



State Public Records Laws

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Today's Presentation

- What records are covered
- What records are exempted
- Who may make requests
- Timelines for responding to requests
- Penalties for non-compliance
- What fees may be charged
- Fee Limitations and Waivers
- Prohibitive Fees
- Broad, Vague or Unreasonable Requests

Principal of Public Records Laws

“It is vital in a democratic society that public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decisions that are reached in public activity and in making public policy. Toward this end, this chapter is adopted, making it possible for them or their representatives to learn and to report fully the activities of their public officials.”

Arkansas Freedom of Information Act

“The public’s right to access to public records and the individual’s right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to public records. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.”

Rhode Island Access to Public Records

Principal of Public Records Laws

- State records laws have led to orderly processes to make this information available
- States must protect certain types of sensitive information within their possession:
 - Plans related to physical and digital security
 - Sensitive personal information (e.g., personnel records)
 - Records restricted by federal law

What is covered

- Generally applicable across state and local governments
- Exceptions as a distinction
- Definition of “Public Body” or “Agency”

Exemptions

- Every public records law has some exemptions for records that can or must be withheld
- Can be general or specific
- Constitutions, statutes and court decisions all impact interpretation and implementation of individual laws

Who may request

- “Any Person”
- No distinction as to who may request
- State citizens

Timelines

- Some states don't specify
- Some states require requests to be addressed in a “timely manner”
- Some states specify a timeline (can vary based on type of request)
- Some states have exemptions for difficult or time-consuming requests

Penalties for non-compliance

- Some states allow only for injunctive relief in courts
- Some states do not mention any penalties for non-compliance
- Some states have criminal and civil enforcement provisions
- Some states have penalties related to specific types of records
- Some states have an open records ombudsman to assist with disputes

Questions so far?

- What records are covered
- What records are exempted
- Who may make requests
- Timelines for responding to requests
- Penalties for non-compliance

Fees

- Can be set for paper or electronic formats
- Can vary by type of record (i.e., motor vehicle accident reports vs. registry of deeds)
- Some states have a fee schedule
- Additional costs may apply if extraordinary expenditures of time are required

Fee Limitations and Waivers

- Some states allow or require agencies to reduce or waive fees if they determine that it is in the public interest
 - May have requirements about how to apply waivers
 - May consider costs of copying and amount of materials in making determination
 - May cap fee waivers at a certain amount per year by agency
- May be special exemptions for news media
- Waiver or reduction may be allowed if records are requested primarily for noncommercial purposes

Prohibitive and Excessive Fees

- Some states have laws that specifically prohibit fees in excess of the direct costs of duplication
- More recently, questions about what is a reasonable cost for electronic transmission
- States may be required to provide an estimate to requestors if cost of producing exceeds a certain threshold, but may also be allowed to require pre-payment from requestor

Examples of Statutes Around Prohibitive Fees

“...The fee for residents may not exceed the actual cost to the agency of copying the record if another fee is not otherwise provided by law.”

Idaho

Idaho Code § 74-102(10)(c)

“A fee...shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information...unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs.”

Michigan

M.C.L. § 15.234(3)

“...if the request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or if producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested, then the agency may charge, in addition to the actual cost of duplication, a special service charge...”

North Carolina

N.C. G.S. § 132-6.2(b)

Examples of Court Cases Around Prohibitive Fees

Supreme Court held that:

“city could not charge requesters for time city employee spent editing videos to redact exempt, but otherwise producible, data.”

California

Nat. Lawyers Guild v. City of Hayward

Supreme Court held that:

“custodian of city records could not charge citizen fee to cover costs of temporary employee to supervise such inspection unless custodian could show that supervision was necessary and that fee was reasonable.”

Georgia

McFrugal Rental of Riverdale v. GARR

Supreme Court held that:

“(2) applicant was entitled to the medicaid claims as they were compiled in their original form; and (3) HHS was not required to create a new document in order to comply with the request.”

New Hampshire

Hawkins v. New Hampshire
Dept. HHS

Broad, Vague or Unreasonable Requests

- Agencies across states have attempted to deny requests that were considered overly burdensome or broad
- States may distinguish between a request for particular records vs. research and analysis
- At least two states have clear statutes about allowing refusal for unreasonable requests with sustained evidence

Examples of Statutes Concerning Broad, Vague or Unreasonable Requests

“In any instance in which an agency will seek costs in excess of \$25.00 for responding to a request, the agency shall notify the requester within a reasonable amount of time...and inform the requester of the estimate of the costs, and the agency may defer search and retrieval of the records until the requester agrees to pay the estimated costs....”

Georgia

O.C.G.A. § 50-18.71(d)

“A request...is deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request.”

Wisconsin

WI Stat. § 19.35(1)(h)

“If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence”

Kentucky

K.R.S. §61.872(6)

Examples of Court Cases Concerning Broad, Vague or Unreasonable Requests

Court of Appeal held that:

“1 finding that request was overbroad and unduly burdensome was not supported by substantial evidence;

2 county failed to provide sufficient evidence to require review of emails to determine whether any exemptions under Act might apply”

California

Getz v. Superior Court

“...neither D.C. Code § 2–532(c) nor any other provision of D.C. FOIA states that a requester's failure to reasonably describe records to a FOIA officer's satisfaction will render the request void. Particularly in light of the statutory directive that the provisions of D.C. FOIA be “construed with the view toward expansion of public access,” ...”

District of Columbia

Fraternal Order of Police v. District of Columbia

“While OPRA may provide access to governmental records otherwise unavailable, MAG's request was not a proper one for specific documents within OPRA's reach, but rather a broad-based demand for research and analysis, decidedly outside the statutory ambit.”

New Jersey

MAG Entertainment v. Div. of Alc. Bev. Control

Additional NCSL Web Resources

Public Records Law and State Legislatures:

<https://www.ncsl.org/cls/public-records-law-and-state-legislatures>

Thank You

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