UWG PROCEDURE NUMBER 8.5.2, Compliance with Georgia Open Records Act

Authority: UWG Policy 8.5 (Legal and Regulatory Compliance)

The Chief Data Officer, serving as Custodian of Records, pursuant to the authority of University of West Georgia (UWG) Policy 8.5, establishes the following procedures to comply with Georgia’s Open Records Act:

A. Background

Georgia’s Open Records Act, O.C.G.A. §§ 50-18-70 et seq., provides that all public records of an agency shall be available for inspection or copying unless they are specifically exempt by law.

B. Definitions

1. Business Day—days of the week when administrative offices are open. Typically, these are the days between and including Monday to Friday and do not include public holidays and weekends.

2. Institutions— all colleges/universities and units thereof under the governance and management of the University System of Georgia (USG) and its Board of Regents (BOR).

3. Office of the Legal Affairs— work unit or individual with the responsibility for providing legal support to the institution.

4. Open Records Officer— the individual designated by the Institutional President to receive oral (verbal) or written Open Records Requests. The individual may be one of the following: the official Custodian of Records, or any other responsible official whose absence or unavailability would not delay the response to the requests.

5. Open Records Request— an oral or written request made by a person, firm, corporation, or other entity to examine or copy a public record.

6. Public Records— all documents, papers, letters, maps, books, tapes, photographs, emails, computer-based or generated information, or similar material prepared and maintained or received in the course of the operation of a public office or agency. A “public record” may also include items received or managed by a private person, firm, corporation or other private entity in the performance of a service or function for or on behalf of a public agency.

7. Public Employee— a person employed by a government agency, to include the employees of a municipal, county, state, or federal agency or state college or university.

8. Third Party— a private person, firm, corporation or other private entity on behalf of the institution, prepares, collects, stores or maintains “public records.”
9. **Unit**- all departments/offices thereof under the governance and management of UWG.

10. **University System of Georgia (USG)**- is composed of the System Office, public four-year higher education institutions and affiliated state agencies.

11. **USG System Office**: provides direction, policy, and structure for operations of the "University System of Georgia".

C. **Procedures**

1. Each institutional president, pursuant to O.C.G.A. § 50-18-71(b)(1)(B), may designate one official to serve as the "Open Records Officer" and shall publish the individual's name and contact information prominently on the university's website.

2. The "Open Records Officer" is responsible for ensuring compliance with this procedure.

3. There is no legal requirement that an "Open Records Request" must be in writing; therefore, requests are received orally or in writing. Any individual who makes an oral request for inspection or copying of "Public Records" shall be directed immediately to the designated "Open Records Officer". All written requests must be made upon the duly appointed "Open Records Officer".

4. Upon receipt of a request, the "Open Records Officer" shall immediately determine whether any responsive documents exist. Within a reasonable amount of time, not to exceed three business days from receipt of a request, "Public Records" responsive to a request must be produced for inspection. In instances where some but not all of the records are available within three business days, those records located and produced shall be made available.

5. In any instances where responsive records exist but are unavailable, the "Open Records Officer", within three business days, must provide the requester with an estimated cost and timeline for production.

6. All requests for inspection or copying of "Public Records" must be responded to in writing, within a reasonable period, not to exceed three business days. The three-business-day response deadline begins when the "Open Records Officer" receives the written/oral request.

7. Contracts with private vendors to prepare, collect, store or maintain public records, on behalf of the institution, should include provisions to ensure public access and delivery of records do not impede the response to a request.

8. All "Open Records Requests" from representatives of the media must be forwarded to the "Open Records Officer".

9. All "Open Records Requests" by a civil litigant for records pertaining to ongoing civil or administrative litigation and a copy of all documents responsive to such a request must be forwarded to the "Open Records Officer".
10. Before responding to or disclosing records in response to an "Open Records Request", the "Open Records Officer" must determine if any information or documents are exempt from public disclosure. All exemptions are to be interpreted narrowly to exclude only those portions of the records that are lawfully exempt.

11. The "Open Records Officer", upon request, shall receive requested records in their entirety without redaction from all parties.

12. The "Open Records Officer", in consultation with "Office of the Legal Affairs", will determine for the institution if all or part of a requested record(s) may be withheld; the specific legal authority, including the Code section, subsection, and paragraph exempting the requested information must be relayed to the requestor when withholding such records.

D. Exemptions to Disclosure:
O.C.G.A. § 50-18-72 lists the records exempt from the public disclosure requirements of the "Open Records Act". The following is a list of exempt records most likely to be received or maintained by UWG:

1. Documents specifically required by federal statute or regulation to be kept confidential, including student records protected by the Family Educational Rights and Privacy Act (FERPA); O.C.G.A. § 50-18-72(a)(1) and O.C.G.A. § 50-18-72(a)(37)

2. Records that reveal a public employee’s home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother’s birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information other than compensation by a government agency, unlisted telephone number if so designated in a public record, and the identity of the public employee’s immediate family members or dependents. If records are requested which contain any of the information above but which also contain information that is not otherwise exempted from disclosure, the above information must be redacted prior to release of the record; O.C.G.A. § 50-18-72(a)(21)

3. Records maintained by UWG and associated foundations that contain personal information concerning donors or potential donors, except: the name of the donor and the amount of the donation shall be subject to disclosure if the donor or an entity in which the donor has a substantial interest transacts business with the public postsecondary educational institution to which the donation is made within three years of the date of such donation. O.C.G.A. § 50-18-72(a)(29). “Substantial interest” means the direct or indirect ownership of more than 25 percent of the assets or stock of an entity; “transact business” means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative in an amount exceeding $10,000.00 in the aggregate in a calendar year.

5. Records consisting of confidential evaluations submitted to, or examinations prepared by, a government agency and prepared in connection with the appointment or hiring of a “Public Employee”; O.C.G.A. § 50-18-72(a)(7)

6. Records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the report has been presented to the appropriate UWG official for action or the investigation is otherwise concluded or terminated; O.C.G.A. § 50-18-72(a)(8)

7. Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state or a local agency relative to the acquisition of real property until such time the property has been acquired or the proposed transaction has been terminated or abandoned; O.C.G.A. § 50-18-72(a)(9)

8. Pending, rejected, or deferred sealed bids or sealed proposals and any related detailed cost estimates until such time as the final award of the contract is made, the project is terminated or abandoned, or the BOR takes a public vote regarding the sealed bid or sealed proposal, whichever comes first; O.C.G.A. § 50-18-72(a)(10)

9. Records that reveal an individual’s social security number, mother’s birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information, insurance or medical information in all records, unlisted telephone number, personal email address or cellular telephone number, and day and month of birth. If records are requested that contain any of the information above but which also contain information that is not otherwise exempted from disclosure, the above information must be redacted prior to release of the record; O.C.G.A. § 50-18-72(a)(20)(A).

10. Media Exception: an individual’s social security number and day and month of birth are subject to disclosure in response to a written “Open Records Request” that is signed under oath stating that the person or entity requesting the information is gathering it as a representative of a news media organization for use in connection with news gathering and reporting. Even in response to “Open Records Requests” from the media, however, the “Open Records Officer” shall not release the social security number and day and month of birth of a “Public Employee”.

11. Any trade secrets obtained from a person or business entity that are required by law, regulation, bid, or request for proposal to be submitted to UWG, provided the person or business entity that wishes to keep such records confidential under this exemption, has submitted and attached to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets as defined in O.C.G.A. § 10-1-761; O.C.G.A. § 50-18-72(a)(34)

12. Records consisting of questions, scoring keys, and other materials constituting a test that derives value from being unknown to the test taker prior to administration by UWG, provided
the owner of the test has taken reasonable measures to protect the security and confidentiality of the test. O.C.G.A. § 50-18-72(a)(38)

13. Data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies, in the conduct of, or as a result of, study or research on commercial, scientific, technical, or scholarly issues, where such data, records or information has not been publicly released, published, copyrighted, or patented. This exemption applies regardless of whether the study or research is sponsored by the university alone or in conjunction with a governmental body or private concern; O.C.G.A. § 50-18-72(a)(35)

14. Records, data, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of a university or any public or private entity supporting or participating in the activities of a university in the conduct of, or as a result of, study or research on medical, scientific, technical, scholarly, or artistic issues, until such information is published, patented, otherwise publicly disseminated or released; this exception shall apply to, but not be limited to, information provided by participants in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works; O.C.G.A. § 50-18-72(a)(36)

15. Records disclosing the identity or personally identifiable information of any person participating in research on commercial, scientific, technical, medical, scholarly or artistic issues conducted by a university whether sponsored by the university or in conjunction with a governmental body or private entity; O.C.G.A. § 50-18-72(a)(39)

16. If there are no records which are responsive to the “Open Records Request”, UWG is not required to prepare reports, summaries, or compilations or create any new records not in existence at the time of the request. However, a request for electronic records, data or data fields may not be refused on the grounds that exporting the data will require inputting range, search, filter, report parameters or similar commands or instructions into the computer system when such commands are used in the ordinary course of business.

E. Assessment of Costs

The most economical means reasonably available shall be utilized to identify and produce responsive, non-excluded documents. Reasonable charges may be assessed for the search, retrieval, redaction, production or copying costs associated with complying with the request.

1. Estimated Costs
   a. When the estimated cost of responding to the request exceeds $25.00, the requestor must be notified of the estimated costs within a reasonable time, not to exceed three business days. The search and retrieval of the requested records may be deferred until the requester agrees to pay the estimated costs unless the requester has stated in his or her request a willingness to pay an amount that exceeds the estimated search and retrieval costs. The production of the documents, however, may not be delayed or conditioned upon receipt of the payment of the estimated costs.
a. When the estimated costs for the production of the requested records exceed $500.00, the requester must prepay the costs before the beginning of the search, retrieval, review, copying or production of the records.

c. A requester who did not pay for the cost of search, retrieval, redaction, or copying of records when such charges were lawfully incurred may be required to prepay the cost to produce any future requests for records until the costs for the prior production of records are paid. The Georgia Department of Law may authorize collection procedures for lawfully incurred charges.

2. Actual Costs and Fees
   a. The fee for copies shall not exceed ten cents ($0.10) per page for letter or legal-size documents. For other documents (e.g., blueprints, posters, etc.) the actual cost of copying/producing may be charged.

   b. The hourly charge for the search, retrieval, redaction, copying, and production of records shall not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable discretion of the "Open Records Officer", has the necessary skill and training to perform the request.

   b. No charge shall be made for the first quarter hour.

   c. For electronic records, the actual cost of the media (e.g., disk, thumb drive, etc.) on which the records or data are produced may be charged.

3. Optional Fees
   a. Where policy or law authorize fees for certified copies a fee may be charged if requested that records be certified. There is an additional fee of $1.00 for certification of the first record and $0.50 for each record thereafter.

   b. Where policy or law authorize fees for notarized copies a fee may be charged if requested that records be notarized. The authorized fee is $2.00 for each notarial act.

F. Violation of the Act
Employees who violate the Open Records Act may be subject to disciplinary action up to and including termination from employment. Employees are also subject to the following provisions of the Open Records Act O.C.G.A. § 50-18-74(a):

1. Any person or entity who knowingly and willfully fails or refuses to provide access to records not subject to exemption or within reasonable time limits, or who knowingly and willingly frustrates or attempts to frustrate the access to records by intentionally making records difficult to obtain or review is subject to conviction of a misdemeanor punishable by a fine not to exceed $1,000.00 for the first violation, and a fine not to exceed $2,500 may be imposed for each additional violation committed within a 12 month period from the date the first penalty or fine was imposed. It shall be a defense to the criminal action that a person has acted in good faith in his or her actions.
2. Persons or entities that destroy records to prevent their disclosure under the Open Records Act may be subject to felony prosecution under O.C.G.A. § 45-11-1.4.

3. Employees may be required to pay all criminal and civil fines associated with their actions.

G. Record Retention:
All Open Records Act responses and documentation will be maintained in a manner consistent with the Georgia Archive’s Retention Schedule for State Government Paper and Electronic Records. Institutions are the official custodian of responses for their records; the System Office is the official custodian of responses for records maintained in the System Office.

H. Additional Guidelines Published by University Units
Any unit of the University may publish guidelines that address these issues as it applies specifically to its unit. In the event any unit specific guidelines conflicts with UWG Policy 8.5 or Procedure 8.5.2, the latter will control.

I. Exclusions
Nothing in this procedure shall change the manner in which subpoenas and formal judicial discovery requests are handled.

Nothing in this procedure shall change the manner in which the UWG complies with the Family Educational Rights and Privacy Act (FERPA).

Issued by the Chief Data Officer, the 12-day of February 2019.

Catherine A. Jenks, Ph.D.

Reviewed by President: [Signature]