

OPEN RECORDS Q & A

Georgia Open Records Act (O.C.G.A §50-18-70)

The questions and answers below are meant to serve only as a brief overview of how the Georgia Open Records Act affects University employees and is not meant to be all inclusive of every aspect of the Act. The Director of Institutional Effectiveness and Assessment (IEA) was named custodian of records and the President of the University designated the department to respond to ORA requests. If you have questions about the Act itself, or questions about your response to a request for information, please contact the Office of Institutional Research at 678-839-6449.

1. What is the Georgia Open Records Act?

State law requires that public records be open and available for inspection by any member of the public.

2. What is the purpose of the Open Records Act?

The purpose is not only to encourage public access to certain information, but to maintain the public's confidence in government by discouraging secrecy and closed records. The act allows the public to evaluate the function of its institutions.

3. What is a public record?

Public records include virtually all records of state agencies regardless of format. Documents, maps, photographs, videotapes, handwritten notes, computer data, including e-mails, are public records. Records held by private persons for a state agency and records held away from the work site all are subject to the law.

4. Does the Open Records Act apply to the University of West Georgia?

Yes. All State-supported colleges and universities, including UWG, are public agencies and are subject to the Act.

5. Who may make an Open Records request?

Any member of the public has a right to inspect, take extracts, or make copies from public records, instruments, and documents. The requestor does not have to invoke the phrase "Open Records request," nor does the requestor have to give reason why he or she wants to inspect records.

6. Does an Open Records request have to be made in writing?

No. While an office or agency can ask that the request be in writing to ensure understanding of what is being requested and for documentation, the law does not require it to be in writing.

7. What is the institution obligated to do?

The University must provide access to existing public records in its custody or under its control, including those the University created and those it has received in the course of its operation. We are not required to create a record which does not exist at the time of the request. While the Act states that we may not be required to compile requested information into a single document (i.e. additional analysis, programming, data manipulation or formatting), the Georgia Attorney General advises that the University make every reasonable attempt to comply with these types of requests.

8. What are examples of UWG records subject to the Open Records Act?

- *Student evaluations of academic courses*
- *Personnel files and Performance Evaluations, however, exempt material in personnel files, such as social security numbers, medical information, financial, or information relating to the designation of beneficiaries, will not be available.*
- *Emails sent and received on UWG-owned equipment, no matter where it is housed, or through private equipment housed on UWG property, whether or not it is business-related, is subject to disclosure. E-mail is not confidential and is subject to disclosure under the Georgia Open Records Act.*

9. Are any UWG records exempt from the Open Records Act?

Yes. There are exemptions, but they are limited and have been interpreted very narrowly by the courts. The law

presumes all records are open and places the burden on the University to demonstrate that any requested materials are exempt. If a public record contains both exempt and non-exempt material, the exempt portion must be removed and the remaining non-exempt material disclosed. The exemptions most relevant to UWG are:

- Medical records and other documents involving matters of personal privacy;
- Records relating to pending investigations;
- Records required by the federal government to be kept confidential, such as student educational records defined in the Family Educational Rights and Privacy Act (FERPA);
- Trade secrets and certain information of a proprietary nature;
- Certain research data, records, or information that has not been published, patented, or otherwise publicly disseminated;
- Confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared **in connection with the appointment or hiring** of a public employee; and records consisting of material obtained in investigations **related to the suspension, firing, or investigation of complaints** against public employees **until ten days after** the same has been presented for action or the investigation is otherwise concluded.
- An individual's social security number, mother's birth name, credit card information, debit card information, bank account information, financial data or information, and insurance or medical information in all records, day and month of birth, which shall be redacted prior to disclosure of any record requested pursuant to this article.

10. Are student records subject to disclosure under the Open Records Act?

Yes, some are. Under the Act, student directory information is considered open. Student directory information is defined in the Family Equal Rights and Privacy Act and includes: name, address, telephone listing, major field of study, dates of attendance, previous institutions attended, degrees and awards received, participation in officially recognized activities and sports, height and weight of members of athletic teams, photograph, and full- or part-time status.

11. What if it costs us money to comply with a valid request?

A reasonable charge may be collected for search, retrieval, and other direct administrative costs for complying with a request. The hourly charge will not exceed the salary of the lowest paid full-time employee who, at the discretion of the custodian of the records, has the necessary skills and training to perform the request provided, however, that no charge shall be made for the first quarter hour. Any agency receiving a request for public records shall be required to notify the party making the request of the estimated cost for copying, search, retrieval, and other administrative fees authorized by Code Section 50-18-71 prior to fulfilling the request as a condition for the assessment of any fee; provided, however, that no new fees other than those directly attributable to providing access shall be assessed where records are made available by electronic means.

12. What happens if a valid request is not honored?

The Code provides for "any person knowingly and willfully violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from this article or by failing or refusing to provide access to such records within the time limits set forth in this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$100.00."

13. What obligation does the Open Records Act place on the University of West Georgia?

UWG must provide access to existing public records in its custody or under its control, including those the University created and those it has received in the course of its operation. We are not required to create a record which does not exist at the time of the request. We are not required to compile information into a single document.

14. As a University System employee, what is my responsibility to preserve public records?

Although other federal and state laws require the University to maintain certain records for a period of years, no particular records are required to be maintained by the Georgia Open Records Act until they have been requested. Once they are the subject of a request, records may not be erased, shredded, or otherwise disposed of under penalty of law.

15. Must the University notify employees named in records being disclosed?

While there is no such requirement in the law, the University will notify employees whose performance evaluations or personnel files are being released under an open records request.

16. How critical is the time element in complying with the Open Records Act?

It is very critical that any unit receiving a request for records immediately notify Institutional Effectiveness and Assessment. The 3-day clock for the University to comply under the law starts running when you receive the request, not when you relay it to IEA. It is the responsibility of department heads to assure there is no delay in this notification to Institutional Effectiveness and Assessment, which is responsible for compliance under University policy.

17. In connection with my duties at the University of West Georgia, what should I do if I receive a legal document such as a summons, lawsuit, or a subpoena?

You should call the **University Legal Counsel** immediately, and provide a copy of the document(s). Upon receipt of the document(s), the office will instruct you as to what actions are necessary.

18. In connection with my duties at the University of West Georgia, what should I do if an attorney contacts me?

You should contact University Legal Counsel or Institutional Effectiveness and Assessment immediately and further inform the attorney that he/she should contact one of those offices.

19. In connection with my duties at the University of West Georgia, what should I do if I receive a request under the Georgia Open Records Act?

You should contact the Office of Institutional Effectiveness and Assessment at 678-839-6449 immediately. Upon receipt, the request will be handled appropriately.