

Columbus | Aug. 3, 2022

Georgia's Sunshine Laws: Essentials for Public Information Officers

Kathy Brister

Georgia First Amendment Foundation



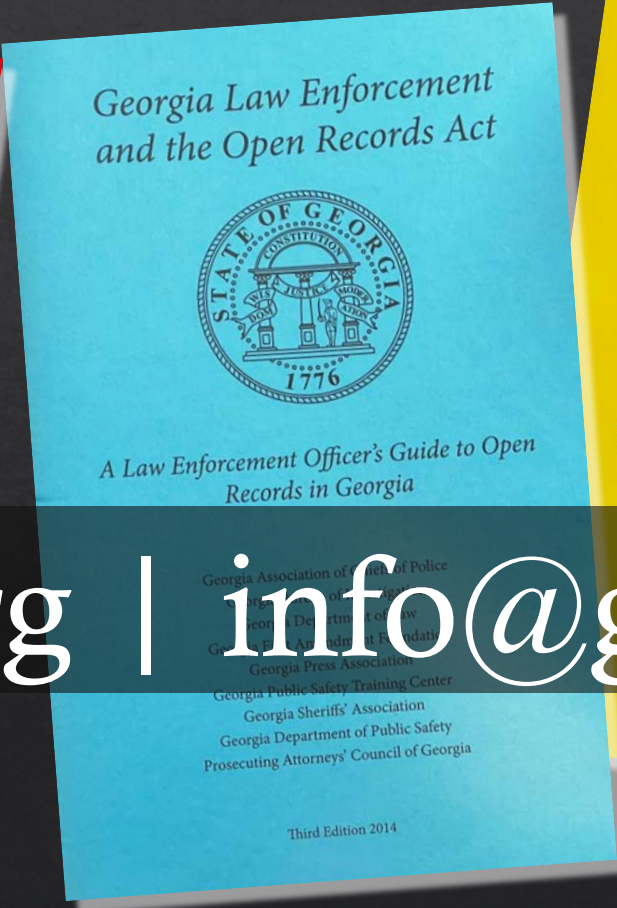
Legal Fine Print

This presentation contains general legal information that's
current as of today.

It is not, nor intended to be, legal advice.



Open Government Guides



gfaf.org | info@gfaf.org



*“The **strong public policy** of this state is **in favor** of open government; that open government is essential to a **free, open and democratic society.**”*

(O.C.G.A. 50-18-70 - 77)





Records Requests

1. **Written requests are not required**, though GFAF recommends the public submit written requests.
2. Exception: **records requested pursuant to litigation must be in writing** -- and copied to the agency's attorney of record.
3. Agency can require that all written requests go to a designated person, a *records custodian*.
4. **All public records are presumed to be open** to inspection and copying.



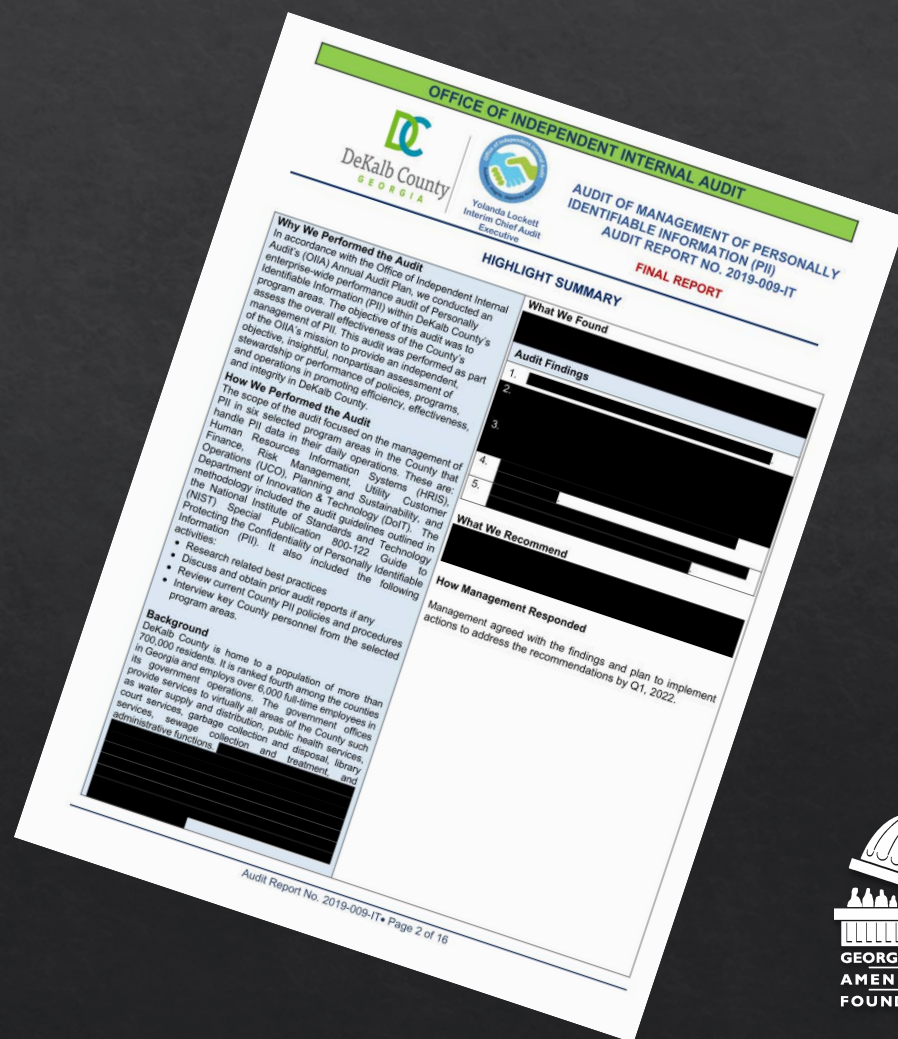
Three-Day Rule

- Records that are readily available (i.e. not in storage, not needing redaction) are to be **made available as soon as possible**. No three-business-day wait.
- The **three-business-day rule** gives the agency a deadline to respond, telling the requester when records will be available, how much they will cost, and cite exemptions if records are to be withheld.



Redactions

- Redactions must be made by **lowest cost, qualified** employee.
- **Records must be released when they are ready.** Redaction process cannot be a reason to withhold other records that are ready to be delivered.



Denial

- 50-18-71 (d) agency **must provide specific legal exception** (code section, subsection and paragraph within 3 business days).

DENIED



Non-Responsive Records

- The **law does not require agencies to create records** that do not exist. That's totally at the agency's discretion.
- However, the law does not allow this to be grounds to deny a request if the requested information is available, or partially available, in another format.



Electronic Data

- Agencies must produce electronic records from the systems they use.
- Agencies cannot refuse data requests on grounds that exporting it equates to creating a new record.
- **Private vendors** contracted to maintain government data are **subject to the Georgia Open Records Act.**



Violations & Penalties

Any person who “knowingly and willfully” **violates or frustrates** public access to records shall be guilty of a misdemeanor and subject to a **\$1,000** fine – and a **\$2,500 fine for additional violations** within a year. **This is a criminal offense.**

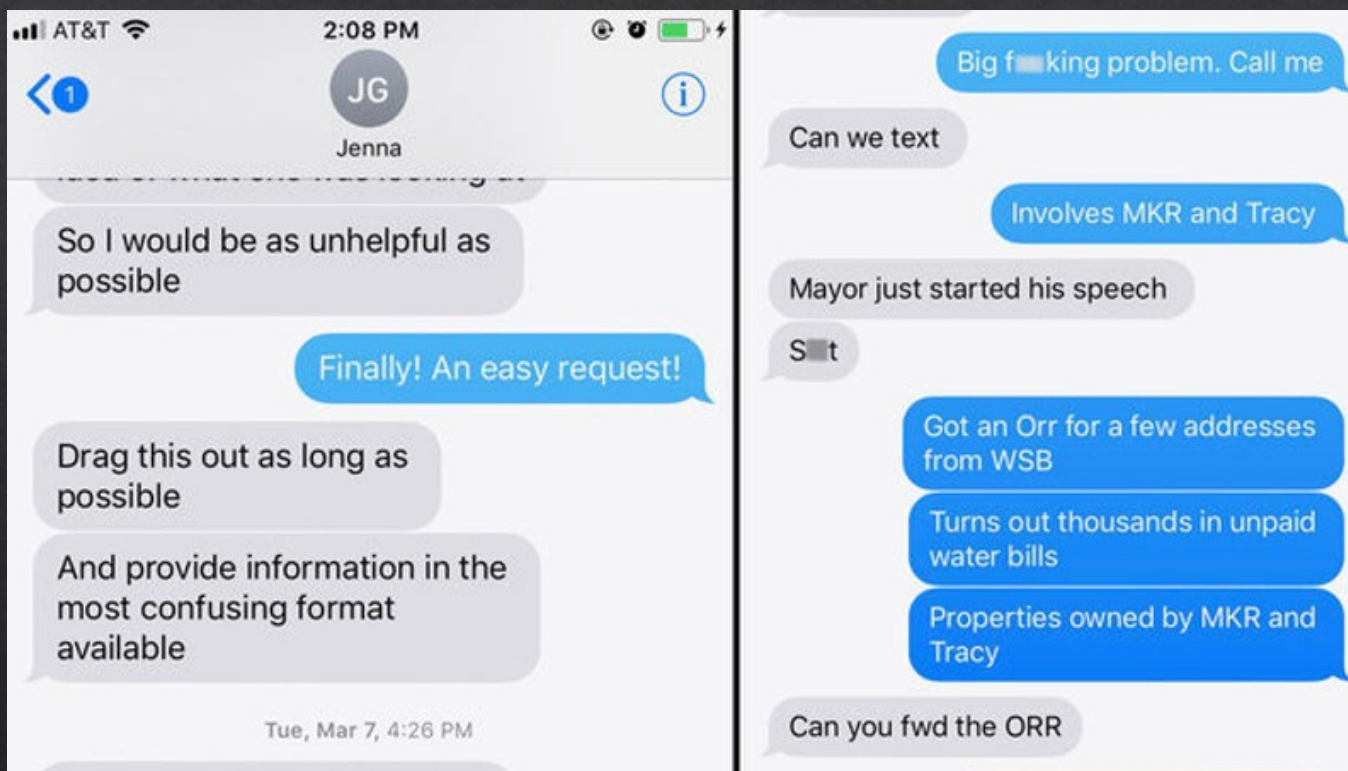
In civil actions, **the court may impose a \$1,000 fine for the first violation and \$2,500 for additional violations** within a year.

These fines and other penalties also apply to **open meetings violations**.

The Act protects **disclosures in good faith**.

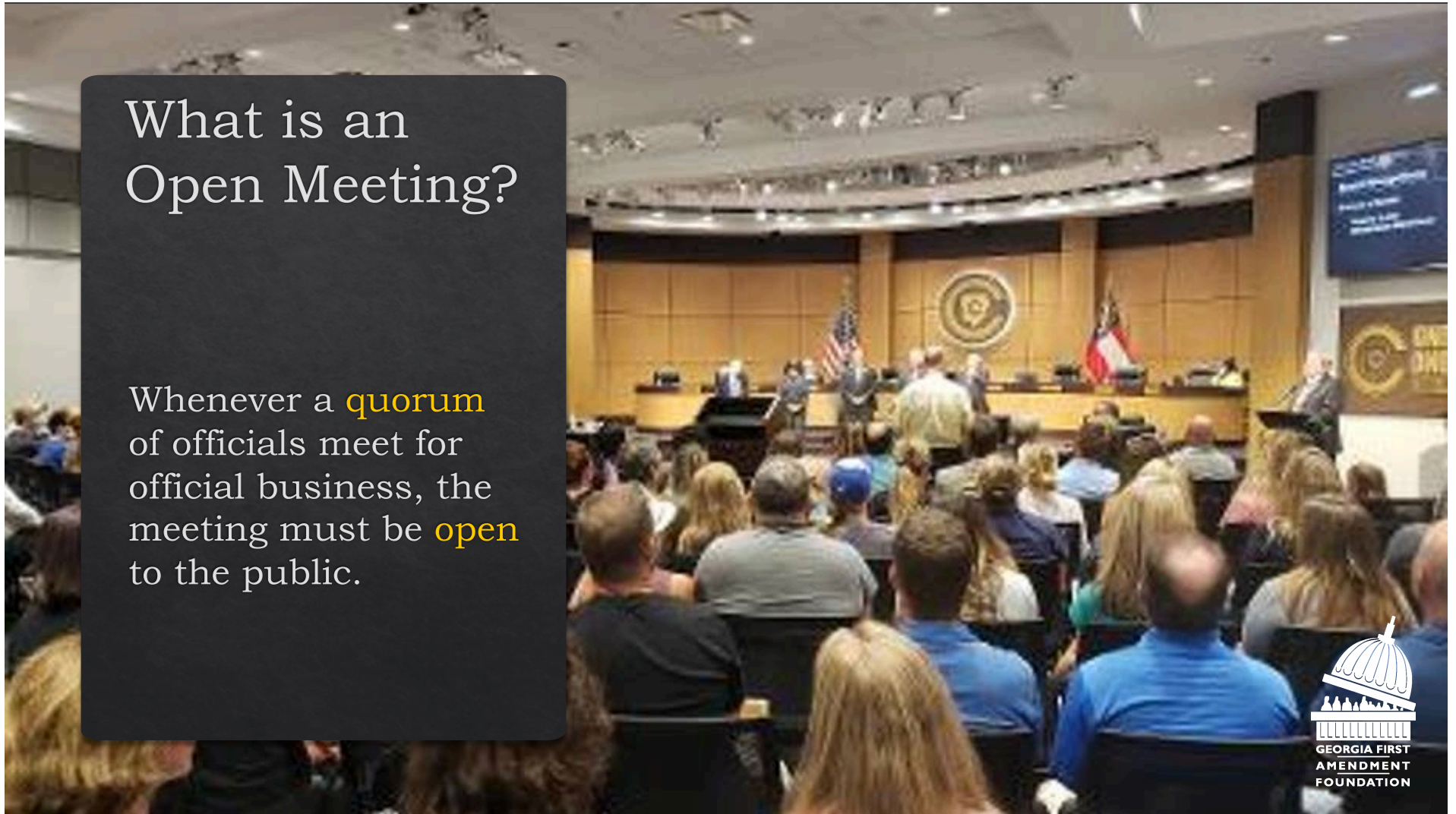


City of Atlanta Case



What is an Open Meeting?

Whenever a **quorum** of officials meet for official business, the meeting must be **open** to the public.





What Does an Open Meeting Require?

- Public must have **full access** to meetings and may make video/ audio recordings.
- Agencies must **provide notice** to the public before all meetings, even emergency ones.
- Before all meetings, agency must make an **agenda** of matters expected to be considered. Agenda must be available upon request and be posted at meeting site.
- **Minutes** must be kept in writing and made available to the public no later than immediately following the next regular meeting.

No Exceptions for Electronic Meetings



Sunshine Laws & Law Enforcement

- **Exempt:** Records generated during active investigations while investigation is open, i.e. interviews, contacts with confidential sources.
- **Not exempt:** Initial incident reports, supplemental narratives to initial incident reports or public records *that existed before the investigation.*



Bodycam Video

- Police dash camera or body camera recordings in closed cases **must** be released.
- Non-investigatory footage in an open case is an open record.
- GBI has stated support for releasing police video because it...
 - **Often benefits officers**
 - **Clears up misinformation**
 - **Diffuses community tensions**



News Media Access

- The news media have the same rights of access to information as the public. Therefore, government agencies, including law enforcement must allow:
 - Photography in public places
 - Interviews with witnesses
 - News gathering activities on property open to the public

Resources

- Open government guides and resources: gfaf.org/resources/
- Open government FAQs: bit.ly/GaOpenGovFAQs
- Video of GFAF's "Open Government Essentials" training: youtu.be/woDBRSD_hd4
- Public officials, free speech and media interviews: bit.ly/3BFMxqu
- Example of First Amendment audit handled well: youtu.be/JkSM52YivkE
- Georgia local government records retention schedule: georgiaarchives.org/records/local_government



Questions?

Kathy Brister

President, Georgia First Amendment Foundation

kathybrister@yahoo.com | info@gfaf.org | gfaf.org

