

# Procedure: 3.3.14p. (II.C.14a.)

## Open Records Requests

**Revised:** July 15, 2015; January 9, 2013

**Last Reviewed:** July 15, 2015

**Adopted:** July 18, 2008



### I.PURPOSE:

Access to public records is encouraged to foster confidence in government, to provide the public the opportunity to evaluate the expenditure of public funds and for the efficient and proper functioning of its institutions. Georgia's Open Records Act, O.C.G.A. §§ 50-18-70 et seq., provides that all public records of an agency must be made available for inspection or copying unless they are specifically exempt by law. Generally, these records must be made available within three business days of the receipt of request. It is the policy of the Technical College System of Georgia to provide access to all public records in accordance with the law.

### II.RELATED AUTHORITY:

O.C.G.A. § 20-4-11 – Powers of the Board

O.C.G.A. § 20-4-14 – TCSG Powers and Duties

O.C.G.A. §§ 50-18-70 et seq

O.C.G.A. § 10-1-761

O.C.G.A. § 45-11-1

Family Educational Rights & Privacy Act (FERPA), 20 U.S.C. §1232(g); 34 CFR Part 99.

### III. APPLICABILITY:

All work units and technical colleges associated with the Technical College System of Georgia.

### IV. DEFINITIONS:

- a) **Public Records:** all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by the Technical College System of Georgia or any of its constituent colleges. Records prepared, received or maintained by a private person, firm, corporation, or other private entity in the performance of a service or function for or on behalf of the Technical College System of Georgia or any of its constituent colleges or documents which have been transferred to a private person or entity for storage or future governmental use are also considered Public Records.
- b) **Open Records Request:** an oral or written request made by a person, firm, corporation, or other entity to examine or copy a public record.
- c) **Technical College System of Georgia (TCSG):** the Technical College System Board of Directors, System Office, and all technical colleges and units thereof.
- d) **System Office:** the Commissioner's Office, the Office of Administrative Services, the Office of Adult Education, the Office of Technical Education, the

- Office of Data, Planning and Research, and the Office of Economic Development Programs/Quick Start and units thereof.
- e) **Colleges:** all technical colleges and units thereof under the governance and management of the Technical College System of Georgia and its Board of Directors.
  - f) **Open Records Officer:** the individual designated at the System Office or a technical college to receive written Open Records Requests. The individual may be one of the following: Commissioner, technical college President, the official Custodian of Records, or any other responsible official whose absence or unavailability would not delay the response to the requests.
  - g) **Public Employee:** any officer, employee or former employee of the state of Georgia, TCSG, college, county, commission or other political subdivision of the state as well as employees of early care and education programs administered through the Department of Early Care and Learning.
  - h) **Business Day:** the weekdays administrative offices of are open.
  - i) **Office of Legal Services:** work unit assigned to the Commissioner's Office with the responsibility for providing legal support to TCSG.

**V. ATTACHMENTS:** Attachment 3.3.14p.a1. Sample Response Letter

**VI. PROCEDURES:**

- a. All written requests for inspection or copying of open records maintained by the System Office must be made to the Commissioner of the Technical College System of Georgia. This designation shall be prominently displayed on the TCSG website.
- b. The president at each college shall be responsible for ensuring compliance with this procedure. Each technical college shall designate one official to serve as the Open Records Officer and shall publish the individual's name and contact information prominently on the college's website; the Office of Legal Services and the legal organ of the county in which the college's principal offices are located shall also be notified. [http://georgiapublicnotice.com/pages/legal\\_organs](http://georgiapublicnotice.com/pages/legal_organs)
- c. An Open Records Request may be made orally or in writing, however, any individual who makes an oral request for inspection or copying of public records shall be immediately directed to the designated Open Records Officer. All written requests must be submitted to the Open Records Officer.
- d. Upon receipt of a request, the Open Records Officer should immediately determine whether any responsive documents exist. Public records that are responsive to a request must be produced for inspection within a reasonable amount of time not to exceed three business days from receipt of a request. In those instances where some, but not all, records are available within the three business days, records that can be located and produced shall be made available.
- e. In any instances where responsive records exist but are unavailable within three business days, the Open Records Officer must, within three business days, provide the requestor with a description of the records, estimated cost of production and timeline for production. Access to records must be provided as soon as practicable.
- f. 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.

- g. Contracts with private vendors to prepare, collect, store or maintain public records on behalf of TCSG must include provisions to ensure that public access and delivery of those records in response to a request will not be impeded.
- h. A copy of all Open Records Requests and responses thereto should be sent to the Office of Legal Services.
- i. Colleges shall forward to the Office of Legal Services all Open Records Requests by a civil litigant for records pertaining to ongoing civil or administrative litigation and a copy of all documents to be produced in response to such a request.
- j. Prior to responding to and/or disclosing records in response to an Open Records Request, college Open Records Officers 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.
- k. The Open Records Officer should consult with the Office of Legal Services in determining that all or part of a requested record(s) must 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.
- l. A list of records exempt from the public disclosure requirements of the Open Records Act may be found in O.C.G.A. § 50-18-72. The following is a list of exempt records most likely to be received or maintained by TCSG:
  - i. 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)
  - ii. 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)
  - iii. Records maintained by TCSG and associated foundations that contain personal information concerning donors or potential donors except;
    - 1. 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)
    - 2. "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.

- iv. Medical records; O.C.G.A. § 50-18-72(a)(2)
- v. Records consisting of confidential evaluations submitted to, or examinations prepared by TCSG and prepared in connection with the appointment or hiring of a public employee; O.C.G.A. § 50-18-72(a)(7)
- vi. 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 TCSG official for action or the investigation is otherwise concluded or terminated; O.C.G.A. § 50-18-72(a)(8)
- vii. Real estate appraisals, engineering or feasibility estimates, or other records made for or by TCSG relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned; O.C.G.A. § 50-18-72(a)(9)
- viii. 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 Board takes a public vote regarding the sealed bid or sealed proposal, whichever comes first. O.C.G.A. § 50-18-72(a)(10)
  - 1. Records which 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 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)(20)(A).
  - 2. 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;
  - 3. 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.
- ix. 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 TCSG, 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)
- x. 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 TCSG, 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)

- xi. Records, data, or information of a proprietary nature, produced or collected by or for TCSG faculty or staff or staff of 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 college alone or in conjunction with a governmental body or private concern; O.C.G.A. § 50-18-72(a)(35)
- xii. Records, data, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of a college or any public or private entity supporting or participating in the activities of a college 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)
- xiii. 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 college whether sponsored by the college or in conjunction with a governmental body or private entity; O.C.G.A. § 50-18-72(a)(39)
- xiv. Records containing communications subject to the attorney-client privilege recognized by state law and confidential attorney work product; O.C.G.A. § 50-18-72(a)(41) and O.C.G.A. § 50-18-72(a)(42)
- xv. Records relating to a Quick Start training program disclosing an economic development project prior to a binding commitment having been secured. For purposes of this paragraph, “economic development project” means a plan or proposal to locate a business, or to expand a business, that would involve an expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business. O.C.G.A. § 50-18-72(a)(47)
- xvi. Quick Start related records pertaining to job applicants, or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity O.C.G.A. § 50-18-72(a)(47)
  - 1. If there are no records which are responsive to the Open Records Request, TCSG 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.
  - 2. 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.

- xvii. When the 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.
- xviii. A requestor who has not paid the cost for search, retrieval, redaction, or copying of records when such charges have been 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 have been paid. Collection procedures for lawfully incurred charges may be authorized by the Georgia Department of Law.
- xix. When the estimated costs for the production of the requested records exceed \$500.00, the requestor must prepay the costs prior to the beginning of the search, retrieval, review, copying or production of the records.
- xx. The fee for copies shall not exceed ten cents (\$0.10) per page for letter or legal size documents. In the case of other documents (e.g. blue prints, posters, etc.), the actual cost of copying/producing them may be charged. Where fees for certified copies are authorized by policy or law, these fees may be charged if the request specifies certified copies.
- xxi. The hourly charge for 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. No charge shall be made for the first quarter hour.
- xxii. In the case of electronic records, the actual cost of the media on which the records or data are produced may be charged. Where information requested is maintained by computer, actual cost of a computer disk or tape onto which the information is transferred shall be charged.
  - A) 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:
  - B) 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. A fine not to exceed \$2,500 may be imposed for each additional violation within a 12 month period from the date the first penalty is assessed. It shall be a defense to the criminal action that a person has acted in good faith in his or her actions.
    - a) Any person who negligently violates the Open Records Act is subject to civil action and penalty not to exceed \$1,000 for the first

violation, and up to \$2,500 for each successive violation occurring within 12 months of the date the first penalty was assessed.

- b) Persons or entities that destroy records for the purpose of preventing their disclosure under the Open Records Act may be subject to felony prosecution under O.C.G.A. § 45-11-1.4.
- c) Employees may be required to pay all criminal and civil fines associated with their actions.
- C) Nothing in this procedure shall change the manner in which subpoenas and formal judicial discovery requests are handled.
- D) Nothing in this procedure shall change the manner in which the TCSG complies with the Family Educational Rights and Privacy Act (FERPA).
- E) Any questions about this procedure shall be directed to the Office of Legal Services.

## **VII. RECORD RETENTION:**

All employment-related documents created or collected pursuant to this procedure shall be maintained in a manner consistent with the Georgia Archive's Retention Schedule for State Government Paper and Electronic Records. NOTE: all medical information obtained/collected in conjunction with a donated leave request shall be maintained in a file separate from the employee's official personnel file with limited access.

ATTACHMENT: (3.3.14p.a1.)

## Sample Open Records Response

*Instructions for various situations are underlined and should be removed from final response; insert college specific information in highlighted areas*

Dear [Requestor's Name]:

I have received your request for [list requested records] dated [insert date of request]. I am responding to your request under the Georgia Open Records Act, which can be found at O.C.G.A. § 50-18-70 et seq.

The following records are available: [insert list of available documents]. OR If documents have been requested that contain confidential information:

The following documents exist, but [college name/TCSG] will be unable to produce the records under an exception(s) to the Georgia Open Records Act: [list documents that will not be produced or information that will be redacted AND the legal citation to the exception from the Open Records Act.] NOTE: citations are included in the Open Records Procedure at the end of each exception that is listed

If the cost of producing responsive documents is less than \$25.00:

All responsive documents have been enclosed. OR are available for review at [insert location where records can be viewed]. If the documents cannot be produced within 3 business days, use the following as an alternative: The responsive documents will be available by [date] and will be sent to you at that time. OR will be available for review at [location].

If responding to the request will generate costs in excess of \$25.00:

The cost for producing the responsive documents is estimated at \$[insert total cost] which includes XX (minus the first 15 minutes) staff hours for search, retrieval, production, copying, and if applicable, redaction of the records, 10 cents each for approximately XX copies, and only if applicable \$XX for [list cost of flash drive, CD, cost of non-traditional sized copying]. Please confirm that you are willing to pay for the cost of production. Once I receive your confirmation, the college [or TCSG] will begin the search and retrieval process. I anticipate the documents will be available [insert date or other period of time, e.g. within one week of receiving confirmation from you].

If responding to the request will generate costs in excess of \$500.00:

The college [or TCSG] anticipates that the cost to respond to your request will be \$[insert total cost] which includes XX (minus the first 15 minutes) staff hours for search, retrieval, production, copying, and if applicable, redaction of the records, 10 cents each for approximately XX copies, and only if applicable \$XX for [list cost of flash drive, CD, cost of non-traditional sized copying]. Please send your payment to my attention. Once the payment is received, the college [or TCSG] will begin the search and retrieval process. I anticipate the documents will be available [insert date or other period of time, e.g. within one week of receiving your payment].

If you have any questions, please do not hesitate to contact me at [insert phone number] or [email].