

	CITY OF ATLANTA	<i>Control ID</i>	CTO-001
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OPEN RECORDS COMPLIANCE POLICY		<i>Revision Number</i>	N/A
		<i>Revision Date</i>	N/A
		<i>Approved By</i>	Chief Transparency Officer
		<i>Department Policy Owner</i>	Office of the Mayor, Chief Transparency Officer

1. OVERVIEW

This Open Records Compliance Policy (“Policy”) sets forth the policies and guidelines to be followed at all times in responding to requests for public records under the Georgia Open Records Act, O.C.G.A. § 50-18-70, *et. seq.*

The City of Atlanta recognizes that full compliance with the requirements of the Georgia Open Records Act is a vital and essential component of creating and maintaining public trust and enhancing the City's effectiveness. All City of Atlanta employees and elected officials are required to comply with this Policy, in addition to all applicable federal, state and local laws and any department-specific policies and procedures implemented related to compliance with the Georgia Open Records Act.

2. PURPOSE

The purpose of this Policy is to establish an efficient and good faith procedure for agencies and departments of the City of Atlanta to respond to requests under the Georgia Open Records Act, O.C.G.A. § 50-18-70, *et. seq.* Accordingly, the City’s Transparency Officer has developed this policy to provide direction and guidance to employees, to set forth rules and procedures for Open Records Act compliance, to strengthen its partnerships with media organizations, improve collaboration, and facilitate transparency and compliance with the Georgia Open Records Act.

3. SCOPE

This Policy applies to all City of Atlanta employees and elected officials (hereinafter referred to in the collective as “the City”), including but not limited to those employees designated as official custodian of public records and those employees designated as open records coordinators. Pursuant to O.C.G.A. § 50-18-71(h), all third-party vendors with custody of public records related to the services they provide to the City must not impede public access and must strictly comply with this policy.

4. **RELATION TO OTHER LAWS AND OTHER POLICIES**

This Policy should be closely reviewed in conjunction with Chapter 3 (Transparency) of the City of Atlanta Code of Ordinances.

5. **STANDARD OPERATING PROCEDURES**

The following procedures shall be required in responding to all requests for records under the Georgia Open Records Act:

- a. **Summary of Rule.** The Open Records Act requires the City to provide all available responsive documents within three business days of receiving a request for public records. If some or all of the requested documents are not available, then within three business days of receiving the request, the City must provide the requestor with a description of the currently unavailable (but obtainable) records and a timeline for the production of those records. Records that are unavailable within three business days should be provided as soon as practicable.
- b. **Production of Available Records within Three Business Days.**
 - i. Records that are available within three business days of the receipt of a request should be produced without delay. Departments must manage staffing and workflow such that complicated requests requiring more staff activities do not interfere with the production of records that are immediately available.
 - ii. Records that are unavailable within three business days due to delays in retrieval or complex redaction obligations or for any other reason, must be produced as soon as practicable. In all such instances, the requester must be provided with a specific estimated date by which records will be provided. This estimated date may be amended as needed in response to the actual time required to provide records.
 - iii. If the estimate of time required to provide records exceeds ten (10) business days, the Transparency Officer must be notified.
 - iv. If the estimate of time required to provide records exceeds twenty (20) business days, such estimate must be reviewed and approved by the Transparency Officer before it is provided to the requester.
 - v. *Conferral with Requestor.* When a request will be time-consuming to fulfill or result in excess costs to the requestor, the employee responsible for fulfilling a request shall attempt to contact the requestor to obtain more information about the goal of the request, explain why the request is burdensome or costly, and ask whether the request can be narrowed or clarified to facilitate a more efficient and timely production of responsive records. Such an inquiry must be initiated within three business days of the request.

Where a request asks for records in a format that does not exist or will be difficult to generate, the City shall, if practical, explain its document systems to the requestor so that the requestor may reframe the request to seek more readily available information.

If the request seeks records which would require the City to conduct a document-by-document review for attorney-client privileged information or other information which might require redaction, the City shall inform the requestor, who may consider whether the request can be fulfilled through more efficient means.

A requestor is not obligated to narrow a broad request, and the City is obligated to fulfill any request for records that are not exempted from disclosure once the requester agrees to pay the estimated costs. The City should rely on the conferral process to clarify complex requests, and to avoid delays and miscommunications between requestor and the City.

In the event a requestor agrees to narrow a request, the City must confirm the narrowed scope of the request in writing.

c. Partial/Rolling Productions.

- i. *Partial Production.* If some records are readily available and some are not, the City must make a partial production of the available documents within three business days.
- ii. *Rolling Production.* The City should provide a rolling production of available documents and should not wait to respond to the request until all requested documents are available.
- iii. At the written direction of a requester, the City may wait to provide a complete set of responsive records to a requester once the compilation and preparation of records is complete.

d. Exemptions. If some or all of the requested records are exempt from disclosure by law, the City shall inform the requestor of such exemption within three business days of the request or within three business days of the discovery of the applicability of exempt information subsequent to the retrieval of records.

- i. The City must explain the nature of the exemption and shall cite the specific statutory section, subsection, and paragraph under which the records are exempt. Records or portions of records may only be redacted if specifically authorized by a statutory exemption. A portion of an otherwise responsive record cannot be redacted unless it is specifically exempt, even if it is not responsive to the request for records.
- ii. *Attorney-Client Privileged Communications and Attorney Work Product.* To avoid the unintentional waiver of attorney-client privilege and/or disclosure of confidential attorney work product, all requests that relate to legal matters must be sent to the Department of Law for review as soon as they are received. Legal review of requests for exempt attorney-client privileged communications and exempt attorney work product must occur prior to, but shall not unreasonably delay, the release of records. Requests that must be reviewed by the Department of Law include, but are not limited to:
 - A. Requests for copies of legal invoices submitted by outside legal counsel;
 - B. Requests for records related to a lawsuit in which the City is a party; and
 - C. Requests for records that include communications with attorneys in the Department of Law.

- e. **Cost Estimates**
- i. The Open Records Act allows the City to impose a reasonable charge for the search, retrieval, redaction, and copying of records. Such costs cannot exceed the prorated hourly salary of the lowest paid full-time employee who has the necessary skill and training to perform the request, provided that no charges shall be made for the first quarter hour. In addition, the City may charge a fee for the copying of records or data, not to exceed 10 cents per page for letter or legal-size documents, or in the case of other documents, the actual cost of producing the copy.
 - ii. If a request will result in a charge of more than \$25 for search, retrieval, redaction, or copying, the City must provide the requestor with a detailed description of the estimated costs, including: (1) the total estimated charge; (2) the estimated number of hours required to search, retrieve, redact, or copy the records; (3) the hourly rate to be charged; (4) in the case of paper records, the estimated number of pages to be copied and the charge per page for copying; and (6) in the case of electronic records, the actual cost of the media on which the records are produced, within three business days of receiving the request. The City may defer search and retrieval of the records until the requester agrees to pay the estimated costs unless the requester has stated in the request a willingness to pay an amount that equals or exceeds the search and retrieval costs.
 - iii. Any estimate of costs that exceeds \$500.00 must be reviewed and approved by the Transparency Officer. The City may insist on prepayment of the costs prior to beginning search, retrieval, review, or production of the records.
 - iv. An invoice describing the actual cost incurred in producing responsive records, which may be higher or lower than the cost estimates provided in accordance with paragraph ii above, must be provided at the time of delivery of records.
 - v. Whenever any person who has requested to inspect or copy a public records has not paid the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully incurred, the City may require prepayment for compliance with all future requests for production of records from that person until the costs for the prior production of records have been paid or the dispute regarding payment resolved, if the records officer has received approval of such action from the Transparency Officer.
- f. **Physical Inspection of Records.** The procedures described in this Policy will in no way limit the rights of a requester as created by the Georgia Open Records Act to physically inspect records rather than paying for copies. However, any costs associated with the search, retrieval, and redaction of records may still be assessed when a requester chooses to physically inspect records in lieu of paying for copies.

6. REQUESTS FOR ELECTRONIC RECORDS

- a. **Retrieval of Data.** The City cannot refuse to fulfill a request on the grounds that it will require inputting any range, search, filter, reporter parameters, or similar commands or instructions into an agency's computer system or database. So long as those commands

or instructions can be executed within existing computer programs or databases, the City must perform those commands and provide the requested records.

- b. **Format.** A requestor may ask for a document either in the format in which the agency normally keeps that data or in a standard export format (such as .csv or .xls).
- c. **Conferral.** If an agency has concerns about its capabilities to locate and/or produce requested electronic records, the agency should use the conferral process discussed in Section 5.b.v. to discuss its concerns with the requestor and try in good faith to find a solution that will fulfill the request.

7. USE OF CITY-WIDE OPEN RECORDS SOFTWARE

This compliance policy will be updated to include the use of the City-wide public records software solution once the solution has been procured and implemented

8. USE OF PRIVATE EMAILS ACCOUNTS, PRIVATE CELLULAR TELEPHONES, AND PRIVATE ELECTRONIC MESSAGING

- a. **Use of Private Email Accounts.** The use of private email accounts to conduct official City business is strongly discouraged. Employees who choose to use a private email account to conduct official City business do so at their own risk and assume all responsibility for providing access to records of official business upon request. If a private email account is used to conduct official City business, it is recommended that those emails be copied (CC'd) and/or forwarded to the employee's City email account as soon as practicable to ensure that they are captured on the City email server. Failure or refusal to provide access to records of official City business in a private email account may result in disciplinary action up to and including termination. Further, such failure or refusal may be referred to the appropriate authorities for criminal prosecution or civil enforcement.
 - i. *Campaign email accounts.* Pursuant to the City of Atlanta Ethics Code, §2-811 employees and elected officials are prohibited from using City resources, including email accounts, for campaign purposes. Campaign-related email accounts and email records are not official City business and are not covered by this Policy.
- b. **Use of Private Cellular Telephones.** It is preferred that all employees use City-issued cellular telephones to conduct official City business. Employees who choose to use a private cellular telephone to conduct official City business do so at their own risk and assume all responsibility for providing access to records of official business upon request. Failure or refusal to provide access to records of official City business on a private cellular telephone may result in disciplinary action up to and including termination. Further, such failure or refusal may be referred to the appropriate authorities for criminal prosecution or civil enforcement.
- c. **Use of Private Electronic Messages.** It is preferred that all employees use City-issued devices to conduct official City business via text messaging or similar

technology, including but not limited to: text messaging, instant messaging, and third-party electronic messaging apps such as WhatsApp, Viber, and Signal. Employees who choose to use a private device to conduct official City business via electronic messaging do so at their own risk and assume all responsibility for providing access to records of official business upon request. Failure or refusal to provide access to records of official City business on a private device may result in disciplinary action up to and including termination. Further, such failure or refusal may be referred to the appropriate authorities for criminal prosecution or civil enforcement.

- d. **Use of Private Computers.** It is preferred that all employees use City-issued computers to conduct official City business. Employees who choose to use a private computer to conduct official City business do so at their own risk and assume all responsibility for providing access to records of official business upon request. Failure or refusal to provide access to records of official City business on a private computer may result in disciplinary action up to and including termination. Further, such failure or refusal may be referred to the appropriate authorities for criminal prosecution or civil enforcement.
- e. **Retention of Public Records on Private Devices.** Records of official City business are subject to the requirements of the state records retention statute, the Georgia Records Act, O.C.G.A. § 50-18-90, *et. seq.*, regardless of their location. Employees who choose to use any type of private device or private messaging service to conduct official City business do so at their own risk and assume all responsibility for retaining those records in accordance with the applicable retention schedule. Intentional deletion or destruction of records of official City business on a private device or in a private messaging service may result in disciplinary action up to and including termination. Further, such deletion or destruction may be referred to the appropriate authorities for criminal prosecution or civil enforcement.

9. TRAINING

- a. **Mandatory Annual Training.** All current employees, elected officials, and council staff must participate in annual training on the requirements of the Georgia Open Records Act. Such training will be conducted by the Transparency Officer or her/his designee.
- b. **Mandatory Training for New Employees and Newly Elected Officials.** All new employees must receive training on the requirements of the Georgia Open Records Act within the first thirty (30) days of employment. All newly elected officials must receive training on the requirements of the Georgia Open Records Act within the first thirty (30) days of being sworn into office. Such training will be conducted by the Transparency Officer or her/his designee.
- c. **Mandatory Training for Designated Open Records Coordinators.** All employees designated as open records coordinators pursuant to Chapter 3 (Transparency), Section 3-3 of the Atlanta City Code of Ordinances must attend quarterly training provided by the Transparency Officer. This quarterly training will include, but not be

limited to, the requirements of the Georgia Open Records Act, the requirements of this Policy, and consequences for violations.

- d. Records of Training.** The Transparency Officer will keep a record of the name of each individual receiving training and the date on which the training occurred.

10. COMPLIANCE MONITORING

The Transparency Officer will evaluate the City's compliance with the Georgia Open Records Act, Chapter 3 (Transparency) of the Atlanta City Code, and this Policy on a quarterly basis and will report the results of that evaluation to the Mayor and to the Council on a quarterly basis. Employees are required to cooperate with all inquiries and investigations conducted by the Transparency Officer related to such compliance monitoring. Failure or refusal to cooperate with inquiries or investigations by the Transparency Officer may result in disciplinary action up to and including termination.

11. REPORTING OF VIOLATIONS

- a.** Employees are encouraged to report any alleged violation of the Georgia Open Records Act, Chapter 3 (Transparency) of the Atlanta City Code, or this Policy to the Transparency Officer. Such a report can be made via the following:
 - i. Telephone. Reports can be made via telephone to the City's Integrity Hotline at 1-800-844-0911.
 - ii. Email. Reports can be made via email to ChiefTransparencyOfficer@atlantaga.gov.
 - iii. Web Portal. Reporting capabilities through the web portal will be announced once the City's public records software solution has been procured and implemented.
- b.** Employees are encouraged to report any alleged attempt to interfere with the response to a request for public records from the City. Such a report may be made in the same manner as described in paragraph a above.
- c.** Employees are required to cooperate with all inquiries and investigations conducted by the Transparency Officer related to the allegation of violations of the Georgia Open Records Act, Chapter 3 (Transparency) of the Atlanta City Code, or this Policy. Failure or refusal to cooperate with inquiries or investigations by the Transparency Officer may result in disciplinary action up to and including termination.