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AGENDA ITEM 7

7

F. DATE  
DONNA K. JACKSON  
CITY CLERK

Inventory list from Alparre Post

JACKSON  
CITY CLERK  
5/30/01

Mrs. Donna Jackson  
City Clerk of Jonesboro Arkansas  
Mrs. Jackson:

Again, I request the opportunity to speak to our Council at the next meeting.

I, too, want an opportunity to brag on what a great job the leadership has done in the past five years to make significant increases in salary for our Mayor, Asst. Mayor, and Alderman as well as much of the leadership.

It is now the great hope that the talent and skill used by the leadership to promote those salaries can be used to make similar increases in the salaries of our Police & Fire Department employees and other employees of our fine city.

People \* Pride \* Progress.

Also, to touch on the Arkansas Freedom of Information charges made for photo copies.

Mary Thomas Bell Ebbert

# ARKANSAS FREEDOM OF INFORMATION HANDBOOK

9th Edition

**Q. How does one request records?**

**A.** The request should be directed to the "custodian of the records." It need not be in writing, though a written request is advisable, because it provides a record if litigation becomes necessary.

**Q. When must the agency respond?**

**A.** Records must be made available immediately unless in active use or storage, in which case they must be made available within three working days of the request. Requests for personnel records and employer evaluation records must be acted upon within 24 hours of the custodian's receipt of the request. During that same period, the custodian must make effort to the fullest extent possible to notify the person making the request and the subject of the records of the custodian's decision. The custodian, requester, or subject of the records may seek an Attorney General's opinion on whether the custodian's decision is consistent with the act.

**Q. How must the agency respond?**

**A.** There is no obligation on the agency's part to provide copies or furnish duplicating equipment; it must simply make available existing records. Reasonable comforts and facilities for the full exercise of the right to inspect and copy the records must be provided as well.

**Q. What fees may be charged?**

**A.** An agency may charge a fee that is reasonably related to actual copying cost. The agency must be prepared to justify the costs assessed, if challenged. The Attorney General has opined that **25 cents a page** is not unreasonable. An agency may not charge for time spent by an employee in searching manually for records or for computer time.

**Q. Who may attend meetings?**

**A.** Because meetings "shall be public," any person may attend.

**Q. What is a meeting?**

**A.** Any meeting, formal or informal, regular or special, of a governing body, including sub-bodies. A quorum of the governing body need not be present for the meeting to be subject to the FOIA. If two members meet informally to discuss past or pending business, that meeting may be subject to the FOIA. This question will turn on the facts of each case.

**Q. What meetings are exempt from the FOIA?**

**A.** There is only one exemption: an executive session may be held only "for the purpose of considering employment,

appointment, promotion, demotion, disciplining, or resignation of any public officer or employee." In contrast, an executive session to consider general salary matters, or across the board pay increase, or the overall performance of employees as a group is not permissible.

**Q. Who may attend an executive session?**

**A.** Only the top administrator in an agency may attend, the employee's immediate supervisor, the employee in question, and any person being interviewed for the top administrative position in the agency involved. Neither the agency's nor the employee's attorney may attend an executive session.

**Q. When does the action discussed in an executive session become legal?**

**A.** When the governing body involved utilizes the action with a public vote in open session following the executive session. If no public vote is taken, the decision discussed in closed session has no legal effect.

**Q. How does one challenge an agency's action?**

**A.** "Any citizen denied the rights granted to him may appeal immediately from the denial" to an appropriate circuit court, which may issue "orders" to enforce the act.

**Q. Are attorney's fees available?**

**A.** The court may award attorney's fees and other litigation expenses to a party who has substantially prevailed in an FOIA case unless the court finds that the position of the defendant was substantially justified or that other circumstances make an award unjust.

**Q. Is violation of the FOIA a criminal offense?**

**A.** A person who "negligently violates" the FOIA is guilty of a misdemeanor and can be punished by a fine of up to \$200, a jail term of up to 30 days, or both. Alternatively, the court may sentence the defendant to "appropriate public service or education, or both."

**Q. What is a recommended way to announce an executive session?**

**A.** After approval of a motion to retire into executive session, the chairman may announce: "This body has voted to retire into executive session to consider the [employment, appointment, promotion, demotion, discipline or resignation] of an employee. We will reconvene in public session following this executive session to present and vote on my motion arrived at in private."

## PUBLIC AGENCIES

The following questions and answers pertain to all public boards and agencies regulated by state, county and municipal governments, including local public school districts. The opinion numbers represent the year and sequence the opinion was issued; e.g., Opinion No. 74-10 was the tenth opinion issued in 1974.

**Q. Does a committee or subcommittee of a governing body have to meet the requirements of the FOIA?**

**A.** Generally, yes. *Ark. Gazette Co., v. Pickens*, 258 Ark. 69, 522 S.W.2d 350 (1975).

**Q. Must a governing body hold a public meeting even if its only purpose is to gather information?**

**A.** Yes. Opinion No. 95-198.