

## Open Records

### I. STATUTE -- BASIC APPLICATION

The primary legislative statement regarding the right of individuals to inspect and copy public records of the State of Alabama is contained in Alabama Code § 36-12-40 (Supp. 2005), as follows:

Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute. Provided, however, registration and circulation records and information concerning the use of the public, public school or college and university libraries of this state shall be exempted from this section. Provided further, any parent of a minor child shall have the right to inspect the registration and circulation records of any school or public library that pertain to his or her child. Notwithstanding the foregoing, records concerning security plans, procedures, assessments, measures, or systems, and any other records relating to, or having an impact upon, the security or safety of persons, structures, facilities, or other infrastructures, including without limitation information concerning critical infrastructure (as defined at 42 U.S.C. § 5195c(e) as amended) and critical energy infrastructure information (as defined at 18 C.F.R. § 388.113(c)(1) as amended), the public disclosure of which could reasonably be expected to be detrimental to the public safety or welfare, and records the disclosure of which would otherwise be detrimental to the best interests of the public shall be exempted from this section. Any public officer who receives a request for records that may appear to relate to critical infrastructure or critical energy infrastructure information, shall notify the owner of such infrastructure in writing of the request and provide the owner an opportunity to comment on the request and on the threats to public safety or welfare that could reasonably be expected from the public disclosure of the records.

In *Stone v. Consolidated Publishing Co.*, 404 So. 2d 678 (Ala. 1981), the Supreme Court of Alabama defined "public writing" to include both

- a. "all written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business and shall also include any record authorized to be made by any law of this state belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filed with, in or by any such court, office or officer," Ala. Code § 41-13-1 (2000), and
- b. "such a record as is *reasonably necessary* to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens." 404 So. 2d 678, 680-81 (Ala. 1981) (emphasis in original). See also *Walsh v. Barnes*, 541 So. 2d 33, 35 (Ala. Civ. App. 1989) (referring to and applying the two *Stone* standards -- the stricter standard ("required by law to be kept") and the lesser standard ("reasonably necessary").

Two additional statutes specifically require public officers and servants to make and keep records and to produce those records upon request, as follows:

- a. "All public officers and servants shall correctly make and accurately keep in and for their respective offices or places of business all such books or sets of books, documents, files, papers, letters and copies of letters as at all times shall afford full and detailed information in reference to the activities or business required to be done or carried on by such officer or servant and from which the actual status and condition of such activities and business can be ascertained without extraneous information . . .," Ala. Code § 36-12-2 (2001); and

b. "Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor . . .," Ala. Code § 36-12-41 (2001).

In 1989, the Supreme Court of Alabama also established the following rules of statutory construction, presumptions, and burden of proof for the Public Records Law:

a. "It is clear from the wording of § 36-12-40 that the legislature intended that the statute be liberally construed," *Chambers v. Birmingham News Co.*, 552 So. 2d 854, 856 (Ala. 1989);

b. "There is a presumption in favor of public disclosure of public writings and records expressed in the language of § 36-12-40," 552 So. 2d at 856; and

c. "[B]ecause there is a presumption of required disclosure, the party refusing disclosure shall have the burden of proving that the writings or records sought are within an exception and warrant nondisclosure of them," 552 So. 2d at 856-57.