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# FREEDOM OF INFORMATION RULES & PROCEDURES

ARKANSAS STATE GAME & FISH COMMISSION  
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## Section 1 Definitions

The purpose of these rules and procedures is to establish provisions through which the Arkansas State Game and Fish Commission will perform public business in an open and transparent manner consistent with Amendment 35 to the Constitution of Arkansas. The Commission's goals in establishing these rules and procedures are to establish procedures for inspection and copying of public records and for open public meetings.

For the purposes of these rules and procedures, the following terms shall be construed to mean and include:

- (a) **Business** – any corporation, partnership, limited liability company, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, receivership, trust, or any legal entity through which business is conducted, whether for profit or not for profit.
- (b) **Commission** – the Arkansas State Game and Fish Commission, which has been established under Amendment 35 of the Arkansas Constitution as a constitutionally independent agency of the State of Arkansas.
- (c) **Commission Board** – the eight Commissioners collectively.
- (d) **Commissioner** – an individual who is appointed by the Governor as one of seven voting members of the Arkansas State Game and Fish Commission or who serves on the Commission in a non-voting capacity by virtue of being the head of the Department of Biology at the University of Arkansas.
- (e) **Confidential Record** – a public record maintained by the Arkansas State Game and Fish Commission which is declared not subject to disclosure under the provisions of these rules and procedures.
- (f) **Custodian** – the person deemed by the Commission to maintain administrative control of certain public records. It does not include a person who holds public records solely for the purposes of storage, safekeeping, or data processing for others.
- (g) **Director** – an individual who is employed as the Executive Director of the Arkansas State Game and Fish Commission.
- (h) **Disclosable Record** – a non-confidential public record maintained by the Arkansas State Game and Fish Commission subject to disclosure under the provisions of these rules and procedures.
- (i) **Employee** – an individual who is employed by the Arkansas State Game and Fish Commission. It does not include Commissioners.

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- (j) **Format** – the organization, arrangement, and form of electronic information for use, viewing, or storage.
- (k) **Freedom of Information (FOI) Coordinator** – the person designated by the Commission to be responsible for accepting and processing requests for inspection and/or copying public records.
- (l) **Medium** – the physical form or material on which records and information may be stored or represented and may include, but is not limited to, paper, microfilm, microform, computer disks and diskettes, optical disks, and magnetic tapes.
- (m) **Person** – an individual, business, union, committee, club, or other organization or group of persons.
- (n) **Public meeting** – a meeting or deliberations of at least a quorum of the seven voting members of the Commission Board for the purpose of transacting official business of the Commission.
- (o) **Public record** – a writing, recorded sound, film, tape, electronic or computer-based information, or data compilation in any medium, required by law to be kept or otherwise kept, that constitutes a record of the performance or lack of performance of official functions that are or should be carried out by the Arkansas State Game and Fish Commission. A record maintained in Commission offices or by Commission employees within the scope of their employment shall be presumed to be a public record. It does not include software or other intellectual property acquired by purchase, lease, or license.

## Section 2 Requests for Examination and Copying of Public Records

- (a) A citizen may make a request to the Commission to inspect and copy any disclosable record as provided under the provisions of these rules and procedures. Such request must be made in writing and delivered to the Commission FOI Coordinator in person, by mail, by facsimile transmission, or by electronic mail. Requests received after regular business hours (generally Monday through Friday, 8:00 a.m. to 4:30 p.m.) will be deemed received on the morning of the following business day.
- (b) Requests must be sufficiently specific to enable the Commission FOI Coordinator or a custodian to locate the requested public records upon reasonable effort. A request may be denied in part or in full and returned to the requestor for the following reasons: (1) the request does not adequately describe the records; (2) the request requires the Commission to perform research or assemble information that has not been compiled; (3) the request is by or on behalf of a party to any litigation or other legal proceeding involving the Commission, its Commissioners, or its employees; or (4) the request is overly broad. For example, a request for all email records of a Commission employee or department would be overly broad. The request should be limited to a particular subject, time frame, and recipient or sender.

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- (c) The following are declared to be confidential records and exempt from public inspection and copying, except under conditions specifically provided herein:
- (1) State and federal income tax records including returns and any records that show the amount of state or federal income tax withheld from a person's compensation.
  - (2) Medical records, test results, medical evaluations, and any similar records related to the treatment or diagnosis of a person's medical condition.
  - (3) Adoption records.
  - (4) Academic transcripts and other records related to a person's scholastic performance while attending a high school, college, university or other educational agency or institution, including educational records as defined in the Federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g.
  - (5) Information protected by the attorney-client privilege or the work product doctrine in accordance with the Federal or Arkansas Rules of Civil Procedure or Rules of Evidence, or other applicable law. This includes, but is not limited to, memoranda, correspondence, electronic mail and other documents prepared by legal counsel for the Commission, as well as information compiled in reasonable anticipation of a civil action or proceeding.
  - (6) Records related to ongoing criminal investigations conducted by the Commission Enforcement Division or another law enforcement agency. Upon an administrative determination by the Enforcement Division that no criminal activity has occurred or that a criminal investigation is otherwise at an end, the exemption no longer applies and the records shall be disclosed upon request unless the matter has been turned over to a prosecutor's office or involves another law enforcement agency. The status of records related to such matters shall be determined with assistance by that office or agency. This exemption does not apply to arrest reports, dispatch logs, incident reports, shift sheets, accident reports, and other routine enforcement records that are not investigative in nature.
  - (7) Unpublished memoranda, working papers, and correspondence of the Commission. For the purposes of this exemption, publication does not occur merely upon the transmittal of information to its intended recipient, rather it occurs only upon its communication to a third person (outside the Commission).
  - (8) Documents that are protected from disclosure by order or rule of court.
  - (9) Records which, if disclosed, would give an advantage to competitors or bidders. This exemption includes protection of trade secrets and other proprietary information and records of a business, unless approval for release of those records is granted by the business entity. Any business wishing to avail itself of this exemption must, contemporaneously with the submission of its information, submit a written request to the Commission that specifically identifies the

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information it believes should remain confidential and includes justification for its request. The Director, in consultation with the Commission FOI Coordinator, shall make the final determination of the applicability of this exemption and notify the business accordingly.

- (10) Identities of wildlife officers and other law enforcement officers currently working undercover with their agencies, including officers identified in the Arkansas Minimum Standards Office as undercover officers. This exemption does not apply to records containing only the number of undercover officers.
- (11) Records containing measures, procedures, instructions, or related data used to cause a computer or a computer system or network, including telecommunication networks or applications thereon, to perform security functions, including, but not limited to, passwords, personal identification numbers, transaction authorization mechanisms, and other means of preventing access to computers, computer systems or networks, or any data residing therein.
- (12) Personnel records are exempt from disclosure to the extent such disclosure would constitute an unwarranted invasion of personal privacy. This exemption shall be applied on a case-by-case basis and, as a general rule, includes records that contain intimate details of a person's life which, if disclosed, could subject him or her to embarrassment, harassment, disgrace, or loss of employment or friends. Some personnel records, such as medical or scholastic records, may fall within other exemptions and therefore be protected from disclosure on that basis. Any record relating to individual employees, former employees, or job applicants is a personnel record, whether or not it is kept in a personnel file.
  - (A) The following personnel records are expressly deemed confidential records and exempt from disclosure: job applications (including resumes and references) of persons not selected for employment, social security numbers, religious affiliation, marital status and similar family information, citizenship status, welfare payments, tax withholding, payroll deductions, insurance coverage, credit union statements and similar personal financial records, employee benefit information, scores on promotional exams and other assessments, personal telephone numbers and addresses, and personal electronic mail addresses.
  - (B) The following personnel records are expressly deemed disclosable records and open to public disclosure: employees' names, job titles, salary information, work electronic mail addresses, job applications (including resumes and references), employment history, educational background, training and certification, records of vacation time or sick leave, terms of employment, and letters of resignation (excluding information of a personal and intimate nature).

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- (C) Regardless of whether they are confidential or disclosable to the public, personnel records are available to the person about whom they are maintained or to that person's designated representative.
- (13) Home addresses of Commissioners and Commission employees, except that the custodian of the records shall verify an employee's city or county of residence upon request.
- (14) Materials, information, examinations, and answers to examinations utilized by the Commission for purposes of testing persons for employment or promotion.
- (15) Military service discharge records or DD Form 214, the Certificate of Release or Discharge from Active Duty of the United States Department of Defense, filed with the county recorder as provided under Ark. Code Ann. § 14-2-102, for veterans discharged from service less than seventy (70) years from the current date.
- (16) Records pertaining to the issuance, renewal, expiration, suspension, or revocation of a license to carry a concealed handgun, or a present or past licensee under Ark. Code Ann. § 5-73-301 et seq., including without limitation all records provided to or obtained by any local, state, or federal governments, their officials, agents, or employees in the investigation of an applicant, licensee, or past licensee and all records pertaining to a criminal or health history check conducted on the applicant, licensee, or past licensee except that:
- (A) Information or other records regarding an applicant, licensee, or past licensee may be released to a law enforcement agency for the purpose of assisting in a criminal investigation or prosecution, or for determining validity or eligibility for a license;
- (B) Names of an applicant, licensee, or past licensee may be released as contained in investigative or arrest reports of law enforcement that are subject to release as public records; and
- (C) The name and the corresponding zip code of an applicant, licensee, or past licensee may be released upon request by a citizen of Arkansas.
- (17) Employee evaluation and job performance records are not available for public inspection unless there has been a final administrative resolution of a proceeding to suspend or terminate an employee, the records formed a basis for the decision, and there is a compelling public interest in disclosure. Records of an employee who has resigned or has been reprimanded, demoted, or placed on probation are exempt, since there has been no termination or suspension of the employee.
- (A) "Evaluation records" include memoranda and preliminary materials associated with the evaluation process.

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- (B) "Job performance records" include any record that details the performance or lack of performance of an employee with regard to a specific incident or incidents. This category includes such records as written reprimands, records of an internal investigation into alleged misconduct, and documents related to a recommendation for dismissal.
- (C) Regardless of whether they are open to the public, employee evaluation and job performance records are available to the person about whom they are maintained or to that person's designated representative.
- (18) Records regarding the nature or specific location of an endangered or threatened wildlife or plant species shall be kept confidential unless the Commission determines that: (i) disclosure is needed by an owner of land upon which the species has been located or by a potential buyer who has bona fide contract to buy the land and applies to the Commission for disclosure of endangered species information; (ii) disclosure is to qualified persons or organizations, public agencies, and nonprofit organizations for scientific research or for preservation and planning purposes when the Commission determines that the preservation of the species is not further endangered by the disclosure; or (iii) disclosure is consistent with other applicable laws protecting the species.
- (19) Records are exempt if they contain sensitive personal information that would be harmful or embarrassing to a reasonable person if disclosed, unless this right to privacy is outweighed by the Commission's interest in making the information public. The Commission FOI Coordinator shall make a determination of the applicability of this exemption on a case-by-case basis, and any record maintained by the Commission is potentially affected.
- (20) Records identifying the holders of a Commission-issued recreational hunting or fishing license or permit including their names, addresses, telephone numbers, electronic mail addresses, violation histories, wildlife harvest data, and other information the Commission has compiled on such holders. This exemption does not apply to holders of commercial or guide licenses or permits. Notwithstanding this exemption the Commission may furnish a license or permit holder's record to the following: (i) the person on whom the record has been compiled; (ii) any person authorized in writing by such holder to obtain the record; (iii) any court having jurisdiction over the offenses provided in the Commission's Code of Regulations; (iv) any law enforcement officer who shall use such report only in the line of duty in enforcing the Commission's regulations; and (v) any governmental department or agency upon a showing of reasonable cause as to why the record should be issued to such governmental department or agency in order for the governmental department or agency to effectively carry out its lawful duties.
- (21) Any information protected from by disclosure by applicable law.



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- (d) Within three (3) business days of receiving a request for the examination or copying of public records, the Commission FOI Coordinator shall contact the custodian(s) of the requested records to identify whether such records exist. The Commission FOI Coordinator shall use diligent efforts to determine within ten (10) business days after the receipt of any such request whether (1) the Commission is able to comply with the request and (2) the records identified by the custodian(s) are disclosable, confidential, or otherwise exempt by law from disclosure. Promptly thereafter, the Commission FOI Coordinator shall notify the requestor of such determination and set a date and time when any disclosable records or portions thereof will be made available for inspection and copying. If a request is denied in part or in full, the Commission FOI Coordinator shall notify the requestor of the reason(s) for the denial and of the right to appeal as provided herein.

If the requested records are personnel records, employee evaluation records, or job performance records, then the Commission FOI Coordinator also shall promptly notify the subject employee(s) that a public request for such records has been made and whether the Commission intends to make the records or portions thereof available to the requestor for inspection and copying. The subject employee(s) may immediately seek a decision from the Director regarding the intended release of such records by the Commission and, within three (3) business days following receipt of the request from the employee(s), the Director shall issue a final decision stating whether the release of such records is consistent with these rules and procedures.

- (e) If the Commission FOI Coordinator has any question as to whether a requested public record is subject to disclosure, he or she shall immediately seek advice from the Legal Division. If the requested records appear to be related to an ongoing criminal investigation by the Enforcement Division or another law enforcement agency, the Commission FOI Coordinator shall refer the request to the Enforcement and Legal Divisions.
- (f) The Commission FOI Coordinator is under no obligation to create any new record by compiling and collecting information in the manner specified by the requestor.
- (g) Any reasonably segregable portion of a public record shall be made available to the requestor for inspection and copying after deletion of the portions that are exempt from disclosure. If a disclosable record is maintained in more than one format, it shall be made available in the format specified by the requestor. However, in the discretion of the Commission, the Commission FOI Coordinator or the custodian of requested public records may summarize, compile, or tailor electronic data in a particular manner or medium, and may provide the data in an electronic format to which it is not readily convertible.
- (h) The Commission, through the Commission FOI Coordinator or the custodian(s) of requested public records, shall permit the inspection of disclosable records during regular business hours (generally Monday through Friday, 8:00 a.m. to 4:30 p.m.) at a time and in a manner that does not interfere with normal office operations. The Commission also

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shall provide reasonable access and reasonable comforts and facilities for inspection and copying of the records.

- (i) The requestor may copy any disclosable records made available for inspection but may not remove such records from the Commission office. Such copying may be done by hand or with the requestor's own equipment. For the convenience of the requestor, the Commission FOI Coordinator or the custodian(s) of requested public records shall, upon request, furnish copies of the disclosable records within a reasonably prompt period of time for the following fees:

- (1) Black and white copies:
  - 8.5" x 11" and 8.5" x 14" - \$0.15 per printed page;
  - 11" x 17" - \$0.25 per printed page;
- (2) Color copies:
  - 8.5" x 11" and 8.5" x 14" - \$0.45 per printed page;
  - 11" x 17" - \$0.75 per printed page;
- (3) Oversized items, blueprints, engineering drawings, GIS printouts, maps:
  - 18" x 22" - \$2.00 each;
  - 24" x 36" - \$3.00 each;
  - 30" x 42" - \$4.00 each;
  - Larger than 30" x 42" - \$0.60 per square foot.
- (4) The fees for copying public records maintained in an electronic format may differ based on the media onto which the records are copied as follows:
  - CD/DVD - \$1.00 each;
  - Hard Disk Drive, Flash Drive, other media - actual cost;
- (5) The Commission, in its discretion, may arrange to have records copied by an outside contractor if the Commission does not have the resources or equipment to copy such records. In such instance, the requestor will be responsible for payment of these costs.

Reasonable copying fees for public records in other formats shall be established by the Director and shall be uniformly applied by the Commission.

- (j) In addition to copying fees, the Commission may also charge (i) the actual costs of mailing or transmitting the public records by facsimile or other electronic means and (ii) the actual, verifiable costs of personnel time exceeding two (2) hours associated with the administrative tasks of processing an FOI request, including locating, reviewing and copying public records and summarizing, compiling, or tailoring electronic data. Any charge for personnel time shall not exceed the sum of the time actually expended by each employee and contractor in processing the FOI request multiplied by their respective hourly compensation rates. The requestor shall be provided with an itemized breakdown of any charges for personnel time.

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Payment for all charges shall be made to the Commission FOI Coordinator. If the estimated charges exceed twenty-five dollars (\$25.00), the Commission FOI Coordinator may require the requestor to pay the charges in advance.

### Section 3 Open Public Meetings

- (a) Except as otherwise specifically provided under the provisions of these rules and procedures, all meetings or deliberations, formal or informal, special or regular, of a quorum of the seven voting members of the Commission Board for the purpose of transacting official business of the Commission shall be public meetings.
- (b) The time and place of each regular public meeting of the Commission Board shall be furnished to anyone who requests the information. In the event of an emergency or special public meeting of the Commission Board, the Director or his other designee shall notify the representatives of the newspapers, radio stations, and television stations, if any, located in the county in which the public meeting is to be held, and any news media located elsewhere in the state that routinely cover regular public meetings of the Commission Board and that have requested to be so notified of emergency or special public meetings, of the time, place, and date of the public meeting. Notification shall be made at least two (2) hours before the public meeting takes place in order that the public shall be afforded an opportunity to have representatives at the meeting.
- (c) An executive session may be called during a public meeting only to consider, evaluate, or discuss one or more of the following matters:
- (1) The employment, appointment, promotion, demotion, disciplining, or resignation of any Commissioner or Commission employee.
  - (2) Threatened or pending litigation or other legal proceeding, or confidential advice of legal counsel.
  - (3) Any matter related to the security of the Commission's computer systems, communications infrastructure, and properties (facilities, equipment, etc.) where public discussion would significantly compromise such security.
  - (4) Any information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action. For example, this would include information that, if disclosed, would hamper the Commission's ability to effectively negotiate contracts; the purchase, lease, sale, or transfer of an interest in property; or otherwise put the Commission at a competitive disadvantage.

The specific purpose of an executive session shall be announced in public before going into executive session. At its discretion, the Commission Board may invite into executive session any Commission employee it deems necessary for effective consideration, discussion, and evaluation of the above matters. Executive sessions must

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never be called for the purpose of defeating the reason or the spirit of these rules and procedures. No resolution, rule, contract, regulation, or motion considered or arrived at in executive session will be valid unless, following the executive session, the Commission Board reconvenes in public session and presents and votes on the resolution, rule, contract, regulation, or motion.

## Section 4 Appeals and Judicial Review

- (a) Any citizen who considers himself or herself injured in his or her person, business, or property by action or decision of the Commission pursuant to application of these rules and procedures may file an administrative appeal with the Commission Board within thirty (30) days from the date of the action or decision. The administrative appeal must be made in writing and delivered to:

Board of Commissioners  
ATTN: Freedom of Information Appeal  
Arkansas State Game and Fish Commission  
2 Natural Resources Drive  
Little Rock, AR 72205

No specific form or particular language is required to file an administrative appeal; however, the citizen should explain the reasons for the appeal and include copies of any freedom of information request and the response of the Director or Commission FOI Coordinator.

- (b) If, after a final decision has been rendered by the Commission Board, the citizen considers himself or herself injured in his or her person, business, or property by that final decision, then the citizen shall be entitled to judicial review of that decision. Proceedings for review shall be instituted by filing a petition in the Pulaski County Circuit Court within thirty (30) days from the date of service upon the citizen of the Commission Board's final decision. Copies of the petition shall be served upon the Commission through the Director and upon any other parties of record in accordance with the Arkansas Rules of Civil Procedure.