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STATE OF ALABAMA  
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Honorable Vernon Barnett  
Commissioner  
Alabama Department of Revenue  
Post Office Box 320001  
Montgomery, Alabama 36132

Revenue Department – Public  
Records – Emails – Rules and  
Regulations

Draft documents, such as versions of proposed administrative rules and legislation, used internally by the Alabama Department of Revenue, are not subject to disclosure under the Open Records Law. Draft documents shared externally, as well as internal and external correspondence, such as emails, on possible actions to be taken by Revenue, are also not subject to disclosure.

Dear Commissioner Barnett:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

1. Are draft documents, such as draft versions of rules, draft versions of proposed legislation, and draft versions of other communications considered public writings? Is

the answer to this question different if the documents are used solely for internal discussions versus those that might be shared with a person or entity outside the Alabama Department of Revenue (“Revenue”)?

2. Are internal communications, such as email or other written documents, that discuss proposed, but not finalized, Revenue actions or Revenue’s strategic planning related to the implementation of tax laws or regulations, i.e., communications that are preliminary and deliberative in nature, considered public writings?

3. Do the communications referenced in the above questions, which are preliminary and deliberative and/or explore potential areas or methods of Revenue action, become public writings merely because the communication is between Revenue and a person or entity outside Revenue?

### FACTS AND ANALYSIS

Your request states that the Alabama Department of Revenue has received an open records request for “a broad array of documents that include internal correspondence, draft versions of documents, and any communications with outside entities or other states related to regulations and legal actions taken by” Revenue.

The Open Records Law provides that “[e]very citizen has a right to inspect and take a copy of any public writing of this State, except as otherwise expressly provided by statute.” ALA. CODE § 36-12-40 (2013). This Office, however, has consistently stated that only completed records in final form are subject to disclosure. See the following opinions:

- Honorable Jim Bennett, Secretary of State, dated August 22, 2014, A.G. No. 2014-087 (draft sublist of the statewide voter registration list used for planning purposes is not a public record);

- Honorable Beth Chapman, Secretary of State's Office, dated March 17, 2010, A.G. No. 2010-050;
- Honorable Alvin Holmes, Member, House of Representatives, dated January 9, 2007, A.G. No. 2007-031 (notes are not public records);
- Honorable Donald B. Sweeney, Jr., Attorney, Pell City Board of Education, dated February 8, 1996, A.G. No. 96-00126 (documents of the opinions of individual members of a board of education used to complete the board's evaluation of its superintendent are not public records);
- Opinion to Ms. Constance S. Aune, Mobile County Board of Education, dated October 4, 1995, A.G. No. 96-00003 (recommendations by the superintendent of education for transfer or disciplinary action are not public records).

The *Chapman* opinion specifically addressed interoffice correspondence in the context of complaints against registrars made to the Secretary of State. That opinion concluded that, while the order to remove a registrar is subject to disclosure, staff recommendations as to the action to take on a complaint may be withheld. Consistent with these opinions, draft documents, such as versions of proposed administrative rules and legislation, and interoffice correspondence, such as emails, on possible actions to be taken by the agency, are not public records.

Moreover, this Office is unaware of any law that would treat these documents and preliminary discussions differently simply because they had been shared with and taken place with an outside entity or person. The preliminary nature of the documents is not changed by virtue of the outside communication. *See*, opinion to Honorable W. David Ryan, Attorney, Tuscaloosa City Board of Education, dated August 29, 2001, A.G. No. 2001-269 (personnel records of both former and current employees are public records). This reading is supported by state and federal court decisions interpreting the interoffice correspondence principle as codified in state transparency laws and the Freedom of Information Act. These decisions hold that materials from outside consultants constitute interagency memoranda that are exempt from disclosure as part of the decisional-making process of the agency. *E.g.*, *Matter of Town of Waterford v New York State Dept. of Env'tl. Conservation*, 77 A.D.3d 224 (N.Y. App. Div. 2010); *Wu v. Nat'l Endowment for Humanities*, 460 F.2d 1030 (5th Cir. 1972).

Honorable Vernon Barnett  
Page 4


CONCLUSION

Draft documents, such as versions of proposed administrative rules and legislation, used internally by the Alabama Department of Revenue, are not subject to disclosure under the Open Records Law. Draft documents shared externally, as well as internal and external correspondence, such as emails, on possible actions to be taken by Revenue, are also not subject to disclosure.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

STEVE MARSHALL  
Attorney General  
By:

  
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