

## Alabama AG Issues “Public Writings” Opinion

The Alabama Attorney General (AG) has issued an opinion indicating that, though the Alabama public writings statute is very broad, not every document in the hands of a public official constitutes a record that must be disclosed. The AG has stated that a “letter or any other written, typed, or printed document received by a public official in pursuance of law is a public record,” but that notes kept by a public official do not fall in that category. Opinion to Hon. Alvin Holmes, dated January 7, 2007, A.G. No. 07-031.

The opinion relied on a previous determination that certain preliminary writings made by an official may not rise to the level of a disclosable document if those writings are part of a process leading to a final document or official action. In a 1996 opinion, the AG was asked about the status of notes made by members of a board of education in their evaluation of the superintendent. The AG’s response was as follows:

Documents which reflect part of an official’s thought processes, which are not records of the ultimate decision, are not subject to disclosure until a final action is arrived at or acted upon. It is only the final draft or document, reflecting the ultimate decision, which is contemplated by the Public Records Law. Evaluation forms such as the ones used by board members from which the Board’s ultimate decision is made and recorded as a public record need not be disclosed to the public. (citations omitted)

Opinion to Honorable Donald B. Sweeney, Jr., dated February 8, 1996, A.G. No. 96-00126.

In the present case, the AG ruled that a final document prepared by a public official based on notes taken by him/her is clearly a public record, but the notes themselves are not. Though an AG’s opinion is not binding upon the courts, these rulings provide a basis for UAH officials to claim that their notes and preliminary drafts of documents may be protected from mandatory disclosure, especially where such notes or drafts are part of a process by which a final disclosable document is generated.