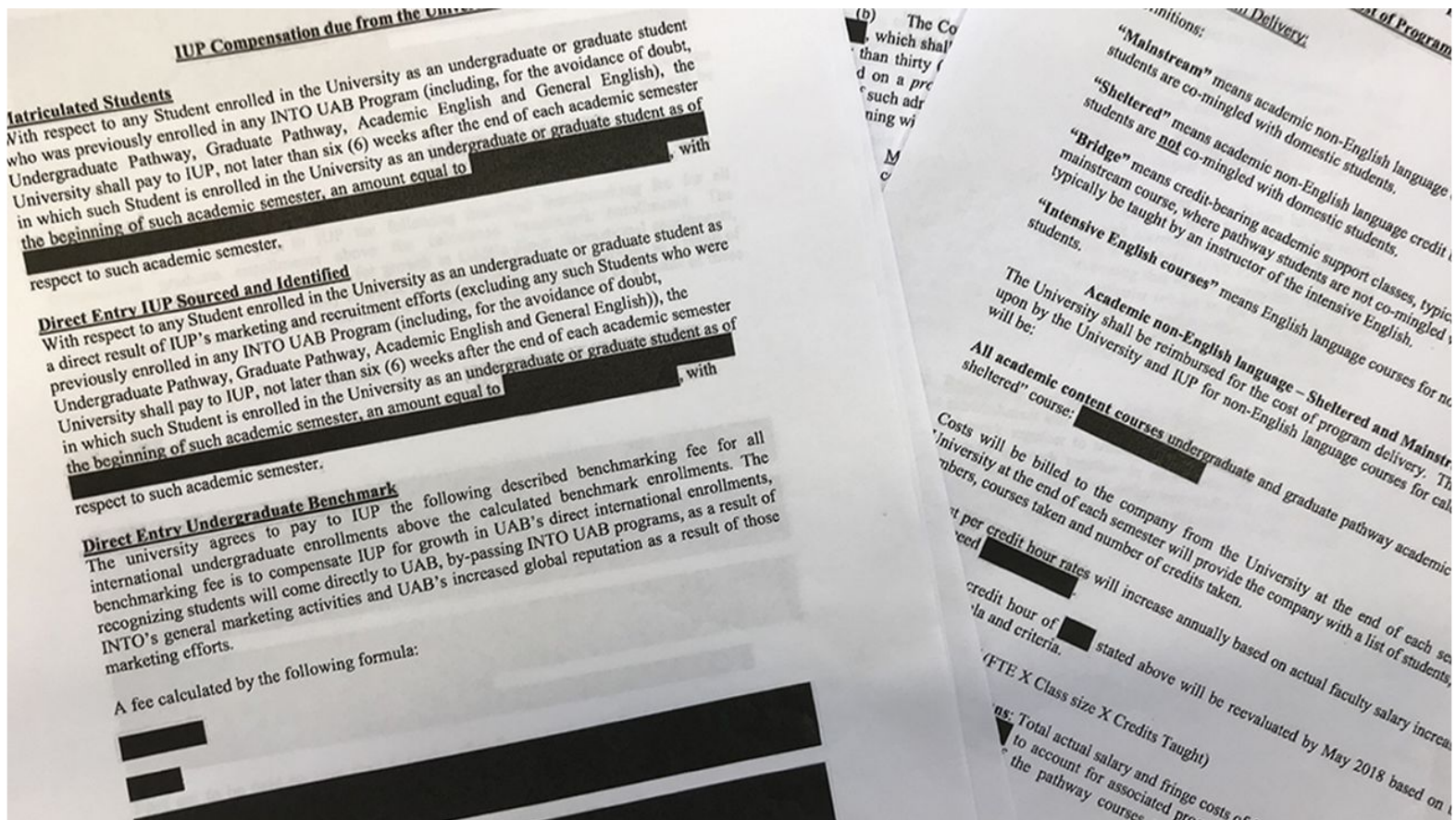


# Whitmire: Alabama needs a new open records law, now

Today 8:37 AM



When UAB refused to disclose what it pays a vendor, INTO University Partnerships, to recruit and counsel international students, the University of South Florida returned the same information regarding its contract with IUP complete — and in six days.

By [Kyle Whitmire | kwhitmire@al.com](mailto:kwhitmire@al.com)

*This is an opinion column.*

The Alabama Legislature has a chance to make the state better. For real, this time.

State Sen. Cam Ward, R-Alabaster, has introduced a bill to rewrite Alabama's Open Records Act — changes that, if passed, will make our records laws mean something

again.

But before we get to how that bill would make Alabama better, I'd like to revisit an example of just how bad things have gotten.

A few years ago, the EPA attempted to add a north Birmingham Superfund site to its National Priorities List — a designation that could put polluters there on the hook for cleaning toxins in the soil. Almost in unison, public officials from all levels — from city council members to U.S. Senators — wrote the EPA fussy letters opposing its efforts. The Alabama Attorney General's Office, then led by Luther Strange, sent two letters to EPA opposing its actions.

When this story was over, it turned out nearly all those letters were written by a polluter's lawyer, Joel Gilbert. A federal jury found Gilbert and Drummond Co. vice president David Roberson guilty of bribery as part of that scheme.

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But that's the end of the story. Before that, there were folks like me and groups like the environmental watchdog GASP trying to prove all those things we now know.

GASP put in a public records request to the AG's office asking for all its correspondence related to Strange's letter to the EPA. The AG's office initially told GASP that, since its lawyer was from Florida, he wasn't entitled to those public records.

So I submitted a nearly identical request.

The AG's office appeared to relent and gave us both some — but not all — of the documents we asked for, even though they insisted they had given us everything and searched high and low for anything else. (Spoiler: This was a lie.)

The documents they turned over didn't show anything damning. No letters back and forth with Gilbert, nothing showing who wrote Strange's letter to the EPA. Except in the chickenfeed they did give us, they let something slip through.

Strange's letters to the EPA had an odd little tracking number on the bottoms of the pages. That number, it would turn out, was put there by Balch & Bingham, Gilbert's firm, track the documents it produced.

I contacted the AG's office again and I told them exactly what I had found. I explained

that this suggested there were communications they hadn't shared.

Nope, they insisted. They had produced it all.

Only they hadn't.

When Gilbert and Roberson went on trial, federal prosecutors introduced into evidence the very emails GASP and I had been looking for. Those emails showed Gilbert sending the letters to the AG's office, which then put them on AG's office letterhead before adding Strange's signature to them. Around the same time Strange sent these letters, Drummond Co. sent Strange's campaign

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Federal subpoenas, it turns out, work better than the open records requests.

I called the AG's office. I demanded to know why they hadn't released documents they insisted had not existed. The AG's office then offered a wholly new argument. This time they said those documents had been drafts and drafts are not subject to the Open Records Act.

The Alabama Supreme Court, in an unrelated case, has since ruled that this argument is a bunch of hogwash and that drafts are, indeed, subject to the Open Records Act.

I had proof that the AG's office had violated the Open Records Act, and in a column, I blasted them for covering up for Strange.

But GASP did something different: It filed its records request one more time. Just to see if there was anything we all missed.

The last GASP heard from the AG's office was November. Since then, silence. No response. No documents.

Alabama's Open Records Act has lots of problems but here are the big ones:

- It does not specify a timetable by which government entities must respond. They can ignore you forever.
- It does not set what are reasonable copy costs and fees. They can make it too expensive for average folks to afford.
- It does not provide a neutral party to settle disputes other than the courts. They can say, so sue us. And they have.

That last one might be the most significant. As the law stands now, there's nothing for

a citizen to do but sue when denied records, and those legal fees stack up quickly.

Public records are the only tools the public — not just the media or nosy environmentalists — have to see what our government is up to. Without them, we have not transparency, no accountability.

And as we've already seen, the Alabama AG's office cannot be trusted to obey the law, much less uphold it.

Ward's bill would cure all of these problems. It sets timetables for responses, establishes reasonable fees for copies, and creates an independent Public Access Counselor with the power to mediate disputes and enforce the law.

Ward's bill died in committee last year near the end of the session after lobbyists from county and municipal governments spoke against it.

This year Ward is holding that hearing early, Feb. 25 at 1 p.m., with an hour blocked out for everyone to speak.

Maybe the AG's office will show up. If so, they'd better have some papers in their hands.

*Kyle Whitmire is the state political columnist for the Alabama Media Group.*

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