SECTION 1: ACCESS TO COURT RECORDS AND PROCEEDINGS

1.1 SYNOPSIS OF MISCELLANEOUS GEORGIA CASES REGARDING ACCESS TO COURT RECORDS AND PROCEEDINGS

1982 **Criminal cases.** *R.W. Page Corporation v. Lumpkin*, 249 Ga. 576 (1982) (Jordan, C.J.):

* As a matter of constitutional law, trials and pretrial hearings in criminal cases may not be closed to the public and representatives of the news media unless closing the hearing is the only means by which a "clear and present danger" to the defendant's right to a fair trial can be avoided. The Court stressed "the extreme importance of the strong presumption" of openness.

1984 **Juvenile proceedings.** *Florida Publishing Company v. Morgan*, 253 Ga. 467 (1984) (Marshall, J.):

* Holding that as a matter of constitutional law the press and public have a right of access to proceedings in juvenile cases unless there is an overriding or compelling reason for closure.
* Uniform Juvenile Court Rules 26.1 and 26.2, which provide respectively for access to juvenile court proceedings and camera access to juvenile court proceedings, were adopted effective March 21, 1991. Rule 26.1 requires any person seeking access to a juvenile court proceeding to file a written motion for access prior to the time of the hearing for which access is sought. Rule 26.2 requires any person seeking camera access to file a written request for access with the judge involved prior to the proceeding. The judge has discretion to allow or deny the request and may require pool coverage. The Rule further imposes various restrictions on the intrusiveness of the camera equipment.

1986 **Camera access to courtrooms.** *Pacific and Southern Co. d/b/a WXIA-TV v. State*, (Gwinnett County Superior Court, Nov. 6, 1986) (Jackson, J.), *aff'd mem.*, No. 44889 (Ga., Oct. 1, 1987):

* Trial court has discretion under Uniform Superior Court Rule 22 to order photographers only to show criminal defendant from the shoulders down where the defendant - a former police officer - had objected, telling the court that he was afraid that television coverage of his testimony would adversely affect his ability to concentrate.

1987 **Camera access to courtrooms.** *Multimedia WMAZ, Inc. v. State*, 256 Ga. 698, 699 (1987) (Marshall, J.):

* Rule 22 grants to the media the right to provide electronic-media coverage of trials in the superior courts "unless the assigned judge, after 'appropriate hearing' with notice, makes specific findings that such coverage is either not 'within the requirements of due process of law' or

cannot be 'done without detracting from the dignity and decorum of the court.'"

1988 **Access to videotape trial exhibits — criminal proceedings.** *United States v. Eaves*, 685 F. Supp. 1243 (N.D. Ga. 1988) (Evans, J.):

* News media has right of access to those portions of video and audiotapes, which depict defendant allegedly accepting bribes from undercover FBI agents, that are admitted into evidence at trial, although such tapes will not be released until close of evidence, in order to allow defendant to present his case in court prior to tapes' public disclosure and in order to diminish administrative difficulties involved in releasing portions of tapes.

1988 **Access to depositions.** *Avirgan v. Hull*, No. 1:88-CV-305-RLV (N.D. Ga. May 5, 1988) (Vining, J.):

* The Atlanta Journal-Constitution petitioned to intervene to oppose a Fulton County Police lieutenant's motion for a protective order prohibiting press attendance at his deposition. The lieutenant subsequently agreed to press attendance and his motion was denied as moot.

1988 **Civil cases.** *Atlanta Journal and Atlanta Constitution v. Long*, 258 Ga. 410 (1988) (Bell, J.) (*"Long I"*):

* Holding in a civil case that there is a "presumption that the public will have access to all court records," which may be overridden only "in cases of clear necessity." The Court declared that: "Public access protects litigants both present and future, because justice faces its gravest threat when courts dispense it secretly. Our system abhors star chamber proceedings with good reason. Like a candle, court records hidden under a bushel make scant contribution to their purpose."
* Justices Marshall and Smith dissented without opinion.

1988 **Camera access to courtrooms.** *Georgia Television Company v. Napper*, 258 Ga. 68 (1988) (Gregory, J.):

* Cameras may be prohibited only if they would violate due process of law or would detract from the dignity and decorum of the court. Denying camera access because the trial court believes it may "stifle, inhibit, frustrate or prevent" Socratic dialogue between court and counsel is improper.

1988 **Camera access to courtrooms.** *Georgia Television Co. d/b/a/ WSB-TV v. State*, 257 Ga. 764 (1988) (Gregory, J.):

* Trial court did not abuse its discretion by denying broadcast coverage of pre-trial proceedings in murder prosecution of Alday defendant whose prior conviction had been vacated due to extensive pre-trial publicity, in view of court's express finding that defendant's due process rights would be violated by such coverage.

1989 **Access to videotape trial exhibits — criminal proceedings**. *United States v. Evans*, No. CR88-269A (N.D. Ga. Feb. 7, 1989) (Ward, J.):

* News media has right of access to those portions of video and audiotapes, which depict defendant allegedly accepting bribes from undercover FBI agents, that are admitted into evidence at trial, although such tapes will not be released until the case is submitted to the jury, in order to allow defendant to present his case in court prior to tapes' public disclosure and in order to diminish administrative difficulties involved in releasing portions of tapes.

1989 **Civil cases.** *Atlanta Journal and Atlanta Constitution v. Long*, 259 Ga. 23 (1989) (Bell, J.) (*"Long II"*):

* The trial court (Eldridge, J.) was not authorized to reconsider the issue of public access after the Court issued its decision in *Long I* holding that the record in the case had been improperly sealed. The Court specifically directed the trial court to make the records in the case available to the public upon receipt of the remittitur.

1989 **First Offender records.** *The Atlanta Journal & The Atlanta Constitution v. Smith, Clerk of Atkinson County*, No. 89-C-28 (Atkinson County Superior Court, April 21, 1989) (Blitch, J.):

* Suit by The Atlanta Journal-Constitution for access to First Offender records.
* Concluding that the public and the media have a constitutional right of access to judicial records in criminal cases under the First Amendment and the Georgia Constitution, the Court ordered the Clerk to produce the records to the newspaper.

1989 **Criminal trial briefs.** *United States v. Patrick Swindall*, No. CR 88-477-A (N.D. Ga. May 22, 1989) (Freeman, J.):

* Motions by The Atlanta Journal-Constitution and The Gwinnett Daily News to object to the filing of certain records and trial briefs under seal. The Court ordered the briefs to remain closed until a jury was sworn; other records were immediately unsealed.

1989 **Access to civil pleadings**. *Wilson v. Lowe*, 16 Media L. Rep. 1847 (Fulton County Superior Court, 1989) (Hull, J.):

* Petition by The Atlanta Journal-Constitution for access to records filed under seal in civil action.
* Concluding that all court records in Georgia are public and presumptively open to public access unless the harm resulting to the party seeking closure clearly outweighs the public interest, Court found that, since much of the information in the sealed records already had been disclosed and disseminated publicly, the alleged harm to the defendant seeking closure does not outweigh the public's interest.

1990 **Divorce records.** *Southeastern Newspapers Corporation v. J. Lester Newsome, Clerk of Court, Richmond County*, 260 Ga. xxx (1990):

* In January 1989, the Augusta Chronicle began publishing "For The Record," a feature that included marriage licenses granted, divorces, indictments, sentences and DUIs. In June 1989, the Richmond County Superior Court Clerk, allegedly in response to the feature and as a result of his own personal objection to the press or anyone else having access to divorce decrees, instructed his staff to prevent access to divorce records until the decrees were fully processed and entered on the docket book. The effect and alleged intent of the change was to render impracticable the newspaper's obtaining current divorce information from the court. The Clerk reportedly explained, "We just want to make it as difficult as possible for you to get those records."
* After the newspaper brought suit pursuant to the Open Records Act and Uniform Superior Court Rule 21, the Superior Court ordered the Clerk to allow inspection. The Clerk appealed the order to the Supreme Court. The newspaper cross-appealed from the denial of its request for attorney's fees.
* On October 2, 1990, in a one-line decision, the Supreme Court affirmed.

1990 **Access to videotape trial exhibits — civil proceedings.** *Griffith v. Ledbetter*, 1:86-CV-142-HTW (N.D. Ga., May 2, 1990) (Ward, J.):

* Petitions by news organizations for access to videotape exhibit played to the jury in the trial of a suit brought by a patient of the Georgia Retardation Center. The videotape consists of a presentation of a method of restraint used in the plaintiff's treatment.
* The court denied a petition for access made while the trial was in progress.
* Post trial, the court granted the petitions with the condition, based on privacy concerns, that any broadcasts of the tape "block out" the identity of other Retardation Center patients and employees.

1990 **Access to actions for the return of property seized pursuant to search warrant.** *United States v. Moody*, No. 1:90-CV-0334-RCF (N.D. Ga., Feb. 20, 1990) (Freeman, J.), *rev'd*, 17 Med. L. Rep. 2096 (11th Cir. 1990) (per curiam):

* Petitions by news organizations for access to records and proceedings in federal suit brought by mail bombing suspects seeking, *inter alia*, return of material seized by federal agents in the course of searching suspects' persons and property.
* Although the United States Court of Appeals for the Eleventh Circuit allowed to remain sealed without explanation an in chambers hearing conducted by the trial court, the Court reversed the trial court's order sealing all other records and proceedings.

1990 **Access to pretrial release proceedings.** *United States v. Moody*, Criminal No. 90-41-MAC (WDO) (M.D. Ga. Oct. 4, 1990) (Owens, J.):

* Petitions for access to a portion of a pretrial release proceeding closed sua sponte by the court to hear argument concerning a proffer of evidence sought to be made by the United States.
* Petitions denied on the ground that "[a]llowing the press and public access to communications between the court and counsel at the bench or in chambers would allow the dissemination of information which could be highly prejudicial to the defendant's right to a fair trial." "[T]he press has no First Amendment right of access to communications between counsel and the court which take place at the bench or in chambers, particularly when those communications involve evidence which the court determines to be inadmissible and which, if disclosed, could deprive the defendant of the fair trial by an impartial jury that the Constitution guarantees."
* Transcript subsequently opened prior to prosecution of media appeal.

1991 **Paternity proceedings.** *Long v. Keohane*, D-47561 (Fulton County Superior Court, July 18, 1991) (Hull, J.):

* Motion for closed trial based upon O.C.G.A. § 19-7-53 denied as "there are no confidential matters left to protect, much less any 'clear necessity' for closure, or any 'overriding or compelling' interest on the part of the parties for closure."

1992 **Audio and video tapes admitted as evidence at trial.** *U.S. v. Shumake*, No. 1:92-CR-02-ODE (N.D. Ga. Mar. 27, 1992) (Evans, J.):

* WSB-TV petitioned for access to audio and video tapes admitted into evidence at criminal trial. Access initially granted only after such time as jury returned verdict. After mistrial was declared, renewed motion for access granted. "The primary consideration weighing against the original release of the tapes was the concern that widespread dissemination of the tapes would adversely impact on Defendant's right to a fair trial. . . . In light of the widespread publicity that this matter has already received, however, this court believes that the common law presumption favoring access to judicial records outweighs the competing interests in this case, and dictates that the subject tapes be released."

1992 **Official court reporter's tape of a judge's remarks in open court.** *Green v. Drinnon, Inc.*, 262 Ga. 264 (1992) (Fletcher, J.):

* Trial court (Parrott, J.) ordered judge to produce to newspaper official court reporter's tape of comments from the bench that were recorded while court was in session. Affirmed.
* The Court held that the tape is a court record to which the public and press enjoy a right of access.

1992 **Access to civil pleadings.** *Brown v. Advantage Engineering, Inc.*, 960 F.2d 1013 (11th Cir. 1992) (Fay, J.) (Edmondson, J., dissenting):

* Plaintiff in civil case moved for permissive intervention for purposes of unsealing record in previous unrelated case against defendant brought by another party. Trial court (Hall, J.) denied motion as untimely. Reversed.
* The court held that, "Once a matter is brought before a court for resolution, it is no longer solely the parties' case, but also the public's case. Absent a showing of extraordinary circumstances set forth by the district court in the record consistent with *Wilson*, the court file must remain accessible to the public."

1993 **Dual docketing system.** *United States v. Valenti*, 987 F.2d 708 (11th Cir. 1993) (Hatchett, J.):

* Newspaper filed motion to intervene in criminal proceeding for limited purpose of seeking to unseal disputed court record. The district court denied the motion. On appeal, the newspaper argued in part that the Middle District of Florida's maintenance of a "dual-docketing" system denied it any meaningful opportunity to be heard on its exclusion from closed pretrial proceedings.
* The Eleventh Circuit held that the use of a public and a sealed docket to note criminal proceedings was an unconstitutional infringement of the right of the public and press to seek the release of in camera motions and transcripts of closed bench conferences.
* "'[A] two-tier system, open and closed' erodes public confidence in the accuracy of records, and thus denies the public and press its right to meaningful access." (citing *CBS, Inc. v. District Court*, 765 F.2d 823, 826 (9th Cir. 1985)).

1994 **Computers in courtroom.** *United States v. Jackson*, No. 93-CR-310-AAA (N.D. Ga. Jan. 3, 1994) (Alaimo, J.):

* Trial court permitted reporter from The Atlanta Journal-Constitution to bring lap-top computer into courtroom for duration of trial "so long as the computer does not make any noise that may disrupt the trial."

1995 **Settlement agreement.** *Mullins v. City of Griffin*, No. 3:93-cv-10-GET (N.D. Ga. Jan. 9, 1995) (Tidwell, J.):

* In sexual harassment action against Georgia municipality, Griffin Daily News sought leave to intervene to challenge provision of consent order dismissing case that ordered parties not to divulge terms of settlement.
* Court granted intervention and deleted confidentiality provision as unjustified.

1995 **Preliminary hearings in death penalty cases.** *Southeastern Newspapers Corp. v. State*, 265 Ga. 223 (1995) (Carley, J.) (Hunstein, J., joined by Benham & Sears, JJ., dissenting):

* Affirming closure of pretrial proceedings in pending capital murder case.

1995 **Preliminary hearings in death penalty cases.** *Rockdale Citizen Publishing Co. v. State*, 266 Ga. 92 (1995) (Thompson, J.):

* Appeal of order closing pretrial proceedings in pending capital murder case.
* The Supreme Court reversed and remanded in light of *R.W. Page v. Lumpkin* and the trial court's failure to "fully articulate the alternatives to closure and the reasons why the alternatives would not protect the [defendant]'s rights." The Court reversed outright the trial court's closure of a hearing on a recusal motion: "[b]ecause evidentiary matters pertaining to the prosecution's case were not going to be presented at the recusal hearing, this ruling was erroneous."
* Hunstein, J., specially concurring, noted that the government was the source of certain factually-accurate information that the majority found to be "highly inflammatory."

1996 **Preliminary hearings in death penalty cases.** *Rockdale Citizen Publishing Co. v. State*, 266 Ga. 579 (1996) (Hunstein, J.):

* Appeal of order on remand again closing all pretrial proceedings in pending capital murder case.
* The Supreme Court reversed, reasoning that "the superior court based its finding on speculation regarding the media coverage that might occur" and that "[a]ssumptions and speculation cannot provide the 'clear and convincing proof' required by *Lumpkin* to justify closure." The Court also concluded that, "[g]iven the change of venue in this case, there exists no evidence to support closure of all pre-trial evidentiary hearings in this capital prosecution, wherever held."
* Sears, J., concurring, stressed that "we must do our very best to hold fast to the values embodied by the First Amendment even in extreme and painful cases, because we cannot suspend it and remain all that we strive to be."
* Carley, J., joined by Thompson, J., "reluctantly" specially concurred in reversal given "the established law of this state that a trial court has exceedingly limited discretion in ordering closure."

1996 **Search warrant affidavits.** *In re Four Search Warrants*, 945 F. Supp. 1563 (N.D. Ga. 1996) (Forrester, J.):

* Petition for access to sealed affidavits filed in support of search warrants executed against former suspect in Olympic park bombing.
* Held that public has common law right to inspect and copy portions of sealed affidavits where disclosure would not compromise ongoing government investigation.

1998 **Camera access to court proceedings.** *WALB-TV v. Gibson,* 269 Ga. 564 (1998) (Hines, J.):

* Appeal from a television station's request for electronic access to court proceedings.
* The Supreme Court affirmed in part and reversed in part the trial court's rejection of an application for electronic media coverage of the trials of two defendants charged in a double murder. The Court held that the trial court's findings were sufficient to support its conclusion that denial of coverage of the first trial was necessary to prevent a tainted jury pool in the second defendant's subsequent trial. The Court reversed the trial court's ruling disallowing coverage of the second trial because there was no basis on the record from which to conclude that the second defendant's rights would be jeopardized, or that the participants in the proceedings would be distracted, by the presence of a video camera in the courtroom during trial.

1999 **Camera access to the courtroom**. *Smith v. Gwinnett County*, 270 Ga. 424 (1999) (Carley, J.):

* The Georgia Supreme Court rejected a claim that the trial court erred in allowing television coverage of proceedings involving a levy on real property. The Court held that the consent of the property owners was not a prerequisite to access; rather, it was "but one factor" to be considered.

1999 **Probate proceeding.** *In Re: Motion of the Atlanta Journal Constitution,* 271 Ga. 436 (1999) (Sears, J.):

* After files relating to estate proceeding were sealed, newspaper filed motion seeking access to sealed files. Superior Court denied motion. Supreme Court in a unanimous opinion reversed and remanded.
* Held that, in discharging its duty under Uniform Superior Court Rule 21.1, trial court cannot forego "findings of fact and simply state that the public's interest in access to court records is clearly outweighed by potential harm to the parties' privacy. By their nature, civil lawsuits quite often cause litigants to experience an invasion of privacy and resulting embarrassment, yet that fact alone does not permit trial courts to routinely seal court records. In an order sealing a court record, a trial court must set forth factual findings that explain how a privacy invasion that may be suffered by a party or parties seeking to seal a record differs from the type of privacy invasion that is suffered by all parties in civil suits. Otherwise, the trial court is not justified in closing the record from public scrutiny."

2000 **Pretrial records in civil cases.** *Van Etten v. Bridgestone/Firestone, Inc. and Ford Motor Co.*, 117 F. Supp. 2d 1375 (S.D. Ga. 2000) (Alaimo, J.), *rev'd*, *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304 (11th Cir. 2001) (per curiam) (Black, Roney & Cox, JJ.):

* Trial court granted media motion to intervene in settled suit and to permit public access to records filed with the court allegedly containing

information on tire tread separation defect. Trial court found that defendant did not meet its burden of showing a compelling need for secrecy of the documents, or that closure of the documents was narrowly tailored to such an interest.

* Court of Appeals reversed and remanded, holding that trial court applied incorrect standard. The standard, the court held, is not one of "compelling interest" but rather "good cause."
* Black, J., specially concurred, "to express my concern about third parties – who have no cause of action before the court – using the discovery process as a means to unearth documents to which they otherwise would have no right to inspect and copy."

2001 **Pretrial records in civil cases.** *McAleer v. General Motors Corp.*, Civil Action No. 1:99-CV-3148-RWS (N.D. Ga. Mar. 30, 2001) (Story, J.):

* Trial court granted media motion to intervene and to permit public access to records filed with the court regarding alleged automobile defects. Trial court rejected defense claim that records contained secrets or that defense had shown "good cause" to justify sealing.

2003 **Pretrial evidentiary hearings in criminal cases.** *State v. Turner*, No. 02-9-04474-33 (Cobb County Superior Court, May 5, 2003) (Bodiford, J.):

* The defendant, on trial for the alleged murder of her husband, sought to close a pretrial hearing and seal all records concerning the State's attempt to introduce evidence at trial regarding the death of a man that defendant previously lived with. The defendant argued that this information would be prejudicial to potential jurors and she introduced numerous media reports about her case as evidence.
* The trial court denied defendant's request, holding that the defendant failed to show by "clear and convincing evidence" that evidence of a danger to her right to a fair trial existed. The Court held that the defendant could not meet the "clear and convincing" standard through "assumptions and speculation" that alternatives to closure could not prevent the danger allegedly posed by the pretrial evidentiary hearing.

2004 **Protective orders sealing records in civil cases.** *BankWest, Inc. v. Oxendine,* 266 Ga. App. 771 (2004) (Phipps, J.):

* The trial judge granted a motion for a protective order sealing certain records "only until she ruled on… motions for summary judgment."
* The Court of Appeals ruled that the order must be reversed, despite its temporal limits, because the judge failed to make finding of fact that privacy concerns outweighed the public interest in access as was her obligation under Uniform Superior Court Rule 21.

2004 **Gag orders.** *The Atlanta Journal-Constitution and WSB-TV v. The State,* 266 Ga. App. 168 (2004) (Mikell, J.):

* The trial court entered a gag order during the prosecution of members of the House of Prayer Church. The order restricted speech by the parties, their counsel, witnesses and investigators and ordered that they respond to media inquiries by stating either: "no comment" or "whatever we have to say will be [or has been] said in court."
* The Court of Appeals held that the gag order was unconstitutional. The court held that any order restricting speech requires a finding that extrajudicial statements "will have a substantial likelihood of materially prejudicing the trial."
* The Court further held that, prior to entry of such an order, the trial court must make specific findings of fact based on evidence in the record showing the possible impact that the extrajudicial statements may have upon the trial. The Court ruled that a conclusory statement that publicity might hamper the defendant's right to a fair trial is not sufficient.

2005 **Camera access to murder trial.** *Morris Communications, LLC, d/b/a Savannah Morning News v. Griffin et al.*, 279 Ga. 735 (2005) (Sears, C.J.):

* The Court reversed the trial court's decision to deny a newspaper's request to install a still camera in the courtroom during a murder trial, finding an abuse of discretion.
* The Court held that the criminal defendant failed to establish that coverage would violate his due process rights, instead improperly relying on mere conclusions that it might do so.
* Trial court failed to develop a factual record supporting its denial, and there was no basis to find that the presence of a camera would disrupt the proceedings, nor to rebut the presumption that camera coverage enhances openness.

2005 **Sealing orders in criminal cases — Court must articulate reasons; secret docketing not permitted.** *United States v. Ochoa-Vasquez*, 428 F.3d 1015 (11th Cir. 2005) (Edenfield, J.) (Barkett, J., concurring in part and dissenting in part on other grounds):

* The Court reversed and remanded the lower court's sealing orders and denials of access to certain court records, because lower court did not articulate the reason for the closure or the evidence that supported the need for closure, as required under First Amendment jurisprudence.
* The Court used its supervisory powers to remind the lower court that secret docketing procedures are unconstitutional, citing United States v. Valenti, 987 F.2d 708 (11th Cir. 1993), even though lower court had already reopened the sealed docket.

2006 **Camera access to criminal trial.** *Savannah Morning News v. Jeffcoat*, 280 Ga. App. 634 (2006) (Adams, J.):

* Trial court denied newspaper's request to place a still camera in the courtroom because trial court concluded that it "would be harmful to the rights of the Defendant, the State and the potential jurors," justifying this with the fact that the courthouse is small, so a camera would interfere with the court process.
* Court reverses this decision, holding that although the decision to allow cameras is within the trial court's discretion, a court must still provide a factual basis for the exclusion, and none was provided here.

2010 **Access to voir dire**. *Presley v. State*, 285 Ga. 270 (2009), *rev'd* 130 S.Ct. 721 (2010) (per curiam):

* Georgia Supreme Court, per Hines, J., held that criminal defendant was not denied right to public trial by trial court's exclusion of defendant's uncle, who was an observer, during voir dire due to lack of space to accommodate both observers and venire panel members.
* Sears, C.J., with Hunstein, P.J., dissented, opining that "[a] room that is so small that it cannot accommodate the public is a room that is too small to accommodate a constitutional criminal trial."
* United States Supreme Court, per curiam, reversed, reiterating that "[t]rial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials."
* Thomas, J., with Scalia, J., dissented.

2010 **Clear and convincing proof.** *Stinski v. State*, 286 Ga. 839 (2010) (Thompson, J.)

* Affirming trial court's refusal to "limit media publicity."
* "Because Stinski presented no clear and convincing proof that closure of his trial proceedings was necessary in addition to the change of venue actually granted by the trial court, this claim must fail."

2011 **Access to trial.** *Purvis v. State*, 288 Ga. 865 (2011) (Hunstein, J.)

* Finding defendant's right to a fair trial violated when defendant's brother was excluded from jailhouse courtroom.
* "[T]rial court, by deciding to hold [ ] trial in a facility where the public's access was governed exclusively by jail authorities, failed in its obligation to take reasonable measures to accommodate public attendance at [ ] trial."

2011 **Child victims.** *Clark v. State*, 309 Ga. App. 749 (2011) (Adams, J.)

* Affirming closure of courtroom during child testimony regarding sexual offenses pursuant to O.C.G.A. § 17-8-54.
* Partial closure permitted by O.C.G.A. § 17-8-54 does not violate defendant's right to a fair trial.

2012 **Access to criminal records.** *United States v. Ignasiak*, 667 F.3d 1217 (11th Cir. 2012) (Martin, J.):

* In a prosecution for illegally dispensing controlled substances, the trial court allowed the federal government, several months after the defendant's conviction, to file under seal an *in camera* notice to the court, along with an affidavit from one of the prosecutors, revealing for the first time impeachment information about its key witness.
* Court grants the defendant's motion to unseal the notice and affidavit, rejecting the government's assertion that the interest in protecting the witness' privacy outweighed the public interest in access to the information, which revealed that a repeat government expert witness committed several acts that could have been charged as felonies.

2012 **Gag order.** *Jackson v. Deen*, No. CV12-0396-AB (Chatham County Superior Court, Mar. 9, 2012) (Abbot, J.):
* Denying defendants' motion for a gag order prohibiting the parties and lawyers in the sexual harassment suit against restaurateur Paula Dean from commenting publicly or disseminating information about the case.
* The trial judge noted the availability of other remedies to address concerns about extrajudicial comments and improper conduct by the parties, as well as the fact that civil jury trials may be less sensitive to extrajudicial speech than criminal ones.

2012 **Courtroom closure during sexual offense trial.** *Pate v. State*, 315 Ga. App. 205 (2012) (Doyle, J.):
* Affirming partial closure of the courtroom during the testimony of two victims, both 13 at the time of the alleged incidents, in a trial for statutory rape, aggravated assault with a deadly weapon and possession of a knife during the commission of the felony of statutory rape.
* The trial court did not abuse its discretion because it limited the closure by allowing the defendant, the attorneys for both sides and their employees, the immediate family members or guardians of the witnesses and the defendant, court officers, sheriff's deputies and members of the news media to remain in the courtroom during the testimony.

2012 *Guyton v. Butler*, No. 12-10334, 2012 WL 4354681, at *1 (11th Cir. Sept. 25, 2012) (per curiam) (unpublished opinion):
* Affirming finding that sexual-offense defendant's right to a public trial was not violated because he agreed that the courtroom would be closed was not contrary to clearly established federal law, and the defendant's counsel was not ineffective for consenting to closure of the courtroom.
* "No clearly established Supreme Court precedent holds that a defendant cannot waive the right to a public trial, nor that the court must balance the interests of closure absent an objection. . . . Further, there is no clearly established federal law stating that counsel cannot waive the right to a public trial as a strategy decision without his client's consent."

2012 **Access to courtroom in which grand jury returns indictment.** *State v. Brown*, 315 Ga. App. 282 (2012) (Mikell, J.) (Dillard, J., concurring fully and specially

with an opinion) (Blackwell, J., dissenting) (Boggs, J., dissenting), *cert. granted* (Jan. 22, 2013) (No. S12G1305):

* When an attorney at the firm representing the defendant went to the recently constructed Cobb County Courthouse to observe the return of the indictment, he found the building's doors either locked or guarded by sheriff's deputies, who were stationed at the only public entrance to ensure the integrity of the clerk's office files being transferred to the new building and as a security measure because some courthouse construction workers were using knives and hammers to install carpeting.
* To gain entry to the courthouse, the lawyer was instructed to call the court administrator and obtain a personal escort across the public walkway to the courtroom, a process that delayed him about 10 to 15 minutes and caused him to miss the return of the indictment.
* Following an evidentiary hearing on the defendant's motion in abatement, the trial court found that because the attorney was delayed and impaired from reaching the courtroom, the indictment was not returned in open court and thus quashed the indictment.
* In affirming this ruling, the appellate court rejected the state's argument that there is no law requiring an indictment to be returned in open court because neither the federal nor state constitution addresses the issue, noting that "Georgia case law has long held that an indictment must be returned in open court to be valid. This requirement 'must be complied with in every case,' and failure to comply strictly with this rule may nullify an otherwise valid indictment."
* Judge Blackwell argued that the lower court applied the incorrect legal standard by failing to make findings as to whether the lawyer was *unreasonably* prevented by courthouse officials from attending a court proceeding.
* In his dissent, Judge Boggs said that although access to the courthouse was limited and required the assistance of court personnel, it was not prohibited, and the presence of other members of the public and media in the courtroom "demonstrate[d] beyond dispute that the courtroom was indeed open to the public," and the indictment was thus returned in open court; "[t]he majority's holding here will result in challenges to the open-court rule based upon claims by lawyers or members of the public who arrive at the courthouse minutes before they believe an indictment is to be returned, only to be briefly detained by courthouse security or a crowded elevator."

2012 **Access to discovery material.** *Purdue Pharma L.P. v. Ranbaxy Inc.*, No. 3:12-MC-1, 2012 WL 1414308, at *1 (M.D. Ga. Apr. 20, 2012) (Royal, C.J.):

* Granting a motion to seal documents filed in support of a party's cross-motion to compel a deposition in a patent infringement case.
* The court stated that although materials filed in conjunction with dispositive or otherwise substantive motions are subject to the common

law right of access, the need for public access to materials filed in conjunction with a pretrial discovery motion is low.

2012 **Change of venue based on pretrial publicity.** *Stephens v. Sec'y, Fla. Dep't of Corrs.*, 678 F.3d 1219 (11th Cir. 2012) (per curiam):

* Affirming denial of death row inmate's petition for a writ of habeas corpus, finding that the defendant's attorney's failure to move and argue for a change of venue due to abnormal pretrial publicity did not amount to ineffective assistance of counsel.
* According to the court, the record demonstrated that the trial court went to great lengths to voir dire the jury with regard to the pretrial publicity of this case and to insulate the jury from the taint of impartiality by conducting individual voir dire of the potential jurors to detect any potential juror who had been persuaded by the pretrial publicity.

2013 *Heidt v. State*, __ Ga. __, 2013 WL 56915 (2013) (Blackwell, J.):

* Finding no abuse of discretion in trial court's denial of defendant's motion for a change of venue of trial for murder of his father and brother, assault of his mother and arson of his parents' home.
* The court held that the defendant failed to allege that the gossip about the case was untrue or even disputed at trial and failed to show that the pretrial publicity was inflammatory or created a hostile atmosphere, and noted that of the 59 jurors who were questioned during voir dire, only six were excused because pretrial publicity made it impossible for them to render a verdict based solely on the evidence.

2013 *Reddings v. State*, __ Ga. __, 2013 WL 398971 (2013) (Hunstein, C.J.):

* Finding no abuse of discretion in trial court's denial of murder defendant's motion for a change of venue where the complained-of pretrial publicity consisted of two local newspaper articles published a year before the trial, and only two prospective jurors indicated they had any familiarity with the case.

2012 **Access to voir dire.** *Evans v. Sec'y, Fla. Dep't of Corrs.*, 699 F.3d 1249 (11th Cir. 2012) (Carnes, J.):

* Affirming ruling that defendant was not entitled to habeas relief based on the Florida Supreme Court's decision that his Sixth Amendment right to a public trial was not violated when the trial court partially closed voir dire proceedings because of limited seating available in a small hearing room.
* That room was used for individual voir dire of those potential jurors who had given answers indicating that more specific questioning of them in front of the other potential jurors might lead to a mistrial, and the decision to close the portion of voir dire that occurred therein was not contrary to clearly established federal law.

2012 **Access to civil records.** *Siemens Indus., Inc. v. SIPCO, LLC*, No. 1:10-cv-2478, 2012 WL 5334186, at *1 (N.D. Ga. Oct. 26, 2012) (Carnes, C.J.):

* Granting both parties' unopposed motions to seal various documents filed in conjunction with summary judgment motions in a contract and patent dispute.
* "Ordinarily, the Court is reluctant to seal pleadings and other documents because of the presumption in favor of public access. . . . However, in this case there is good cause to grant the motions to seal because the referenced filings include and restate the material provisions of a confidential settlement agreement."

2012 **Sequestration rule vs. right to a public trial.** *Nicely v. State*, 291 Ga. 788 (2012) (Blackwell, J.):
* The state Supreme Court rejected the argument of a criminal defendant who was convicted of the felony murder of a 1-year-old child and who claimed that his father was denied equal protection when the trial court excluded him from some of the trial proceedings pursuant to the rule of sequestration but allowed the victim's mother to attend pursuant to an exemption in the Crime Victims' Bill of Rights, notwithstanding the fact that she too was a witness at trial.
* The defendant "does not point us to a single case in which the sequestration of a witness was held to violate the right to a public trial, and we have found none. To the contrary, we have found case upon case in which courts have held that the rule of sequestration ordinarily does not even implicate the right to public trial, much less infringe upon it" (citing numerous federal and state cases nationwide).
* Because the sequestration rule does not violate a fundamental right, the differential treatment between the defendant's father and victim's mother passed equal protection muster because it was rationally related to a legitimate state interest, namely the interests in restraining witnesses from "tailoring their testimony to that of earlier witnesses" and "aid[ing] in detecting testimony that is less than candid" and according to crime victims the same right to be present as the Constitution accords to the accused.

2013 **Return of indictment on "open court."** *State v. Brown*, 293 Ga. 493 (2013) (Nahamias, J.):
* Holding that indictment was not returned in "open court" as required where new courthouse was not technically scheduled to be open until four days later.
* Refusing to adopt a "harmless error" standard "[i]n light of the historical precedent of returning indictments in open court and this state's policy of protecting the openness of our courts."

2014 **Camera Access.** *McLauren v. Ott*, 327 Ga. App. 488 (2014) (McFadden, J.):
* Holding that camera access pursuant to Uniform Superior Court Rule 22 was not limited to the news media.

* Rejecting the trial court's conclusion that camera access was unnecessary as the "proceedings [were] open to anyone who wants to travel to the courthouse."

2014 **Closure of Sentencing Hearing.** *Freeman v. State*, 328 Ga. App. 756 (2014) (Doyle, J.):

* Affirming closure of testimony of single witness during sentencing hearing.
* Finding that trial court had considered all possible alternatives in maintaining open courtroom without hindering ongoing investigation.

2016 **Closure during Testimony.** *Jackson v. State*, 339 Ga. App. 313 (2016) (Peterson, J.):

* Reversing conviction where courtroom cleared during minor testimony – the "most critical testimony of the trial."
* Finding that trial court failed to make any findings supporting closure or address possible alternatives.

2016 **JQC Opinion 239.** *In re Judicial Qualifications Commission Formal Advisory Opinion No. 239* (2016) (Per Curium)

* Considering authority of JQC to opine on open courtrooms.
* Finding JQC opinion appropriate to the extent it directed judges to binding precedent on access.
* Finding the extent to which children can be excluded from the courtroom and to which security personnel can inquire of purpose of visit of attendees to be unsettled questions.

2017 **Failure to Hold Required Hearing.** *Altman v. Altman*, 301 Ga. 211 (2017) (Nahmias, J.)

* Holding that trial court improperly failed to hold hearing prior to sealing in-chambers interviews with children in divorce matter.
* Finding that trial court's blanket statement of "good cause shown" was insufficient to justify sealing order.

2017 **Rule 21 Relief.** *Merchant Law Firm, P.C. v. Emerson*, 301 Ga. 609 (2017) (Peterson, J.)

* Holding that given Uniform Superior Court Rule 21's governance of access to court records, requests for mandamus, injunctive, or declaratory relief were inappropriate.

2017 **Court Audio.** *Undisclosed v. The State*, 807 S.E. 2d 393 (2017) (Peterson, J.)

* Holding that Uniform Superior Court Rule 21 applies only to records filed with the court.
* Court reporter's audio files were not "court records" in this instance because they were not filed with the court.

2018 **Gag Orders.** *WXIA v. State*, 303 Ga. 428 (2018) (Blackwell, J.)

* Media has standing to challenge gag orders, even when not directly restrained by them.
* Vacating gag order, "even under most deferential" standard of review where order was not "narrowly tailored to avoid a clear and present danger or serious and imminent threat to a competing, protected interest and to the extent that no alternatives less restrictive than a prior restraint [were] reasonably available."

2020 **Closure for Minor Victim Testimony.** *Spikes v. State*, __ Ga. App. ___ (2020) (Miller, P.J.)

* Reversing conviction where court's closure to all except alleged victim's mother while victim testified amounted to a total closure which "did not comply with constitutional requirements because the trial court made no findings adequate to support the closure, including the consideration of reasonable alternatives."
* "Cursory" mention of minor's privacy was insufficient to support closure.

SECTION 2: ACCESS TO RECORDS UNDER THE GEORGIA OPEN RECORDS ACT

2.2 SYNOPSIS OF GEORGIA OPEN RECORDS ACT CASES

Georgia Open Records Act
O.C.G.A. §§ 50-18-70, et seq

1971 **Attorney-client privilege.** *Crow v. Brown*, 332 F. Supp. 382, 389 n.5 (N.D. Ga. 1971) (Edenfield, J.), *aff'd*, 457 F.2d 788 (5th Cir. 1972):

* Rejects county's contention in housing discrimination suit that memoranda written by the county attorney are inadmissible as protected by the attorney-client privilege; the court stated that only confidential attorney-client communications are so protected whereas these memoranda are Fulton County records and open to public inspection pursuant to the Open Records Act.

1974 **Election petitions.** *Rentz v. City of Moultrie*, 231 Ga. 579 (1974) (Jordan, J.):

* Citizens have a right pursuant to the Open Records Act to view election petitions.
* Ingram, J., dissented as to other aspects of the decision.

1976 **Law enforcement records.** *Houston v. Rutledge*, 237 Ga. 764 (1976) (Gunter, J.):

* Suit for access to files maintained by the Columbus, Georgia Sheriff relating to the deaths of inmates in the jail under his supervision.
* The Court rejected the Sheriff's argument and the decision of the trial court (Land, J.) that the Open Records Act make public only papers and records required to be prepared and maintained by statute. Rather, all documents, papers, and records prepared and maintained in the course of the operation of a public office are "public records."
* The Court held that records made and maintained in the course of a pending investigation should not in most instances be available for inspection by the public. However, "once an investigation is concluded and the file closed, either with or without prosecution by the state, such public records in most instances should be available for public inspection." If a public official nevertheless refuses to do so, "the judiciary must balance the interest of the public in favor of inspection against the interest of the public in favor of non-inspection...."
* The Court noted that "in our construction of this [the Open Records Act] statute we have attempted to apply First Amendment principles which favor open, unfettered communication and disclosure except where some limitation thereon is required in the public interest."
* Justice Ingram concurred, stating "I would make it clear that, since the files here involved have been determined to be public files, there is a

strong presumption that they should be made available for public inspection immediately. ... [U]nless the sheriff on remand can show some persuasive reason why the files should not now be made available for public inspection, I believe we have a duty under the First Amendment to the United States Constitution and Code Ann. § 40-2701 to require the files to be made available for public inspection without further delay."

* Justice Jordan dissented without opinion.

1978 **Civil investigative records.** *Northside Realty Associates v. Community Relations Commission*, 240 Ga. 432 (1978) (Marshall, J.):

* Suit for access to records compiled by the Community Relations Commission in the course of conducting a racial discrimination "testing" campaign.
* The Court made clear, as Justice Ingram had indicated in a concurring opinion in *Houston v. Rutledge*, that once a request for identifiable public records is made, "the burden is cast on the [records' custodian] to explain why the records should not be furnished." The case was remanded to the trial court (Wofford, J.) to allow it to balance the public interest in disclosure v. nondisclosure.

1978 **Ambulance service records.** *Griffin-Spalding County Hospital Authority v. Radio Station WKEU*, 240 Ga. 444 (1978) (Nichols, J.):

* Suit by a radio station for access to records relating to a public hospital's ambulance service.
* Court affirmed the order of the trial court (Whalen, J.) that the information, with the exception of patient medical records, be produced; and ordered that the hospital separate the confidential from the non-confidential information

1979 **Board of medical examiners records.** *Morton v. Skrine*, 242 Ga. 844 (1979) (Hall, J.):

* Suit by a doctor pursuant to the Open Records Act against the state board of medical examiners for access to the board's investigatory file on him.
* The Court affirmed the trial court (Weltner, J.), holding that access was prohibited by another law making such medical investigation reports confidential.

1979 **Law enforcement records.** *Brown v. Minter*, 243 Ga. 397 (1979) (Undercofler, J.):

* Suit by newspaper editor for access pursuant to the Open Records Act to certain records representing completed investigations by the Internal Investigation Unit of the Atlanta Police Department.
* The Court held that the trial court (Fryer, J.) had properly afforded access to most of the documents, withholding only limited records on the ground that they would disclose information regarding on-going investigations, etc.

* The Court reaffirmed that the burden of justifying non-disclosure is on the government.

1980 **Privacy interests.** *Athens Observer, Inc. v. Anderson*, 245 Ga. 63 (1980) (Undercofler, J.):

* Suit by an Athens newspaper for access pursuant to the Open Records Act to a report commissioned by the vice-president of research and the Dean of the College of Arts and Sciences of the University of Georgia.
* The Court affirmed that portion of the decision of the trial court (Gaines, J.) holding that the report was a public record and reversed that portion approving only the release of only an edited version. The Court held that the entire report was a public record and had to be produced.
* The Court rejected contentions by the State that the report constituted personnel information and that its disclosure would constitute an invasion of privacy. It stated that the right of privacy does not protect "legitimate inquiry into the operation of a government institution and those employed by it. On the contrary, the public policy of this state has been clearly expressed by the legislature in adopting the Open Records Act. The purpose is not only to encourage public access to such information in order that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions, but also to foster confidence in government through openness to the public. That the information may comment upon certain public officials' performance of their official duties does not warrant suppression by the courts."
* Justice Jordan, joined by Justices Bowles and Marshall, dissented, arguing that "[t]he documents here sought are merely written evaluations or opinions of an outside group of experts. Until acted on officially by university officials such material does not assume the status of a public 'record' or writing."

1980 **Housing Authority records.** *Doe v. Sears*, 245 Ga. 83 (1980) (Nichols, J.):

* Suit by newspaper editor for access pursuant to the Open Records Act to "certain computer printouts kept by the Atlanta Housing Authority as part of its business records," containing the names, addresses, sources of income and rents owed by tenants.
* The Court held that the Act clearly applied to the Housing Authority. It further held that the "underlying implication" of the Act is that all records are open to inspection unless closed by a "specific exception." The Court thus held that the printouts were public records.
* The Court rejected the decision of the trial court (Eldridge, J.) to not reveal, on grounds of privacy, names and addresses of tenants whose rents were delinquent by less than 6 months. The Court stated: "This court holds today that the general public properly is concerned with whether or not public housing tenants are paying their rentals when due. Accordingly, we hold that each of the tenants impliedly waived whatever constitutional, statutory or common law rights of privacy he may have had

in the status of his rental account and the amounts and sources of his income when he allowed his rental account to become unpaid when due."

1980 **Citizenship requirement.** *Atchison v. Hospital Authority of the City of St. Mary's*, 245 Ga. 494 (1980) (Clarke, J.):

* Suit by an employee of a Florida newspaper for access pursuant to the Open Records Act to business telephone records of a public hospital.
* The Court reversed the refusal of the trial court (Scoggin, J.) to afford access.

1984 **Public hospital records.** *Richmond County Hospital Authority d/b/a University Hospital v. Southeastern Newspapers Corporation*, 252 Ga. 19 (1984) (Smith, J.):

* Suit by two newspapers for access pursuant to the Open Records Act to information identifying the names, salaries, and job titles of public hospital employees earning more than $28,000 annually.
* In affirming the order of the trial court (Fleming, J.) compelling access, the Court stated that "[t]he public has a legitimate interest in the operation of this institution and the salaries paid to those employed there." The Court found speculative the hospital's predictions that highly qualified staff would go elsewhere and morale would plummet if salaries were disclosed. The Court found such speculation clearly insufficient to overcome "the strong public policy of this state in favor of open government."

1984 **Tax records.** *Pensyl v. Peach County*, 252 Ga. 450 (1984) (Hill, J.):

* Suit by a taxpayer for access pursuant to the Open Records Act to certain tax information on residences adjoining his.
* The Court affirmed the order of the trial court (Wilcox, J.) that the records be disclosed, noting: "The General Assembly has seen fit to exempt intangible personal property and other tax records from the open records law but has not seen fit to exempt ad valorem property tax records. We are unwilling to extend the exemption to tax records which the General Assembly has not seen fit to exclude."
* Justice Smith dissented without explanation.

1984 **Law enforcement records.** *Irvin v. Macon Telegraph Publishing Company*, 253 Ga. 43 (1984) (Gregory, J.):

* Suit by the Macon Telegraph against the Commissioner of Agriculture and the Director of GBI for access pursuant to the Open Records Act to records of GBI investigations concerning the conduct of several employees of the State Farmers' Market in Macon.
* The Court affirmed the order of the trial court (Vaughn, J.) that the records be disclosed. The Court rejected claims that the records were personnel records and that the public interest in non-disclosure outweighed the public interest in disclosure. In doing so, the Court agreed with the trial court's conclusion that "the public has an overriding interest in learning the results of the GBI investigation and the administrative law judge's

review of certain of these results. Specifically, the trial court found the public has an interest in learning 'about the operation and functioning of a public agency, namely the State Farmer's Market at Macon, and the work-related conduct of public employees; [in gaining] information [to] evaluate the expenditure of public funds and the functioning of a public institution or agency; [in having] information openly available to them so that they can be confident in the operation of their government; and [in insuring] that both the activity of public employees suspected of wrongdoing and the conduct of those public employees who investigate the suspects is open to public scrutiny."

* Justice Marshall, joined by Justice Smith, dissented, "for the reasons set forth in Justice Jordan's dissent in *Athens Observer*."

1986 **Athletic association records.** *Macon Telegraph Publishing Company v. Board of Regents of the University System of Georgia*, 256 Ga. 443 (1986) (Bell, J.):

* Suit by the Macon Telegraph for access pursuant to the Open Records Act of records showing the assets, liabilities, income and expenses of the University of Georgia Athletic Association.
* The Court reversed the order of the trial court (Pierce, J.) denying access, concluding that "regardless of whether the documents are prepared by employees of a private Athletic Association or by Dr. Barber as Treasurer of that Association, it is clear that they are 'documents, papers and records prepared and maintained in the course of the operation of a public office,' and are therefore 'public records' under the Open Records Act."

1987 **Law enforcement records — Wayne Williams files.** *Napper v. Georgia Television Company*, 257 Ga. 156 (1987) (Marshall, J.):

* Suit by The Atlanta Journal-Constitution, WSB and ABC News for access to the City of Atlanta's investigative files on the Atlanta child murders.
* The Court affirmed the decision of the trial court (Alverson, J.) that the files were public records and should be produced, but held that "the trial court should have deleted from the files information identifying individuals who were investigated but not charged with or prosecuted for a crime, as well as information which would prove personally embarrassing to individuals who were not the targets of the investigation, unless the trial court determines that 'exceptional interests militate in favor of disclosure.'
* Judge Alverson found such exceptional interests on remand and ordered production, with few deletions.
* On remand, Judge Alverson also awarded attorney's fees to The Atlanta Journal-Constitution, WSB and ABC News.
* **F.B.I. records in local police custody.** An order entered in a separate, federal action preventing disclosure of such records in the City's files that originated from the FBI was affirmed by the United States Court of Appeals for the Eleventh Circuit in *United States v. Napper*, 887 F.2d 1528 (11th Cir. 1989).

1989 **Attorney-client privilege.** *Atlanta Legal Aid v. City of Atlanta*, No. D14722 (Fulton County Superior Court, Apr. 14, 1989) (Sears-Collins, J.):

* Suit by Atlanta Legal Aid for access pursuant to the Open Records Act to the City's records of its investigation of corruption in the City's housing rehabilitation program. The Atlanta Journal-Constitution filed an amicus brief on Atlanta Legal Aid's behalf on April 12, 1989.
* On April 14, 1989, Judge Sears-Collins ordered the City to produce the records, rejecting the City's claim that since the records were compiled by the City Attorney they were exempt from disclosure as attorney-client privileged.

1989 **Public university presidential search records.** *Board of Regents v. The Atlanta Journal & The Atlanta Constitution & Glenn McCutchen*, 259 Ga. 214 (1989) (Weltner, J.):

* Suit by The Atlanta Journal-Constitution for access to records as to candidates being considered by the Regents for the presidency of Georgia State University.
* Rejecting the Regents' contentions (1) that the Board is not subject to the Act, (2) that all presidential search records are exempt from disclosure as "confidential evaluations," and (3) that the public interest in nondisclosure of such records outweighs the public interest in disclosure. The Court noted that "it would make for a strange rule, indeed, to hold that a person who applies for a public position — to serve the public and to be paid by the public — has the right to keep secret from the public the very existence of such an application."
* Justice Clarke concurred, emphasizing the statutory mandate that exceptions to the Open Records Act must be construed narrowly.
* Justice Gregory concurred, noting that the Open Records Act exception for confidential evaluations of candidates for public employment and the Open Meetings Act exception for meetings to consider candidates for public employment are in harmony: "What both protect from disclosure is the give and take among decision makers so that they may make candid and difficult comparisons of the qualifications of candidates for public office and employment, and their performance once selected. ... This does not mean however that the identity and other information about candidates, officials, and employees is exempted."
* Justice Marshall, joined by Justice Smith, dissented, arguing (1) that the Open Meetings Act exception for meetings to consider candidates for public employment should be read to exclude disclosure under the Open Records Act of any records maintained in connection with a presidential search and (2) that the public interest favored nondisclosure.
* Justice Bell dissented without opinion.

1989 **Law enforcement records.** *Parker v. Lee*, 259 Ga. 195 (1989) (Bell, J.):

* Open Records Act exemption for law enforcement records compiled in a pending investigation applies only when there is an "imminent adjudicatory proceeding[] of finite duration." Fact that death row inmate

could be tried for alleged rape, for which an indictment against him is outstanding, does not justify non-release of records.

* The fact that the person requesting the records is a death row inmate is irrelevant. There is "no reason to distinguish [a death row inmate's] (or any other individual citizen's) right of access from news organizations' right of access."
* Justice Marshall, joined by Justice Smith, dissented.

1989 **Records of quasi-public entities — The Atlanta Convention and Visitors Bureau.** *The Atlanta Journal & The Atlanta Constitution & Glenn McCutchen. v. The Atlanta Convention and Visitors Bureau, Inc.*, No. D63684 (Fulton County Superior Court, Mar. 14, 1989) (Eldridge, J.):

* Suit for access pursuant to the Open Records Act to records of The Atlanta Convention and Visitors Bureau, Inc.
* On March 14, 1989, the trial court held that the Bureau is subject to the Open Records Act because of its public function (promoting tourism and convention business for the City) and because it receives over half of its funds from hotel/motel taxes and ordered the Bureau to disclose records as to its expenditure of these funds. The trial court also held that the Bureau is not required to disclose records as to its expenditure of funds received from other sources.
* The Bureau appealed and The Atlanta Journal-Constitution cross-appealed and the order was stayed pending their outcome. In the fall of 1989, the Georgia Supreme Court affirmed without opinion. 259 Ga., XXX.

1989 **Insurance information.** *Evans v. Belth*, 193 Ga. App. 757 (1989) (Birdsong, J.):

* O.C.G.A. § 33-2-8.1(c) requires withholding from public inspection of any and all information acquired by the Insurance Commissioner from the National Association of Insurance Commissioners, provided the same was obtained under expectation of privacy by the Association at the time of information release to the Commissioner.
* The section overrides the Open Records Act and applies retroactively to documents obtained prior to the section's effective date, April 10, 1989.

1990 **Incident reports.** *Cook Publishing Company, Inc. v. Charles W. Bryant, individually and in his capacity as Sheriff of Cook County, Georgia*, No. CV89-162 (Cook County Superior Court, Mar. 19, 1990) (Knight, J.):

* Suit against sheriff for access to incident reports.
* Based upon sheriff's testimony "that he and his deputies are ready and willing to provide all future incident reports requested," newspaper's motion for injunctive relief denied.

1990 **Child abuse records.** *The Atlanta Journal and Constitution and Glenn McCutchen v. Georgia Department of Human Resources*, No. D-73733 (Fulton County Superior Court, Apr. 20, 1990) (Hicks, J.):

* Suit for access to records of reports of child abuse and deprivation concerning children who died while under the protection of the State in 1988 and 1989.
* On April 20, 1990, the trial court ordered the records produced to The Journal-Constitution but ordered the newspaper not to disclose certain identifying information in the records.

1990 **Hospital accreditation records.** *Georgia Hospital Association v. Ledbetter*, 260 Ga. 477 (1990) (Clarke, J.) (Fletcher, J., with Smith, J., dissenting):

* Declaratory judgment action brought by the Georgia Department of Human Resources for an adjudication of the open records status of DHR records on the accreditation of hospitals, public and private, throughout the state.
* The Supreme Court held that "[t]he public has a legitimate interest in the records which make up the DHR's hospital licensing decisions."

1990-91 **Public university coaches income records.** *Dooley v. Davidson and The Atlanta Journal and The Atlanta Constitution*, 260 Ga. 577 (1990) (Weltner, J.); *Cremins v. The Atlanta Journal and The Atlanta Constitution*, 261 Ga. 496 (1991) (Fletcher, J.):

* Suits involving requests by The Atlanta Journal-Constitution for access pursuant to the Open Records Act to records of athletically-related income (shoe contracts, radio and television shows, etc.) of athletic coaches at the University of Georgia and Georgia Tech.
* In *Dooley*, the Court concluded that certain records reflecting the athletically-related "outside" income of University of Georgia athletic coaches were "public records" although they were neither on file with the University nor were they ever seen by the University President. The Court found that the records were prepared and maintained or received in the course of the operation of the University and Athletic Association because Board of Regents policies and NCAA rules required the coaches to report such income to the President and in some cases required the President's prior approval of the activity.
* The Court established that the following categories of records are required to be disclosed under the Act:
    (1) Records in the hands of employees that pertain to the receipt of athletic equipment and apparel;
    (2) Records of outside income received in connection with the operation of the university and the [athletic] association; and
    (3) Records in the hands of employees that have been prepared for the purpose of complying with reporting requirements relating to specified income.

* The Court also held that records relating to money received for speaking appearances "unconnected with and not in conflict with the performance of an official duty" are not public records.
* Chief Justice Clarke and Presiding Justice Smith dissented. Each would limit the definition of "public record" to those required to be maintained by law or those actually on file at the public office or agency.
* After *Dooley*, Fulton Superior Court Judge Frank Hull granted the Newspapers' motion for summary judgment in an identical case involving athletic coaches at Georgia Tech.
* On July 3, 1991, the Georgia Supreme Court affirmed.

1991 **Police investigatory files.** *McBride v. Wetherington*, 199 Ga. App. 7 (1991) (Cooper, J.):

* Appeal from trial court order denying appellant's claims that police department had improperly refused to grant him access to investigatory records and seeking copies of those records free of charge based on appellant's indigence.
* The appellate court affirmed. The court held that O.C.G.A. § 50-18-72(a)(4) does not require a police department to turn over investigatory records when there is an ongoing investigation and, in any event, the records were later made available.
* The court held that a copying fee of 25 cents per page was allowed by O.C.G.A. § 50-18-71(c) and that the statute contained no provision for excusal of payment upon filing of a pauper's affidavit.

1991 **Car telephone records.** *Dortch v. The Atlanta Journal and The Atlanta Constitution*, 261 Ga. 350 (1991) (Fletcher, J.) (Smith and Benham, JJ., dissenting):

* Suit for access to unredacted copies of City of Atlanta car telephone records.
* On September 19, 1990, the trial court (Sears-Collins, J.) ordered the records produced.
* Notwithstanding that some of the calls made were personal calls for which the public official reimbursed the City, the Court held that personal information that is intermingled or co-mingled with official public documents or information that is being maintained by a city agency is subject to disclosure under the Open Records Act.
* In response to the City's claim that some of the telephone numbers of persons on city cellular phones might be unlisted, the Court held that "[e]ven if we were to hold that publication of unlisted telephone numbers involved disclosure of secret or private facts, we cannot say, in the circumstances presented here, that such disclosure would be so offensive or objectionable to a reasonable man as to constitute the tort of invasion of privacy."
* The Court further held that records reflecting the numbers of the City-owned cellular telephones must be disclosed notwithstanding the fact that "this could result in increased telephone bills" by virtue of calls made to

the cellular phone. "While we understand the potential financial problems that disclosure of the cellular telephone numbers could create, there is presently no exemption for such records under the Act. Any such remedy must come from the General Assembly."

1991 **Psychiatric records.** *Southeastern Legal Foundation v. Ledbetter*, 260 Ga. 803 (1991) (Fletcher, J.):

* Suit by news organizations and the Southeastern Legal Foundation for access to records prepared and maintained or received by the State regarding the commitment, diagnosis, treatment and release of James Calvin Brady. On April 24, 1990, less than 24 hours after Brady's release from a State mental facility where he had been diagnosed as having homicidal tendencies, Brady gunned down five persons at random in a major Atlanta metropolitan shopping mall.
* On May 1, 1990, the trial court (per Coursey, P.J.) denied motions for access to the records without prejudice, concluding that "[b]ased on the limited facts which have been presented, this court finds that Mr. Brady's privacy interest in his records outweighs the interest of the public at this time."
* On June 13, 1990, the trial court (Castellani, J.) denied renewed motions for access despite public disclosure by Brady's attorney of portions of the records sought and despite public statements by Brady's attorney that "Mr. Brady is not interested in privacy. He wants the world to know."
* On appeal, the Supreme Court, per Justice Fletcher, affirmed. The Court held that the records sought were "clinical records" which are specifically made confidential by the Mental Health Code, O.C.G.A. § 37-3-1(2). As a result, the records are exempt under the Act as "records ... which by law are prohibited or specifically exempted from being open to inspection by the general public."
* The records at issue were subsequently disclosed in the course of the criminal proceedings against Mr. Brady.

1991 **Attorney's fees.** *GMS Air Conditioning, Inc. v. Georgia Dep't of Human Resources*, 201 Ga. App. 136 (1991) (Pope, J.):

* Where a case presented factual issues as whether the defendant agency, though it produced documents plaintiff requested after a lawsuit was filed, violated the Open Records Act by not producing them before the suit was filed and whether the violation, if any, was "completely without merit as to law or fact," the trial court (Cummings, J.) erred in granting summary judgment for the agency on plaintiff's attorney's fees claim.

1991 **Executive search records.** *The Atlanta Journal and The Atlanta Constitution v. Atlanta Convention and Visitors Bureau, Inc. and Spencer Stuart and Associates, Inc.*, No. S91A1200 (Ga. 1991):

* Suit for access to records reflecting the names, resumes and vitae of candidates for President of the Atlanta Convention and Visitor's Bureau, a private non-profit corporation which receives over 60% (nearly $6

million) of its annual budget from tax revenues. To conduct the search, the Bureau retained an executive search firm, Spencer Stuart, at a cost of $30,000.

* On June 3, 1991, the trial court (Johnson, J.) issued an order holding that records sent directly to the Bureau were public records, but records which were prepared and retained by Spencer Stuart, although disclosed to and utilized by the Bureau members, were not public records.
* Appeal dismissed as premature. The Newspapers subsequently dismissed the action after enactment of certain revisions to the Act.

1991 **Tax appraisals.** *Douglas v. Pope*, No. D-86301 (Fulton County Superior Court, Apr. 12, 1991) (Alverson, J.):

* Held that O.C.G.A. § 48-5-314 is not a blanket prohibition against the production pursuant to the Open Records Act of materials held by boards of tax assessors but rather was intended only to protect from disclosure materials, except the return, provided by taxpayers to the tax assessors office, such as taxpayer accounting records, profit and loss statements, income and expense statements, balance sheets, depreciation schedules, and like materials.
* "The purpose of the confidentiality provisions of O.C.G.A. § was to protect the privacy of individual taxpayers, not to protect the board of tax assessors and its agents from public scrutiny as to their procedures, their activities, and methods of assessing property."
* Attorney's fees awarded to plaintiff.

1991 **Charges for agency attorney time spent reviewing Open Records Act requests.** *Trammell v. Martin*, 200 Ga. App. 435 (1991) (Pope, J.):

* Suit for access to bills for legal services performed for and paid by Clayton County. Defendant county finance director attempted to charge plaintiff for the cost of attorney time spent reviewing the bills for exempt information. The trial court held that such a charge was not permitted under the Act.
* The Court affirmed on appeal holding that the evidence showed "that defendant wrongly planned to charge plaintiff for attorney time required to review the requested documents for information exempt from disclosure. The trial court corrected this violation by ruling plaintiff could not be charged for that service since it is not a charge authorized under OCGA § 50-18-71."
* The Court also held that agencies must use the most "economical means available for providing copies of public records" and remanded the case for a determination of whether the county had done so.

1991 **Complaints concerning agency employees.** *The City of St. Mary's v. Camden Newspapers*, No. 91V0420 (Superior Court of Camden County, July 25, 1991; Aug. 20, 1991), *sum. aff'd*, (Ga.):

* Suit for access to complaint filed by City employee complaining of harassment by City council member. The request was made more than 10 days after the complaint had been filed with the City.
* The trial court (Taylor, J.) held that the complaint was not exempt from disclosure since the complaint had been presented more than 10 days previously and the City's investigation had terminated. Nor was the complaint protected from disclosure by virtue of privacy interests asserted either by the council member or the complaining employee.

1992 **Criminal enforcement.** *Jersawitz v. Eldridge*, 262 Ga. 19 (1992) (Bell, J.):

* District Administrative Judge of the Fifth Judicial District and Chief Judge of the Atlanta Judicial Circuit (Eldridge, J.) lacked authority to issue an order interpreting the Open Records Act as not permitting a private citizen to swear out an arrest warrant against a public official for violation of the Act and ordering all judicial officers and judges in the District and Circuit to refrain from issuing any such arrest warrant to any individual other than the Attorney General, District Attorney or Solicitor General acting in their official capacities.

1992 **Property appraisals.** *Black v. Georgia Dep't of Transportation*, 262 Ga. 342 (1992) (Hunt, J.):

* Appeal from trial court's denial of Open Records Act request by plaintiff to inspect appraisals of his property in connection with DOT's efforts to condemn.
* The Court held that O.C.G.A. § 50-18-72(a)(6) does not require such records to be disclosed until after the condemnation proceedings conclude and DOT has acquired the property. The Court also held that O.C.G.A. § 32-3-7 should not be read to require DOT to disclose matters in condemnation proceedings that it would not ordinarily have to disclose in discovery.
* Justice Weltner, joined by Justice Sears-Collins, dissented, arguing that the clear wording of O.C.G.A. § 32-3-7(a) provides that DOT "acquires" property as soon as it files a declaration of taking.

1992 **Fees.** *McFrugal Rental of Riverdale, Inc. v. Garr*, 262 Ga. 369 (1992) (Clarke, J.):

* Open Records Act plaintiff, which sought to inspect city council minutes, city zoning maps and ordinances, challenged city manager's imposition of a fee to cover the cost of a temporary employee to supervise the inspection. Denial of relief by the trial court reversed.
* Emphasizing the importance of public access to government information, the Court held that "any fee imposed pursuant to O.C.G.A. § 50-18-71 constitutes a burden on the public's right of access to public records. Therefore, the statute must be narrowly construed. As we construe the

statute, the imposition of a fee is allowed only when the citizen seeking access requests copies of documents or requests action by the custodian that involves an unusual administrative cost or burden. Thus, a fee may not be imposed under O.C.G.A. § 50-18-71 when a citizen seeks only to inspect records that are routinely subject to public inspection, such as deeds, city ordinances or zoning maps. Further the custodian of the records must bear the burden of demonstrating the reasonableness of any fee imposed."

1992 **"Secrets of State" exemption.** *Hardaway Co. v. Rives*, 262 Ga. 631 (1992) (Bell, J.):

* Appeal from ruling of trial court (Langham, J.) that "Engineer's Cost Estimate" documents generated by the Department of Transportation as part of the process of evaluating bids for work on Savannah's Talmadge Memorial Bridge were exempt from disclosure under the Open Records Act as "secrets of state," O.C.G.A. § 24-9-21(4), or "state matters of which the policy of the state and the interest of the community require concealment," O.C.G.A. § 24-9-27(d). Reversed.
* The Court emphasized that "*any* purported statutory exemption from disclosure under the Open Records Act must be narrowly construed." The Court agreed that "the public interest in exempting engineering cost estimates from disclosure until projects are completed or abandoned outweighs the public interest in favor of disclosure," but concluded, consistent with past precedent, that the Court does not "have the discretion to judicially craft such an exemption. The balancing test which the special concurrence urges us to apply was expressly limited by *Board of Regents* to instances where individual privacy rights were involved."
* Justice Fletcher, joined by Justice Hunt, concurred specially, concluding that a balancing was appropriate but weighed in favor of disclosure as construction had been completed.

1993 **Public university student disciplinary court records.** *Red & Black Publishing Company v. Board of Regents*, 262 Ga. 848 (1993) (Hunt, J.):

* Appeal from ruling of trial court (Hull, J.) that records of the University of Georgia Student Organization Court must be disclosed to the public pursuant to the Open Records Act but that the Court's disciplinary hearings are not subject to the Open Meetings Act. Affirmed in part, reversed in part.
* The Court concluded that both the records and the disciplinary hearings of the Student Organization Court must be open to the public: "We are mindful that openness in sensitive proceedings is sometimes unpleasant, difficult, and occasionally harmful. Nevertheless, the policy of this state is that the public's business must be open, not only to protect against potential abuses, but also to maintain the public's confidence in its officials." 262 Ga. at 854.

1993 **Records of private entities acting under agency direction and control.** *Clayton County Hospital Authority v. Webb*, 206 Ga. App. 693 (1993) (Andrews, J.):

* Appeal from ruling of trial court (Ison, J.) ordering Clayton County Hospital Authority (CCHA) and five affiliated corporations to produce records under the Open Records Act.
* The Court of Appeals held that the Act applies to records of private entities when such entities function "under the direction and control of [a hospital authority] to implement the [authority's] duty to provide for the public health."
* The Court held that the disputed records — relating primarily to transfers of funds from the CCHA to five private affiliated corporations and to transfers of funds between any of those corporations — are public records. Citing the fact that assets of the CCHA had been transferred to some of the corporations and the fact that all of the records were in the possession or control of the CCHA, the Court found that the "private status" alone of the corporations did not insulate them from the strictures of the Open Records Act.

1993 **Alleged trade secrets submitted to agency.** *BellSouth Telecommunications, Inc., d/b/a Southern Bell v. Georgia Public Service Commission*, No. E-7376 (Fulton County Superior Court, Apr. 16, 1993) (Eldridge, J.), *aff'd without opinion* (Ga.):

* Appeal from administrative determination by Georgia Public Service Commission that Southern Bell must provide certain documents pursuant to a PSC order and that PSC would not agree to maintain documents confidential.
* Trial court concluded that Southern Bell had demonstrated that documents constituted "trade secrets" and that PSC was obligated to maintain their confidentiality. The court determined that the Georgia Trade Secrets Act and the Georgia Open Records Act together required that the PSC not disclose the documents to the public. The court also found that Southern Bell had a property interest in the "trade secrets" and that the PSC was further prohibited under the requirements of the United States Constitution from publicly disclosing the documents.

1993 **District attorney work product.** *Hall v. Madison*, 263 Ga. 73 (1993) (Hunstein, J.):

* Appeal from denial of death row inmate's request for writ of mandamus. After murder conviction was upheld by Georgia Supreme Court, appellant sought district attorney's files relating to his prosecution pursuant to the Open Records Act. Trial court (McWhorter, J.) denied writ of mandamus without findings or conclusions. Supreme Court affirmed.
* The Court concluded that petition for writ of mandamus was premature since appellant still had alternative legal remedy available to him in a habeas proceeding. The Court expressly distinguished *Napper v. Ga.*

Television on grounds that party seeking production of files in *Napper* was not defendant and so did not have habeas proceeding available.

1993 **Mootness.** *Conklin v. Zant*, 263 Ga. 165 (1993) (Carley, J.):

* Appellant brought suit seeking order compelling appellees to allow him to inspect and copy certain records pursuant to the Open Records Act. Trial court (Smith, J.) dismissed action as moot based on defendant's having turned over requested records.
* Supreme Court reversed because evidence showed only that appellees had turned over some, but not all, of the records requested by appellant.

1994 **Privately held records.** *Hackworth v. Board of Education for the City of Atlanta*, 214 Ga. App. 17 (1994) (Smith, J., with Pope, C.J. and McMurray, P.J.):

* Suit for access to personnel records of certain City of Atlanta school bus drivers. Trial court (Daniel, J.) held that personnel records held by a privately-owned transit company that contracts with the city to provide drivers were not public records.
* The court of appeals reversed the trial court's decision, concluding that, because the city's contract with the transit company allowed the city to review the records and because the operation of buses is a "legitimate function of the school board and within the operation of a public agency," the records were public records despite the fact that they were not physically in the possession of the city.
* The court remanded the decision to the trial court to determine whether any of the records are exempt from disclosure based on concerns of "personal privacy." Citing *Dortch v. Atlanta Journal*, 261 Ga. 350 (1991), the court instructed the trial court to order disclosure of all records unless disclosure would constitute the tort of invasion of privacy.

1994 **Commercial solicitation.** *Speer v. Miller*, 864 F. Supp. 1294 (N.D. Ga. 1994) (Hall, J.):

* Suit for permanent injunction by criminal defense attorney preventing enforcement of O.C.G.A. § 35-1-9, which prohibits the inspection or copying of law enforcement agency records for the purpose of commercial solicitation. Prior to passage of § 35-1-9, the plaintiff had used the records to solicit clients for his legal practice, and he claimed that refusing to allow him to continue to peruse those records violated his First Amendment rights. The trial court had initially denied plaintiff's challenge, but the Eleventh Circuit reversed, ruling that "a mere reading of this statute indicates that it probably impinges upon Speer's commercial speech." *Speer v. Miller*, 15 F.3d 1007, 1010 (11th Cir. 1994).
* On remand from the Eleventh Circuit, the district court held that O.C.G.A. § 35-1-9 violates the First Amendment and is unconstitutional because it does not directly advance a substantial state interest. The court specifically rejected the state's argument that the statute advanced the substantial interest of "protecting people's privacy." According to the court, that effect is "so riddled with exceptions that the statute's ability to

advance the asserted purpose is anemic and betrays a true alternative purpose" (preventing solicitation).

1994 **Online computer access.** *Jersawitz v. Hicks*, 264 Ga. 553 (1994) (Hunstein, J.):

* The Supreme Court unanimously affirmed the denial by the trial court (Langham, J.) of plaintiff's request for on-line computer access to the Fulton County real estate deed records: "While we are mindful that the prevalence of computers in homes, offices and schools may make on-line access to computerized public records desirable, requiring that means of access must be addressed by the General Assembly."

1994 **Rape incident reports.** *Doe v. Board of Regents*, 215 Ga. App. 684 (1994) (en banc) (Beasley, J.):

* Trial court refused to issue injunction sought by university employee enjoining disclosure of a university police incident report, sought by The Red & Black, regarding the employee's claim that she had been abducted and raped on the university campus by an unknown assailant.
* Court of Appeals held that pursuant to the Open Records Act the newspaper is entitled to the requested report but, pursuant to O.C.G.A. § 16-6-23(a), with the university employee's name and identifying information redacted.
* Birdsong, J., Andrews, J., Blackburn, J., and Ruffin, J., dissent from the Court's decision to authorize redaction of any part of the report. Andrews, J., writes that O.C.G.A. § 16-6-23(a) "does not cover an admittedly false allegation of rape. It is undisputed that the incident investigated by the campus police did not occur." Blackburn, J., writes that "I join Judge Andrews in concluding that appellant has lost any right she would otherwise have had to keep her identity from being disclosed because of her admitted fabrications and the superior right of the public to know of the falsity of her original complaint, and the right to know *who* falsely complained."

1995 **Tax information.** *Bowers v. Shelton*, 265 Ga. 247 (1995) (Thompson, J.):

* Affirming order of trial court (Jenrette, J.) entering permanent injunction pursuant to Open Records Act preventing Attorney General from disclosing confidential tax information contained in closed criminal investigation file.

1995 **Police incident reports.** *City of Brunswick v. The Atlanta Journal-Constitution and The Florida Times-Union*, 265 Ga. 413 (1995) (Carley, J.):

* Appeal from order of trial court (Williams, J.) requiring City to disclose serial rape incident reports despite City's professed concern that doing so would hamper investigation and pose risk to victims' safety. For these reasons, and based upon an ex parte presentation by the City, the trial court had initially refused to order production. However, the trial court reversed itself and ordered production after the Times-Union published an article disclosing certain facts relating to the incidents.

* Cross-appeal by The Journal-Constitution and The Times-Union challenging the trial court's conclusion that incident reports can ever be protected and that it was proper to hear City's witnesses ex parte.
* Supreme Court affirmed in all respects, concluding that portions of incident reports may be exempted from disclosure to the extent they contain confidential information otherwise exempted from disclosure under the Act.

1995 **Hospital authorities.** *Northwest Georgia Health System, Inc. v. Times-Journal, Inc.*, 218 Ga. App. 336 (1995) (McMurray, J.):
* Appeal from order of trial court (Hines, J.) holding that combinations of private hospitals and public hospital authorities are subject to the provisions of the Open Meetings and Open Records Acts.
* Court of Appeals affirmed, stating that "[w]ithout question, these private, nonprofit corporations became the vehicle through which the public hospital authorities carried out their official responsibilities."

1996 **Fees.** *Powell v. Von Canon*, 219 Ga. App. 840 (1996) (Johnson, J.):
* Appeal from order of trial court (Wood, J.) holding that defendant government officials are limited to charging only the actual cost of computer disk or tape onto which requested information is transferred and, after the first quarter hour of work, only the hourly wage of the lowest paid full-time employee capable of overseeing or performing transfer.
* Court of Appeals affirmed as to all defendants except clerk of superior court on ground that superior court clerks are authorized by O.C.G.A. § 15-6-96 to sell computer generated records for a profit.

1996 **911 incident cards.** *The Bainbridge Post Searchlight, Inc. v. Decatur County*, No. 96-V-302 (Decatur County Superior Court, Sept. 10, 1996) (Cato, J.):
* Action to require county to make available for public inspection 911 incident cards completed by 911 dispatchers for the purpose of registering, dispatching and preserving information from callers that is necessary or important for an appropriate emergency agency to effectively respond to the emergency.
* Held that 911 incident cards are equivalent to initial police incident reports and must be made open for inspection by the public at reasonable times at the 911 facility where the cards are kept.

1996 **Settlement agreements.** *City of Helen v. White County News*, No. 96-CV-409-DB (White County Superior Court, Oct. 7, 1996) (Barrett, J.):
* Action for access to documents relating to settlement of former police chief's civil rights action against city.
* Held that "[c]onsistent with the public policy of the Open Records Act, the public has a right to know the terms of a settlement agreement in which a public entity has settled a lawsuit" and that "the nondisclosure provisions of the Settlement Agreement ... are void as against the public policy of the State of Georgia." The court rejected the city's contention that disclosure

would be improper because "a right of privacy may exist on behalf of those individuals in the underlying lawsuit."

1996 **District Attorney records.** *Felker v. Lukemire*, 267 Ga. 296 (1996) (Thompson, J.):

* Action by death row inmate for access to district attorney's records on prosecution. After hearing and production of additional records, trial court found that the district attorney had complied with inmate's request and denied relief.
* The Supreme Court affirmed, finding that "the district attorney fully complied with his obligations under the Act. And he had no reason to suspect that he did not comply."

1997 **Inmate appeals.** *Hall v. Linahan*, 225 Ga. App. 439 (1997) (McMurray, J.):

* Appeal by state prison inmate of trial court order concerning inmate's Open Records Act requests.
* Because inmate was currently in the custody of Department of Corrections, held that appeal was controlled by Prison Litigation Reform Act of 1996, O.C.G.A. § 42-12-1 et seq., and, because no application for discretionary review had been filed, had to be dismissed.

1997 **Child abuse records.** *In re Hansen*, No. 165958 (Fulton County Juvenile Court, Nov. 14, 1997) (Hatchett, J.):

* Granting access pursuant to O.C.G.A. § 49-5-41(B) to records of Georgia Department of Human Resources, Division of Family and Children Services, of all Georgia children who died between January 1, 1993 and August 31, 1997 and had been reported previously to state protective service workers.

1997 **Privacy of public employees.** *Chatham County v. Adventure Radio Group, et al.*, Case No. CV97-1406-FR (Eastern Judicial Circuit Superior Court, Dec. 22, 1997) (Freesemann, J.):

* Denying request of county and certain county employees to redact the names of certain county employees who were the subject of tape-recorded derogatory remarks by senior police officials. "The Court sympathizes with the female employees who desire to keep their names secreted. Unfortunately, however, these women have, albeit unwillingly, become figures in a public drama. Therefore, dissemination of information pertaining to this drama is no violation of their right to privacy."
* Granting request of Savannah Morning News and WSAV-TV for injunction requiring access.

1998 **Motor vehicle accident reports.** *Statewide Detective Agency v. Zell Miller,* 115 F. 3d 904 (11th Cir. 1997) (Barkett, J.):

* A private detective agency filed suit against the Governor and the Attorney General of Georgia, seeking to enjoin enforcement of statute

criminalizing request for motor vehicle accident reports for commercial solicitation purposes.

* Affirming the District Court preliminary injunction order, the 11th Circuit Court held that the statute represented an unconstitutional restraint of commercial speech.

1998 **Investigatory report concerning sexual harassment**. *Fincher v. State,* 231 Ga. App. 49 (1998) (Ruffin, J.):

* Pursuant to the Open Records Act, the State Board of Pardons and Paroles of Georgia released to a local television station an investigatory report concerning claims that one of its employees had sexually harassed a co-worker. The employee sued claiming invasion of privacy.
* Affirming the dismissal, the Court of Appeals found that the report was a public record not subject to any exemptions under the Georgia Open Records Act. The Court further found that the public interest in obtaining the report outweighs any private interest.

1999 **Settlement records.** *Savannah College of Art and Design v. School of Visual Arts Inc*., 270 Ga. 791 (1999) (Hunstein, J):

* Appeal concerning public access to court records in a civil case. The trial court ordered that confidential settlement documents filed with a discovery motion should be open because the plaintiff failed to meet its burden in limiting access. The Supreme Court reversed, concluding that the plaintiff's privacy interest in the documents clearly outweighed the public's interest in access.

1999 **Discovery procedures considered adequate legal remedy.** *Millar v. Fayette County Sheriff's Dept.,* 241 Ga. App. 659 (1999) (Blackburn, J.):

* Attorney's action against county and county sheriff under Georgia's Open Records Act, seeking injunction requiring them to turn over certain public records relating to his client's federal action against them, was premature; when request for injunction was made, attorney retained adequate legal remedy, namely right to seek defendants' records through discovery procedures in his federal action. Eldridge and Barnes, J.J. concurring.

2000 **Verbal requests for records.** *Howard v. Sumter Free Press, Inc.*, 272 Ga. 521 (2000) (Hines, J.):

* Sheriff's contention that he was not required to comply with verbal requests by the press for access to public records, but only to "bona fide" written requests, was unavailing. Verbal requests do not diminish their efficacy under the Open Records Act.

2000 **Records versus information.** *Schulten v. Fulton-DeKalb Hospital Authority,* 272 Ga. 725 (2000) (Carley, J.):

* Law firm filed writ of mandamus to compel hospital to permit inspection and copying of records since 1995. Court denied relief, because request

would violate Open Records Act by requiring hospital to compile and prepare reports that were not yet in existence.

* Failure by hospital to furnish non-existent records does not constitute a denial of a request for access to public records.

2001 **Trade secrets.** *Georgia Dep't of Natural Resources et al. v. Theragenics Corp.,* 273 Ga. 724 (2001) (Carley, J.):

* Trade secrets exception to disclosure under the Act not expressly limited to documents specifically identified as confidential at time of submission to agency.
* Because Act places ultimate responsibility for non-disclosure on agency, agency cannot construe submitter's failure to identify all trade secrets at time of original filing as waiver of confidentiality.

2001 **Internet access.** *J.K. Champion, M.D. v. State,* Civil Action File No. 2000CV26375 (Fulton Superior, Apr. 9, 2001) (Goger, J.):

* Trial court dismissed complaint for injunction to prevent continued public Internet access to the fact that plaintiff doctor had entered into a disciplinary consent order with the State Board of Medical Examiners, holding, *inter alia*, that Act mandated access.

2001 **Motor vehicle records.** *Spottsville v. Barnes*, 135 F. Supp. 2d 1316 (N.D. Ga. 2001) (Thrash, Jr., J.):

* Challenge to 1999 amendment to the Open Records Act that restricts disclosure of motor vehicle accident reports to certain designated groups of persons including the media. The amendment was upheld and found not to be an unconstitutional prior restraint on commercial speech.

2001 **Police reports concerning rape.** *Dye v. Wallace*, 274 Ga. 257 (2001)

* Trial court held that Georgia's Rape Confidentiality Statute, which made it unlawful for the media to identify rape victims, was unconstitutional.
* Supreme Court affirmed, holding that the media can publish information from police reports that are lawfully obtained.

2002 **Court records filed under seal.** *Estate of Martin Luther King, Jr., Inc. v. CBS, Inc.*, 184 F. Supp. 2d 1353 (N.D. Ga. 2002) (O'Kelley, J.):

* Holding that records filed under seal in support of the parties' respective summary judgment motions must be unsealed. There was no third party request to unseal the records. Rather, the decision was in response to the Court's order directed to the parties to show cause why the records should remain under seal.
* The Court held that documents filed under seal in connection with a dispositive motion in a civil case may remain sealed only if the party seeking closure can show good cause that outweighs the public's interest in dissemination.

* The Court did allow two depositions to remain under seal finding that the plaintiff showed that good cause exists because the documents contained trade secrets.

2004 **Income tax records of individual who received government contract.** *City of Atlanta v. Corey Entertainment , Inc.*, 278 Ga. 474 (2004) (Fletcher, J.):

* Holding that Georgia's Open Records Act requires the disclosure of the tax returns of an individual who won a government contract for her business based on that fact that she successfully applied for status as a "Disadvantaged Business Enterprise."
* The Court rejected the individual's claim that her privacy interests outweighed the public interest in disclosure, finding that there is "a strong need for open government to prevent the appearance of impropriety and corruption in the certification process" for "disadvantaged" businesses.
* The Court also found that the income tax return was not a "personal net worth statement" or "documentation supporting it," which would have been exempt from disclosure under federal regulations.

2004 **Housing Authority records.** *Strange v. Housing Auth. of City of Summerville*, 268 Ga. App. 403 (2004) (Barnes, J.):

* The Housing Authority filed suit seeking, *inter alia*, to enjoin Appellants from making future open records requests on the Authority. Appellants had made several open records requests in the past.
* Appellants filed a counterclaim alleging that the Authority violated the Open Records Act. The trial court granted summary judgment for the Authority on the counterclaim, holding that it was rendered moot when the Authority amended its complaint to withdraw its injunction request.
* The Court of Appeals reversed, holding that the counterclaim was not moot because the Authority also had failed to provide documents in response to Appellants' open records requests and, therefore, could still be liable under the Open Records Act.

2004 **State insurance commissioner records.** *Hoffman v. Oxendine*, 268 Ga. App. 316 (2004) (Phipps, J.):

* The Court held that it was an abuse of discretion by the state Insurance Commissioner to withhold reports regarding the investigation of an insurer.
* The Court found that the Insurance Commissioner could not rely on authority and/or reasons to deny disclosure that were not stated in his response to the Open Records request.
* Here, the Insurance Commissioner failed to cite the "pending investigation" exception to the Open Records Act in his response to the request; therefore, the Court held that the trial court erred in permitting the Commissioner to use this argument in denying disclosure.

2005 **Police records — Private university police force.** *The Corporation of Mercer University v. Barrett & Farahany, LLP*, 271 Ga. App. 501 (2005) (Johnson, J.) (Ruffin, C.J. and Barnes, J., concurring), cert. denied, 2005 Ga. LEXIS 392 (Ga. May 23, 2005):

* Suit by law firm against Mercer University for access to records maintained and generated by the Mercer University Police Department.
* The Court reversed the decision of the trial court (McConnell, J.) that the records be produced, holding that a police force hired by a private university is not a public office or agency just because it performs certain functions authorized by the State by statute.
* The Court also held that the police force did not receive or maintain documents in the performance or service of a function on behalf of a public office or agency, because evidence showed that the police force worked solely for Mercer University. The fact that the police force was required to report gang activity to local law enforcement was irrelevant.
* Simply performing some task or function with an indirect public benefit, or with benefit to the public as a whole, does not transform a private entity's records into public records.
* Purpose of Open Records Act would not be furthered by compelling disclosure of records in this case.

2005 **Attorney's fees and procedure — Petitioner should follow up after receiving response to ORA request before rushing to sue for attorney's fees.** *Everett v. Rast*, 272 Ga. App. 636 (2005) (Miller, J.):

* The Court affirmed the decision of the trial court denying Everett's motion for attorney's fees and expenses, holding that the city had not failed to produce records without substantial justification. Rather, the city indicated that it would comply and that documents in addition to those in its possession "may or may not" be in the possession of various city departments.
* Everett improperly rushed to litigation instead of contacting the city after it responded that it would provide documents.

2005 **Attorney's fees and procedure — Custodian of records must affirmatively respond to ORA request within 3 business days.** *Wallace v. Greene County*, 274 Ga. App. 776 (2005) (Bernes, J.):

* The Court reversed and remanded the decision of the trial court denying Wallace's motion for summary judgment on attorney's fees, holding that the county violated the Open Records Act by not affirmatively responding to Wallace's request within 3 business days. Thus, Wallace met first prong of test for attorney's fees.
* Court remanded on unresolved issue of whether Wallace had shown that county lacked substantial justification for the violation, the second prong of test for attorney's fees.

2005 **Private entities as vehicles for public agencies due to involvement of public officials.** *Baker v. Metropolitan Atlanta Chamber of Commerce et al.*, 2005-cv-105088, Nov. 17, 2005 Order (Johnson, J.), currently on appeal:

* Suit by Attorney General and newspaper for access to NASCAR Hall of Fame and Super Bowl bids submitted and maintained by private entities.
* The Court held that records maintained by private entities related to the bids were subject to Open Records Act because public officials and their pledges of political and financial support were "absolutely necessary" to the possible success of the bids.
* The bids were received in the course of the operation of a public office because the private entities needed the public officials and acted with their full knowledge and acquiescence.
* Certain exceptions under the statute protecting bids from disclosure did not apply here.

2006 **Records of bids for Atlanta to host NASCAR Hall of Fame and Super Bowl.** *Central Atlanta Progress, Inc. v. Baker*, 278 Ga. App. 733 (2006) (Johnson, J.):

* Two private corporations, composed of Atlanta-area businesses, submitted bids for Atlanta to host the NASCAR Hall of Fame and the 2009 Super Bowl, and newspaper requested copies of the bids under the Georgia Open Records Act, but corporations refused, arguing that the bids were not subject to the Act because they were not prepared by or on behalf of public agencies.
* The Attorney General issued an opinion that "in light of the significant involvement of public officials, public employees, public resources and public funds in the matters, the bids were subject to the [Act] and should be disclosed," but the corporations still refused. The superior court agreed and ruled for the newspaper.
* Court affirms trial court's decision, explaining that the bids involved the use of public funds; they called for the future use of substantial public resources; and, public officials and employees participated in preparing them. The Act "must be broadly construed to effect its purposes."

2006 **Attorney's fees and procedure — Summary Judgment improper when evidence shows that records custodian failed to respond to ORA request within 3 business days, and no substantial justification exists for not doing so.** *Benefit Support, Inc. v. Hall County*, 281 Ga. App. 825 (2006) (Blackburn, J.):

* County failed to respond to a records request within three days of receiving it, and requester sued for attorney's fees for failing to comply with the Georgia Open Records Act. Trial court denied the county's request for summary judgment on this claim, finding that both prongs of the test set forth in Wallace were satisfied: the county missed the three-day deadline, and it did not have a substantial justification for its omission.
* Court affirms trial court's denial of summary judgment, explaining that because the county did not produce the documents until after the civil

litigation commenced, "and because the county has further failed to explain this dilatory conduct in any evidence submitted with its summary judgment motion, some evidence shows that the county's violation lacked substantial justification."

2006 **Trade-secrets exception to ORA.** *Douglas Asphalt Company v. E.R. Snell Contractor, Inc.*, 282 Ga. App. 546 (2006) (Barnes, J.):

* Trial court enjoined DOT from giving unredacted copies of certain records to asphalt company because the records contained contractors' trade secrets, which could give asphalt company a competitive advantage.
* Court affirms trial court, finding that the exception to the Act for trade secrets, O.C.G.A. § 50-18-72(b)(1), applies, and explaining that the "trial court did not err in concluding that the contractors presented evidence that the information derived economic value from not being generally known or readily ascertainable to others." Court also holds that although the product was sold in public places, this did not transform the confidential, technical specifications of the product's design into public property.
* Court rejects asphalt company's contention that trade-secret exception was not satisfied because the contractors were not required by law to submit the information to the DOT. "While it is true that the contractors were not required by law to enter into contracts with the state, several witnesses testified that once they entered those contracts, they were required by law to submit the information to the DOT before starting or continuing work." Court explains that information that must be submitted in conjunction with government contracts is "required by law" as that phrase is used in O.C.G.A. § 50-18-72(b)(1).

2007 **Access to Election Materials.** *Smith v. DeKalb County*, 288 Ga. App. 574 (2007) (Ellington, J.):

* Injunction proper to Georgia Secretary of State to prevent public from obtaining election data.
* Individual submitted Georgia Open Records Act request to director of elections seeking CD containing "all ballot images and ballot styles as well as vote totals and a copy of the consolidated returns from the election management system." Director notified Secretary of State of request and that she intended to release the records. Secretary of State sought TRO to prevent this.
* Lower court granted TRO and permanent injunction preventing unauthorized individuals from accessing election CDs because it found Georgia law required CD's to remain under seal for at least 24 months following election unless otherwise directed by superior court, but superior court had not ordered the seal be lifted. Because the CD is statutorily designated to be kept under seal, it is exempt from records open to public inspection.
* Injunction is also proper because CD contains security information that could compromise election security, so it falls within exemption for

"material which if made public could compromise security against sabotage, criminal, or terroristic acts." Though copy of CD could be provided without this security information, government need not create this since it was not in existence at the time of the request.

2007 **Notice where State (or its agency) is a party.** *Georgia Department of Agriculture v. Griffin Industries*, 284 Ga. App. 259 (2007) (Adams, J.):

* Department did not receive adequate notice in accordance with O.C.G.A. § 9-10-2(1) that merits of Open Records Act request were going to be considered by court, thus court's decision granting full requested relief was improper.
* Only notice in record was of case management conference, and only pending motion was for temporary relief, thus Department did not have adequate notice of hearing on merits of ultimate issue.

2007 **Open Records Act requests regarding government wrongdoing.** *Moore v. Gabriel*, No. 3:05-CV-31(CDL), 2007 WL 917291 (M.D. Ga. Mar. 22, 2007):

* Open Records Act requests relating to potential abuse and mismanagement by government are protected First Amendment speech because this is of core public interest.

2008 **Open Records Act does not excuse improper service.** *Melton v. Wiley*, 262 Fed. Appx. 921 (11th Cir. 2008) (per curiam):

* Plaintiff claimed Open Records Act, which protects from disclosing records revealing home address of law enforcement officers, validated substitute service crafted by process server who served someone other than defendant at defendant's place of business.
* Court rejects this argument explaining that Open Records Act does not excuse failure to perfect service in accordance with Georgia law.

2008 **Pending investigations and three-day response requirement.** *Unified Gov't of Athens-Clarke County* v. *Athens Newspapers, LLC*, 284 Ga. 192 (2008) (Carley, J.):

* Newspaper filed suit against county claiming it violated Open Records Act by refusing access to police records of unsolved rape and murder case from 1992. Although investigation was inactive, the investigatory file had not been closed.
* Trial court granted summary judgment for county finding the records exempt because they fell within exemption for "pending investigations," set forth in O.C.G.A. § 50-18-72(a)(4).
* Appellate court reversed, finding the exception unsatisfied because evidence showed there had been no progress in solving the case for several years and because there was no ongoing, active investigation. Court of Appeals noted that statutory exemptions to the Open Records Act must be narrowly construed.

* Georgia Supreme Court reversed the Court of Appeals holding and held that the investigation remained "pending" and thus subject to the Open Records Act exemption.
* Georgia Supreme Court held that for purposes of the Open Records Act exemption, a seemingly inactive investigation, which has not yet resulted in a prosecution, remains undecided and therefore remains "pending" until it is concluded and the file is closed. Similarly, a prosecution is pending until a conviction has been reviewed on direct appeal and no further direct litigation of an imminent nature and finite duration remains.
* Georgia Supreme Court approved of Court of Appeals' interpretation of three-day response requirement in O.C.G.A. § 50-18-70(f) as requiring response within three business days of agency receiving request irrespective of when specific person at agency in charge of records receives request.
* Hunstein, J. (concurring in part and dissenting in part) disagreed with majority's analysis of "pending investigation" exemption and stated that exemption should only apply to those investigations and prosecutions being "actively, definitely and imminently pursued."

2008 **Open Records Act Does Not Permit Recovery of Damages.** *Chisolm v. Tippens*, 289 Ga. App. 757, 762 (2008) (Mikell, J.):

* Noting in *dicta* that Open Records Act does not permit recovery of compensatory or punitive damages.

2008 **Records Generated During Internal Investigation of Sexual Misconduct Were Subject to Disclosure and Were Not Work Product.** *Fulton DeKalb Hospital Auth. v. Miller & Billips*, 293 Ga. App. 601 (2008) (Johnson, J.):

* Law firm filed suit against Fulton DeKalb Hospital Authority pursuant to Open Records Act seeking disclosure of records generated during internal investigation into allegations of sexual misconduct. Authority had refused to produce certain records, including tape-recorded interviews, interview notes, and investigator's final report to the General Counsel on the basis of the work product doctrine.
* Following *in camera* review, trial court rejected work product claim and ordered disclosure of records despite involvement of legal department in investigation, finding that investigation was a routine inquiry in response to complaints and was not conducted in anticipation of litigation.
* Appellate court affirmed, finding that Authority had commenced investigation not in response to any claim or threat of litigation, but only because it received anonymous complaints.

2008 **Public Agency Must Raise Specific Exemption in Initial Response to Requesting Party.** *Jaraysi v. City of Marietta*, 294 Ga. App. 6 (2008) (Mikell, J.):

* Property owners filed suit against City for refusing to disclose records regarding unfinished construction on their property for which building permit had been revoked and which was subject to Municipal Court

demolition action.

* Court rejected City's attempt to rely on "pending investigation or prosecution of criminal or unlawful activity" exemption under O.C.G.A. § 50-18-72(a)(4) because City failed to specify this reason in its initial response to Open Records Act request, and instead did not reference specific Act provision until summary judgment. Court also noted that City's citation to O.C.G.A. § 50-18-72, without more, was insufficient in that City did not cite subsection and paragraph relied upon.
* Appellate court vacated trial court's grant of summary judgment for City where record showed that City violated Open Records Act by failing to respond to request within three business days and rejected argument that property owners' action was moot because City had eventually provided requested records. Court remanded case to trial court to determine whether attorney's fees were warranted under O.C.G.A. § 50-18-73(b).

2008 **Documents Held By Private Entity Performing Public Function; Trade Secrets Exemption.** *United Healthcare of Georgia, Inc. v. Georgia Dep't of Cmty. Health*, 293 Ga. App. 84 (2008) (Bernes, J.):

* Private party contracted with Georgia Department of Community Health ("DCH") to serve as third-party administrator for administration of State Health Benefit Plan. Following Open Records Act request to DCH, private party filed suit seeking to enjoin disclosure of certain documents relating to its contract with DCH.
* Court held that documents were "public records" because, even though in possession of private party, Open Records Act requires disclosure of documents possessed by a private entity performing a service or function for or on behalf of a public agency. O.C.G.A. § 50-18-70(a).
* Court held that documents were "required by law to be submitted to a government agency" in satisfaction of trade secrets exemption to the Open Records Act, O.C.G.A. § 50-18-72(b)(1) (rejecting the trial court's holding on this point) because private entity had submitted documents to DCH pursuant to contractual obligation.
* Rejecting public policy argument in favor of disclosure and finding that plain language of O.C.G.A. § 50-18-72(b)(1) constitutes General Assembly's determination that trade secret protection outweighs any greater public benefit in disclosure.
* Remanding to trial court for determination of whether certain documents meet two-part test for trade secrets under O.C.G.A. § 10-1-761(4)(A).

2008 **Lack of Federal Jurisdiction.** *Flemming v. Morris*, No. 4:08-CV-51 -CDL, 2008 WL 2442184, at *5 (M.D. Ga. Apr. 30, 2008) (Faircloth, M.J.):

* Prisoner filed suit bringing 42 U.S.C. § 1983 and Open Records Act claim.
* After determining that § 1983 claim should be dismissed, Magistrate Judge recommended dismissal of Open Records Act claim as outside the subject matter jurisdiction of federal court.
* Although documents at issue may have been relevant to plaintiff's federal

claims, the determinations which must be made regarding the documents' status and accessibility under Georgia law are not related to the issues underlying plaintiff's federal claims and are therefore not part of the same case or controversy.

2009 **Personnel Records of Municipal Employee.** *Goddard v. City of Albany,* 285 Ga. 882, 684 S.E.2d 635 (2009) (Benham, J.):

* Court held that appellant's right to privacy was not violated when her personnel documents were released by her manager pursuant to the Open Records Act.
* Personnel records of municipal employees are not entitled to any blanket exemption from the Open Records Act. Appellant's privacy claim, therefore failed.

2009 **Lack of Federal Jurisdiction.** *GeorgiaCarry.Org, Inc., v. MARTA,* No. 1:09-CV-594-TWT, 2009 WL 5033444 (N.D.Ga. Dec. 14, 2009) (Thrash, Jr., J.):

* Court declined jurisdiction over plaintiffs' Open Records Act claims.
* Court did not have federal question jurisdiction because the plaintiffs' claims were based on state law. Court did not have supplemental jurisdiction because the plaintiffs' Open Records Act claims did not arise out of a common nucleus of operative fact with any federal claim in the case.
* Plaintiffs' claims were narrow in that they only involved questions as to whether the records requested were subject to the Open Records Act, whether the defendants responded to the requests, and if the defendants responded, when they responded.

2009 **Recoverable Damages.** *Shabazz v. Marchand*, No. 1:09-CV-1741-WSD, 2009 WL 3148676 (N.D.Ga. Sept. 29, 2009) (Duffey, Jr., J.):

* Court dismissed plaintiff's claim for compensatory and punitive damages based on defendant's failure to respond to plaintiff's Open Records Act request. Court held that the Open Records Act does not authorize compensatory or punitive damages, only an award of attorney fees and litigation expenses in actions brought to enforce the statute.
* Court also dismissed plaintiff's claim for compensatory and punitive damages based on claim that defendant disseminated to an "unauthorized recipient" information that included plaintiff's social security number, in violation of O.C.G.A. § 50-18-72. Court held that defendant was not an "authorized recipient" whose conduct is governed by § 50-18-72(a) (11.3) (C). Defendant was a custodian of records and, therefore, did not obtain records pursuant to the Open Records Act. Court again noted in relation to this claim that the Open Records Act does not authorize compensatory or punitive damages.
* Court noted that plaintiff could file action against county requesting equitable relief in the form of access to the requested records if he believed that he was improperly denied access to a public record. His

claim should not have been against defendant in her individual capacity.

2009 **Access to Personnel File.** *Soloski v. Adams*, 600 F. Supp. 2d 1276 (N.D.Ga. 2009) (Shoob, S.J.):

* Court noted that personnel file of a dean of a university is available to the public under the Open Records Act.
* Court held that reprimand letter placed in plaintiff's personnel file, which stated that former dean of college at state university violated university's nondiscrimination and anti-harassment policy, was not an adverse employment action, even though file was accessible to public under Georgia Open Records Act.

2010 **Alleged Trade Secrets.** *State Road and Tollway Authority v. Electronic Transaction Consultants Corp.*, 306 Ga. App. 487 (2010) (Ellington, J.)

* Holding that pricing information in supplier's proposal to the Tollway Authority was not exempt under the trade secrets exemption to the Open Records Act.
* Court noted the narrow construction of the Act: "Because public policy strongly favors open government, any purported statutory exemption from disclosure under the Open Records Act must be narrowly construed."
* Court concluded that there was no evidence that the information in the proposal would enable a competitor to deduce how it decisions its systems, and therefore, it was not subject to the trade secrets exemption.

2010 **Attorneys' Fees.** *City of Carrollton v. Information Age, Inc.*, 306 Ga. App. 891 (2010) (Johnson, J.)

* Court affirmed award of $1,750 in attorneys' fees where City failed to comply with the Open Records Act.
* Plaintiff had requested 13 categories of records, and been provided records in three categories, with many of the requests were "vague" and "overly broad and unduly burdensome"
* Court affirmed trial court's determination that request for non-health related insurance claims and premiums were "plain as day."
* Court affirmed the award of attorneys' fees, noting that the City gave no "special circumstances" to preclude the award.

2011 **Email Access.** *Griffin Industries, Inc. v. Dep't of Agriculture*, 313 Ga. App. 69 (2011) (Doyle, J.)

* Court concluded that Dept. of Agriculture complied sufficiently with Open Records Act request despite limited email response where email was not retained on computers.
* Court determined that since "the Department did not maintain the purported e-mails on its system and would have to extract them from backup tapes using a laborious compilation process, the information sought [ ] 'was not an existing public record, and non-disclosure thereof did not violate the act."

2013 **Retroactive Application.** *Deal v. Coleman,* 751 S.E.2d 337 (2013) (Blackwell, J.)

* Court concluded that statutory exemption for certain training program records could be retroactively applied to lawsuit initiated before exemption passed.
* Court determined that rights under the Open Records Act are "public rights" which can be retroactively restricted by subsequent legislation if the legislature is clear in its intention.

2014 **Tax Assessor Records.** *Hansen v. DeKalb Co. Bd. Of Tax Assessors*, 295 Ga. 385 (2014) (Hunstein, J.):

* Finding that requests for county tax assessment records are "carved out" of the Open Records Act and available through O.C.G.A. §48-5-306(d), which requires the provision of certain tax documents within 10 days.
* The Open Records Act could not be used as an enforcement mechanism for records sought under O.C.G.A. §48-5-306(d).

2015 **Georgia Bureau of Investigation File.** *Evans v. Georgia Bureau of Investigation*, 297 Ga. 318 (2015) (Hines, P.J.)

* Finding that GBI could refuse to release investigative file based on the "pending investigation" exemption, even when the initial subject of the investigation has been cleared, as long as the investigation remains ongoing

2015 **Board of Regent Records.** *Schick v. Board of Regents of University System of Georgia*, 334 Ga. App. 425 (2015) (McMillian, J.)

* Finding that the Board of Regents could not rely on O.C.G.A. § 50-18-72(a)(4) to withhold records, as the Board of Regents' records were not "records of law enforcement, prosecution, or regulatory agencies in [a] pending investigation."
* Rejecting Board's argument that its records were subject to the exemption because it was working with law enforcement.

2016 **Pending Prosecution.** *Media General Operations, Inc. v. St. Lawrence*, 337 Ga. App. 428 (2016) (Mercier, J.)

* Finding that pending investigation or prosecution exemption applied to sheriff's office records provided to the district attorneys' office, despite the fact that the sheriff's office's internal investigation had concluded.
* Rejecting argument that records were subject to disclosure as the records of the "agency that is the subject of the pending investigation," because only individual employees were under investigation and not the agency itself.

2017 **Private Right of Action.** *Blalock v. Cartright*, 300 Ga. 884 (2017) (Grant, J.)

* Affirming trial court's dismissal of mandamus action seeking records under the Open Records Act.

* Act's enforcement provisions and private right of action create sufficient relief.

2017 **Privately Restructured Public Hospital Records.** *Smith v. Northside Hospital, Inc.*, 807 S.E. 2d 909 (2017) (Peterson, J.)

* Holding that "a private entity acts 'on behalf of' a government agency when the agency arranges for the private entity to perform a government function that the agency would otherwise have to perform."
* Requiring trial court to examine whether privately restructured public hospital authority's records were sufficiently connected to the operation of its lease agreements with Fulton County to qualify as public records.

2018 **Exemptions Discretionary.** *Campaign for Accountability v. Consumer Credit Research Foundation*, 303 Ga. 828 (2018) (Nahmias, J.)

* Holding that agencies have discretion to release records subject to exemptions where disclosure is not prohibited by statute or common law.

2018 **Requester Identity Irrelevant.** *Smith v. Northside Hospital, Inc.*, 347 Ga. App. 700 (2018) (Dillard, J.)

* Holding that the trial court did not abuse its discretion in prohibiting discovery concerning the requestor's motivation for seeking records or the identity and purposes of any alleged client

2020 **General Assembly.** *Institute for Justice v. Reilly*, 351 Ga. App. 317 (2019) (McMillian, J.) (cert. applied for)

* The General Assembly and its offices are not subject to the provisions of the Act.
* Goss, J., concurring.
* McFadden, C.J., dissenting.

2020 **Attorney's Fees.** *Geer v. Phoebe Putney Health System, Inc.*, ___ Ga. ___ (cert. granted Jan. 13, 2020)

* Did the Court of Appeals err in holding that the anti-SLAPP statute does not apply to a counterclaim for attorney's fees under the Open Records Act.

SECTION 2 ACCESS TO RECORDS UNDER THE GEORGIA OPEN RECORDS ACT

2.2 SYNOPSIS OF ATTORNEY GENERAL OPINIONS REGARDING GEORGIA OPEN RECORDS ACT

1962 **Access to records. 1962 Op. Att'y Gen. p. 101.**

* Notary public, ex officio justice of the peace, has a right to inspect records of the justice of the peace, as has any other citizen.

1964 **Revenue records. 1963-65 Op. Att'y Gen. p. 277.**

* Construes former Georgia Code Annotated § 92-8414 (now part of O.C.G.A. § 48-2-15) and the Open Records Act.
* When the revenue statute, then called the "secrecy provision," is considered with open records law, information incident to assessment of ad valorem taxes on public utilities furnished by the commission to the counties is not subject to the secrecy provision and should be released.
* O.C.G.A. § 48-2-15(a) provides, with certain specific exceptions, that information secured by the Commissioner incident to "the administration of any tax" is confidential and privileged.

1965 **Records confidential under federal law. 1965-66 Op. Att'y Gen. U65-93.**

* When the Department of Public Health (now Department of Human Resources) obtains information that was filed with the Internal Revenue Service from the Secretary of Health, Education and Welfare, federal law makes such information confidential.

1966 **Personnel records; access. 1965-66 Op. Att'y Gen. 66-88.**

* Release of information about employees of the University System to third persons is governed by the Open Records Act.
* No laws or court decisions prohibit disclosure of personnel records.
* Policy which requires a person to come into the office to make a request, and not give information by telephone, is consistent with the requirement that records be open "for a personal inspection."
* By accepting state employment, one condition is disclosure of salary information.

1966 **Copyrighted materials. 1965-66 Op. Att'y Gen. 66-178.**

* Copying of copyrighted manuals that are required to be filed with the Insurance Commissioner constitute a fair use and would not amount to a copyright infringement.
* When filings are made pursuant to statute, there is "at least an implied consent" given to copy for an open records request.
* Commissioner may wish to require insurers to furnish written consent to copy and use such filings as necessary in the performance of required duties.

1967 **Magistrate court records. Op. Att'y Gen. U67-340.**

* Suits on account, notes, mortgage foreclosures and garnishments which have been filed in [magistrate] court are "public records" open to inspection.
* Additionally, O.C.G.A. § 45-6-6 provides that office property kept by any public officer is subject to inspection by citizens.

1967 **Grand jury records. Op. Att'y Gen. U67-371**

* Grand jury lists are public records open to inspection under both O.C.G.A. §§ 50-18-70 and 45-6-6.
* O.C.G.A. § 15-12-23(a) which requires clerk "never divulge any of the proceedings and deliberations of jury commissioners unless compelled to" refers to the selection of those who will be placed in the jury box and does not refer to keeping a list of the names selected.

1971 **Accident reports. Op. Att'y Gen. U71-9.**

* Accident reports required to be filed with the Department of Public Safety are not required to be furnished to persons requesting them. Note: The opinion applies a narrow definition of "public record" which is no longer followed; statute amended.
* Under earlier statutes, discusses "public record" as a record required by law to be kept or a record that is intended to serve as a memorial of official action. Although the law authorizes the Department to furnish copies and empowers it to charge up to $2.00, it does not require the Department to make the records available.

1971 **Charge for voter lists. Op. Att'y Gen. U71-140.**

* Since Open Records authorizes custodian to make a charge for a copy of a public record and O.C.G.A. § 21-2-242 makes voter registration lists open to inspection, board of registrar may sell surplus voter lists.

1972 **Education records. Op. Att'y Gen. U72-74.**

* Notwithstanding Open Records, there is no absolute right of parent to inspect child's school records under law then in effect. Note: The law in this area has been changed.

1973 **Records of contractor. Op. Att'y Gen. 73-55.**

* Open Records is not applicable to certain records of Department of Transportation. Note: Opinion applies definition of "public record" which is no longer followed; statute amended.
* Papers created for monitoring the performance of a contractor do not constitute a public record.
* Discussing a narrow definition of "public record" (required to be kept or a final memorial of official action) and the lack of a definition in statute or case law, the opinion notes that access is sought by the contractor for private pecuniary interests rather than for the public benefit. Examination

of such records is by the state auditor and it would be naive to believe that access is not sought for litigation purposes.

1973 **Correction records. - Op. Att'y Gen. 73-77.**

* Department of Offender Rehabilitation (now Corrections) may provide copies of a former inmate's prison medical records to a third person if the requester has proper authorization.
* Department may condition delivery upon payment of costs.

1974 **Business information received from federal government and private businesses. Op. Att'y Gen. U74-113.**

* Trade secrets and other confidential business information received by the State Energy Office from the federal government and private businesses may be treated as confidential. Note: Opinion applies narrow definition of "public record" which is no longer followed; statute amended.
* Under petroleum allocation program, federal regulations requiring disclosure exclude trade secrets and commercial or financial information which is privileged or confidential. Federal government shares essential information on condition of non-disclosure.
* The fact that a record is in the possession of a public officer does not make it a public record. Using a narrow definition of "public record," since agency is not required by law to keep these records and records not intended to be a memorial of agency action, records are not "public records" subject to disclosure.

1975 **Location of records. Op. Att'y Gen. U75-75 (portion).**

* It is not proper for county tax commission to store tax records in his home.

1975 **Investigative records. Op. Att'y Gen. U75-92.**

* An investigation report of a police officer is not a "public record." Note: Opinion applies narrow definition of "public record" which is no longer followed; statute amended.
* Again applying the narrow definition of "public record," finds that an investigation report was not created to disseminate information or memorialize any public activity.

1976 **Copying records. Op. Att'y Gen. U76-43.**

* Open Records Act provides for inspection and copying of public records by citizens and does not require Department of Education to itself prepare and furnish copies.
* Citing O.C.G.A. § 50-18-71(a), opinion notes policy of the agency to allow citizens to bring in their own equipment, and agency decision that use of its equipment would materially interfere with its internal operations, even if administrative costs paid.

1976 **Financial records. Op. Att'y Gen. 76-126.**

* Licensure application submitted to Board of Used Car Dealers is a public record to be kept by the Joint-Secretary of the State Examining Boards and is subject to public inspection. Note: Opinion applies narrow definition of "public record" which is no longer followed; statute amended.
* Still following the narrow definition of "public record, " opinion notes that the Board is required by statute to keep applications and documents.
* Financial statements submitted in lieu of bond requirement as part of the application are open for public inspection. Board may not return statements without subjecting them to public scrutiny.

1977 **Personnel files. Op. Att'y Gen. 77-56.**

* Local school boards may maintain a policy of confidentiality for personnel files. Note: Opinion applies a narrow definition of "public record" which is no longer followed; statute amended.
* Relying on a narrow definition of "public record" as one that is required by law to be made and maintained, or which was made to serve as a memorial of action taken, the opinion concludes inspection is not required.
* Noting that the area is "somewhat clouded" by Houston v. Rutledge, 237 Ga. 764 (1976) (inspection required of records relating to deaths of jail inmates that were not required to be made and maintained), the opinion notes that it is unlikely that the dicta would be extended beyond the facts of that case so as to include personnel files.
* Release of personnel files would constitute an invasion of personal privacy.

1980 **Medicaid records and reimbursement rates. Op. Att'y Gen. 80-50.**

* Department of Medical Assistance must disclose maximum provider reimbursement rates.
* Although agency believes release will have an inflationary effect, particularly where providers have been submitting charges below the maximum, a balancing of this rationale would not favor non-disclosure.
* Department is not required to disclose studies and other materials that served as background materials for final rates.

1980 **Licensing board's records. Op. Att'y Gen. 80-84. (withdrawn).**

* Board of Nursing should not disclose investigative materials that are not prepared and kept as written memorials of final Board action.
* Opinion formally withdrawn as a result of Irvin v. Macon Telegraph Publishing Co., 255 Ga. 43 (1984).

1980 **Fire Marshal's records; subpoena. Op. Att'y Gen. 80-105.**

* Since a report of the State Fire Marshall is subject to inspection, a citizen who wishes to inspect and copy the document cannot be required to first serve a subpoena.
* A citizen can bring a mandamus action to compel inspection and copying of a public record.

* A subpoena is not required even if there is litigation unless the State or a State employee is a party. Citing Op. Att'y Gen. 73-55, the opinion notes that then disclosure would be by normal discovery procedures.

1981 **Educational records. Op. Att'y Gen. 81-48.**

* University is not required to disclose information concerning students' degrees unless the information has been designated as directory information or permission is obtained form the student.
* The Family Educational and Private Rights Act, 20 U.S.C. § 1232g, requires all "educational records" to remain confidential. Under Open Records Act, disclosure of educational records is not required.
* No federal funds are available to an institution that has a practice of disclosing educational records without compliance with the federal law.

1981 **Correction records. Op. Att'y Gen. 81-50.**

* Department of Offender Rehabilitation (now Corrections) may release inmate information to the Social Security Administration to the extent that the information is necessary to enable the federal agency to perform its statutory duties.
* The release of any inmate information not necessary to accomplish purposes for which SSA requests the information would be an invasion of personal privacy.
* Inmate files may be withheld from public inspection under departmental regulations.

1981 **Personal records. Op. Att'y Gen. 81-71.**

* Personnel files maintained by the University System are not subject to disclosure. Note: Opinion applies narrow definition of "public record" which is no longer followed; statute amended.
* Noting that inspection of personnel files is an area "fraught with uncertainty" and noting that Athens Observer v. Anderson , 245 Ga. 63 (1980) declined to decide whether personnel records are per se exempted from public access, the opinion follows previous opinions and finds no legal requirement to make personnel records available to the public. The opinion also observes that most records would not be prepared and maintained as memorials of final agency action.
* As to a request by the concerned employee, considerations beyond the Open Records (such as possible litigation) might result in disclosure of the records except where a claim of privilege or confidentiality of someone other than the employee is involved.
* Institutions are not required to make copies for a member of the public of records subject to inspection.

1981 **Employee information; salaries. Op. Att'y Gen. U81-40.**

* Where salary information of a county employee is contained solely within the employee's personnel file, it is not accessible to the public.

* Following Op. Att'y Gen. 81-71, when salary information is a part of a budget, audit report or other public accounting, it should be disclosed.

1981 **Records concerning pistol permits. Op. Att'y Gen. U81-47.**

* Only the names of persons issued permits to carry a revolver or pistol and the date the permits are issued are public records subject to disclosure.
* In conducting a criminal history check, information obtained by local law enforcement from the Georgia Crime Information Center is confidential.

1982 **City records; public utility records. Op. Att'y Gen. U82-36.**

* Municipal traffic records and records of utility accounts must be accessible for public inspection.
* O.C.G.A. § 40-13-271 requires a written record be kept and accessible of every prosecution of traffic offenses.
* Although a privately owned public utility would not be required to open its records, a "balancing of interests" test must be applied to utility records in the possession of a municipality. Applying Northside Realty Associates v. Community Relations Commission, 240 Ga. 432 (1976), the opinion holds that since there is no specific exclusion, the public interest requires disclosure.

1984 **Records concerning electors. Op. Att'y Gen. 84-39.**

* The names, addresses and ZIP codes of electors must be furnished upon request and payment of fees set forth in O.C.G.A. § 21-2-234. Additional identifying information as may be collected and maintained must also be made available.
* O.C.G.A. § 21-2-242 provides that lists of electors be open for reasonable inspection and O.C.G.A. § 21-2-234 specifies that the lists include names, addresses and ZIP codes. If additional information is also maintained, the Open Records Act provides an independent right to inspect and copy electoral lists, including any additional information.
* It is generally within the discretion of the records custodian whether to provide copies or make the originals available for on-premise copying by the person inspecting the records. A reasonable fee may be charged for expenses incurred or copies furnished.

1985 **Business records; balancing test. Op. Att'y Gen. U85-44.**

* Invoices reflecting sales of alcoholic beverages by wholesalers to local retailers furnished to a local governing authority for computing local alcohol excise taxes are public records and should be disclosed.
* Citing a number of cases that define "public record" to include "documents, papers and records prepared and maintained in the course of the operation of a public office," the opinion notes the courts have "demonstrated a reluctance to exclude documents" absent a specific statutory exception.
* The opinion reviews the public policy in favor of disclosure, the importance of the regulation of alcoholic beverages, and the lack of a

specific exclusion. Applying a "balancing -of interests" test, the documents are "public records."

1988 **Performance evaluation records. Op. Att'y Gen. 88-3.**

* Student evaluations of academic courses or the performance of individual faculty members are subject to disclosure.
* Under Athens Observer Inc. v. Anderson, 245 Ga. 63, 65 n.5 (1980), the right of personal privacy has to do with "one's private affairs with which the public has no legitimate concern." This concept was reiterated in Harris v. Cox Enterprises, Inc., 256 Ga. 299 (1986) which held that the public has a legitimate interest in the performance of official duties.
* Performance evaluations prepared by students as well as review summaries of evaluations collated and prepared by individual departments are subject to inspection.

1988 **Access to records by legislative branch. Op. Att'y Gen. U88-33.**

* Members of the General Assembly have no greater right than any other citizen to inspect records under the Open Records Act.
* Access to records does not depend upon the identity of the requesting party or the purpose for which the records are sought. While some states provide members of the legislature which access to -otherwise confidential records, Georgia does not.
* Many of the records in question contain portions that are not considered confidential and those portions should be provided.

1988 **1988 Attorney General White Paper.**

* This general opinion to all department heads reviews the 1988 amendments to the Open Records Act in question and answer form.
* While there is a legal presumption of openness except when a specific exception applies, the continued vitality of the "balancing test" remains unanswered.
* The right of personal privacy must be protected at the same time the public is entitled to full information about the affairs if its government and officials.

1989 **Private corporation serving a public function; trade secrets. Op. Att'y Gen. 89-5.**

* Private Industry Councils are "agencies" within the meaning of the Open Meetings Act and records maintained by these groups, unless specifically exempted, are subject to the Open Records Act.
* Although not specifically defined in the Open Records Act, "agency" should be given at least as broad a reading as it has been given in the Open Meetings Act.
* Even if the Open Meetings Act definition of "agency" were not adopted by the courts, a private corporation is subject to Open Records requirements when serving a public function and under the control of the public entity. These PIC activities are analogous to the facts in Macon

Telegraph Publishing Co. v. Board of Regents, 256 Ga. 443 (1986) (private athletic association serving a public function and under the control of the university).

* Trade secrets which are privileged or confidential "and required by law to be submitted to a government agency" are excluded from disclosure under O.C.G.A. § 50-18-72(b). However, if a bid proposal contains what would otherwise be protected trade secrets and the trade secrets were not required to be submitted, they are not protected under the Open Records Act.

1989 **Computer data and computer generated information. Op. Att'y Gen. 89-32.**

* Information does not fall outside the scope of the Open Records Act because it is stored by means of magnetic tape or diskette rather than in more traditional form.
* Computer related methods of data storage or retrieval such as floppy disks, diskettes, or magnetic tapes are "public records."
* Where requested information can be retrieved by a minimal computer search, an agency must comply. There is a distinction between compilation of computer storage information and the preparation of a new program designed to perform a series of operations to retrieve facts in a substantially different format. The former is within Open Records and generally, the latter is outside its scope. Whether contain programming constitutes the creation of new material must be determined on a case-by-case basis.
* The cost provisions are not specifically tailored to providing computer generated records. It may be reasonable for an agency to develop administrative rules for cost provisions to comply with computer requests, keeping in mind the legislative policy.
* An agency cannot alter the parameters of the Open Records Act by contract or by agreement of the parties and any such provisions are unenforceable.
* The public has the right to examine copyrighted materials held as a public record. Assuming no exceptions apply, it is an administrative decision either to furnish copies appropriately marked to denote copyright status or authorize copying by the requester.

1989 **Federal notices. Op. Att'y Gen. 89-38.**

* Notices of plant closings received from private employers by the Department of Labor are subject to, public disclosure.
* As the agency is designated as the state dislocated worker unit under Title III of the Job Training Partnership Act, notices received in the course of the agency's operation are subject to inspection.

1989 **Grant records; trade secrets. Op. Att'y Gen. 89-35.**

* Information provided the Department of Community Affairs in connection with its administration of the Community Development Block Grant program is not exempt from disclosure unless such information constitutes a trade secret.

* Under federal regulations, recipients of block grant funds are not required to permit public access to their records. The fact that the Freedom of Information Act is expressly excluded from application to such information is not sufficient under O.C.G.A. § 50-18-72(f) to bar disclosure.
* To be excepted, information must constitute trade secrets of a privileged or confidential nature and be required by law to be submitted to the agency.
* A trade secret is defined in O.C.G.A. § 16-8-13(a)(4) with regard to the offense of theft of a trade secret and at O.C.G.A. § 10-1-760 which relates to trade practices. It remains unclear how a court would harmonize these definitions with the narrow construction given exclusions under Open Records.

1990 **Telephone numbers, social security numbers; privacy. Op. Att'y Gen. 90-5.**

* A voter's unlisted telephone number should not be disclosed by a voter registrar.
* As telephone numbers are not required on registration cards but often included as a matter of convenience for the registrar, release of unlisted numbers may constitute an unwarranted invasion of privacy.
* Social security numbers are required by statute to be recorded on registration cards which are open for inspection pursuant to O.C.G.A. § 21-2-242. However, in accordance with the federal Privacy Act, voters should be informed whether the disclosure of a social security number is mandatory or voluntary, under what statutory authority the disclosure is requested, and the uses to which the disclosure will be put.

1991 **Workers' compensation records. Op,. Att'y Gen. 91-5.**

* Records of the Board of Workers' Compensation pertaining to accidents, injuries, and settlements are generally confidential and constitute an exception to Open Records.
* Under O.C.G.A. § 34-9-12(b) such records are only available to the employee, employer, insurer or party at interest.

1991 **Medical records at open meeting. Op. Att'y Gen. 91-8.**

* Where records excluded from inspection under the Open Records Act are discussed at a meeting, that portion of the meeting is not subject to the Open Meetings Act.
* It would be illogical for the Subsequent Injury Trust Fund Board to be required to open a meeting at which medical records not open to- the public inspection, are discussed.

1991 **Bidding records. Op. Att'y Gen. 91-11.**

* Documents used in the competitive bidding process are subject to open records.
* Except for the trade secret exception, records concerning the competitive bidding process under the Job Training Partnership Act are public records

subject to inspection under the reasoning discussed in Op. Att'y Gen. 89-5.

1991 **Section 8 housing records. Op. Att'y Gen. 91-33.**

* Documents pertaining to inspection of Section 8 housing are subject to open records requests.
* The mere fact that a state entity manages a program with federal financial assistance does not make it subject to federal open records or privacy laws.
* Identification of a landlord is similar to disclosures about the employees and prospective employees as required by case law. Identification of a tenant, if it occurs, will be indirect, minimal and incidental to a legitimate inquiry into the operation of Georgia Housing and Finance Authority. Applying a "balancing process," GHFA must comply with the request.

1992 **Computer generated proprietary data. Op. Att'y Gen. 92-13 (Portion).**

* Land-use planning maps created by the Department of Natural Resources from enhanced database, of satellite imagery are public records subject to inspection.
* The opinion construes the "proprietary nature" exception in O.C.G.A. § 50-18-72(b). An agency engages in a "proprietary" activity when it undertakes an enterprise which is commercial in nature or usually carried on by private individuals or is for the advantage of the governmental unit conducting the activity rather than for the public at large.
* When a product is generated for the benefit of the public at large and not for the profit, benefit, or advantage of the agency, the records do not fall under the "proprietary" exception.

1992 **Medical records. Op. Att'y Gen. 92-19.**

* Medical records prepared by the examining physician hired by the Employees Retirement System to assist in the evaluation of a claim for disability retirement benefits are not required to be disclosed under Open Records.
* The specific exemption allowing an agency to not disclose "medical records, the disclosure of which would be an invasion of personal privacy" provides ERS authority to withhold such records to someone other than the disability applicant.
* Under statutes which govern health records, a physician may limit his or her patient's access to his or her own records if the requirements of O.C.G.A. § 31-22-2(c) are satisfied; however, upon written request by the patient, the records shall be furnished to any other health care provider.

1993 **Nonresidents. Op. Att'y Gen. 93-27.**

* Open Records Act requires all public records to be open for inspection upon request by any nonresident of Georgia unless disclosure is prohibited by court order or otherwise exempted by law.

* Although the Act itself mandates that records be made available for inspection "by any citizen of this state," based on the Georgia Supreme Court's decision in Atchison v. Hospital Authority of the City of St. Marys, 245 Ga. 494 (1980) (allowing Georgia resident who was an employee of a Florida newspaper access to public records) and the fact that the Supreme Court "has consistently taken a broad view of the Open Records Act with respect to disclosure," the Act should apply to nonresidents as well.

1994 **Trade secrets. Op. Att'y Gen. 94-15.**

* Confidential business information contained in a contract with one of the Georgia Ports Authority's customers may be properly obtainable under the Open Records Act.
* "For purposes of the Open Records Act, the term 'trade secret' has the same meaning as is found in 0. C. G. A. § 10- 1 -761(4). [T]he trade secrets of any state department, agency, board, bureau, commission or authority are not exempt from public disclosure under the Open Records Act. Information in the possession of such entity which is a trade secret of others must be protected from disclosure." (citations omitted).
* Immaterial that party seeking information is a competitor. "The fact that disclosure would lessen competition has not been viewed as a sufficient basis for exempting disclosure of the information. " (citing Hardaway v. Rives, 262 Ga. 631 (1992); Op. Atty. Gen. 91-11).

1995 **Attorney-client privilege. Op. Att'y Gen. 95-1.**

* Although state agencies may employ persons with legal training and experience to serve, as administrative legal service officers, those persons may not provide legal advice or representation to the agency, and no. attorney-client relationship or privilege arises between the legal services officer and other agency officers or employees, or the agency itself.

1995 **Nonprofit contractors. Op. Att'y Gen. 95-31.**

* Certified financial statements, financial audits and summary statements of nonprofit contractors who seek to contract with and obtain reimbursement through the state office of planning. and budget based upon the recommendation of the Georgia Council for the Arts must be made available for public inspection.

1997 **Applicability of ORA to records of the Fraud and Compliance Division of the State Board of Workers' Compensation. Op. Att'y Gen. 97-20.**

* Records maintained by the Fraud and Compliance Division of the State Board of Workers' Compensation are public records within the meaning of ORA and are therefore subject to disclosure unless exempted by ORA or some other statute. One exemption, the privacy exemption, prevents disclosure of private information if disclosing would constitute invasion of privacy. The agency should make a case-by-case determination of

whether to release private information, and it should be prepared to justify that decision.

* If a "defendant in a criminal prosecution is either a claimant or employer, the defendant is entitled to records relating to accidents, injuries and settlements." Also, a defendant may be "entitled to other records that contain exculpatory evidence in the custody of the Fraud and Compliance Division under the authority of Brady v. Maryland, 373 U.S. 83 (1963), or under statutory rules governing criminal discovery."

1998 **Executive Meetings. Op. Att'y Gen. U98-3.**

* Although the Open Meetings Act does not contain a limitation on the persons who may be invited into an "executive session," this does not mean that a covered "agency" has *carte blanche* in determining who may remain in a closed meeting. Instead, such agencies must determine on a case-by-case basis which people may remain in a closed session, permitting *only* those persons who presence is consistent with an applicable exception to remain in the closed meeting.

1999 **Decisions of Office of State Administrative Hearings. Op. Att'y Gen. 99-13.**

* Decisions of the Office of State Administrative Hearings are public records that can be published on a web site, unless they contain information that is subject to a confidentiality provision. In most cases, the whole opinion may be disclosed. In some cases, such as hearings regarding the Individuals with Disabilities Education Act, personally identifiable information must be redacted. In mental health, mental retardation and substance abuse treatment cases, the record must be sealed and the opinion may not be disclosed.

2000 **Billing and payment records of public employees and officials to a municipally owned and operated public utility system. Op. Att'y Gen. U00-4.**

* Utility billing and payment records of public officers or employees in relation to a municipally owned and operated public utility system providing electrical water and gas services, as well as a billing a service for sewer charges, are subject to disclosure under the Georgia Open Records Act. Additionally, any special treatment of those public officials by such utilities may need to be disclosed under the Ethics in Government Act.

2005 **Withholding otherwise public documents via a confidentiality agreement with a federal agency. Op. Att'y Gen. U05-1.**

* Documents that are subject to disclosure under the Georgia Open Records Act cannot be shielded from disclosure simply because a contract with a federal agency calls for the documents to remain confidential. Although the Act contains an exemption for public records "specifically required by the federal government to be kept confidential," that provision only applies to records that are required to be kept confidential by federal statute or regulation.

2007 **Death certificates. Op. Att'y Gen. 07-4.**

* HIPPA does not prevent release of information on copies of death certificates about cause of death, conditions leading to death, or surgical procedures conducted on deceased (if any) that are released pursuant to Open Records Act.
* However, social security numbers of deceased should be redacted unless requestor is bona fide member of news media who submits the appropriate affidavit and otherwise complies with the ORA in requesting that particular information.

2012 **Images and data in the statewide online information system for deeds, liens and plats. Op. Att'y Gen. 12-5.**

* Images of the deeds, liens and plats submitted by the clerks of superior court statewide and a database consisting of an index of the submitted data satisfy the Open Records Act's definition of a public record.
* Because the Georgia Superior Court Clerks' Cooperative Authority, which maintains the information, is authorized by state law to impose fees for "data, media, and incidental services furnished by it to any individual or private entity," it may, in responding to requests for such images and data under the ORA, impose fees in accordance with a schedule adopted pursuant to statute.

SECTION 3: ACCESS TO MEETINGS UNDER THE GEORGIA OPEN MEETINGS ACT

3.1 SYNOPSIS OF GEORGIA OPEN MEETINGS ACT CASES

Georgia Open Meetings Act
O.C.G.A. §§ 50-14-1, et seq

1973 **University committees.** *McLarty v. Board of Regents*, 231 Ga. 22 (1973) (Undercofler, J.):

- Suit for access to meetings of a committee composed of facility members and students of the University of Georgia which was organized by the Dean of Student Affairs for the purpose of reviewing allocation of Student Activity Funds.
- The Court affirmed the decision of the trial court (Barrow, J.), that such "advisory groups" do not fall under the Act. [Note that the Act has since been amended to expressly include agency committees.]
- However, the Court for the first time stressed the importance of the Act: "What the law seeks to eliminate are closed meetings with such engender in the people a distrust of its officials who are clothed with the power to act in their name. It declares that the people, who possess ultimate sovereignty under our form of government, are entitled to observe the actions of those described bodies when exercising the power delegated to them to act on behalf of the people in the name of the State."

1975 **General Assembly.** *Coggin v. Davey,* 233 Ga. 407 (1975) (Gunter, J.):

- Suit by three radio reporters and Common Cause for access to meetings of General Assembly committees.
- The Court held that the lower court (Etheridge, J.) erred in holding that the Open Meetings Act applies to the General Assembly.
- Justices Ingram and Hall concurred specially, stating "[w]e do not concur with the statement in the majority opinion that either the House or the Senate can pass an internal operating rule for its own procedures in conflict with a general law enacted by both bodies and signed by the Governor."

1977 **Notice.** *Harms v. Adams,* 238 Ga. 186 (1977) (Hill, J.):

- Citizen sought to have certain actions of the Union City planning commission declared void for failure to comply with the Open Meetings Act
- The Court upheld dismissal of the suit by the trial court (Etheridge, J.) based on the fact that, although the planning commission's meetings were held in "the mayor's office, a small and crowded room," there was no evidence that any person attempted to gain admission but was excluded. "While plaintiff argues that the planning commission meetings were not open to the public, basically he is contending that the public was prevented from attending

because there was no notice of the meetings. Our Sunshine Laws deal with openness of public meeting, not with notice of such meetings." [Note that the present Open Meetings Act requires notice of meetings.]

- ❖ Justice Ingram concurred in the judgment only, without opinion.

1978 **Notice.** *Dozier v. Norris,* 241 Ga. 230 (1978) (per curiam):

- ❖ Suit by citizens and taxpayers of Columbia County to invalidate certain action by the county commission taken at an allegedly secret meeting held in one of the commissioner's homes.
- ❖ As in *Harms*, the Court affirmed the rejection by the trial court (Pierce, J.) of the Open Meetings claim, holding that Act "does not require notice to the public of governmental meetings; rather, it merely requires meetings to be open to the public." Unlike in *Harms*, the Court recognized the importance of such a notice requirement if the Act is to be effective: "The trial court realized and this court realizes the potential for abuse when meetings that are open to the public are held away from their usual places." [Note that the present Open Meetings Act requires notice of meetings.]

1979 **Timeliness.** *Worthy v. Paulding County Hospital Authority,* 243 Ga. 851 (1979) (Nichols, C.J.):

- ❖ Suit challenging public hospital authority's decision, in executive session, to apply for an addition to its nursing home facilities. Plaintiff sought to invalidate the decision for failure to comply with the Open Meetings Act.
- ❖ The Court affirmed the decision of the trial court (Noland, J.) that such relief was unavailable as the suit had not been filed within 90 days of the decision as required by the Act.

1980 **School boards.** *Deriso v. Cooper,* 245 Ga. 786 (1980) (Nichols, J.):

- ❖ Suit against the Sumter County school board based on 1976 constitutional provision requiring school boards to keep all meetings open at all times.
- ❖ The Court reversed and affirmed the trial court (Blanks, J.), holding that school boards may meet in executive session to discuss, deliberate, consider or hear matters enumerated in the Open Meetings Act as exceptions to its open meetings requirements.
- ❖ Justice Hill concurred specially.
- ❖ Justice Jordan dissented, arguing that "the Constitution says what it means and it means what is says."
- ❖ The plaintiffs moved for rehearing, which the Court, Justices Jordan and Hill dissenting, denied: "If the state of the law is perceived by the school patrons as being unjust, their proper recourse is to their elected representatives in the General Assembly with suggested revisions to our Constitution and laws."

1982 **Validity of ordinance initially passed in illegal meeting but subsequently reenacted in legal meeting.** *Newsome v. City of Union Point,* 249 Ga. 434 (1982) (Gregory, J.):

- Suit to invalidate ordinance enacted by the City of Union Point regarding the licensing and sale of malt beverages and wine.
- The Court affirmed the trial court (Thompson, J.), holding that it was unnecessary to consider the plaintiff's Open Meetings claim because the City subsequently re-enacted the ordinance in compliance with the Act's provisions.

1985 **Criminal prosecution.** *State v. Kennedy.* According to the Georgia Press Association's amicus brief in *Bowers v. Regents*, on January 21, 1985, the Colquitt County Grand Jury indicted county commission chairman Bill Kennedy on seven counts of Open Meetings violations. He subsequently pled nolo to four counts and paid a small fine.

1987 **Atlanta City Charter.** *City of Atlanta v. Pacific & Southern Company, Inc.,* 257 Ga. 587 (1987) (per curiam):

- Appeal by the City of Atlanta of an order requiring that any meeting of the Atlanta Public Safety Committee at which the so-called "Alice Bond" report was to be discussed must be open to the public.
- The Court affirmed the decisions of the trial court (Eldridge, J.), that the meeting must be open, holding that the meeting was required to be open by the Charter of the City of Atlanta, which provides that "All meetings of the council and of its committees shall be open for attendance as provided by law." The Court emphasized that this provision leaves "no room for closed meetings." The Court did not consider the Open Meetings Act.

1987 **Advisory panels.** *Atlanta Journal v. Hill,* 257 Ga. 398 (1987) (Hunt, J.):

- Suit for access to meetings of the Administrative Review Panel appointed by Mayor Young to conduct a review of actions taken by City officials in response to Alice Bond's allegations.
- The Court declared for the first time that "the Act must be broadly construed to effect its remedial and protective purposes," which the Court described as follows: "We note that the Act was enacted in the public interest to protect the public – both individual and the public generally – from 'closed door' politics and the potential abuse of individuals and the misuse of power such policies entail."
- However, the Court held that the Act does not cover groups which although they function on behalf of government have not official authority. The Court held that the Administrative Review Panel had no such authority, despite its purposed subpoena powers, because the delegation to it of subpoena powers was unconstitutional.
- Justice Marshall concurred specially, writing that the Open Meetings Act does not apply to advisory committees. [Note that the Act has since been amended to expressly include agency committees.]

- ❖ Justice Gregory concurred in the judgment only.

1988 **Notice.** *Johnson v. Nicely,* 258 Ga. 574 (1988) (Gregory, J.):

- ❖ Suit to invalidate the Warren County Board of Commissioner's application to be a host site for a hazardous waste dump based on improper notice of the Board's meeting in violation of the Open Meetings Act.
- ❖ The Court reversed the decision of the trial court (Pickett, J.), invalidating the application, holding that, even though the notice did not state the exact time and place of the meeting, the notice was nevertheless sufficient to comply with the statute and added that "[i]f more effective notice is desired, the statute must be amended."
- ❖ Justice Weltner dissented, arguing that the notice was inadequate as a matter of law.

1988 **Personal exception.** *Atlanta Journal v. Babush,* 257 Ga. 790 (1988) (Gregory, J.):

- ❖ Suits before Judge Tillman by both The Atlanta Journal-Constitution and The Attorney General challenging the closure of a State Personnel Board Meeting at which the Board heard oral argument concerning the demotion and relocation Public Safety employee Richard Coleman on grounds that he had endorsed ticket-fixing by members of the State Patrol.
- ❖ The Court held that the meeting was exempted from the Open Meeting Act's requirements by the Act's personnel exclusion, noting "we must recognize the exclusion whether or not we think it is a good idea."
- ❖ Justice Weltner dissented, arguing that because the Act must be construed broadly, its exceptions must be construed narrowly, and so construed it did not exclude the meeting under review. He stated, "[w]hile this court has the *power* to define away any or all of its rights granted to our citizens by the General Assembly, our *duty* ought to lead us in other directions."

1988 **Subpoenaed witnesses.** *Macon Telegraph v. City of Forsyth,* No. 88V442 (Monroe County Superior Court, September 30, 1988) (Craig, J.):

- ❖ Suit by The Macon Telegraph, in which The Atlanta Journal-Constitution participated as an amicus, for access to meetings conducted by a committee of the City of Forsyth City Council for the purpose of questioning citizens concerning allegations of government impropriety.
- ❖ Judge Craig ruled that the public was entitled to attend such meetings, ordered disclosure of transcripts of such meetings conducted in closed session in the past, and enjoined the City from conducting such meetings in secret in the future.

1989 **Criminal prosecution.** On August 15, 1989, Snellville Mayor Emmett Clower pleaded no contest to one misdemeanor count of violating the Open Meetings Act and received a $500 suspended fine. According to a Gwinnett Daily News report, Clower and other Snellville officials had been accused of participating in meetings that were not properly posted, of failing to furnish agendas for the

meetings and of failing to make minutes available within the time period specified by the Act.

1989 **Personnel matters.** *Times-Journal, Inc., d/b/a Marietta Daily Journal v. Cobb County,* No. 89-16974-05 (Cobb County Superior Court, Oct. 23, 1989) (Cauthorn, J.):

- Suit by the Marietta Daily Journal for an order requiring the defendants to allow the Journal to inspect and copy the minutes and a tape recording of the September 26, 1989 meeting of the Cobb County Board of Commissioners.
- Judge Cauthorn ruled that the Journal was entitled to the requested relief as the meeting should have not been closed because more than discussion and deliberation of a personnel matter occurred, i.e., a vote was taken.

1989 **Coroner's inquest.** *Kilgore v. R.W. Page Corp.,* 259 Ga. 556 (1989) (Weltner, J.):

- Access to coroner's inquests is governed by the Open Meetings Act.

1989 **Personnel matters.** *Athens Newspapers, Inc., et al. v. Classic Center Authority for Clarke County,* No. SU-89-CV-1543 (Clarke County Superior Court, Dec. 22, 1989) (Gaines, J.):

- Suit by the Athens Banner Herald and Athens Daily News to enjoin closed sessions of the Classic Center Authority to discuss and deliberate upon the employment of architectural firms for the Athens Civic Center.
- Held that the entire meeting should have been open both (1) because architectural firms are not "employees" within the meaning of the Open Meetings Act personnel exception and (2) because the action of the Authority in reducing the number for firms under consideration from six to three was tantamount to a vote regardless of what other label may be attempted to be attached and votes are not excluded by the personnel exception.

1991 **Board of Education meeting.** *News Publishing Company d/b/a Rome News-Tribune v. Board of Educ. of the City of Rome,* No. 90-CV-11083-2 (Floyd County Superior Court, Jan. 7, 1991) (Matthew, J.), *sum. aff'd,* (Ga. May 10, 1991):

- Suit by Rome News-Tribune to enjoin closed sessions of Rome Board of Education to consider candidates to replace board member who had resigned.
- Held that O.C.G.A. § 50-14-13(6), which excepts "meetings when discussing or deliberating upon the appointment . . . of a pubic officer or employee" from the requirements of the Act, permitted board to close sessions to consider appointment of new board member.

1991 **Coroner's inquest.** *Kilgore v. R.W. Page Corp.,* 261 Ga. 410 (1991) (Bell, J.):

- Trial court (Whisnant, J.), held that a coroner's inquest must be conducted in a manner open to the public. Affirmed.

- The Court held that coroner's inquest must be open under the Open Meetings Act. "[T]he Open Meetings Act does not by its terms exempt from its coverage meetings concerning a pending criminal investigation. Moreover, there is no provision in the Open Meetings Act granting this Court the authority to fashion the public-interest test for determining whether meetings required to be open by the Act should nevertheless be closed."

1991 **Ground for recall.** *Steele v. Honea,* 261 Ga. 644 (1991) (Weltner, J.):

- Conduct of public official who participates in closed meeting that is required by law to be open can become ground for recall under 1989 Recall Act.
- According to Fletcher, J., concurring, "The practical side of the majority decision is to point out that if there is the slightest doubt, or any question whatsoever, as to whether a matter can be the subject of a closed meeting, DO NOT CLOSE. To err in favor of openness will not result in the imposition of penalties on public officials, however, to err otherwise may well result in such penalties."

1992 **Georgia Commission on Gender Bias in the Judicial System meetings.** *Fathers Are Parents Too, Inc. v. Hunstein,* 202 Ga. App. 716 (1992) (Andrews, J.):

- Group sued chairman of Georgia Commission on Gender Bias in the judicial system for access to Commission meetings. Trial court (Vaughn, J.), dismissed suit. Court of Appeals affirmed.
- Open Meetings Act does not apply to judicial branch of government or to the Commission, which was formed pursuant to a Georgia Supreme Court order to assist the Court in exercising its judicial function.

1992 **Timeliness.** *Walker v. City of Warner Robins,* 262 Ga. 551 (1992) (Fletcher, J.):

- Affirming ruling of trial court (Nunn, J.), that property owners waived Open Meetings Act challenged to city resolution to seek drainage easements by failing to raise issue in timely manner.

1993 **Public university student disciplinary hearings.** *Red & Black Publishing Company v. Board of Regents,* 262 Ga. 848 (1993) (Hunt, J.):

- Appeal from ruling of trial court (Hull, J.), that records of the University of Georgia Student Organization Court must be disclosed to the public pursuant to the Open Records Act but that the Court's disciplinary hearing are not subject to the Open Meetings Act. Affirmed in part, reversed in part.
- The Court concluded that both the records and the disciplinary hearings of the Student Organization Court must be open to the public: "We are mindful that openness in sensitive proceedings is sometimes unpleasant, difficult, and occasionally harmful. Nevertheless, the policy of this state is that the public's

business must be open, not only to protect against potential abuses, but also to maintain the public's confidence in its officials." 262 Ga. At 854.

1993 **County board of commissioners executive session.** *Brennan v. Commissioners of Chatham County,* 209 Ga. App. 177 (1993) (Johnson, J.):

- Affirming determination by trial court (Gadsden, J.), that a vote of the Chatham County commissioners in an executive session to dismiss plaintiff, the appointed county attorney, did not violate Open Meetings Act. The Court of Appeals held that the Act did not require the executive session to be held in public because it was held for the purpose of "discussing or deliberating upon the . . . dismissal . . . of a public officer or employee," and thus exempt pursuant to O.C.G.A. § 50-14-3(6).
- The court concluded that the 1992 amendment of O.C.G.A. § 50-14-3(6) requiring that any vote affecting the dismissal of a public employee be taken in public was not in effect when the commission vote took place in 1991.

1994 **Petition for recall.** *Davis v. Shavers,* 263 Ga. 785 (1994) (Clarke, Jr.):

- Appeal from decision of trial court (Pannell, J.), finding that applications for petition of recall of two city councilmen and the mayor of Fort Oglethorpe, Georgia were insufficient. Among other alleged transgressions, the application cited a violation of the Open Meetings Act as grounds for the recall.
- Affirming the trial court's decision, the Georgia Supreme Court recognized that a violation of the Act can be grounds for recall of a politician, but held that the circumstances of the violation must be set out with "reasonable particularity," including notice of the time and place of the alleged violation, so that members of the public can make "an informed decision as to whether to sign the application for recall." 263 Ga. at 787. According to the Court, "That was not done in this case." *Id.*

1994 **Advisory committees.** *Jersawitz v. Fortson,* 213 Ga. App. 796 (1994) (Blackburn, J.):

- Suit alleging violation of the Open Meetings Act by the Atlanta Housing Authority's Olympic Task Force Selection Committee. The trial court (Langham, J.), held that the meeting did not fall within the purview of the Open Meetings Act.
- The Court of Appeals reversed, holding that the committee "acted as a vehicle for AHA to carry out its responsibility to review the proposals submitted to the agency, and because of the responsibility assumed by this committee with the knowledge and full acquiescence of the agency, the agency cannot hide behalf the committee and assert that its governing body did not create it."
- The court also found that AHA did not substantially comply with the Act by providing the plaintiff with a videotape of the meeting after the fact, because

viewing a videotape was not "as adequate substitute" for having the opportunity to give input to the decision-makers.

1994 **90 days provision.** *Guthrie v. Dalton City School District,* 213 Ga. App. 849 (1994) (McMurray, J.):

- Appeal from the trial court's grant of partial summary judgment to defendant school district voiding a settlement agreement that had been reached between the board of education and plaintiff school teacher as violative of the Open Meetings Act. The trial court (Parnell, J.), reasoned that because the board had approved the settlement agreement outside of an open meeting, the board's action violated the Act.
- The Court of Appeals reversed, holding that defendant's challenge to the action taken at the meeting was not brought within 90 days, as required by O.C.G.A. § 50-14-1(b).

1994 **Discussion of permit in closed session.** *Crosland v. Butts County Board of Zoning Appeals,* 214 Ga. App. 295 (1994) (en banc) (Pope, Jr.):

- Suit challenging Butts County Board of Zoning Appeals' grant of a solid waste landfill permit. The trial court (Smith, J.), granted summary judgment to the board, concluding that the board had not violated the Act.
- In an en banc decision, the Court of Appeals reversed and remanded, holding that fact issues existed as to whether the Act had been violated. The court noted that there was conflicting testimony as to whether the merits of granting the permit had been discussed at two nonpublic meetings that had been held by the board.
- Four judges dissented, arguing that even though the permit was discussed at closed meetings, the only "official action" occurred at an open meeting after public hearings.

1995 **Hospital authorities.** *Northwest Georgia Health System, Inc. v. Times-Journal, Inc.*, 218 Ga. App. 336 (1995) (McMurray, J.):

- Appeal from order of trial court (Hines, J.), in suit by Marietta Daily Journal holding that combinations of private hospitals and public hospital authorities are submitted to the provisions of the Open Meetings and Open Records Acts.
- Court of Appeals affirmed, stating that "[w]ithout question, these private, nonprofit corporations became the vehicle through which the public hospital authorities carried out their official responsibilities."

1996 **Notice.** *Beck v. Crisp County Zoning Board of Appeals,* 221 Ga. App. 801 (1996) (Blackburn, J.):

- Appeal from order of trial court (Lawson, J.), finding that appellant landowners failed to establish a violation of Open Meetings Act.
- Court of Appeals reversed, concluding that the zoning board intentionally misinformed the public by its printed agenda and its chairman's comments that the meeting was closed. Accordingly, the board's action on the petition for conditional use permit at issue was void.

1998 **Petition for recall.** *Phillips v. Hawthorne,* 269 Ga. 9 (1998) (Hunstein, J.):

- ❖ Appeal from trial court order finding legally insufficient recall applications alleging an Open Meetings Act violation.
- ❖ Reversed. "The requisite information identifying the meeting was provided here not by date or location but by the controversial subject matter that was allegedly discussed at the meeting."
- ❖ Benham, J., joined by Carley and Thomason, JJ., dissenting.

1999 **Personal issues.** *Camden County v. Haddock,* 271 Ga. 664 (1999) (Fletcher, J.):

- ❖ Former county employee sued county, county commission, individual commissioners, and administrator, alleging violations of procedural due process and the Act in connection with her discharge. The trial court entered summary judgment for employee, and county appealed.
- ❖ Reserved. The Act provides that county commission meetings must be open to public, but there is an exception when personnel matters are discussed. Thus, the county commission did not violate the Act when its members discussed former county employee's performance at meetings prior to her termination by county administrator.

2000 **Attorney-client privilege.** *Schoen v. Cherokee County,* 242 Ga. App. 501 (2000) (Johnson, J.):

- ❖ County resident sued county, chairman of county board of commissioners, and members of board for violation of the Act. Trial court enters summary judgment for county, chairman, and board members, and resident appealed.
- ❖ Affirmed. Court of Appeals held that the closed meeting between county board of commissioners and county attorney about lawsuit filed by property owner challenging board's denial of its application to change zoning classification fell within attorney-client exception to Act, even if members voted on proposed consent order, as governing body discussing pending litigation with counsel must necessarily be permitted to decide whether to accept or reject a proposed settlement agreement, even if it incidentally involves taking of a vote.

2001 **Personnel matters.** *Moon v. Terrell County et al.,* 249 Ga. App. 567 (2001) (Barnes, J.):

- ❖ Court of Appeals held that, even though defendant employer asked plaintiff whether he would prefer a closed or open session to discuss his employment status and he chose a closed session, the Act states that "the public at all times shall be afforded access to meetings declared open to the public." One citizen cannot elect to close a meeting that should be open. Defendant's action of terminating plaintiff's employment was void, as it was accomplished in violation of Act.

2001 **Location of meeting.** *Maxwell v. Carney,* 273 Ga. 864 (2001) (Thompson, J.):

- ❖ County board of commissioners held monthly meeting in usual room, but on one occasion the room could not accommodate all people who wanted to attend. Board did not move meeting to larger room that had been used previously for meetings.
- ❖ Supreme Court affirmed lower court's ruling that board must conduct meetings in larger meeting room if usual room was too small; but reversed lower court's ruling that board was required to provide adequate seating to enable all members of public to attend the meeting. Held that Act requires adequate, advance notice of meeting, not physical access to all members of public.

2001 **Attorney-client privilege.** *Claxton Enterprise v. Evans County Board of Commissioners,* 249 Ga. App. 870 (2001) (Ellington, J.):

- ❖ Board invoked the attorney-client exception to Act to discuss "probable litigation" concerning employee. Newspaper objected as there was no evidence employee had taken any legal action against the county at that time. Board later amended its stated reason to "personnel matters." A week later, Board again invoked attorney-client exception to close meeting to discuss possible litigation concerning same employee, as the employee had now made reference to litigation.
- ❖ Held that Act must be construed broadly and exceptions construed narrowly.
- ❖ Court of Appeals found that employee's threat to sue was idle and should not be construed as potential litigation for purposed of the Act. To invoke attorney-client exception, the governmental entity must show a realistic and tangible threat of legal action, beyond mere suspicion or fear of being sued.

2002 **Board of Equalization deliberations.** *Bryan County Bd. of Equalization v. Bryan County Bd. of Tax Assessors,* 253 Ga. App. 831 (2002) (Andrews, J.):

- ❖ The Bryan County Board of Equalization held an open hearing to obtain evidence regarding a dispute over property value. The Board, however, closed the meeting to the public when it began its deliberations. The Board claimed that its deliberations were a quasi-judicial function and, therefore, entitled to be in private.
- ❖ The Court of Appeals ruled against the Board noting that the Open Meetings Act applies to all meetings of the Board. In response to the Board's claim that they were undertaking a quasi-judicial function, the Court held: "We realize that 'openness in sensitive proceedings is sometimes unpleasant, difficult, and occasionally harmful. Nevertheless, the policy of this state is that the public's business must be open."

2002 **Attorneys' fees.** *Evans County Bd. of Comm'rs v. The Claxton Enter.,* 225 Ga. App. 656 (2002) (Phipps, J.):

- ❖ The Claxton Enterprise newspaper sued the Evans County Board of Commissioners for violating the Open Meetings Act. The trial court awarded the newspaper $1,500 in attorney fees.

- ❖ The Court of Appeals upheld the award of attorney fees. The Court held that when noncompliance with the Open Meetings Act is without "substantial justification," attorney fees must be awarded. This includes fees incurred for appellate work. "Substantial justification" does not require a showing that the government acted with bad faith.

2002 **Civil discovery.** *Wiggins v. The Bd. of Comm'rs of Tift County, Ga.,* Ga. 258 Ga. App. 666 (2002) (Eldridge, J.):

- ❖ Plaintiff sought injunctive relief under the Open Meetings Act against the Board of Commissioners of Tift County. He claims that the Board received evidence and heard arguments against him while in a closed session in violation of the Act. The superior court granted the injunction and ordered the relief sought by Plaintiff – that no action be taken against him as a result of the Board meeting.
- ❖ The Court of Appeals affirmed the remedial injunction but also held the trial court should not have placed the Board under a continuing injunction as the Board was already under a legal duty to comply with the Open Meetings Act.

2004 **Notice of meetings.** *Slaughter v. Brown,* 269 Ga. App. 211 (2004) (Andrews, J.):

- ❖ Taxpayers sued the Stewart County school board and superintendent for violation the Open Meetings Act by not giving the public proper notice of upcoming meetings. The published notice that was provided by the school board listed a different location than where the meeting actually was held.
- ❖ The Court held in favor of the taxpayers finding that the notice was improper and that there was no special circumstances that justified holding the meeting with less than 24 hours' notice.
- ❖ The Court also upheld an award of attorney's fees to the Plaintiffs.

2005 **Failure to hold meeting.** *H.G. Brown Family Ltd. v. Villa Rica,* 278 Ga. 819 (2005) (Sears, P.J.):

- ❖ Company sought mandamus relief asking that City be compelled to comply with a contract executed between the company and the mayor and two council members who were acting on behalf of the City. The contract was not presented to the city attorney for review nor to the city council for approval, as required by the City's charter.
- ❖ Court held that contract was null and void, given, among other reasons, that the contract was not considered in an open public meeting, as required by the Open Meetings Act.

2005 **Notice of meeting agenda.** *Lancaster v. Effingham Co.,* 273 Ga. App. 544 (2005) (Miller, J.):

- ❖ Taxpayers sued Effingham County and Board of Commissioners for violating Open Meetings Act where notice failed to disclose that budget meeting would involve consideration of borrowing money from the county's general reserve fund to pay off a bank note.

- ❖ The Court held in favor of the county finding no evidence that the Board intentionally omitted the issue from the agenda.
- ❖ The Court further noted that under the Open Meetings Act, "[f]ailure to include on the [public meeting] agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering the acting upon such item." O.C.G.A. § 50-14-(e)(1).

2005 **Notice of meetings.** *Bradley Plywood Corp. v. Savannah,* 271 Ga. App. 828 (2005) (Phipps, J.):

- ❖ Companies filed a declaratory judgment suit against the mayor, alderman and City alleging that their property was improperly annexed in a special, as opposed to regular, meeting. Plaintiffs alleged that the City improperly rescheduled a meeting to an earlier date in violation of the Open Records Act.
- ❖ The court held in favor of the City, finding that when the City published its schedule, it made clear that the December meeting would not be held on the regular date because of Christmas. Thus, the chosen date was the first selected date, not a product of a rescheduling that would turn a regular meeting into a special meeting.

2006 **Open Meetings Act and bond validation hearings.** *Berry v. City of East Point,* 277 Ga. App. 649 (2006) (Blackburn, J.):

- ❖ An appellate court will not disturb a trial court's factual finding regarding a bond-violation hearing if there is any evidence to support it. Because there was some evidence showing that the meeting and vote on the bond proposal were conducted properly, the Georgia Court of Appeals found no error and declined to find a violation of the Open Meetings Act.

2006 **Attorney's fees.** *Decatur County v. Bainbridge Post Searchlight, Inc.,* 280 Ga. 706 (2006) (Carley):

- ❖ During a public county commission meeting, county commissioners who were under investigation retired to an executive session with their attorney to respond to proposed, grand-jury presentments. When newspaper requested copies of the documents involved in that session, commissioners refused, claiming that the documents "constituted a confidential response by them to proposed grand jury presentments," thus the information was not subject to the Open Meetings Act or Open Record Act.
- ❖ Trial court held in favor of the newspaper and awarded it attorney's fees. On appeal, the commissioners argued that this was effort because their closed session came within the attorney-client exception to the Open Meetings Act. The Georgia Supreme Court disagreed, holding that "a meeting may not be closed to discuss potential litigation under the attorney-client exception unless the governmental entity can show a realistic and tangible threat of legal action against it . . . that goes beyond a mere fear or suspicion of being sued."
- ❖ In this case, there was no pending or potential litigation but only grand-jury presentments questioning the propriety of some of the commissioners' actions. "Thus, it is clear that the topic of the meeting related to the manner in which

related to the manner in which the country's business was being conducted and, as such, the purpose was to fashion a political response, not to prepare a legal defense." In such circumstances, the trial court correctly rejected the claimed privilege as too remote and speculative.

* Justices Benham and Melton dissented, maintaining that the attorney-client exception applies when the threat of suit is realistic or tangible. In this case it was because the grand jury questioned commissioners' alleged wrongdoings and sent proposed presentments to them requiring explanations for their activities, which would then be used to determine the scope of the charges against them. "These acts are directly analogous to discovery in a pending suit," thus, commissioners were subject to potential litigation, and the exception should apply.

2006 **Notice of meeting and location of meeting agenda.** *EarthResources, LLC v. Morgan County,* Nos. S06A1150, S06Al713 (Ga. Nov. 30, 2006) (Benham, J.):

* Court holds that notice of meeting was sufficient to satisfy the notice requirement under the Open Meetings Act because it was timely posted at the regular meeting location, and it advised the public that the meeting would be held at an alternate site.
* Court also holds that "[a]lthough the failure to post the agenda at the alternate [meeting] site constituted a technical violation of the statute, [the court does] not construe the statute so tightly as to consider the failure to comply with the letter of the agenda provision to require invalidation of the decision adverse to [plaintiff]." This is especially true given that there is no allegation or evidence that this technical violation deprived plaintiff "of a fair and open consideration of its request or in any way impeded the remedial and protective purposes of the Open Meetings Act."

2008 **State Commission Decisions.** *In the Matter of the Complaint of Alltel Communications, Inc., Against Pub. Serv. Telephone Co. to Stop Revocation of Local Dialing Parity by Pub. Serv. Telephone Co. and for Emergency Relief*, 2008 WL 1747649 (Ga. Pub. Serv. Comm'n Apr. 9, 2008):

* Georgia Public Service Commission's modification of initial decision by Commission Hearing Officer violated provision of Georgia Open Meetings Act, O.C.G.A. § 50-14-1(b), which applies to all state commissions.
* O.C.G.A. § 50-14-1(b) provides that "[a]ny resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding." Where the Commission made a decision to modify the initial decision of the Hearing Officer outside of a meeting open to the public, the Commission's order was not binding.

2009 **Unscheduled Gathering Not a Meeting.** *Gumz v. Irvin,* 300 Ga. App. 426 (2009) (Mikell, J.):

* Holding that unscheduled gathering of four members of five member county board, county attorney, and county's zoning administrator to discuss court decision setting aside board's rezoning decision was not a meeting under the Open Meetings Act.
* Board's "gathering" to discus zoning decision was not a "meeting" under the Open Meetings Act, as gathering was not held pursuant to schedule, call, or notice at a designated time and place, no votes were taken, no decisions were made, no directions were given to the zoning administrator, and no official action was taken.
* Open Meetings Act sets out a two prong test to determine its applicability: whether the meeting is (1) one of a governing body of an agency or any committee thereof, and (2) one at which official business or policy of the agency is to be discussed or at which official action is to be taken. O.C.G.A. § 50-14-1(a)(2).
* Noting that any violation of Open Meetings Act by board members could not serve as a basis for invalidating board's rezoning of property, where actions taken subsequent to alleged meeting complied with local zoning ordinance.

2009 **Timeliness.** *Anti-Landfill Corp., Inc. v. North American Metal Co., Inc.*, 299 Ga. App. 509 (2009) (Doyle, J.):

* Holding that failure by county Board of Commissioners to comply with the requirement to give the public advance notice of the meeting did not invalidate board's action authorizing lease agreement, where no challenge under the Open and Public Meetings Act was filed within 90 days after the meeting.
* O.C.G.A. § 50-14-1(b) provides that: "[a]ny action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision must be commenced within 90 days of the date such contested action was taken."

2010 **Meeting to Discuss Acquisition of Real Estate Exempted.** *Johnson v. Board of Commissioners, Bib County*, No. A10A0398, 2010 WL 446950 (Ga. App. Feb. 10, 2010) (Ellington, J.):

* Affirming Board of Commissioners' motion to dismiss, Board of Commissioners did not violate the Open Meetings Act by voting in closed meetings to pursue the acquisition of certain real estate.
* The Open meetings Act provides an exception from the open meetings requirement for "[m]eetings when any agency is discussing the future acquisition of real estate." O.C.G.A. § 50-14-3(4).
* Unless an exception to the open meetings requirement specifically provides that a vote on an excepted issue must be taken in public, a vote may be taken in closed session. No such amendment was in effect at the

time that the vote was taken in the instant case. The board later ratified in an open meeting the votes taken in the earlier closed meetings, the point was, therefore, moot in any event.

2011 **Attorneys Fees**. *City of Statesboro v. Dabbs*, 289 Ga. 669 (2011) (Melton, J.)

* Plaintiffs sought injunctive relief and attorney's fees in suit alleging City violated Open Meetings Act by holding budget meetings in private.
* Court found entitlement to fees despite fact that no corresponding *ante litem* notice was sent to the City.

2012 **Non-Roll Call Votes**. *Cardinale v. City of Atlanta*, 290 Ga. 521 (2012) (Hunstein, C.J.) (Melton, J., dissenting with an opinion in which Carley and Benham, JJ., joined):

* Reversed grant of City of Atlanta's motion to dismiss complaint seeking detail of non-roll call vote.
* Plaintiff had alleged that meeting minutes were insufficient in that they did not identify how each member voted on a certain issue.
* Act not only provides for open meetings, but "fosters openness by . . . requiring agencies to generate meeting minutes that are open to public inspection so that members of the public unable to attend the meeting nonetheless may learn what occurred."
* In light of legislative intent, meeting minutes must include a "record of all votes."
* Affirmed, however, dismissal of the portion of the complaint seeking to impose criminal liability on defendants pursuant to the penalty provision of the Act because plaintiff, as a private citizen, lacked standing to initiate a criminal prosecution, although his complaint properly stated claims for declaratory and injunctive relief under § 50-14-5(a).
* Justice Melton argued that a "straightforward interpretation of the statute" makes clear that while an agency is required to include in the minutes the name of each person who voted for or against a proposal in the case of a roll-call vote, in all other cases it has the *option* of including in the minutes the names of the individuals who voted against a proposal or abstained from voting, but it is not *required* to do so.

2014 **Preclusion of cameras.** *Olens v. Gravitt*, 120CV-1205 (Forsyth Sup. Ct. 2014)

* Finding that the Cumming City Council violated by the Open Meetings Act by preventing an attendee from videotaping a meeting and then removing her when she had done nothing wrong.

2015 **Sovereign and Official Immunity.** *Gravitt v. Olens*, 333 Ga. App. 484 (2015)

* Finding that the Attorney General's action against Cumming and its Mayor for violation of the Open Meetings Act was not precluded by sovereign or official immunity

2019 **Statute of Limitations.** *Sweet City Landfill, LLC v. Lyon*, 835 S.E.2d 764 (2019) (Coomer, J.)

* Finding that the statute of limitations set forth in the Open Meetings Act could not be tolled by a demonstration of fraud.

SECTION 3 ACCESS TO MEETINGS UNDER THE GEORGIA OPEN MEETINGS ACT

3.2 SYNOPSIS OF ATTORNEY GENERAL OPINIONS REGARDING GEORGIA OPEN MEETINGS ACT

1980 **Hospital Authorities. Op. Att'y Gen. U80-6.**

* Meetings of hospital authorities created by the Georgia Hospital Authorities Act are subject to requirements of Open Meetings Act because the funds which the hospital authorities operate and which they expend are public funds."

1983 **Student disciplinary hearings. Op. Att'y Gen. 83-9.**

* Student disciplinary hearing held before board of education must be open to the public.
* "[A]ny deliberations of the board at which the final action on a student disciplinary case is discussed" must be open to the public.

1985 **Meetings by telephonic conference. Op. Att'y Gen. 85-26.**

* Meetings of Stone Mountain Memorial Association, "an instrumentality of the State of Georgia and a public corporation with the powers of a private corporation," may be conducted by speaker telephone conference where public access is provided.

1985 **Advisory committee meetings. Op. Att'y Gen. U85-42.**

* Advisory Committee on Area Planning and Development, is not an ad hoc advisory committee but instead "act[s] for the State" when it performs its statutory duties and is, therefore, subject to the Open Meetings Act.
* Under McLarty v. Board of Regents, 231 Ga. 22 (1973), ad hoc advisory committees, which "can take no official action," are not subject to the Act; McLarty does not extend to meetings of Advisory Committee on Area Planning and Development.

1986 **Law enforcement agency meetings. Op. Att'y Gen. U86-35.**

* Georgia Organized Crime Prevention Council, whose activities are concerned with "the prevention, detection or investigation of organized crime in Georgia," is a law enforcement agency, and is, therefore, exempt from the Open Meetings Act pursuant to O.C.G.A. § 50-14-4(3).

1988 **Closed meetings; notice provisions. Op. Att'y Gen. U88-30.**

* An agency must comply with the notice provisions of the Open Meetings Act even for meetings that are properly closed to the public. Minutes must be made available to the public giving the reasons for closure, the names of the members present and the names of those voting for closure.

1989 **Private corporation serving a public function. Op. Att'y Gen. U89-5.**

* Private Industry Councils, which are primarily funded by the federal government through the state government, are "agencies" for purposes of the Open Meetings Act. PIC "review groups," which do not have decision-making authority and do not formulate recommendations on official business or policy to the governing body are not subject to the Act. PIC "consolidation committees," which are comprised of PIC members and do make recommendations to the full PIC board, are subject to the Act. In accordance with the Act, written or oral notice of meetings must be provided at least 24 hours in advance and must be given to a local legal organ or newspaper of general circulation.

1989 **Deliberations of state commission. Op. Att'y Gen. 89-6.**

* Deliberations of the State Ethics Commission after taking evidence in an administrative hearing of a contested case are subject to the requirements of the Open Meetings Act.

1991 **Personnel matters. Op. Att'y Gen. 91-8.**

* Discussions regarding personnel matters during Subsequent Injury Trust Fund Board meetings are not subject to the Open Meetings Act unless the Board is conducting an evidentiary hearing or entertaining argument in a disciplinary proceeding.
* Portions of meetings during which medical and rehabilitation records of individuals are discussed are not subject to the Act and may be closed since those records are exempt from disclosure under the Open Records Act.

1994 **Meetings by telephonic conference. Op. Att'y Gen. 94-11.**

* Use of a telephonic conference is permissible for a regular meeting of the State Properties Commission in compliance with the Open Meetings Act; members participating by telephonic means in such a meeting may be counted to reach a quorum.

1995 **Attorney-client privilege. Op. Att'y Gen. 95-1.**

* Although state agencies may employ persons with legal training and experience to serve as administrative legal service officers, those persons may not provide legal advice or representation to the agency, and no attorney-client relationship or privilege arises between the legal services officer and other agency officers or employees, or the agency itself.

1995 **School board personnel meetings. Op. Att'y Gen. U95-15.**

* A school board may not close to the public any meeting devoted to the airing of grievances about school personnel by interested members of the public. Further, should the school board conduct an inquiry into the actions of school personnel any evidence or argument presented to the board must be held in an open meeting, but the board may close that portion of the meeting consisting of deliberation or discussion of

disciplinary action upon proper compliance with the statutory meeting closure provisions.

1998 **Executive Meetings. Op. Att'y Gen. U98-3.**

* Although some limited individuals may be permitted to attend a closed executive session under the Open Meetings Act, a covered "agency" does not have *carte blanche* in determining who may remain. Instead, such agencies must determine on a case-by-case basis which people may remain in a closed session, permitting *only* those persons whose presence is consistent with an applicable exception to remain in the closed meeting.

2010 **Drug Utilization Board. Unofficial Opinion 2010-1.**

* Concluding that the Drug Utilization Review Board created by the Georgia Department of Community Health is subject to the Open Meetings Act.
* The Drug Utilization Review Board, authorized by the Social Security Act, reviews drug studies and therapies and makes recommendations to the Department of Community Health. As the Board was not explicitly a covered entity, the AG looked at "whether, even if the Board is sometimes only making recommendations to DCH on which drugs should be given a preferred status for purchase, the Board has otherwise become the vehicle through which DCH meets the requirements of the Social Security Act, 42 U.S.C. § 1396r-8(g), in making its decisions regarding the purchase of medications."
* The AG concluded that yes, the Board was serving an express DCH function and discussing agency business and policy, and thus, subject to the Open Meetings Act.

SECTION 4 SUBPOENAS, THE REPORTER'S PRIVILEGE AND THE GEORGIA SHIELD LAW

4.1 SYNOPSIS OF CASES REGARDING GEORGIA SHIELD LAW, O.C.G.A. § 24-5-508

1990 *Izbicki v. Ridgeview Inst.* No. 1:89-CV-306-RCF (N.D.Ga., March 27, 1990) (Freeman, J.):

* Subpoena to non-party reporter appropriately limited to verifying that published statements were actually made by the parties to whom they were attributed.
* Georgia shield law is not limited to protection of confidential sources.

1990 *Vance v. Krause*, No 90-1687-5 (DeKalb County Superior Court, Nov. 21, 1990) (Fuller, J.):

* Where subpoena sought to compel testimony from non-party television station photographer who was also a long-time personal friend of defendant, trial court held that shield law protected from disclosure only information obtained by photographer as a news gatherer for purposes of dissemination to the public.

1991 *Stripling v. State*, 261 Ga. 1 (1991) (Bell, J.):

* Held that trial court did not err in allowing non-party reporter to invoke "shield law" privilege against disclosure of the identity of certain confidential sources — "three former employees of the Douglas County Sheriff's Department" — who had informed her of "precise details on a systematic policy of eavesdropping" of attorney-client communications at the Douglas County jail. A death row inmate sought to compel the testimony for purposes of a motion for new trial.

1991 *Nobles v. State*, 210 Ga. App. 483 (1991) (McMurray, J.):

* In a highly publicized criminal action, a television station reported while the jury was out that it had learned the jury was eleven to one for conviction and one juror was holding out and would not budge. After the jury returned its verdict, trial court polled the jury, which stated that the facts as to their deliberations had been otherwise and, in addition, that no juror had seen the telecast. Defendant subpoenaed the station's reporter for purposes of supporting a mistrial motion on grounds of jury tampering or misconduct.
* The trial court quashed the subpoena on the grounds that since the report was inaccurate and the jury had not seen it, no impropriety had taken place and piercing the reporter's shield of confidentiality would bring forth no relevant information.
* Affirmed. The shield law was not "meant to be used to uncover the source of mere courtroom gossip or speculation that appears to have been involved here. Nor has it been shown that the disclosure of the source of

this erroneous information was in any way material or relevant, or necessary to the presentation of appellant's case. Moreover, the trial court had instructed the jury on several occasions that they were not to read, listen or watch any news reports, nor to discuss the case among themselves or with anyone else."

1992 *Miller v. Greer*, No. 91-5492-7 (DeKalb County Superior Court, March 20, 1992) (Peeler, J.):

* Action to compel reporter to answer questions about the source of information about an article. Requested relief denied as plaintiff had failed to exhaust alternative, non-media sources from which information might be obtained. Of the thirty-one possible alternative sources, plaintiff had only deposed a handful.

1993 *State v. Rower*, No. 93-1157-18 (Cobb County Superior Court, March 10, 1993) (Staley, J.):

* Trial court initially quashed the State's grand jury subpoena demanding a newspaper reporter's audiotapes of a "jailhouse" interview with a defendant who had confessed to being the triggerman in a highly-publicized murder, holding that the State had neither carried its burden under the shield law nor demonstrated a waiver of the privilege. After allowing the State to reopen the evidence as to "necessity" and "alternative sources", the trial court granted the State's motion for reconsideration and enforced the grand jury subpoena holding the State had carried its burden under each of the showings required by the privilege.
* Georgia Supreme Court, No. S93A1072, affirmed without opinion.

1995 *Royals v. Spearman*, No. CV693-121 (S.D. Ga., September 15, 1995) (Moore, J.):

* Augusta Chronicle reporter wrote a series of articles about allegations of sexual abuse made by female prisoners, who later sued prison and certain prison personnel for violation of their constitutional rights. Defendants sought to compel reporter to disclose names of confidential informants and computer transcripts of interviews with informants.
* Trial court denied motion to compel on ground that "[d]efendants have not convinced the Court that this information is highly relevant and necessary to the proper preparation or presentation of their case."

1997 *CSX Transp. v. Cox Broadcasting, Inc.*, No. E-59240 (Fulton County Superior Court, May 29, 1997) (Bonner, J.):

* Action in equity by CSX Transportation seeking discovery from WSB-TV and WXIA-TV of their news coverage of an accident at a railroad crossing involving a CSXT train and a motor vehicle.
* Requested relief denied as the information and knowledge sought by CSXT was privileged pursuant to the shield law, O.C.G.A. § 24-9-30, and CSXT could not make the showing required by the statute to justify compelling the discovery sought.

1999 *In Re Paul*, 270 Ga. 680, 513 S.E.2d 219, (Fletcher, J.):

* Reversing the trial court, the Supreme Court ruled that the state shield law protected a news reporter from disclosing his unpublished information obtained during a jailhouse interview. The Court explicitly held that Georgia's statutory reporter's privilege applies both to confidential and non-confidential information and that a reporter ordered to disclose such information is entitled to an immediate, direct appeal to the Georgia Supreme Court.

2001 *Atlanta Journal-Constitution v. Jewell*, 251 Ga. App. 808 (2001) (Johnson, J.):

* Refusing to adopt a constitutional reporter's privilege for confidential sources in a case where the news reporter is a party, but requiring protection of such sources under general civil discovery procedures. Accordingly, before such sources must be disclosed, the court must require that the plaintiff "specifically identify each and every purported statement he asserts was libelous, determine whether the plaintiff can prove the statements were untrue, taking into account all the other available evidentiary sources, including the plaintiff's own admissions, and determine whether the statements can be proven false through the use of other evidence, thus eliminating the plaintiff's necessity for the requested discovery."

2002 *In re: Morris Communs. Co*, 258 Ga. App. 154 (2002) (Smith, J.):

* The State subpoenaed a reporter for the Georgia Times-Union seeking testimony regarding two articles that she had written about a robbery. The State wanted to use the reporter to authenticate information that appeared in the articles. The newspaper filed a motion to quash pursuant to Georgia's qualified reporter's privilege, O.C.G.A. § 24-9-30. The trial court denied the motion to quash.
* The Court of Appeals affirmed the trial court's decision, holding that the reporter had waived the privilege, but only as to the information that actually appeared in the articles. Because the subpoena did not seek "substantive, confidential or unpublished" materials, the reporter was required to testify concerning the limited information that was sought.

2004 *Torrance v. Shook*, No. 03-SV-55 (State Court of Toombs County, Jan. 8, 2004) (Mikell, J.):

* The Savannah Morning News published a series of articles concerning the death of a man whose body was found in the swimming pool of the Vidalia city attorney. The plaintiff filed a defamation case against the defendant who he claims made remarks indicating that plaintiff was involved in the man's death. The plaintiff subpoenaed a reporter for the Savannah Morning News seeking his deposition and his files concerning the man's death.
* The trial court quashed the subpoena on the grounds that the testimony and information sought was privileged under O.C.G.A. § 24-9-30 and the plaintiff failed to show that he could not obtain the information by

alternative means. The Court noted that the plaintiff also had sued the newspaper and the reporter for defamation in Richmond County and discovery in that case was ongoing.

2007 *Flynn v. Roanoke Cos. Group, Inc.*, No. 1:06-CV-1809-TWT, 1:07-MD-1804-TWT, 2007 WL 4564113 (N.D. Ga. Dec. 21, 2007) (Thrash, J.):

* Subpoena issued to CNN for interview footage.
* CNN moves to quash claiming reporter's privilege and that footage is protected by Georgia Reporter's shield.
* Court finds CNN is entitled to qualified reporter's privilege against disclosing all unaired footage of program in question, but this does not extend to non-confidential interview with plaintiff in this action, which was partly broadcast.
* Court explains it "is not persuaded that the freedom of the press is in anyway hampered when a news broadcasting corporation turns over nonconfidential video footage of a plaintiff interview."
* However, CNN is entitled to withhold unaired footage that has nothing to do with plaintiff because subpoena fails to explain why every piece of unaired footage is either relevant or necessary to defense.

2008 *Hendrix v. Highsmith*, No. 07 CV 1290 B, 2008 WL 2078966 (Ga. Super. Ct., Hall County May 9, 2008) (Gosselin, J.):

* Subpoena issued to news reporter seeking to obtain discovery of document sent anonymously to reporter leaking results of drug test. Court denied motion to compel, finding that plaintiff had not overcome privilege provided by O.C.G.A. § 24-9-30.
* Plaintiff failed to satisfy any of three requisite conditions necessary to overcome privilege.
* Plaintiff failed to show that he exhausted non-media sources from which the information might be obtained. Court found it pertinent that plaintiff stipulated with defendants not to pursue discovery until after court ruled upon motion to compel information from reporter. Plaintiff did not depose any of numerous alternative sources from whom plaintiff might have determined when and how drug test was leaked.
* Plaintiff failed to show how the document was material, relevant or necessary to the proper preparation or presentation of his case. The document sent to the reporter was not necessary to prove that the drug test was leaked. That fact was undisputed and could easily be stipulated to by the parties. Even if document did contain source-identifying information, it might be cumulative of other evidence because other circumstantial evidence existed regarding identity of person who leaked drug test.
* Even if plaintiff could satisfy all three factors of privilege exception, motion to compel was premature because plaintiff needed to show claims were viable and that disclosure of the information would be critical to prosecution of his case.

2008 *Giddens v. Advantage Mobility Solutions, Inc.*, No. 08A84548-3, 2008 WL 4947726 (Dekalb County State Ct. Nov. 9, 2008) (Purdom, J.):

* Plaintiffs, individuals involved in litigation relating to injuries sustained in elevators, issued subpoena to news reporter seeking information pertaining to investigative report regarding elevators. Reporter filed motion to quash asserting protection under O.C.G.A. § 24-9-30. Court granted motion to quash.
* Court found that plaintiffs had made no showing that the evidence was not reasonably obtainable by other means or that it was necessary to the proper preparation or presentation of the case. While plaintiffs had noticed the deposition of one of the individuals who had overheard a conversation when defendant made an admission at issue, plaintiffs did not seek the information from other witnesses who were present. Plaintiffs also failed to show that information was necessary to case because they did not seek to obtain it from other witnesses. Court rejected argument that it was necessary for plaintiffs to obtain video from reporter because it would present the alleged admission more powerfully than would testimony from other witnesses, finding that such a rationale would eviscerate the privilege.
* Court held that reporter had not waived privilege not to disclose unaired audio and other information by broadcasting another portion of the tape.

2009 *Soloski v. Adams*, (N.D. Ga. April 30, 2009) (unreported) (Shoob, J.)

* Court overturned an order issued by a Magistrate Judge that had required a former Atlanta Journal-Constitution journalist, Ms. Simmons, to disclose the identity of a confidential source.
* Court found clear error in at least two respects: (1) the Magistrate Judge's finding on exhaustion of alternative sources, and (2) the Magistrate Judge's finding on the "necessity" of the identity of the confidential source to the case.
* Court noted that by failing to depose Soloski's accuser, "who arguably had the greatest interest in publicizing the investigation, plaintiff clearly failed to 'beat the bushes' to identify Ms. Simmons' source."
* Court was highly critical of a stipulation entered into between the plaintiff and defendants that stated that depositions of several University administrators had established that the identity of the source "could not be reasonably obtained other than by asking Ms. Simmons directly." Court held that: "[T]he duty to exhaust reasonable alternative sources of information is not one that the parties can simply "stipulate" away. Nor is the Court required to accept a self-interested stipulation that is patently false."
* Court concluded that the identity of the initial source was not necessary to Soloski's privacy claim because the on-the-record confirmation of the investigation into alleged breach of sexual-harassment policy by Soloski by a University official gave him an independent basis to allege a privacy violation if such a cause of action existed under Georgia law.

2013 *Bateman v. Summit Logistics Services, Inc.*, (N.D. Ga. April 9, 2013) (unreported) (Treadwell, J.)

* Court granted motion to quash subpoena to reporter seeking accident related video and "observations."
* Court found Georgia law applicable in diversity actions.
* Court concluded production of some photographs did not waive privilege, and there was no showing that the information could not have been otherwise obtained.

SECTION 5 GEORGIA'S ANTI-SLAPP STATUTE

5.1 SYNOPSIS OF CASES REGARDING GEORGIA'S ANTI-SLAPP STATUTE, O.C.G.A. § 9-11-11.1

1997 *Providence Constr. Co. v. Bauer,* 229 Ga. App. 679 (1997) (Beasley, J.):

* Upholding dismissal under O.C.G.A. § 9-11-11.1 of action for injunction, breach of contract and tortious interference with contractual relations by developer against residents who actively opposed rezoning proposals.

2000 *Davis v. Emmis Publ'g Corp.*, 244 Ga. App. 795 (2000) (Blackburn, J.):

* Plaintiff sued publisher for libel, false light invasion of privacy and tortious interference with business relations in connection with a magazine article. Defendants raised in their answer the defense that Plaintiff failed to verify his complaint, pursuant to the anti-SLAPP statute.
* Assuming the anti-SLAPP statute applied to the case, the Court held that the plaintiff was required to verify his complaint within 10 days of being notified of the verification omission and his failure to do so was not amendable defect and, thus, his complaint should have been stricken.
* In his concurrence, Judge Eldridge wrote that the anti-SLAPP statute did not apply to the case and the statute was not intended to protect the media from tort liability.

2001 *Hawks v. Hinely*, 252 Ga. App. 510 (2001) (Blackburn, J.):

* Holding that failure to comply with verification requirements of O.C.G.A. 9-11-1.1 was a non amendable defect that should result in a dismissal with prejudice.

2002 *Denton v. Browns Mill Dev. Co., Inc.*, 275 Ga. 2 (2002) (Hines, J.):

* Developers filed action for trespass, libel, slander, and intentional interference with business operations against Appellant, a resident who opposed the development of natural areas.
* The Court affirmed the dismissal of the libel, slander and intentional interference with business operations claims because the Developers' complaint was not properly verified, pursuant to the anti-SLAPP statute. However, the Court affirmed the Court of Appeals' holding that the anti-SLAPP statute did not apply to the trespass claim and, therefore, that claim should not be dismissed.

2003 *Metzler v. Rowell*, 248 Ga. App. 596 (2003) (Smith, J.):

* Landowner brought suit against residents who were vocal opponents of his plan to redevelop his property . The causes of action were tortious interferences with business relations, trespass, and interference with right of quite enjoyment of property.

* The Court affirmed dismissal, holding that the statements of the concerned residents were privileged and, therefore, O.C.G.A. 9-11-11.1 applied. The court held that plaintiff's framing of his claims as tortious interference with contract or business relations does not render the assertion of privilege inapplicable.

2003 *Chatham Orthopaedic Surgery Ctr., LLC v. Ga. Alliance of Cmty. Hosps., Inc.*, 262 Ga. App. 353 (2003) (Phipps, J.), *overruled by Berryhill v. Ga. Cmty. Support & Solutions*, No. S06G0038 (Ga. Nov. 28, 2006) (Carley, J):

* Recognizing that, unlike other state anti-SLAPP statutes, "Georgia's is not limited to actions brought by or against particular classes of parties."
* Noting that both the party asserting the claim and the party's attorney of record must properly verify the complaint and holding that the failure to file a timely verification is a nonamendable defect.

2003 *Buckley v. DIRECTV, Inc.*, 276 F. Supp. 1271 (N.D. Ga. 2003) (Shoob, J.):

* Defendant, DIRECTV, Inc., sent letters to thousands of individuals, including plaintiffs, who were identified as owners of devices used to unscramble DIRECTV's satellite signals without authorization. The letters informed plaintiffs of the illegality of their conduct, and it notified them that they would face legal action unless they agreed to a settlement. After receiving this information, plaintiffs sued DIRECTV. DIRECTV moved to dismiss the complaint pursuant to Georgia's anti-SLAPP statute. Plaintiffs argued that the statute did not apply because DIRECTV's demand letters did not involve an issue of public interest or concern.
* Court disagrees with plaintiffs and dismisses their complaint, explaining that a letter in preparation of legal proceedings is an act in furtherance of free speech or the right to petition the government for redress of grievances, and fact that the demand letters were sent to thousands of people regarding an issue affecting millions renders plaintiffs' claims as touching on matters of public concern.

2004 *Land v. Boone*, 265 Ga. App. 551 (2004) (Eldridge, J.):

* Stating in dicta that dismissal for failure to verify is without prejudice and the suit may be refiled.

2004 *Walden v. Shelton*, 270 Ga. App. 239 (2004) (Eldridge, J.):

* Recognizing that expenses and attorney fees are available under O.C.G.A. 9-11-11.1 when a complaint is verified in violation of the statute; however, such an award is not mandatory.

2004 *Harkins v. Atlanta Humane Soc'y*, 278 Ga. 451 (2004) (Carley, J.):

* Former employee of the AHS and another woman publicly criticized the AHS and its executive director on television and internet message boards alleging problems with operations at the AHS. The AHS and its executive

director brought defamation actions against the women but failed to verify their complaints. The trial court denied the women's motions to dismiss under the anti-SLAPP statue because the complaints were later amended to provide verifications.

* The Supreme Court recognized that O.C.G.A. 9-11-11.1 allows dismissal if a claim is falsely verified; however, it held that "dismissal cannot be based solely on evidence that the claim involves statements in furtherance of the right of free speech or the right to petition the government, in connection with an issue under consideration or review by a governmental body." The Court held that once such a determination is made, the claim cannot be dismissed unless the trial court determines that : "(a) the claimant or his attorney did not reasonably believe that the claim was well grounded in fact and that it was warranted by existing law or a good faith argument for the modification of existing law, (b) the claim was interposed for an improper purpose, or (c) the defendant's statements were privileged pursuant to O.C.G.A. 51-5-7."
* The Court remanded the cases to the Court of Appeals where they remain pending.

2004 *Blissitt v. Doctors for Medical Liab. Reform*, No. 2004CV90693, 2004 WL 5219364 (Ga. Super. Ct., Fulton County Dec 16, 2004) (Barnes, J.):

* Plaintiff filed suit for invasion of privacy, commercial misappropriation and publication of private facts after hospital film crew filmed her and broadcast her image without consent. Court held that anti-SLAPP did not apply as a matter of law.
* Court found question of fact as to whether tortious misconduct in the form of invasion of plaintiff's right to privacy was committed in gathering the information used in the speech. If such a tort was committed, defendants would not have protection by the anti-SLAPP statute. Anti-SLAPP statute does not safeguard extrajudicial action, which constitutes tortious misconduct to gather information for use in free speech or petition.

2006 *Berryhill v. Ga. Cmty. Support & Solutions*, 281 Ga. 439 (2006) (Carley, J):

* Court affirms lower court's decision holding that the anti-SLAPP statute does not encompass all statements that touch upon matters of public concern but is limited to those statements that fall within the definition of O.C.G.A. § 9-11-11.1(c).
* Court holds that list of acts following "includes" in O.C.G.A. § 9-11-11.1(c) is exhaustive, and it rejects plaintiff's argument that the term should be interpreted broadly as one of enlargement or illustration.
* Court overrules *Chatham v. Orthopaedic Surgery Ctr. v. Ga. Alliance of Cmty. Hosps.*, 262 Ga. App. 353 (2003), because it erroneously interpreted "includes" as "includes," but "is not limited to."

2006 *Chatham Orthopaedic Surgery Ctr., LLC v. White*, 283 Ga. App. 10 (2006) (Bernes, J.):

* Appellants filed a malpractice action against attorney claiming that he breached the standard of care by failing to file a verified complaint in accordance with O.C.G.A. § 9-11-11.1(b), and by failing to cure the defect by amending the complaint within ten days.
* Court finds that lower court properly granted summary judgment in favor of attorney on appellants' claim that attorney breached duty by failing to verify the complaint within the ten-day period because "at the time of the original lawsuit, Georgia law was unsettled as to the effect of a dismissal in cases where written verifications had not been filed within the ten-day period."
* Court finds that lower court erroneously granted summary judgment in favor of attorney on appellants' claim that attorney breached duty by failing to advise them about the potential *risks* associated with not verifying the complaint within the ten-day period, given the conflicting case law on the matter.

2006 *EarthResources, LLC v. Morgan County*, 281 Ga. 396 (2006) (Benham, J.):

* Plaintiff moved to dismiss defendant's motion for attorney's fees, arguing that Georgia's anti-SLAPP statute prevented a fee award, but trial court denied plaintiff's motion.
* Supreme Court finds that anti-SLAPP statute does not apply to defendant's claim for attorney's fees. Plaintiff had a full, public consideration of its grievance, and it lost case on the merits. The anti-SLAPP statute was not intended to immunize from the consequences of abusive litigation a party who has asserted a claim lacking any justiciable issues of law or fact. Anti-SLAPP statute does not protect those who abuse the judicial process.

2007 *Hagemann v. City of Marietta*, 287 Ga. App. 1 (2007) (Phipps, J.):

* Counterclaims violate anti-SLAAP statute because verifications were false; court reverses lower court decision finding otherwise.
* Plaintiff's declaratory judgment challenging rezoning constitutes petition to judiciary for redress of grievances in connection with issue of public interest or concern and thus falls within anti-SLAPP statute.
* Because city's counterclaims were filed in response to this action, they also fall within statute's ambit.
* City filed verifications for counterclaims, but mere filing is insufficient where it is shown that verifications are false. Allegations contained in counterclaims reveal with certainty that city would not be entitled to relief under any set of facts.
* Because record shows that neither city's attorney nor its mayor could have reasonably believed counterclaims were warranted, verifications to the contrary violated anti-SLAPP statute.

2007 *Smith v. Wal-Mart Stores, Inc.*, 475 F. Supp. 2d 1318 (N.D. Ga. 2007) (Batten, J.):

* Anti-SLAPP statute does not apply.
* For anti-SLAPP statute to apply, statements from which alleged SLAPP litigation arises must be made in relation to some official proceeding.
* Court rejects claim that allegedly infringing statements comparing Wal-Mart to Al Qaeda constitute statements made in connection with an issue under consideration in an official proceeding and thus fall within anti-SLAPP statute.

2007 *Adventure Outdoors, Inc. v. Bloomberg*, 519 F. Supp. 2d 1258 (N.D. Ga. 2007) (Forrester, SJ.), reversed on other grounds, 552 F.3d 1290 (11th Cir. 2008):

* Defendants, New York City officials, sued plaintiffs (and others) in New York district court for participating in illegal gun sales. Defendants commented on this ongoing litigation in an accompanying press conference and press release. Plaintiffs sued defendants in Northern District of Georgia for libel and slander for this speech.
* Defendants argue that because this speech includes statements before a judicial proceeding, plaintiffs' causes of action against those statements must be verified in accordance with anti-SLAPP statute.
* Court performs *Erie* analysis and concludes anti-SLAPP statute does not apply because it directly conflicts with Federal Rule of Civil Procedure 8(a) because 8(a) requires only a short, plain statement of claim showing pleader is entitled to relief, but anti-SLAPP statute would impose heightened pleading requirement by also requiring verification.
* However, court recognizes that aspects of anti-SLAPP statute regarding what communications are privileged under O.C.G.A. § 51-5-7 can be considered "substantive" rather than "procedural" and are thus applicable in federal court.

2008 *Hagemann v. Berkman Wynhaven Assocs., L.P.*, 290 Ga. App. 677 (2008) (Bernes, J.):

* In prior action, individual property owner filed suit against City of Marietta in effort to block rezoning of neighboring property in connection with potential sale of that property by Berkman Wynhaven to a developer. After deal to sell property fell apart, in part because of litigation, Berkman Wynhaven filed instant action against property owner asserting claims of tortious interference with business relations and contractual relations, conspiracy to tortiously interfere with business and contractual relationships and to commit fraud, and defamation. Defendant moved to dismiss based on anti-SLAPP statute. Prior to decision on motion, plaintiff voluntarily dismissed suit without prejudice. Defendant filed motion for attorney's fees and expenses under O.C.G.A. § 9-11-11.1(f), which the trial denied. Defendant appealed.

* Court of Appeals found that trial court erred in not awarding defendant attorney's fees and remanded to the trial court for a determination of the proper amount.
* O.C.G.A. § 9-11-11.1(b) provides that court "shall" impose sanctions upon finding that a party has falsely verified a complaint.
* Court made required threshold finding that anti-SLAPP statute applied to plaintiff's claims. Plaintiff's allegations of tortious behavior were covered by anti-SLAPP statute because the tortious behavior complained about was the filing of the prior suit.
* Court held that verifications that claims were well grounded in fact and warranted by law filed in support of complaint were false because, as a matter of law, claim for tortious interference with contractual relations cannot be predicated upon alleged improper filing of lawsuit.
* Court held that by use of word "shall," General Assembly required courts to impose a sanction upon finding a false verification (expressly disapproving *Walden v. Shelton*, 270 Ga. App. 239 (2004), to the extent it gives trial court discretion regarding whether to impose sanction).
* Voluntary dismissal of lawsuit did not constitute a sanction.
* Smith, J. (concurring) emphasized that appropriate sanction could include one of all of the following: fine, public reprimand, litigation costs, or attorney's fees.
* Blackburn, J. (dissenting) stating that anti-SLAPP statute intends to grant trial discretion as to form of sanction and that dismissal of case was appropriate sanction.

2008 *Boxcar Dev. Corp. v. New World Communications of Atlanta, Inc.,* No. 08CV2248-10, 2008 WL 1943313 (Ga. Super. Ct., DeKalb County May 1, 2008) (Wood, J.):

* Business brought claims for defamation, invasion of privacy, fraudulent misrepresentation, and intentional infliction of emotional distress against local news station for investigative report questioning plaintiff's business practices. Court dismissed suit with prejudice due to plaintiff's failure to comply with anti-SLAPP statute verification requirements.
* Generic verifications that allegations in complaint were true and accurate did not meet requirements of O.C.G.A. § 9-11-11.1(b).
* A defendant who comments upon potential illegal or wrongful conduct made in connection with issue under consideration or review by government has engaged in an "act" under Georgia's anti-SLAPP statute. Even defendant's statement made prior to initiation of government investigation qualifies as an "act" of free speech under anti-SLAPP statute.
* By its very nature, investigative news report is medium that seeks to influence the public or government.

2008 *Jenkins v. Anderson*, No. A08A1832, 2008 WL 5248987 (Ga. Ct. App. Dec. 18, 2008) (Andrews, J.):

* Member of City Council sued individual defendant alleged that defendant made defamatory statements about him in numerous letters and e-mails.
* Pursuant to anti-SLAPP statute, trial court may dismiss claim where it makes substantive, evidentiary determination that the verification is false because the claim infringes on the rights of free speech or petition as defined by the statue.
* After a hearing, the trial court made a substantive, evidentiary determination that the verification that was filed was partially false because the statements in question were privileged pursuant to O.C.G.A. § 51-5-7(4).
* Appellate court was unable to address plaintiff's claim on appeal that the trial court's determination was erroneous because the alleged statements in the letter were not part of the record on appeal. Although the trial court considered the letter, neither the letter nor the substance of the statements was included in the record on appeal. Plaintiff bears the burden of showing affirmatively that the trial court erroneously found the statements privileged and could not carry that burden on the record before the court. Appellate court therefore must assume that trial court's ruling was proper.
* Appellate court reversed trial court's order to the extent it dismissed defamation claims that were not based on the particular letter at issue.

2009 *Lovett v. Capital Principles, LLC,* 300 Ga. App. 799 (2009) (Andrews, P.J.):

* Holding that anti-SLAPP statute applied in an action by the former manager of school system's technology department, who alleged that school board employees, who were hired to make recommendations regarding implementation of a computer software program, slandered her and interfered with her business relationship with the school system.
* Boards consideration of the issue of how to implement the computer program in the school system was an "official proceeding authorized by law" within the meaning of the anti-SLAPP statute, and the defendants' oral statements to the board in connection with the issue under review in the instant case "could reasonably be construed as [acts] in furtherance of the right of free speech ... in connection with an issue of public interest or concern." OCGA § 9-11-11. 1(b).
* Noting that the fact that defendants' acted while engaged in a commercial transaction did not render the verification requirements of the anti-SLAPP statute inapplicable. The fact that the speech at issue was motivated by a commercial consideration did not lessen the constitutional protection to which the speech was entitled.
* Affirming dismissal of former manager's complaint. As anti-SLAPP statute applied to the action, the former manager was required to comply with the provisions of O.C.G.A. § 9-11-11.1(b) and timely file a verification of her complaint at the time of filing the complaint, or within

ten days after the omission was brought to her attention. Plaintiff had failed to verify her complaint either at the time of filing, or subsequently when the omission was brought to her attention.

2011 *1524948 Alberta Ltd. V. Lee*, 2011 WL 2899385 (N.D. Ga. 2011) (Story, J.):

* Holding that anti-SLAPP statute did not apply in federal court because it conflicted with Federal Rule of Civil Procedure 8(a).

2011 *Hindu Temple and Community Center v. Raghunathan,* 311 Ga. App. 109 (2011) (Dillard, J.):

* Holding that anti-SLAPP statute applied in an action by a religious institution against persons who had alleged that they had engaged in credit card fraud.
* Affirming dismissal on Motion to Dismiss even where verifications filed. Evidence submitted to support Complaint "woefully short of the prima facie evidence required to support the claims…."
* Affirming award of attorneys' fees greater than flat fee actually charged.

2012 *Jefferson v. Stripling*, 316 Ga. App. 197 (2012) (Mikell, J.):

* Holding that anti-SLAPP statute applied in attorney's suit alleging tortious interference, libel and slander and other claims against opposing parties in a property dispute based in part on complaints the parties made about the attorney to the State Bar of Georgia, ruling that "issues before the State Bar involving conduct of attorneys are 'official proceeding[s] authorized by law' and, therefore, covered by the Anti–SLAPP statute."
* Finding that the trial court abused its discretion in dismissing the claims under the anti-SLAPP statute without holding an evidentiary hearing as required by § 9-11-11.1(d)'s mandate that "[t]he motion *shall be heard* not more than 30 days after service . . . ."

2012 *Paulding Cnty. v. Morrison*, 316 Ga. App. 806 (2012) (Dillard, J.):

* Holding that "wherefore" clauses that contained a prayer for attorneys' fees in the Board of Commissioners' answers to landowners' complaints challenging zoning decisions did not constitute counterclaims subject to the anti-SLAPP statute's pleading verification requirements.
* Reversing trial court decision that struck the clauses from the Board's answers as impermissible counterclaims and ordered both the Board and its attorney to pay more than $265,000 in attorneys' fees to the landowners as a sanction for the alleged statutory violations.
* "[T]he anti-SLAPP statute does not preclude a party defending a lawsuit from preserving its right to seek attorney fees and expenses if the lawsuit later is determined to lack substantial justification."

2012 *Settles Bridge Farm, LLC v. Masino*, 734 S.E.2d 456 (Ga. Ct. App. 2012) (McFadden, J.):

* Holding that statements chamber of commerce vice president made to city manager about a zoning matter that had already been communicated to the city and allegedly initiated its adoption of a building moratorium and special permit requirement were privileged under the anti-SLAPP statute since the statements were made in connection with an issue of public interest or concern and in good faith.
* Affirming lower court's denial of landowner's request to lift the automatic stay on all discovery imposed by the anti-SLAPP law where the landowner did not make a good-cause showing that there was other evidence necessary for resolution of the motion to dismiss as required to extend discovery.

2013 *Emory University v. Metro Atlanta Task Force for the Homeless, Inc.*, 320 Ga. App. 442 (Ga. Ct. App. 2013) (Ray J.):
* Holding that claims against Emory University were neither on-their-face made "to any official proceeding authorized by law nor in connection with an issue under consideration by any official proceeding."
* Finding the fact that Plaintiff's Complaint was vague was not an issue, where Defendant could have sought limited discovery to determine whether Anti-SLAPP statute applied.

2014 *The Royalty Network, Inc. v. Harris*, 756 F.3d 1351 (11th Cir. 2014) (Black, J.):
* Holding that the verification requirement of O.C.G.A. §9-11-11.1 was a procedural requirement that did not apply in federal court.

2016 *Barnett v. Holt Builders, LLC*, 338 Ga. App. 291 (2016) (McMillian, J.)
* Holding that trial court erred in not dismissing defamation claim for failure to file verification under O.C.G.A. § 9-11-11.1 where statements complained of related to prior litigation.

2016 *Legislature Passes New anti-SLAPP Statute*, O.G.A. § 9-11-11.1 (House Bill 513).
* Applies to "[a]ny written or oral statement or writing or petition made in a place open to the public or a public forum in connection with an issue of public interest or concern" and "[a]ny … conduct in furtherance of the exercise of the constitutional right of petition or free speech in connection with a public issue or an issue of public concern."
* Contains a mandatory award of attorneys' fees to prevailing party, and a right of immediate appeal.

2018 *Carbone v. Cable News Network*, 910 F.3d 1345 (11th Cir. 2018)
* Holding that O.C.G.A. § 9-11-11.1 did not apply in federal court.

2018 *Neff v. McGee*, 346 Ga. App. 522 (Ray, J.)
* Applying statute to attorney statement regarding client's lawsuit
* Reversing denial of motion to dismiss or strike where Defendant made a showing of conditional privilege and Plaintiff failed to offer evidence of actual malice

2018 *Rosser v. Clyatt*, 821 S.E. 140 (McFadden, J.)
* Applying statute to statements made before the effective date of the statute

2019 *Grogan v. City of Dawsonville*, 2019 WL 417908 (Peterson, J.)
* Confirming immediate appeal right of decision under O.C.G.A. § 9-11-11.1

2019 *Wilkes & McHugh, P.A. v. LTC Consulting, L.P.*, 306 Ga. 252 (Boggs, J.)
* first Georgia Supreme Court decision construing the 2016 revisions to the anti-SLAPP statute and setting forth the applicable analysis
* noting the statute has been "substantially expanded" and applying it to attorney advertisements about nursing home conditions

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