

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Atlanta Community Press Collective;
Lucy Parsons Labs

Petitioner

and

Atlanta Police Foundation

Respondent

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CIVIL ACTION FILE NO.:

24CV001116

FINAL ORDER

1.

The plaintiffs in this case are Atlanta Community Press Collective (“ACPC”) and Lucy Parsons Labs (collectively known as “Plaintiffs”). On January 24, 2024, Plaintiffs filed a Complaint against the Atlanta Police Foundation (“APF”) seeking a declaration that APF had violated the Open Records Act (O.C.G.A. §50-18-70 et seq.). The Complaint also sought the records themselves, civil penalties and attorneys fees. APF answered this Complaint contending, among other things, that the documents in question were exempt from disclosure.

2.

The case was heard before the Court sitting without a jury on March 31 and April 4, 2025. The factual background for this case is as follows:

FACTUAL BACKGROUND

3.

In July 2002, a resolution was adopted by the City Council of Atlanta and approved by then-Mayor Shirley Franklin authorizing the Mayor to create an Atlanta Police and Fire Foundation. On October 2, 2002, Articles of Incorporation were filed creating the Atlanta Police Foundation, Inc. APF was created to promote and support the Atlanta Police Department. David Wilkinson, its Chief Executive Officer, has been with APF since 2005. He described APF as partnering with the Atlanta Police Department (“APD”), the City of Atlanta, residents, businesses and the philanthropic communities of Atlanta to create a safe city.

4.

In its role of support, APF focused its attention on developing and retaining an adequately staffed police department. One concept that APF explored was to make Atlanta a “destination” for career officers. In 2010, APF began accumulating research on accomplishing an adequate force by developing a training center for police and fire departments. A training center had existed on Key Road on property owned by the City of Atlanta (the “Property”), but it had been closed for renovation, and the facilities used as substitutes were ultimately condemned. The discussion began to center on rebuilding a training facility on Key Road.

5.

By 2017, the APD staffing situation was becoming serious as police officers were leaving APD for greater pay elsewhere. By 2019, the crime rate grew higher than ever and staffing numbers had gone from 2035 officers to 1500. Then-Mayor Bottoms supported the building of a new training facility as a means of officer retention. APF developed a funding strategy that combined its own fundraising goals with money to be contributed by the City of Atlanta in order to build a new training facility on the Key Road property already owned.

6.

In 2021, The City of Atlanta adopted Ordinance 21-O-0367 which authorized the City to lease approximately 381 acres of property owned by the City to APF. Eighty-five acres of the Property would be intended for the construction of the Atlanta Public Safety Training Center (the “Training Center”). APF would build the Training Center.

7.

APF, an independent nonprofit, thereafter contracted with Brasfield & Gorrie, LLC, a private entity, to build the Training Center.

8.

In opposition to the development and building of the Training Center, certain protesters, apart from peaceful protesters, committed acts of intimidation, violence, trespass, damage to property and disruption. Those acts are not the subject of this case, but their occurrence is relevant to the issues involved in this case.

THE OPEN RECORDS ACT

9.

Georgia's Open Records Act is codified at O.C.G.A. §50-18-70 et seq. (the "Open Records Act"). This Final Order will not detail the history of Georgia's law and its amendments over the years. However, it is sufficient to quote from it:

The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions. The General Assembly further finds and declares that there is a strong presumption that public records should be made available for public inspection without delay. This article shall be broadly construed to allow the inspection of governmental records. The exceptions set forth in this article, together with any other exception located elsewhere in the Code, shall be interpreted narrowly to exclude only those portions of records addressed by such exception.

O.C.G.A. §50-18-70(a).

10.

Official Code of Georgia Annotated Section 50-18-72 (a) provides for some fifty-eight (58) exemptions from public disclosure for certain records, by this Court's count. These exemptions from disclosure are to be narrowly construed, but the Open Records Act should not be construed in derogation of its express terms. Appen Media Group, Inc. v. City of Sandy Springs, 914 S.E. 2d 374 (2025).

FINDINGS OF FACT

11.

The City of Atlanta is an "agency" within the meaning of Title 50 of the Official Code of Georgia Annotated. APF is a private nonprofit corporation. APF is not an "agency" as defined in O.C.G.A. §50-18-70(b)(1). Brasfield & Gorrie, LLC ("B&G") is a private corporation doing business in Georgia.

12.

On or about October 6, 2021, the City of Atlanta authorized the execution of a ground lease with APF to lease 85 acres of the Property for the development and

construction of the Training Center. On June 26, 2023, APF entered into a contract with B&G to build the Training Center. The funding for the building of the Training Center was a combination of funds raised by APF, tax credits, a loan and funds allocated and contributed by the City of Atlanta. Complaint filed on January 1, 2024, paragraph 23 (the "Complaint").

13.

ACPC is an unincorporated nonprofit media collective based in Atlanta, Georgia. ACPC's goal as stated in its original Complaint is "to make the day to day workings of local government accessible to the public and provide on-the-ground reporting on developments concerning the planning and construction of the [Training Center]." Complaint, paragraph 1.

14.

Lucy Parsons Labs is a charitable Chicago-based "collaboration between data scientists, transparency activists, artists, and technologists that seeks to build consciousness about digital rights and the nature of policing and surveillance in Chicago as well as in other major American cities. . . ." Complaint, paragraph 2.

15.

On May 22, 2023, Matt Scott of ACPC sent APF an email citing O.C.G.A § 50-18-70 et seq. and seeking the Board of Directors meeting agenda and minutes from the first quarter of 2023. On May 22, 2023, Mr. Scott sent APF a request for the Training Center current line-item construction budget. On August 17, 2023, Mr. Scott sent APF a request for "All Bi-Weekly Atlanta Public Safety Training Center OAC Meeting Minutes for June and July 2023." On August 17, 2023, Mr. Scott sent APF a request for any bids for contract relating to the Training Center. This was a total of 4 Open Records Act requests. Communications checking on the status of responding to the requests were also admitted into evidence.

16.

On July 9, 2023, Ed Vogel of Lucy Parsons Labs sent APF a request asking for the Training Center line-item construction budget. On January 19, 2025, Mr. Vogel sent APF 10 more requests as follows:

a. A copy of all submitted proposals, bids, and any other application documents pertaining to any request for proposals, bidding processes, or other procurement processes related to the development of the Atlanta Public Safety Training Center."

b. The most recently approved budget for the development of the Atlanta Public Safety Training Center.

c. Documents sufficient to show all results of environmental testing and assessments conducted as part of the development of the Atlanta Public Safety Training Center.

d. A copy of all contracts, MOUs, licenses, data agreements, and other agreement documents with the Atlanta Police Department pertaining to the development and construction of the Atlanta Public Safety Training Center.

e. Documents sufficient to show internal Atlanta Police Foundation communications pertaining to the proposed November 2023 referendum ballot initiative.

f. All emails which include both Dave Wilkinson and ccarr@law.ga.gov as either the sender, recipient, CCed, or BCCed from January 1, 2020 to October 8, 2023 containing at least one of the following keywords related to the development and construction of the Atlanta Public Safety Training Center: 'Public Safety Training Center,' 'cop city,' 'referendum,' 'rico.'

g. Documents sufficient to show all Atlanta Police Foundation plans to include parkland or other publicly accessible lands as part of the construction of the Atlanta Public Safety Training Center.

h. All emails which include both rbaskin@atlantapolicefoundation.org and ccarr@law.ga.gov as either the sender, recipient, CCed, or BCCed from January 1, 2020 to October 8, 2023 containing at least one of the following keywords related to the development and construction of the Atlanta Public Safety Training Center: 'Public Safety Training Center,' 'cop city,' 'referendum,' 'rico.'

i. All emails which include both Dave Wilkinson and Robin Loudermilk as either the sender, recipient, CCed, or BCCed from January 1, 2020 to October 8, 2023 containing at least one of the following keywords related to the development and construction of the Atlanta Public Safety Training Center: 'Public Safety Training Center,' 'cop city,' 'referendum,' 'rico.'

j. A copy of all contracts, MOUs, licenses, data agreements, and other agreement documents with the Georgia Bureau of Investigation pertaining to the development and construction of the Atlanta Public Safety Training Center.

17.

Prior to sending Open Records Act requests to APF, Lucy Parsons Labs had sent requests to the City of Atlanta for some of the documents requested. The City of Atlanta responded to Lucy Parsons Labs' requests immediately, but in some responses advised that the documents requested

were in the custody of APF. Accordingly, Lucy Parsons Labs sent their Open Records Act Requests to APF as suggested.

18.

Both the ACPC requests and the Lucy Parsons Labs requests cited the Open Records Act and specifically cited both statutory and case law addressing that “the Open Records Act has been applied to private entities when public agencies have delegated to them their official responsibilities and authority.” Plaintiffs’ Exhibit 2; see also, Exhibit 8.

19.

As of January 24, 2024, APF had not responded to any of ACPC or Lucy Parsons Labs’ requests.

20.

Mr. Wilkinson testified that APF had responded to other Open Records Act requests, including requests from the AJC and WSB¹. Mr. Wilkinson associated the requests from Plaintiffs as being aligned with protests resulting in damage to property and intimidation. Mr. Wilkinson testified that he viewed the requests from Plaintiffs as trying to stop the building of the Training Center, and that it was important to understand his mindset in dealing with the entities involved.

21.

Three witnesses testified as to personal intimidation and threats they had received, and acts of vandalism and damage that they had witnessed and been aware of. A videotape and photographs were admitted into evidence showing vandalism, personal threats, objects being thrown, the aftermath of vandalism, verbal threats, protest signs with threats, burned equipment, damaged equipment and trespassing. There was a desire to protect the identities of people working on the Training Center so that more people and their families were not targeted because of their work.

22.

The Complaint in this case was filed on January 24, 2024. APF filed its Answer on May 10, 2024. Through both formal discovery and informal discussions between counsel, many documents were produced. However, APF maintained its position that, if the Open Records Act was indeed applicable to it as a private corporation, certain categories of documents, and certain documents were exempt from production under the Open Records Act.

¹ Mr. Wilkinson testified that he did not think that APF was subject to the Open Records Act, but that it had voluntarily produced documents to other requesting entities.

23.

On December 3, 2024, this Court entered an Order Granting Plaintiffs' Motion for In Camera Review, which was unopposed by Defendant. On December 23, 2024, APF delivered to the Court an envelope of documents together with an In Camera Review Log. The Log was filed of record and available to Plaintiffs. By the time trial commenced on March 31, 2025, APF's justification for not producing certain requested documents was well-defined. The unredacted documents produced on December 23, 2024, and a second traunch produced on March 10, 2025 are in sealed envelopes in this Court's chambers. The Court has reviewed both sets and dated and signed the times of unsealing and resealing.

24.

Plaintiffs counsel accounted for a total of \$156,016.60 in attorneys fees.²

25.

The CEO of APF testified that there were no records of emails between Chris Carr and him; there were no emails between Robin Loudermilk and him; that APF was not involved in the Parkland aspect of the Property, the 2023 referendum initiative, and that there were no records maintained by APF as to quarterly meetings of the Atlanta Security Council.

26.

Although there was a prayer for penalties in their original Complaint, there was no evidence submitted in the final trial regarding penalties sought, nor what amount might be warranted.

27.

APF's objections to production in its In Camera Review Log are divided into three categories: first, an outright denial that the records sought are public; second, that the disclosure of certain identifying information would place people and property in jeopardy; and, third, that the information sought would reveal "sensitive proprietary information of the parties' proprietary approach to structuring its business arrangements." Defendant's In Camera Review Log, page 6.

² Plaintiffs' counsel submitted affidavits with additional time billed after the close of evidence. However, the Court did not reserve the issue of attorneys fees and did not grant additional time for evidence to be submitted.

CCONCLUSIONS OF LAW

28.

In order to determine whether records are subject to disclosure under the Open Records Act, a two-step process must be followed. First, a determination must be made as to whether the records sought are “public records” and, second, whether the records are subject to any exemptions. Howard v. Sumter Free Press, Inc., 272 Ga. 521 (2000). APF is a private nonprofit organization. However, records “maintained or received by a . . . private person or entity in the performance of a service or function for or on behalf of an agency” are subject to the Open Records Act. O.C.G.A. §50-18-70(b)(2).

29.

APF is not an agency as that term is defined in the Open Records Act. It is engaged in the performance of a service and function on behalf of the City of Atlanta, and the Atlanta Police Department in that it has entered into a specific contractual agreement with the City of Atlanta to lease land from the City and to build a Training Center on that land. The records sought by Plaintiffs are public records, and the only determination left in this case is whether the records produced to the Court under seal are exempt from disclosure.

30.

There are 58 possible exemptions, and some of the records sought to be exempted are arguably dealt with in subparagraph 25 dealing with compromising the security against terrorism and criminal acts. O.C.G.A. §50-18-72(a)(25)(A). However, APF does not rely on subparagraph 25 and asserts instead the common law public interest exception. According to APF’s argument, the case of Houston v. Rutledge, 237 Ga. 764 (1976) created the principle that not all public records should be available to the public until the judiciary has performed a balancing test between inspection versus non-inspection as better serving the public interest. Pretermittting the question of whether Houston is still the law of this State with regard to questions under the Open Records Act, it does not apply here. The General Assembly has done the balancing. And, the legislating. There is nothing more for this Court to do.

31.

The Court of Appeals in Hackworth v. Board of Educ. for City of Atlanta, 214 Ga. App. 17 (1994), dealt with the privacy rights of individuals. In that case, individuals sought records of public school bus drivers who were hired by a private company, but who were driving public school students. The Court held that the General Assembly was intentional in not including personnel

records in a blanket exemption, and that the custodian of such records could not object to the production of any information from the private employer about the drivers. The Court nevertheless held that if the disclosure of records would constitute the tort of invasion of privacy on behalf of an individual, then a Court should make the determination as to what would be produced and what would not be produced for inspection. Hackworth v. Board of Educ. for City of Atlanta, supra, 214 Ga. App. 17, 22.

32.

The facts of this case are manifestly different from Hackworth. First of all, the trial court denied the request for records in toto. The requester Hackworth sought records which might have invaded the privacy rights of individuals such as “medical information, tax information, credit histories, etc., about which the public has no legitimate concern and the disclosure of which would be an invasion of both [the private bus contractor] and the employees’ privacy.” Hackworth v. Board of Educ. for City of Atlanta, supra, 214 Ga. App. 17, 21. No such information is even close to being sought here. APF seeks to exempt the identities of its architect, persons present at meetings, board members, and the location of meetings. This Court does not at all diminish or devalue what individuals who testified under oath have gone through, or what their families have gone through. But public disclosure of the identity of someone who was present at a meeting where the Training Center was discussed versus information that would invade the individual’s personal right of privacy are two very different things, and they are accorded a very different legal status. Hence, the discussion in Hackworth of needing to rise to the level of the tort of invasion of privacy. There is no individual privacy right invasion properly asserted here.

33.

One of the main assertions of exemption of the documents requested has to do with the information sought being in the nature of trade secrets or “sensitive proprietary information.” However, there is a specific statutory exemption and procedure with regard to the non-production of records on that basis. APF has neither sought an exemption under O.C.G.A. §50-18-72(a)(34) and (35) nor pursued the procedure outlined to produce the affidavit required. Again, the exemptions of the statute are specific, and they control.

34.

There were 15 requests for records made between the two Plaintiffs in the 2023 time frame. Evidence was admitted as to the requests. There was no response by APF. None. There was testimony a year and a half later as to why there was no response. But, there was no response. Mr.

Wilkinson testified that APF had responded to other requests, though he did testify that those responses were voluntary because he did not believe that APF had a legal duty to respond.

35.

This Court concludes that APF was under a duty to provide records to ACPC and Lucy Parsons Labs pursuant to the Open Records Act. Under the authority explained in this Order, no exemptions applied.

36.

The Court has reviewed the documents submitted in camera on two occasions as set forth above. In the privilege logs accompanying both sets of documents, APF provided its rationale for redacting certain portions of the documents. On the records supplied to the Court, those redactions were highlighted in yellow. There are other redactions in black with no explanation. The Court assumes those portions had been previously redacted for reasons not involved in this lawsuit. The ruling of this Court is that **all documents produced in camera, including the highlighted yellow portions, should be produced to Plaintiffs within thirty days of this Final Order.** The Court is not aware of any further issues submitted to it regarding these 15 Open Record Act requests and the documents responsive to them. It should be remembered that all of the documents that did exist were produced during discovery in this case except those submitted to the Court in camera, according to the evidence produced at trial.

37.

Next, Plaintiffs seek a declaration that APF has violated the Open Records Act, and Plaintiffs seek civil penalties for these violations. Georgia law does in fact provide civil penalties for persons or entities who “knowingly and willfully violate” the Open Records Act. O.C.G.A. §50-18-74. Mr. Wilkinson testified as to two things: 1) He did not think APF was subject to the Open Records Act; and 2) He felt producing any documents to the requesting entities would place people in harm’s way. Therefore, within the time specified for responding to an Open Record Act request, APF did not knowingly and willfully violate the Open Records Act, and no civil penalties will be assessed.

38.

Next, as to the claim for attorney fees, O.C.G.A. §50-18-73(b) states:

In any action brought to enforce the provisions of this chapter in which the court determines that either party acted without substantial justification either in not complying with this chapter or in instituting the litigation, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney’s fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on

the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

39.

Reasonably construing this statute, so long as this Court finds a substantial justification for not complying with the requirements of the Open Records Act, attorney fees are not mandatory in favor of the complaining party. Unified Gov't v. Athens Newspapers, LLC, 284 Ga. App. 465 (2008). There was justification here. The question is whether there was substantial justification. Three witnesses testified to true fear from being involved in the building of the Training Center. All of them were known as being involved. Many, many others were supposedly unknown. Mr. Wilkinson believed that making their identities publicly known would subject those involved to a level of intimidation as seen from the evidence admitted in this case. Mr. Wilkinson further believed that letting the public know where meetings were being held would subject those meetings to disruption. Up to and through the final day of trial, APF contended that the documents produced in camera were exempt for the reasons related to the evidence that APF introduced. These facts are found by this Court to be special circumstances as that term is used in O.C.G.A. §50-18-73(b).

40.

The Court agrees that there was a showing of substantial justification, and no attorneys fees will be awarded to Plaintiffs in this case.

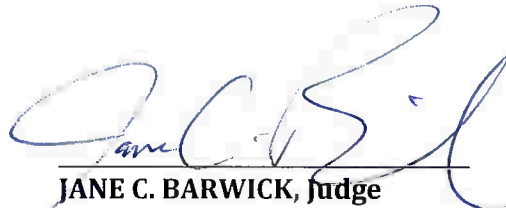
41.

Here is what this Final Order does not do: (1) APF is not declared a public entity; (2) all records maintained by APF are not declared public and accessible by the public; (3) this Court is not directing APF to make all requested records available in future Open Records Act requests, though everyone should comply with the law. Plainly speaking, this Court is not entering an advisory opinion.

42.

But, let the record also be clear that the identity of the requester does not determine whether records are characterized as public.

SO ORDERED this 30th day of May, 2025.



JANE C. BARWICK, Judge
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies by efile to:

Lucas Andrews; SAMANTHA C. HAMILTON; MELISSA JOY RAMSINGH; ALLYSON VEILE; CLARE R. NORINS; Lucas Andrews; SAMANTHA C. HAMILTON; MELISSA JOY RAMSINGH; ALLYSON VEILE; CLARE R. NORINS; Harold David Melton; Dominyka Plukaite