

# **2008 Georgia Student Sunshine Audit:**

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## **Testing Statewide Compliance of the Georgia Open Records Act**

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Abstract:

*More than 100 journalism students across Georgia tested the state's Open Records Act for compliance in October 2008. Two-thirds of custodians complied with the records request. What is notable about the audit is that one-third of public record requests were unfilled. Many students reported they were intimidated and treated rudely. Law enforcement custodians fared the worst in the statewide audit with 58 percent non-compliant. Surprisingly, Georgia's public universities had a 70-75 percent compliance rate. The results indicate that these statewide compliant rates mirror the daily complaints fielded by the Georgia First Amendment Foundation.*

In a statewide audit of county and university athletic records, Georgia university journalism students successfully gained access to two-thirds of requested public records. Students from across the state tested Georgia's open records laws by asking for a variety of records from county commissions, police/sheriff organizations, and local fire departments. They also tested compliancy at the state university system by auditing university athletic and foundation records.

The 2008 audit was a broader reflection of the First Amendment's provision that "Congress shall make no law ... abridging the freedom of speech, or of the press ..." which has been widely interpreted. State and federal courts have given the press a wide latitude to carry out its overall reporting, and more specifically, investigation mission. Several constitutional experts including former U.S. Supreme Court Justice Potter Stewart believed that the press acts as a check on government power.

Courts have repeatedly ruled in favor of the press's rights to access state records if they do not invade someone's privacy. The Georgia Open Records Act reflects this open access. With some exceptions, journalists in Georgia have the legal right to inspect and copy state, county, city, and public school records.

As First Amendment advocates, it is imperative to train the next generation of journalists about their federal and state constitutional rights to access public documents. The 2008 Georgia Student Sunshine Audit was as much a learning experience for students as it was a test of state records laws. The goal was to work with journalism students across the state and teach them how to request an open record. This will be a valuable tool as they graduate from college and enter the journalism field as professionals.

The 2008 Georgia public records audit is a ten-year update from the 1999 audit sponsored by the Georgia First Amendment Foundation. The 1999 audit was coordinated with several newspapers across the state. The 2008 follow-up was conducted by communication and journalism students across Georgia.

Students from eight universities across the state -- Albany State, Armstrong Atlantic State, Emory, Georgia Southern, Georgia State, Kennesaw State, Mercer, and the University of Georgia -- conducted 121 audits of their local county records and public university athletic and foundation records.

The study's overall goal was to test county and university compliance with Georgia open records law.

Counties included in the audit: Bibb, Bryan, Chatham, Cherokee, Clarke, Cobb, DeKalb, Dougherty, Fulton, and Screven.

Athletic and foundation records were obtained from Kennesaw State University, Georgia State University, University of Georgia, Armstrong Atlantic State University, Georgia Southern University, and Albany State University.

The project had the following goals:

- Foster student respect for open government, the law and the First Amendment
- Test legal compliance of custodians of county, and university athletic and foundation records
- Compile a statewide numerical track record
- Assemble student narratives of their experiences
- Create a model for future student audits

The first results of this study were presented at the 2009 Georgia Bar Media Conference. Georgia Assistant Attorney General Stefan E. Ritter served on the panel to provide a state perspective on the results. Also serving on the panel were the organizers of the audit: Dr. Joshua Azriel, Kennesaw State University; Dr. Carolyn Carlson, Kennesaw State University; Sheila Tefft, Emory University, and Hollie Manheimer, Georgia First Amendment Foundation.

**Project History:**

Nationally, the first professional FOI audit occurred in 1992 in Oakland, Calif. In Georgia, 11 state newspapers conducted the first audit in 1999. Rhode Island was the first state to conduct a student led FOI audit in the 1997-98 academic year. In 2003, Alabama journalism students, professional reporters and community volunteers audited more than 600 government entities, the largest audit in U.S. history. This 2008 FOI audit is the first student led project in Georgia.

The seeds for this audit were planted in fall 2007 at the Georgia Bar Media Conference by Emory Journalism Program Director Sheila Tefft and Kennesaw State University Communication Professor Joshua Azriel. Both complained about an ongoing

frustration by their students who attempted to obtain local and state records in their journalism classes. Hollie Manheimer, the executive director of the Georgia First Amendment Foundation, joined the project in 2008 since she assisted with the 1999 newspaper audit. She received a grant from the National Freedom of Information Coalition and the James L. Knight Foundation. Dr. Carolyn Carlson, a communication professor at Kennesaw State University, was hired in 2008 to help coordinate the study among participating universities across the state. She trained the students and faculty at all eight universities.

In summer 2008 Dr. Carlson conducted a pilot project in Forsyth County accessing various county records. She also audited athletic and foundation records at Georgia Tech. The results from this pilot initiative served as a template for training the students to obtain records from across Georgia.

### **Methodology and Summary of Results:**

As a result of the pilot project, the following records were selected for inclusion in the audit:

1. County sheriff's (or police's) previous day's incident reports;
2. County sheriff's mug shots for the previous day, with identification;
3. County sheriff jail log for the previous day;
4. Complaints against county sheriff for police brutality during last 12 months;
5. County commission latest approved meeting minutes;
6. County commission affidavits last three executive sessions

7. Copies of open records requests received by the county commission in the last 30 days;
8. County commission chair's expense reports for his/her last five trips out of town, or since January 1, 2008;
9. The last two county food service permit applications received by the health department;
10. The last two county swimming pool permit applications received by the building department;
11. Fire reports for the last two fires fought by the county fire department;
12. The last two applications by utility companies for utility encroachment within the public right-of-way received by the county engineering department;
13. The coaching contract for the school's men's head basketball coach;
14. The employment contract for the athletic director;
15. Any document or report containing attendance records for men's basketball games during the 2007-08 season;
16. The revenue and expenditures for men's basketball in the 2007-08 season (most recent version);
17. A report or list of the number of students currently attending the school on a full or partial athletic scholarship by sport;
18. Revenue report of the school's primary foundation for the 2007-08 fiscal year (most recent version);
19. Expenditure report of the school's primary foundation for the 2007-08 fiscal year (most recent version);

20. Articles of incorporation or the charter for the school's foundation.

Dr. Carlson visited all eight universities and met for at least an hour with each class. Prior to her sessions, the professors for those classes – Jeff Johnson at Georgia State, Tony Morris at Armstrong Atlantic State, Joshua Azriel at Kennesaw State, Dale Cohen at Emory, Steve Stepanek at Georgia Southern, Jay Black at Mercer, Judith Rosenbaum-Andre at Albany State and Barry Hollander at the University of Georgia – each lectured on the Georgia Open Records Act, the First Amendment and the general issue of access to government information. During Dr. Carlson's training session, the students went over the 20 records to be sought and discussed where to find them, learned how to write a formal open records request letter using the template on [www.gfaf.org](http://www.gfaf.org) and learned step-by-step how to go about making a request in person.

After they chose or were assigned a record, each student had to determine the name and location of the holder of their record. Then they wrote a letter requesting the specific record. They were instructed to take the letter with them when they visited the record-holder's office, although a handful obtained their record after only a phone call or an email. At the record-holder's office, they asked for the record first and identified themselves only if asked. If asked why they wanted the record, they were instructed to say they were simply a student seeking the record for a class assignment. They handed over the letter only if asked for the request in writing or if asked for contact information, which they had included in the letter.

The students made their public record requests during the last three weeks of October 2008, with a few stragglers making their requests during the first two weeks of November 2008.

Of the 121 records sought, 49 were obtained on the first and only visit (41 percent) – most students had to make two or three or more contacts with the agency before they received their record. For most (81), at least, the first visit was short, lasting 15 minutes or less – they went in, asked for the record, were told they’d have to come back after the record was found, left their letter and left. They were usually then contacted by email or telephone when the record was ready for pick-up and then went back to the record-holder’s office to retrieve the record.

After the students followed through on their records request, they posted their results on a web site operated by the Georgia First Amendment Foundation. They entered information such as the type of record, county or university, record fee, time for compliance, and a narrative of their overall impression of their experience. Their professors monitored to make sure all the students, who received grades for participating in the project, actually retrieved the records and filed their reports on the web site. The professors gathered the hard copies of the records and correspondence and shipped them to the Georgia First Amendment Foundation. The web site served as the online repository for the data. Dr. Carlson compiled and analyzed the data, aided by the hard copy when necessary.

In total, slightly more than 65 percent of all records were successfully audited including the following:

- 73 percent of county commission records



- Copies of open records requests received by county commission in last 30 days - 3 of 6
- County commission affidavits last three executive sessions - 5 of 7
- County commission chair's expense reports for last five out of town trips - 6 of 8
- County commission latest approved meeting minutes - 5 of 5
- 42 percent of county police records
  - Complaints against county sheriff for police brutality during last 12 months – 3 of 6
  - County jail log for previous day – 3 of 7
  - County sheriff's (police) mug shots for previous day (with identification) – 3 of 6
  - County sheriff's (police) incident reports for previous day – 2 of 7
- 76 percent of other county departments
  - Fire reports for the last two fires fought by the fire department – 6 of 9
  - The last two applications by utility companies for utility encroachment within the public right-of-way – 6 of 7
  - The last two county food service permit applications received by the health department – 6 of 9
  - The last two county swimming pool permit applications received by the building department – 8 of 9
- Nearly 70 percent of the university athletic records

- A list of the number of students currently attending the school on a full or partial athletic scholarship by sport - 3 of 6
- Any document or report containing attendance records for men's basketball games during the 2007-2008 season - 4 of 4
- The coaching contract for the school's men's head basketball coach – 4 of 5
- The employment contract for the athletic director – 3 of 4
- The revenue and expenditures for men's basketball in the 2007-08 season (most recent version) – 2 of 4
- 75 percent of university foundations records
  - Articles of incorporation or the charter for the school's foundation – 4 of 5
  - Expenditure report of the school's primary foundation for the 2007-08 fiscal year (most recent version) – 2 of 3
  - Revenue report of the school's primary foundation for the 2007-08 fiscal year (most recent version) – 3 of 4

In all, 26 record-holders were in non-compliance with the Open Records Act on 42 record requests, which is 35 percent or one-third of the requests.

- 34 times they simply withheld the records
- 4 times they charged too much (\$70-\$150)
- 4 times they took too long
- Sometimes they were in non-compliance for more than one reason

Several record holders procrastinated and strung the students along well past three days and in the end still didn't give them the records. A few tried to scare the students off

by telling them that the records they asked for would cost \$70, \$100, \$150 – forcing the students to withdraw their request because they couldn't afford the fees. Often these exorbitant fees would come up long after the three-day time limit had expired. However, in general, most record-holders complied with the law as far as the fees were concerned -- 55 students received their record free of charge and most others were under \$10.

### **Student Experiences:**

The student journalists participating in the first Georgia Student Sunshine Audit faced obstacles just like professionals. Evasion, delays, fees as high as \$150, outright refusals to deliver documents and even complaints to university officials obstructed student record searches. Students were grilled on the purpose of their record requests. Although a number of students reported polite encounters with officials, many were taken aback by rude treatment, discouragement from obtaining records and limited knowledge of public records access among officials and their staffs. Across the board, police, sheriff and fire departments presented the strongest resistance.

Viviana Arboleda, an Emory University journalism graduate who participated in the survey during her senior year, had to make four requests before receiving her records from the DeKalb County police department. After two failed attempts, she pared back her records request, but to no avail. She finally located a helpful police officer who printed the records on his office computer.

“They were trying to avoid all possible ways for me to get a public record,” the senior said in an interview with *Emory Report*, an internal campus publication. “It became a goal of mine more than a class project to get those documents.”

Ashley King, a Georgia Southern University student, wasn't as lucky with the Bulloch County sheriff's office. Her quest to obtain the county sheriff's jail log involved repeated visits and pleas to skeptical clerks and officers. She was finally refused in a terse note from the sheriff's office: “Due to sensitive information in the jail list, I cannot release

them to the public.”

Police and sheriff’s officials disrupted student records requests at various levels. Heren Richardson of Georgia Southern was subjected to an “interrogation” upon asking for sheriff incident reports in Screven County. Officials wanted to know who she was, why she wanted the records, which class they were for and who the professor was. On top of that, she had to produce her ID card. Screven sheriff’s officials provided Crystal Jones, also of Georgia Southern, booking details instead of the mug shots she sought. Jones observed the agency “should be more careful when it comes to reading a request and abiding by what the citizen wants.”

Aditya Shajikumar, a student at Mercer University, was asked why he sought police brutality complaints during his first visit to the Bibb County sheriff’s department. The inquiring officer said he wanted to make sure no random “Joe Blow” can access the information. A sheriff’s clerk parried the request, explaining there is no police brutality in Bibb County. Shajikumar finally was offered the records for a \$108 copying fee. The sheriff followed up with a complaint letter about the student and his instructor, Jay Black, to the Mercer University president.

Universities also threw up roadblocks. Hannah Morris of Armstrong Atlantic State University was denied the employment contract for her school’s athletic director. No such records for university athletic directors and coaches exist in the state of Georgia, one official told her, although other universities readily handed their athletic director contracts over. Mable Swindell, her classmate, also encountered barriers in the Armstrong Atlantic athletic department. Swindell had sought a list of students on partial and full scholarships but eventually received only the number of students. “The experience was very eye-opening,” noted the student. “Most people who handle many public records do not even know they are allowed to give them to the public.”

The Savannah Fire Department denied Lindsay Webb, an Armstrong Atlantic student, routine fire reports for insurance claim reasons. Andrew Felson of Georgia State University was ordered to leave the Fulton County fire department headquarters when he

placed his records request. Felson told an inquiring officer he needed them for a class assignment. “He then flat out told me no. That they ‘Do not give that information to just anyone,’ and then asked me to leave.”

Salina Cranor, another Georgia State student, encountered difficulties with the department of health in Fulton County. Repeated visits and requests to various health officials eventually would have produced the records, she reported. But that was only after a week of effort, much later than the three-day deadline for officials to meet a record request. Michael Overmier, a Georgia Southern student, faced a similar run-around when he sought food service permit records from the Bulloch County health department.

For many students, the audit provided teaching moments on the fragility of the citizen’s right to know and the realities of public access in Georgia. Their experiences underscored the need for persistence in obtaining information from many officials. And they highlighted the central role of journalists in ensuring that government remains open.

“It just goes to show that you have no rights unless you remind the powers that be that you have them,” Overmier, the Georgia Southern student, concluded.

### **Conclusion:**

The results from the students’ efforts appear generally consistent with the open records requests reported to the Georgia First Amendment Foundation in its daily operations.<sup>1</sup> For example, while GFAF logs a variety of complaints pertaining to very specific county records, *i.e.* bids on county projects, typically county commission minutes and affidavits are either posted online or readily released to the requestor.

In terms of county police records, the 2 of 7 incident report finding is also unfortunately, consistent with GFAF’s experience. Over the last year and a half, GFAF has received complaints about access to police incidents reports. During the last decade, this particular record has been considered a classic open record pursuant to O.C.G.A. § 50-18-72(a)(4); in other words, few jurisdictions have withheld the record or even given

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<sup>1</sup> It is worth noting that GFAF usually only hears reports of problems. In other words, to the extent an open records request is successfully fulfilled, GFAF is unlikely to hear about it.

the requestor any difficulty in obtaining it. However, GFAF has received complaints regarding at least two jurisdictions in the last year -- indicating trouble accessing these records. While each of the two police agencies claimed that its efforts to place more information online led to a delay in release of the information, still this is a new problem area generally.

Jail log release pursuant to O.C.G.A. § 42-4-7 also has had a checkered release in GFAF's experience. Therefore, the 3 of 7 release rate was not surprising. However, the mixed response in terms of release appears often to stem from confusion, not an unwillingness to disclose. This may in fact result from the fact that the disclosure statute for jail logs is not codified in the state's open records act, O.C.G.A. §§ 50-18-70 *et. seq.* but rather in the criminal code statutes.

The students' reported results for university foundation records were surprising to GFAF. University foundation records have typically been a problem area, particularly university foundation records. At the legislature in 2005, GFAF fought hard, but failed, to stave off an additional exemption from disclosure for university foundation records. *See* 2005 House Bill 340 now codified at O.C.G.A. § 50-18-72(a)(19). While of course this exemption pertains to donor information, still it was encouraging to see ready release of university foundation information and the regularity of on-line posting of such information.

Similarly, the release of university athletic information was surprising and encouraging to GFAF. The historic resistance by schools to public records' release, generally, led in part in 2007 to GFAF's publication of *Georgia's Public Schools and the Open Records Act: A Citizen's Guide to Accessing School Records*.

High costs, out of compliance with O.C.G.A. §§ 50-18-71©)(d)(e), also replicates the experience of GFAF. However, with the guidance of GFAF, requestors generally have more of an opportunity to revisit the public agency and ask for an itemized break-down of the costs to be charged for a public record. Given the limited window by students in this exercise, it is unknowable what would have happened had the students had all semester to challenge public records' custodians on fees.

Lastly, Georgia's open records act mandates that "records maintained by computer shall be made available where practicable by electronic means, including Internet

access.” See O.C.G.A. § 50-18-70(g). This portion of the open records law passed in 1999, obviously as a result of technological advances. This project shows mass movement of all agencies towards Internet availability for public records.

In sum, the results from this exercise parallel the results logged by GFAF in its daily operations. Some of the results actually are more encouraging than those seen by GFAF on a daily basis. However, where the law appears to short-change open records requestors is in terms of the general experience experienced by the students. Too many students reported being intimidated by the records custodians; too many students reported having to circumvent regular channels to procure records, *i.e.* by way of a personal connection.

The efforts to deter students, even if unintentional, by records custodians likely reflects an unfamiliarity with the law, as opposed to any willful effort to withhold information. The penalties in Georgia’s law are inconsequential; therefore, records custodians have little incentive to acquaint themselves with the open records laws. Other states have mandatory open government training and this is one avenue that GFAF may wish to explore.

Regardless of how Georgia addresses improvements in its open records laws, still, the students learned a valuable lesson from the experience. Finally, it will be interesting to see if the results from the prospective part two of this project all parallel the results logged by GFAF in its daily operations. The follow-up study is planned for spring 2010 in various cities and urban, suburban, and rural counties. The results will be compared with those from fall 2008 and will serve to enlarge the overall data that reflects compliance in state open records laws.