

2010 Georgia Student Sunshine Audit:

Testing Statewide Compliance of the Georgia Open Records Act

November 10, 2010

Carolyn S. Carlson, PhD
Hollie Manheimer, JD, MA
Sheila Tefft, MSC
Joshua Azriel, PhD

The Georgia First Amendment Foundation received funding for this project through the National Freedom of Information Coalition and through a grant from the John S. and James L. Knight Foundation. Established in 1950, the John S. and James L. Knight Foundation makes national grants in journalism, education, and the field of arts and culture. It also supports publishing organizations in communities where the Knight brothers were involved in publishing newspapers but is wholly separate and independent from those newspapers.

Thanks to Alvin Grissom, who provided IT support to the project.

Georgia university journalism students undertook a second statewide public records audit in 2010 and recorded a higher rate of success in obtaining public records than in the first student audit in 2008. Students requesting an array of city, library, school board and public university records obtained 80 percent of the requested documents. That compares with a 65 percent success rate in the first audit in 2008 that tested access to county, public university athletic and university foundation records.

The two audits, undertaken by journalism students from universities across Georgia, were part of an effort to test compliance of the Georgia Open Records Act and to educate students in their rights and the process of requesting and obtaining an open record. Federal and state courts have interpreted the First Amendment provision that “Congress shall make no law...abridging the freedom of speech, or of the press...” and extended wide latitude to the press to pursue its reporting and investigative missions. Constitutional experts, including former U. S. Supreme Court Justice Potter Stewart, have endorsed the role of the press as a check on government power under the First Amendment.

The Georgia Open Records Act is one of the laws all 50 states have protecting citizen access to government records. Courts have repeatedly ruled in favor of the press’s rights to access state records if they do not invade someone’s privacy. With some exceptions, journalists in Georgia have the legal right to inspect and copy state, county, city, and public school records.

The 2008 and 2010 audits were updates of a 1999 audit sponsored by the Georgia First Amendment Foundation. The 1999 audit involved professional journalists and was coordinated with several newspapers across the state. In 2010, students from seven universities in the state—Albany State, Emory, Georgia Southern, Georgia State, Kennesaw State, Savannah State and the

University of Georgia—conducted 121 audits of city, library, school board and university records. The Georgia First Amendment Foundation sponsored the project.

Cities included in the audit were Albany, Metter, Athens, Sylvania, Clarkston, Decatur, Kennesaw, Atlanta, Watkinsville, Savannah, Thunderbolt, Athens-Clarke County, Sandy Springs, Dacula, Lawrenceville and Stone Mountain. Records were sought from 13 colleges and universities, including Albany State University, Armstrong Atlantic State University, Savannah College of Art and Design, Savannah Technical College, Kennesaw State University, Georgia Southern University, Georgia Perimeter College, University of Georgia, Savannah State University, Georgia State University, Emory University and Agnes Scott College.

While the 2010 audit resulted in an overall higher success rate, one in five responses to record requests were non-compliant with the state law. Record custodians failed to meet state open records requirements by refusing or ignoring records requests or charging unreasonable fees. Students also faced a persistent pattern of inquiries about reasons for the record requests. At times, the custodians' insistence bordered on intimidation or resulted in denial of access. Almost half the students were asked the reasons for seeking records, and 40 percent were asked to disclose if they were students or about the nature of their work. The Georgia Open Records Act does not require or allow custodians to ask requesters for their reasons or personal information.

Based upon continuing non-compliance in Georgia, the organizing committee recommends changes and clarifications to the existing law. The committee includes Dr. Joshua Azriel, Kennesaw State University; Dr. Carolyn Carlson, Kennesaw State University and project coordinator; Sheila Tefft, Emory University, and Hollie Manheimer, Georgia First Amendment Foundation. The recommendations are:

- The records custodian should not ask for the identification of the records requestor;

- More training in complying with the public records law is needed statewide;
- The Attorney General's office should collect an audit every year from state agencies who report the number of record requests and the number granted and denied;
- The law should be more specific about assisting requestors with electronic records since not everyone has access to the Internet;
- The law should specify that drafts are considered a public record.

Methodology and Summary of Results:

In fall 2009, Dr. Carlson conducted a pilot project in Forsyth County accessing various city, school and library records. Dr. Azriel conducted a pilot project asking for various records at Georgia Tech. The results from these pilots served as a template for training the students to obtain records from across Georgia.

As a result of the pilot projects, the following records were selected for inclusion in the 2010 audit:

City records

1. Mayor's travel expenses for the last time he or she filed for travel expenses
2. Mayor's public calendar for Monday-Sunday of the next week
3. Two most recently filed business license applications
4. Two most recently filed sign permit applications
5. Most recent drinking water analysis in layman's terms

Library records

6. Summary of annual budget for current fiscal year

7. Minutes from last library board meeting

School board

8. School superintendent's current employment contract
9. Minutes from the last school board meeting

University records

10. Police incident record for the most recent incident in the police log to have resulted in an arrest (requested of both private and public colleges and universities)
11. Copy of the annual contract with the school's primary food vendor for catering
12. Employment contract for the university president
13. Current budget for the school newspaper
14. Minutes for the most recent faculty meeting of the English Department

Dr. Carlson visited seven universities and met for at least an hour with each class. Prior to her sessions, the professors for those classes – Marion Meyers at Georgia State, Jeremy Redmond at Kennesaw State, Dale Cohen at Emory, Steve Stepanek at Georgia Southern, Jianchuan Zhou at Albany State, Carmen Manning-Miller at Savannah State and John Greenman 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 reviewed the 14 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 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 custodian'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 first ask if they needed to supply that information in order to be helped and to point out that the law did not demand they supply the reason they wanted the record. If pressed, they were told to say they were simply a student seeking the record for a class assignment. They were to hand 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 April 2010, with a few stragglers making their requests during the first two weeks of May 2010.

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 records), at least, the students' 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, the county or the university where the record was located, record fee, time for compliance, and a narrative of their overall impression of their experience. They were asked if they received the document and, if not, for what reason they were denied. They also reported if they had been asked why they wanted the document and what their job was or whether they were students. 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 80 percent of all records were successfully audited including the following:

- 83.67 percent of city records
 - Mayor's travel expenses for the last time he filed for travel expenses – 12 of 14
 - Mayor's public calendar for Monday-Sunday of the next week – 9 of 12
 - Two most recently filed business license applications – 4 of 7
 - Two most recently filed sign permit applications – 9 of 9
 - Most recent drinking water analysis in layman's terms – 7 of 7
- 90.9 percent of library records
 - Summary of annual budget for current fiscal year – 5 of 6
 - Minutes from last library board meeting – 5 of 5
- 75 percent of school board records
 - School superintendent's current employment contract – 5 of 8
 - Minutes from the last school board meeting – 7 of 8
- 69.44 percent of university records
 - Police incident record for the most recent incident in the police log to have resulted in an arrest – 7 of 11
 - Copy of the annual contract with the school's primary food vendor for catering – 4 of 7

- Employment contract for the university president – 4 of 6
- Current budget for the school newspaper – 6 of 6
- Minutes for the most recent faculty meeting of the English Department – 4 of 6

In all, 24 record requests were in non-compliance with the Open Records Act, which is 19.8 percent or one-fifth of the requests.

- One custodian charged too much (\$150), one took too long (more than the three days prescribed by law) and the rest simply withheld the records.
- Of those who withheld the records, half ignored the request or gave no response, two claimed that clearly existing records did not exist and the rest simply said no.

All but one record-holder complied with the law as far as the fees were concerned -- most students received their record free of charge and most others were well under \$10. And most were quite prompt in complying with the record request – 49 gave the students their record immediately, with 16 giving up the record after only one day, 9 after two days and 11 after the legally allowed three day limit.

Despite no provision in the law requiring or even allowing them to do so, records custodians asked almost half the requesters why they wanted the records (47.3%). More than half of the custodians who were not in compliance with the law – 13 out of 24 – asked the students why they wanted the records and then denied them access to the records.

Slightly fewer custodians (40.2%) queried if the requesters were students or asked what their job was or whether they were news media. Of these, 10 of the 24 denied the students the record.

Student Narratives

Student participants, in their narrative reports, said those officials who denied their requests impeded their searches with intimidation and stalling tactics. A number of students

reported positive experiences in dealing with officials and obtaining records with little obstruction. Several said they felt officials were trying to be friendly in asking why requests were presented.

Others, though, had to make repeated visits to city offices, school boards and university departments and faced challenges in locating the appropriate agency and officials. These participants were asked repeatedly why they sought the record. School employment contracts, police incident reports, campus food vending contracts, and minutes of university faculty meetings proved the most problematic audits.

Police response to public record requests continued to be skeptical and difficult, according to the second audit. In the 2008 survey, law enforcement and fire agencies posed the strongest resistance to records requests. Darah Protas and Peter Rasmussen, two Emory University seniors, faced uphill struggles to obtain incident reports from Agnes Scott College and Emory respectively. Both were initially told private universities did not have to disclose such information, although state law was changed in 2006 to make private college police records public information.

Seeking the most recent arrest record at Agnes Scott, Protas resisted when presented with a five-year-old record. The college safety official said “he had complied with the request by giving me a record and I told him, again, that it wasn’t the document I had requested. He became defensive and said that he didn’t want to be roused and that he didn’t have to comply with the Open Records Act and that he was doing me a favor by giving me the document,” Protas reported. “I told him that official Georgia code says campus police records are open records,” she added.

James Cochran, a student at Savannah State University, was denied a police incident report at the Savannah campus of the private Savannah College of Art and Design. Police officers grilled him on the reasons for his request and then denied it to avoid releasing personal information. “A police department is a very uncomfortable place to be,” Cochran observed.

Stephen Clay Duda of Georgia State University ran afoul of Atlanta Public School administrative office security guards in trying to obtain a copy of the school superintendent’s employment contract. He was told there was only one official—absent that day—to handle his request, and eventually was asked to leave by the angry guards. Persevering, he eventually obtained his record.

Robert Carnes of the University of Georgia wasn’t so fortunate. After delivering a letter and requesting the superintendent’s contract for the Clarke County school system, Carnes was asked if he was a student and was told a school attorney would have to scrutinize his letter before any record would be released. He was never contacted.

Shaniqua Christian of Georgia State University encountered an evasive, guffawing official when she sought a copy of the Fulton County Library budget and then was ignored. On a return trip, she was told the official wasn’t in that day, although she had seen him enter his office.

Audit participants also found academic departments at public universities hesitant to cooperate. Although some students did succeed in obtaining minutes of a faculty meeting after a struggle, Christina Womack was denied her request by the chair of the English Department at Savannah State University.

“I spoke with the administrative assistant for the English Department Chair via messenger. I requested the document. He denied me and said it is not open to the public,” she related.

“I explained to him I had the right to see the document. He then asked me why I needed the document. I explained I (was) doing research. He said he would get back to me. I'm still waiting to hear back from him...”

Requests for a university's contract with its primary food vendor were met with skepticism. Some schools have contracts with just one food vendor while others contract out to several vendors. Shtayvia Brown, a student at Savannah State University, reported difficulty obtaining the food vendor contract at Armstrong Atlantic University.

A university employee confronted the student “in a very unprofessional manner” and insisted she submit a valid reason for the request. Discovering that Brown attended another school, she urged the student to obtain the contract from her own university.

“I then told her that to my knowledge she is required by law to give me these documents and I would be more than happy to submit a formal document requesting this copy,” the student related. “She then got very upset and said, ‘Well then, you have to email me a public records request and this is expensive because you will have to pay for the copies and for the price of my labor because I would need to find it.’”

She eventually succeeded in obtaining only part of the contract.

A few students were referred to records online in lieu of being given a hard copy. Julie Levin, a student at Emory University, was given a web link by the Dekalb County Department of Watershed Management for a recent drinking water analysis. While the department was

compliant in the request, according to Levin, the web site only contained water analyses from 2008-09, none from 2010. A promised email from the record custodian was never sent.

“She also said she could email me a copy of her own report on the water. She then asked me for my email address and my name and also asked if I needed the document for a class project. I told her I did and she said she'd be happy to send it,” she recalled. “I never received the email from her and got no answer when I called the same number on two subsequent occasions.”

Cobb County's water analyses are in PDF files posted online. Kennesaw State University student, Adrienne Cloud, reported county officials told her water analyses do not exist in paper form but are posted online. Since the record exists online, the department was compliant.

“When I asked about a physical copy, they continued to tell me that the physical copy was online and that they do not need to provide copies of information that can be accessed through their web site,” the student said. “I did not argue with them over this because they seemed set in their ways, and accessed the information online. I did leave them my request letter to see if at some point they might actually supply me with a physical copy.”

Minutes from the Fulton County School Board are also posted online. Georgia State University student Nathan Stewart was instructed to visit the school board's web site to obtain minutes from the most recent school board meeting. According to Stewart, the school board's communications coordinator was helpful in directing him to the correct web site and was therefore compliant in the request.

“She did, however, offer to provide the web address where the February minutes, and eventually the March minutes, are located. I gave her my GSU email address and she sent me the URL as promised immediately. She was extremely helpful and friendly,” he said.

Ashleigh Martin, then a junior at Georgia Southern University, had a productive and personable exchange with the mayor of Metter. She requested a copy of the mayor's calendar, which he reviewed for her.

"We talked about Atlanta, where he was headed for a few days, and his daughter's birthday the following Sunday. He thanked me for coming over and (for) my interest in his career," she related. "Afterwards, he walked me back out to the lobby. I said goodbye to the secretary and left. It took about 25 minutes simply because the mayor chatted with me for so long."

The Clarke County School Superintendent's office was non-compliant in a record request for the superintendent's employment contract. UGA student Robert Carnes was never contacted by the office after delivering a letter request the superintendent's assistant:

"Upon hanging up, Seagraves informed me that I should leave the letter with her so she could give it to McNamara who would handle my request. She then put a time stamp on the letter to confirm when I visited. I asked to speak to McNamara and she motioned to another phone on her desk and told me the extension number, which I dialed. I asked McNamara if she had an estimated time or cost it would take to process the record. She said that she did not. McNamara explained that they would have to take my letter to their attorney before they could make me a copy of the record. I thanked her and hung up. Before I left, Seagraves asked if I was a student, but I suspect that was only a casual conversation. I answered yes because it would have been rude and suspicious not to have done so. Since, I have not been contacted by the office via either e-mail or telephone."

Conclusion

Technology, and how the Georgia Open Records Act responds to its advances, was a core thread in this year's audit. For example, many students, upon requesting their public records, were told that they were available online. Does this constitute adequate compliance with the state's Open Records Act?

The Georgia Open Records Act instructs that records shall be made available where practicable. O.C.G.A. § 50-18-70(g). Additionally, the act provides that no new fees shall be assessed where records are made available electronically. O.C.G.A. § 50-18-71.2. But a custodian who merely directs a requestor to the Internet is not sufficiently compliant with law. The Open Records Act requires an affirmative response by the records custodian, even though it seems completely reasonable to give the requestor the option to go online. *See generally* O.C.G.A. § 50-18-70(f); 50-18-72(h). Moreover, the state's Open Records Act instructs that records may be made available electronically, including by way of the Internet, only if asked by the requestor. *See* O.C.G.A. § 50-18-70(g). An affirmative response by the open records custodian adequately meets the needs of those who do not have Internet access.

One troublesome pattern generated throughout the audit is the lack of a response from records custodians at all. Compliance with the state's Open Records Act is not optional. *See* O.C.G.A. §§ 50-18-73, 50-18-74. In fact, the act lists an array of penalties for failures to comply, including both civil and criminal actions. *Id.*

The problem, of course, is enforcement, and the state attorney general's office, which has jurisdiction over the act, may be particularly well suited to respond to situations where there is a complete failure by the agency to respond. *See* O.C.G.A. § 50-18-73(a). The **A**ttorney **G**eneral's office typically initiates a mediation process, whereby it asks each party to the dispute

to explain its reasoning. Often, even a simple initial letter from the attorney general's office, or from another agency not party to the dispute (such as GFAF) is enough to generate a response by the agency.

Another troublesome pattern is the frequent custodian questions about requestors' purpose in seeing the record. Some instances may have simply been casual conversation, but others appeared to be serious barriers thrown up by custodians who subsequently denied access to the records. There is no provision in the law that allows such an inquiry.

Under [the Open Records Act], a citizen of Georgia seeking an opportunity to copy and inspect a public record **need not show** any special or personal interest therein.

Northside Realty Associates, Inc. v. Community Relations Commission of Atlanta, 250 Ga. 432 (1978) (emphasis supplied); *see also* Op. Att'y Gen. U88-33 ("The issue of who has access to records under the Open Records Act does not depend upon the identity of the requesting party or the purpose for which the records are sought."). It is important to remember that in Georgia, openness is the rule, closure the exception, and the state's courts have discouraged public agencies from adding barriers to access. *See McFrugal Rental of Riverdale, Inc. v. Garr*, 262 Ga. 369 (1992); *Athens Observer, Inc. v. Anderson*, 245 Ga. 63 (1980). Any failure to disclose or release records by a public agency should be as narrow and as limited as possible. *See Hardaway Company v. Rives*, 262 Ga. 631 (1992).

Resistance by public agencies to open records requests continues to frustrate requestors and GFAF. In one instance unrelated to the audit, a county school superintendent responded to student requests for public records by sending their instructor with his own massive open records request seeking information from that public university professor. Unlawful, no, but it shows us the need for additional and continued training on open records matters. Compliance with open

records requests is not an “additional” duty of public agency employees, but an established responsibility of the job.