

April 11, 2018

BY EMAIL AND U.S. MAIL

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Re: Atlanta Journal-Constitution's and WSB-TV's Request for Mediation Regarding
Systemic Open Records Act Violations by the City of Atlanta

Dear Mr. Carr, Mr. Dunn, and Ms. Colangelo,

We write on behalf of the Atlanta Journal-Constitution and WSB-TV to request that the Attorney General initiate a formal mediation process to address the City of Atlanta's systemic violations of the Open Records Act.

Introduction

Over the course of the last several years, the City of Atlanta has repeatedly failed to comply with the Open Records Act. City officials have intentionally delayed the production of public information that they deemed politically sensitive or inconvenient. Even typical requests for readily available public records often go unfulfilled for weeks—or, in some cases, months—because of a pervasive culture of non-compliance.

For more than six months, both legal and business representatives of the AJC and WSB-TV have attempted to address these issues directly with Atlanta officials. Those private efforts failed. Therefore, we believe the intervention of the Attorney General is necessary to fashion a resolution that achieves meaningful reform and sustained future compliance.

This letter begins by detailing recent revelations of political interference with record requests from the AJC and WSB-TV. We then describe other examples of Open Records Act violations experienced by the AJC and WSB-TV. Finally, we outline the type of relief that we

hope to achieve through the mediation process—specifically, (i) the establishment of an independent public records office to protect public records requests from political interference; (ii) the commitment of resources and training to facilitate the timely production of public records; and (iii) monitoring and enforcement measures to ensure future compliance.

I. A Culture of Political Interference with Open Records Act Requests

Since 2016, reporters at WSB-TV and the AJC have experienced unusual delays and other obstructions to records requests made to the City of Atlanta. While this complaint is specific to the AJC and WSB-TV, we understand that our experience is not unique. Unlike other city and municipal governments, the City of Atlanta often directs WSB-TV and AJC reporters to submit records requests directly to the mayor's press office or to politically-appointed communications personnel. Recent revelations illustrate that public officials have interfered with, caused delay in, or intentionally obstructed the production of public records—particularly when WSB-TV or the AJC sought public information that city officials perceived as politically embarrassing or inconvenient. We provide several examples below.

Water Billing Records of City Officials

WSB-TV recently learned that, in the spring of 2017, the former press secretary for the mayor instructed a colleague to intentionally delay and obfuscate in response to a request from WSB-TV for the water bills and payment histories of city officials.

On February 28, 2017, after receiving a tip that certain Atlanta city officials had failed to pay their water bills, WSB-TV producer Terah Boyd requested the water billing records for five addresses associated with members of the Atlanta City Council. *See* Ex. 1 at 9-10. Ms. Boyd sent the request to Lillian Govus, then the director of communications and community relations for the Department of Watershed Management. Shortly thereafter, Jenna Garland, then the press secretary in the mayor's Office of Communications, sent text messages to Ms. Govus instructing her to intentionally delay and obscure the City's response to WSB-TV's requests:

Garland: I talked to Terah. She said they got tips coming into a few different places in the newsroom. And that she didn't have any idea of what she was looking at. So I would **be as unhelpful as possible**.

Govus: Finally! An easy request!

Garland: **Drag this out as long as possible. And provide information in the most confusing format available.**

See Ex. 2 at 5-6 (emphasis added).

On March 21, 2017, Ms. Boyd submitted a separate request to Ms. Govus for the water billing, payment, and usage records for 13 additional addresses associated with members of City Council and Mayor Reed. Ex. 1 at 14-15. Ms. Govus responded that the records would be available by April 7. *Id.* at 14. However, on April 7, 2017, the mayor's press secretary, Ms. Garland, again instructed Ms. Govus to delay production of the records: "**Hold all the council docs until Terah [Boyd] asks for an update.**" See Ex. 2 at 8 (emphasis added). The City of Atlanta apparently terminated Ms. Govus's employment the next business day, on April 10, 2017. The City did not produce the records until April 14, two days after WSB retained legal counsel and sent a formal legal demand. See Exs. 1 & 3.¹

The City's intentional delay violated the Open Records Act. The water billing records, which were available at the time the requests were made, should have been provided within three business days. See O.C.G.A. § 50-18-71(b)(1)(A) ("Agencies shall produce for inspection all records responsive to a request within a reasonable amount of time not to exceed three business days of receipt of a request. . . ."). Instead, at the express instruction of the mayor's press secretary, the City intentionally delayed producing these records for several weeks. During the period of time that the City delayed in providing the records, certain City officials paid their overdue water bills. See, e.g., Ex. 4 at 1, 8 (showing payments and adjustments of overdue balances between March 21 and 28, 2017, the week following WSB-TV's requests). Thus, the City delayed in providing available public records with the apparent purpose of *preventing* the public of learning of the overdue status of certain city officials' water bills until they made payment.

Former Mayor Reed's Use of City Funds for Personal Purchases

Another example of political interference with a media records request occurred very recently. Just a few weeks ago, the AJC uncovered evidence suggesting that the City may have delayed in responding to a records request to allow time for former Mayor Kasim Reed to repay the City for his personal use of government funds.

On July 27, 2017, AJC reporter Dan Klepal requested records relating to the City's Chief Financial Officer J. Anthony "Jim" Beard's government issued "P-Card," which is a charge card used to make government-business expenditures. See Ex. 5 at 3. On August 1, Ms. Garland responded that the City would charge \$240 to produce the records. *Id.* at 2. Mr. Klepal agreed to the charge. *Id.* Nevertheless, the City failed to produce any records responsive to the request for the next six months.

¹ WSB-TV published several news reports on this incident. The first news report was aired on March 15, 2018. See <http://www.wsbtv.com/news/local/atlanta/drag-this-out-texts-reveal-reed-administrations-effort-to-keep-public-records-from-wsb/713133598>.

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On January 26, 2018, Mr. Klepal renewed his prior request, but expanded the request to include former Mayor Reed's "P-Card" expense receipts. *See id.* at 7. On January 31, Jenna Garland responded that the documents would be provided by February 16. *Id.* at 5-6. Ms. Garland failed to produce the records on February 16. *Id.* at 6. After Mr. Klepal requested an update, Ms. Garland responded on March 6 that Mr. Beard's records were available, but former Mayor Reed's records would not be ready until March 19. *Id.*

When Mr. Klepal received the City's production on March 19, he realized it included six checks—totaling more than \$11,800—from former Mayor Reed to reimburse the City for personal purchases made from 2015 through 2017 on his government-issued P-Card. Ex. 6 (excerpt of City's March 19, 2018 record production). The checks were all dated March 9, 2018—two weeks after the AJC requested the records. *Id.*

Ultimately, the City delayed for more than *seven weeks* before providing the requested records, even though most of those records were apparently available on January 26, 2018, the day Mr. Klepal made his request for former Mayor Reed's P-Card receipts. All records available on the day of the request should have been produced within three business days. The only records that were not available on January 26 were the six checks written by former Mayor Reed on March 9. The City did not provide any explanation for why it delayed seven weeks before producing the requested records. One thing that is certain is the seven-week delay provided time for former Mayor Reed to repay the personal expenditures—which he did just ten days before the City produced the requested records.²

Baker Donelson Invoices Relating to Federal Bribery Investigation

Besides routinely delaying in providing records, the City also often interprets the Open Records Act in ways that are divorced from its core meaning. One recent example involves the City's Law Department. In response to a request for legal invoices, the Law Department directed the creation of a new set of invoices to avoid publicly disclosing original records that exposed an unusual billing practice. Contrary to the Open Records Act, the Law Department did not disclose that it had withheld the original records nor that the records it produced were in any way different from the original records.³

In July 2017, the AJC requested invoices transmitted by Baker Donelson for legal work performed for the City of Atlanta relating to a federal investigation into potential bribery by city

² This incident was the subject of news reporting by the AJC. The first report was on March 28, 2018. *See* <https://www.myajc.com/news/local-govt--politics/kasim-reed-repays-12k-after-ajc-asks-for-his-city-credit-card-bills/vXq7zht7E0wy1NSiIz8ydN/>.

³ The AJC reported on this issue on March 9, 2018. *See* <https://www.myajc.com/news/local-govt--politics/ajc-experts-question-atlanta-handling-legal-bills-bribery-case/t6ggd8z6lI5kNLZaPFO3kN/>.

contractors. *See* Ex. 7 at 2. The City initially estimated that the request would take 45 days to fulfill. *Id.* at 4. The AJC asked why it would take so long to gather invoices, which were presumably readily available. *Id.* at 7. In response, Jenna Garland attributed the delay in part to the volume of records requests sent to the City: “As we have communicated to the AJC and WSB before, the City has recently received a large volume of open records requests.”⁴ *Id.* at 9.

More than two months later, on November 3, 2017, the City Law Department produced certain invoices apparently prepared by Baker Donelson. *See* Ex. 8. But the Law Department did not state that it had withheld the actual, original invoices or that it was creating summaries of responsive information. To the contrary, the cover letter accompanying the documents described them as “invoices” and did not state that any responsive records had been withheld. *See* Ex. 8 at 1. It was not until months later—when an AJC reporter obtained the actual, original invoices (by requesting them by specific invoice number)—that the AJC discovered discrepancies between the two sets of invoices. *Compare* Ex. 8 with Ex. 9. When asked about the discrepancies, the Law Department explained that, in order to reduce the chance that someone else within the City would learn of the scope, nature, or subjects of the DOJ investigation, the City had asked Baker Donelson to bill time on the DOJ investigation to a different matter involving an ongoing lawsuit. *See supra* note 3.⁵ The Law Department also acknowledged that, in response to the AJC’s request in July, the City had created a “summary” document that omitted certain information (including the matter description and time entries associated with the ongoing lawsuit) for the AJC’s purported “convenience.” *Id.*

The City’s failure to disclose that it withheld responsive records violated the Open Records Act. The Act requires that, “[i]n any instance in which an agency is required to or has decided to withhold all or part of a requested record, the agency shall notify the requester of the specific legal authority exempting the requested record or records from disclosure by Code section, subsection, and paragraph within a reasonable amount of time not to exceed three business days. . . .” O.C.G.A. § 50-18-71(a). However, as set forth above, when the City produced the first set of records in November 2017, the City characterized the documents as “invoices” and did not inform the AJC that it was withholding the original records. *See* Ex. 8 at 1.

⁴ The City has often explained significant delays by emphasizing the large number of requests it receives and claiming a lack of resources to fulfill them. But the obligations of the Open Records Act do not relax if a municipality chooses not to devote sufficient resources to its cause.

⁵ In addition, the City Attorney’s statement regarding the Baker Donelson invoices can be found here: <https://www.myajc.com/news/local-govt--politics/statement-regarding-billing-records-from-atlanta-city-attorney-jeremy-berry/UqlfHFSiNNeWDCP60nBz2M/>.

The three incidents described above demonstrate, at the very least, that the City has a laissez-faire attitude towards Open Records Act compliance. The City routinely ignores mandatory requirements of the Act, including both its timing and disclosure rules. Moreover, in some cases—including the requests for water billing and expense card records of city officials—the City’s delays in providing public records appear to have been intentional and politically motivated. Such political interference should be addressed through the establishment of an independent public records office and other mandatory compliance protocols.

II. Other Examples of Violations

The instances described above are merely examples of a broader problem. For many years, WSB-TV and the AJC have encountered numerous other instances where the City of Atlanta failed to comply with the Open Records Act. Generally, these problems fall into four categories. First, City personnel fail to respond or to provide readily available records within three business days of a request. Second, City personnel delay in providing records—sometimes for weeks or months and often only after reporters make repeated attempts to obtain the information. Third, City personnel have at times provided incomplete records or have provided records in a burdensome format that frustrates WSB-TV’s and the AJC’s ability to use the records. Fourth, City personnel often claim that records are exempt from disclosure, even when the claimed exemption clearly does not apply to the requested records.⁶ Below, we provide examples of incidents that illustrate each of these problems.⁷

a. Failure to Respond Within Three Business Days

The first problem is the most pervasive. For almost every Open Records Act request sent to the City of Atlanta, WSB-TV and the AJC do not receive records within three days, even when those records are available. City personnel will usually (though not always) acknowledge receipt of the request within three days. But even then, they normally fail to provide any

⁶ Relatedly, City personnel also frequently provide confusing responses that make it unclear whether the City is not producing records because they are exempt from disclosure or because they do not exist. For example, the City recently provided this response to a request for records related to the factual findings of an internal investigation: “The City does not have any responsive public records. To the extent that there are any responsive public records, such records are exempt from disclosure pursuant to OCGA 50-18-72(a)(1), (4),(8), (41), or (42).” *See* Ex. 10 at 1. Thus, it is impossible to tell from the City’s response whether (i) it has responsive records and is refusing to produce those records based upon an exclusion; or (ii) it has no responsive records. These types of confusing and self-contradicting responses make it difficult for reporters to obtain the truth about the existence and availability of public records.

⁷ This is not an exhaustive list; in the interest of brevity, we describe several illustrations, rather than list every single instance where the City has violated the Open Records Act.

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responsive records, do not state whether any records exist, and do not state whether the records are exempt from disclosure, as required by O.C.G.A. § 50-18-71(d). Furthermore, the City often fails to provide an estimate of when the records will be available, as required by O.C.G.A. § 50-18-71(b)(1)(A).⁸

For example, on January 26, 2018, WSB-TV producer Sheila Schutt asked the Atlanta Police Department to provide records showing: 1) “The total number of Atlanta Police recruits that were on the payroll between January 1, 2016 and January 1, 2018,” and 2) “The cost of training the 63 Atlanta Police recruits that either resigned or were dismissed between January 1, 2016 and January 1, 2018.” Ex. 11 at 2. A Police Department spokesman responded: “Your request has been received.” *Id.* The spokesman did not state whether any records existed or when they would be produced. *Id.*

On January 31, Ms. Schutt asked the spokesman for an update on the status of her request. *Id.* Hearing nothing back, on February 1, Ms. Schutt sent the request to a different officer and asked him to provide the information. *Id.* at 5. On February 2, the second officer responded and said that the department was working on providing the information, but did not provide an estimate of when the materials would be available. *Id.* at 7. The information was eventually produced on February 9, two weeks after WSB-TV made the request.⁹

WSB-TV and AJC have experienced similar instances of non-compliance. On May 23, 2017, for example, WSB-TV requested files from the Atlanta Board of Ethics, but the Board did not respond within three business days. And on May 30, 2017, WSB-TV sent a request for records to the mayor’s director of communications Ann Torres, seeking information related to former City Attorney Cathy Hampton’s unused sick leave at the time of her departure from the City. Ms. Torres acknowledged receipt of the request, but failed to provide the records within three business days or to provide an estimate of when the records would be available. And on February 15, 2018, WSB-TV requested a personnel file for an Atlanta Police Department officer. The Department has still not provided the requested records as of the date of this letter, more than six weeks after the request.

⁸ The Open Records Act requires that “[i]n any instance where records are unavailable within three business days of receipt of the request, and responsive records exist, the agency shall, within such time period, provide the requester with a description of such records and a timeline for when the records will be available for inspection or copying and provide the responsive records or access thereto as soon as practicable.” O.C.G.A. § 50-18-71(b)(1)(A).

⁹ This request was related to the following story: <https://www.myajc.com/news/crime--law/atlanta-police-recruits-hard-find-and-hard-keep/kBlgnh3p9O8BEuFQPg5rqO/>.

b. Long and Unnecessary Delays in Providing Records/Incomplete or Unusable Records

The City frequently takes a long period of time to provide requested documents, often without any explanation for the delays. On some occasions, the City will provide an estimate of when the records will be produced, but then will not meet that date and will not follow up. The only follow-up comes when the reporter sends another email to inquire about the status of the request. In addition, when the City does eventually produce documents, it has often provided WSB-TV and AJC reporters with incomplete records or with records in a format that is not reasonably useful. In addition to the examples already discussed, the following are three other examples illustrating of these problems.

1. Incarceration/Court Calendar Records

On October 25, 2017, AJC reporter Rhonda Cook sent requests to the Atlanta Department of Corrections seeking records showing when certain individuals were housed in the city jail and to the Municipal Court of Atlanta seeking judicial calendars for certain dates in 2017. *Ex. 12* at 2, 4, 10. On October 26, the Department of Corrections acknowledged receipt of the request, but did not provide any information about when the records would be available. *Id.* at 4, 9. On October 27, Kyra Dixon of the Municipal Court of Atlanta informed Ms. Cook that the records would not be ready for 30 to 45 days. *Id.* at 6-7. Ms. Cook responded on October 30 to clarify that her request was for published court calendars, which should be readily available and thus produced within the three-day limit set by the Open Records Act. *Id.* at 6. Ms. Dixon did not respond.

On October 30, Ms. Cook asked for an update on her Department of Corrections request. *Id.* at 9. The Department records manager responded that she was in the process of gathering the records, but added that the request should have gone through the mayor's Office of Communications, which was copied on her email. *Id.*

On October 31, Ms. Cook reached out to the City Attorney for help with her records requests. *Id.* at 13-14. On November 7, the Law Department informed Ms. Cook that they should have some information on her requests shortly, but after not hearing back for several days, Ms. Cook again emailed the City Attorney for help. *Id.* at 17, 26.

On November 13, Ms. Dixon finally responded to Ms. Cook's October 30 email. *Id.* at 22. She stated that the City "receive[s] numerous request [sic] for records" and because Ms. Cook's request was "quite voluminous," the original estimate of 30 to 45 days was still accurate. *Id.* Twenty minutes later, the City Attorney responded to Ms. Cook's email to say that the Municipal Court was complying with the Open Records Act. *Id.* at 25. He then quoted one of Ms. Cook's stories for the AJC that said City officials had ignored her requests for records. He asserted that it was "simply not true" because the City had responded to her emails, and he asked that she issue a correction. *Id.* He also asserted that she had not sent a formal records request to

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the Department of Corrections, so on November 15, Ms. Cook re-sent her original request with more formal language that cited the Open Records Act. *Id.* at 30-31. No one responded to this request within three days. *Id.* at 30.

On November 22, the Department of Corrections informed Ms. Cook that the records would be ready on November 28. *Id.* at 33-34. But they did not provide any records that day, even after Ms. Cook emailed to remind them. *Id.* at 33. On December 1, the Department informed her that the records would actually be ready on December 11—45 days from the date of her original request. *Id.* at 36-37. But the documents were not provided until December 14, after multiple emails from Ms. Cook went unanswered. *Id.* at 39, 43, 45, 47, 51. The Municipal Court provided the requested calendars on December 14, as well, though the documents did not include some of the information that Ms. Cook had requested. *Id.* at 55.

2. *Department of Watershed Records*

On July 26, 2016, WSB-TV reporter Richard Belcher sent an Open Records Act request to the City's Department of Watershed Management seeking the following information:

A list of all meter readings on accounts with the status 'Vacant – Shut Off' from March 1 – June 30, 2016 including for each account Read Dates, Dwelling Code, Route Number, Customer Number, Street Name and Street Number.

Ex. 13 at 3.

Over the course of ten weeks of negotiation, the Department repeatedly delayed production and provided incomplete records that excluded the requested information. *See id.* at 2, 6-9, 12-14. For example, the Department provided spreadsheets that omitted entire columns of data, including the column that would have shown the meter reading data. *Id.* at 13-14. Based on a source, WSB-TV knew that the spreadsheets were incomplete. Therefore, WSB-TV persisted in asking the Department to provide complete records. On October 3, 2016, WSB-TV provided the Department with a document from the source demonstrating that the Department maintains the very records that were being sought. *Id.* at 7-8.

WSB-TV hired the undersigned law firm to intervene. On October 12, 2016, we sent a demand letter to the Department and the City Attorney. Ex. 14. The Department finally provided sufficient responsive documents in early November 2016. The Department's failure to respond to this request forced WSB-TV to spend thousands of dollars on attorneys' fees and delayed WSB-TV's reporting on this story for more than three months.¹⁰

¹⁰ This request led to the following story: <http://www.wsbtv.com/news/2-investigates/more-free-water-channel-2-discovers-millions-in-uncollected-water-bills/469332065>.

3. *South Africa Travel Records*

On April 20, 2017, Mr. Belcher sent a request for the following information related to former Mayor Kasim Reed's trip to South Africa: the names of all city employees attending the trip, the dates and itinerary for the trip, and copies of all documents related to the cost of the trip. Ex. 15 at 2. Mr. Belcher did not receive a response within three days.

On April 27, the mayor's Director of Communications Anne Torres informed Mr. Belcher that no records related to the cost of the trip had yet been generated because all expenses were being charged on personal cards, and reimbursement records would not be created until after the trip was complete. Ex. 16 at 1. Ms. Torres said the names of attendees would be sent out in a press release the following day. *Id.* However, the press release that was eventually issued days later did not list the attendees, and the City did not provide Mr. Belcher with the list of attendees until May 24, after the trip was complete and more than a month after the request was sent. Ex. 15 at 12.

On May 16, Mr. Belcher sent another request for records relating to travel expenses for the trip. *Id.* at 8. Ms. Torres informed him that the documents would be provided on May 24, but they were not. *Id.* at 10. On May 25, WSB-TV's counsel—the undersigned firm—began communicating with the City Attorney's office regarding the request. The requested documents were finally produced in mid-July. Contrary to what Ms. Torres had said previously, some of the records appear to have been generated in April 2017, before the trip took place.¹¹ The records revealed that the City spent almost \$90,000 on travel expenses for the trip.

c. Improper Exemptions

The City also relies on exemptions that do not apply to the requested records, or they have simply asserted that records are exempt from disclosure without citing a specific statutory section.

For example, on February 10, 2017, AJC reporter Scott Trubey asked the City Communications Department to provide the employment applications and personnel files for two City employees—former Department of Public Works employee Shandarrick Barnes and the current Department of Watershed Management Commissioner Kishia Powell. Ex. 17 at 10-12. On February 17, Jenna Garland provided the records for Mr. Barnes but said that Ms. Powell's records would not be ready until February 24. *Id.* at 9. Because of an impending deadline, the AJC's lawyer contacted the City Attorney regarding the records for Ms. Powell on February 22. *Id.* The City provided some documents on February 23, but the files did not contain Ms. Powell's application, resume, or references. *Id.* at 8. And the documents also suggested that the City had not done the required background check on Ms. Powell. *Id.* In response to Mr.

¹¹ This request led to the following story: <http://www.wsbtv.com/news/local/atlanta/city-officials-business-class-trip-to-south-africa-cost-90k-records-show/564184129>.

Trubey's questions about these issues, the City produced additional files later that afternoon. *Id.* This second production included a memo to the City Council confirming that a background check had been done, but there was no background check in the file. *Id.* at 7. Mr. Trubey asked that the City produce Ms. Powell's background check. In response, the City said it would provide part of the background check, but claimed—without citing a statutory section—that the criminal portion of the background check was “completely exempt” from disclosure under the ORA. *Id.* There is no exemption that would apply to such materials. Indeed, the City had previously provided the full background check for Mr. Barnes without issue.

On March 6, the City provided an undated background check file for Ms. Powell. *Id.* at 6. The next day, Mr. Trubey asked when the check was performed. *Id.* Only then did the City reveal that the document “was from a background check pulled last week” and was not generated during Ms. Powell's hiring and confirmation process in 2016. *Id.* at 5-6. Ms. Garland explained that the City's vendor had not done a background check on Ms. Powell during the hiring process; instead, Commissioner of Human Resources Yvonne Yancy had “checked Ms. Powell's references directly and had verified her employment for the past seven years.” *Id.* After the AJC's records request, the City realized it had not done a background check in 2016 and “ordered a new full check by a third party, as required by city policy.” *Id.* This was the document the City provided to the AJC on March 6, without disclosing that the document was recently generated or that the background check had not been run in 2016.

As another example, WSB-TV and AJC reporters sent several Open Records Act requests in January 2017 for documents relating to the Department of Justice's investigation into allegations of bribery relating to city contracts. Ex. 18. The requests asked for documents such as emails mentioning certain individuals under investigation, any DOJ subpoenas, a list of contracts awarded to the subjects of the investigation, and records of payment to the companies under investigation. Ex. 18 at 2-4, 8. The City rejected all of these requests on the same basis—that they were exempt from disclosure under O.C.G.A. § 50-18-72(a)(3) and (4) because of the pending DOJ investigation. *Id.* at 7, 11.

Neither exemption applied to the requested records. Subsection (3) did not apply because the records were created by the City during its normal business, were not “records compiled for law enforcement or prosecution purposes,” and the records would not have disclosed the identify of any confidential sources. *Id.* § 50-18- 72(a)(3). Subsection (4) did not apply because the requested documents were not “records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity.” *Id.* § 50-18-72(a)(4).

After WSB-TV's and the AJC's law firm once again intervened in the matter, the City eventually produced more than 1.3 million pages. However, the City delayed in providing paper records until former Mayor Reed could hold a press conference showing a backdrop display of almost 150 boxes of paper documents. Moreover, the City never explained the basis for its refusal to provide the records.

The examples set forth above demonstrate that the City of Atlanta has repeatedly violated the Open Records Act by (i) failing to properly respond to records requests within three business days; (ii) unreasonably delaying in providing responsive records; and (iii) relying on improper interpretations of the Act as a means of denying public access to records. The AJC and WSB-TV believe that these violations are so serious and widespread as to warrant intervention by the Attorney General.

III. Request for Mediation

a. History of the Parties' Negotiation

In mid-2017, WSB-TV and the AJC raised these concerns directly with the City Attorney of Atlanta. The parties discussed the concept of a resolution that would improve the City's Open Records Act processes. Ultimately, WSB-TV and the AJC proposed that the City Attorney adopt a formal protocol that would require certain procedures be followed to ensure compliance with the Open Records Act. Although the City expressed interest in continued dialogue, the City did not provide feedback on the draft protocol, and the City never adopted any changes to its methods of handling Open Records Act requests.

Non-compliance issues continue to hinder WSB-TV's and the AJC's reporting. Yet their efforts at informal dialogue with the City have not produced any real change. For these reasons, WSB-TV and the AJC believe that a mediation by the Attorney General is the only effective means, short of formal litigation, to ensure the City of Atlanta complies with the Open Records Act in the future.

b. Goals for Mediation

WSB-TV and the AJC seek a resolution through mediation that includes, but is not limited to, the following elements.

- 1) *Acknowledgment of prior non-compliance and commitment to future compliance.* Reform should begin with an acknowledgment of past non-compliance, the adoption of a formal standard operating procedure, and an appropriate amendment to the City of Atlanta Code of Ethics addressing future compliance with the Open Records Act. The City's commitment to future compliance should include a clear statement that it will produce available records within the Act's three-business-day deadline.
- 2) *Appointment of an independent public records officer.* The City should appoint an independent public records officer who is not vulnerable to political interference by city officials. In particular, there should be legal and practical separation between city officials responsible for transmitting political communications and city personnel who respond to Open Records Act requests.

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- 3) *Hiring and retention of staff devoted to public records retrieval.* The City often cites inadequate resources as a reason for delaying the retrieval and production of public records. Timely future compliance depends on the City's willingness to devote adequate resources to meeting its obligations, such as through the hiring and retention of staff trained in records retrieval and production.
- 4) *Training.* The City should provide mandatory Open Records Act training to relevant personnel—at least annually and when onboarding new personnel—and it should adopt mandatory guidelines for providing appropriate responses to Open Records Act requests.
- 5) *Monitoring.* The parties should agree to a monitoring protocol to allow for an independent monitor to audit the City's Open Records Act compliance and produce a public report describing the City's progress.
- 6) *Enforcement.* The parties should agree to an efficient protocol for enforcement in the event of future non-compliance.
- 7) *Attorneys' Fees.* The City should reimburse the AJC's and WSB-TV's legal fees in connection with its Open Records Act enforcement over the course of the last two years.

Conclusion

The AJC and WSB-TV hereby request a mediation facilitated by the Attorney General to address the City's violations of the Open Records Act. WSB-TV and the AJC are hopeful that the intervention of the Attorney General will assist the parties in having a productive and solutions-based dialogue. They are committed to working in good faith with the City to reach a mutually agreeable resolution.

I would be glad to discuss this matter further at a time of your convenience.

With best regards,



Michael A. Caplan

MAC/sbp

cc: Sarah Brewerton-Palmer, Esq. (by email PDF only)

Enclosures