

IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY  
STATE OF GEORGIA

  
Elisa Zarate, Clerk  
Athens-Clarke County, Georgia

JARROD MILLER, :  
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 :  
 Plaintiff, :  
 :  
 :  
 v. : CIVIL ACTION NO.  
 :  
 :  
 DEBORAH GONZALEZ, *individually and* :  
 *in her official capacity as District Attorney* :  
 *and as Open Records Custodian for the* :  
 *Western Judicial Circuit District* :  
 *Attorney's Office,* :  
 :  
 :  
 Defendant. :  
 :  
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**COMPLAINT TO COMPEL DISCLOSURE OF PUBLIC RECORDS  
AND FOR PENALTIES UNDER THE OPEN RECORDS ACT**

COMES NOW, Plaintiff Jarrod Miller (hereinafter “Mr. Miller”) and files this Complaint to Compel Disclosure of Public Records and for Penalties under the Open Records Act, respectfully showing the Court as follows:

**Preliminary Statement of the Case**

1.

This case arises out of the Western Judicial Circuit District Attorney’s Office and District Attorney Deborah Gonzalez’s blatant disregard of their statutory obligations under Georgia’s Open Records Act, O.C.G.A. § 50-18-70 *et seq.* (the “Open Records Act”) to disclose public records related to the various functions of the District Attorney’s Office. Specifically, Mr. Miller seeks access to, or the production of, records that expose the breadth of the District Attorney’s Office’s failures, including but not limited to unprecedented staff shortages, staggering caseloads, violations of crime victims’ rights, failure to serve the interests of the public to effectively prosecute criminal cases, and an open disregard for the laws of the State of Georgia. Nevertheless,

the requested documents are being withheld without lawful justification by Defendant in order to shield herself from public scrutiny that would result from the disclosure of shocking and embarrassing public records.

2.

Defendant Deborah Gonzalez, on behalf of the Western Judicial Circuit District Attorney's Office, has violated the Open Records Act by failing to timely permit access to or produce requested public records. Even more egregiously, Defendant Deborah Gonzalez knowingly and willfully violated the Open Records Act by destroying records for the purpose of preventing their disclosure. Defendant's actions are neither in good faith nor justified. Accordingly, Mr. Miller brings this action to compel the immediate disclosure of all requested records, to seek the imposition of penalties as allowed by law, and to seek attorney fees.

**Parties, Jurisdiction, and Venue**

3.

Mr. Miller is a resident, taxpayer, and concerned citizen of Athens-Clarke County, and has standing to bring this action pursuant to O.C.G.A. § 50-18-73(a).

4.

Defendant Deborah Gonzalez is the District Attorney of the Western Judicial Circuit and a resident of Athens-Clarke County. She may be served at the Western Judicial Circuit District Attorney's Office at 325 E. Washington St., Room 370, Athens, GA 30601, or wherever she may be found.

5.

This Court has subject-matter jurisdiction over this action pursuant to Article VI, Section IV, Paragraph I of the Georgia Constitution of 1983 and pursuant to O.C.G.A. § 50-18-73(a).

6.

Venue is proper in this Court pursuant to Article VI, Section II, Paragraph VI of the Georgia Constitution of 1983 because Defendant is a resident of Athens-Clarke County, her principal political office is in Athens-Clarke County, and a substantial portion of the events giving rise to this action occurred in this County.

**Factual Background**

7.

Defendant Deborah Gonzalez (hereinafter “DA Gonzalez”) and her office, the Western Judicial Circuit District Attorney’s Office (hereinafter “DA’s Office”), is charged with prosecuting criminal cases involving at least one felony charge in Athens-Clarke and Oconee Counties. The DA’s Office is an “agency” as defined in the Open Records Act. O.C.G.A. § 50-18-70(b)(1) and O.C.G.A. § 50-14-1(a)(1).

8.

DA Gonzalez is the elected District Attorney of the Western Judicial Circuit. DA Gonzalez assumed the official position of District Attorney on January 1, 2021.

9.

Concerned with the interest of victims whose rights have been disregarded and the general safety and well-being of citizens in Athens-Clarke and Oconee Counties, on March 13, 2023, Mr. Miller filed an Application for Writ of Mandamus against DA Gonzalez for her continuous failure to uphold the statutory duties assigned to her by O.C.G.A. § 15-18-6 (hereinafter “Mandamus Action”).

10.

Both before and after filing the Mandamus Action, Mr. Miller, through the undersigned

counsel, sought records pursuant to the Open Records Act from the DA's Office regarding DA Gonzalez's decisions, communications, and misconduct.<sup>1</sup> DA Gonzalez personally responded to the requests through her own email address, [deborah.gonzalez@accgov.com](mailto:deborah.gonzalez@accgov.com) and signed all invoices regarding the requests with her e-signature. Accordingly, DA Gonzalez has held herself out to be her office's Open Records Officer and Custodian.

11.

Pursuant to O.C.G.A. § 50-18-71(e),

requests by civil litigants for records that are sought as part of or for use in any ongoing civil or administrative litigation against an agency shall be made in writing and copied to counsel of record for that agency contemporaneously with their submission to that agency. The agency shall provide, at no cost, duplicate sets of all records produced in response to the request to counsel of record for that agency *unless the counsel of record for that agency elects not to receive the records.*

(Emphasis added.) DA Gonzalez's counsel in the Mandamus Action informed the undersigned counsel that their firm would not be representing DA Gonzalez regarding the Open Records Requests.<sup>2</sup> Accordingly, for each of Mr. Miller's Open Records Requests to the DA's Office and various Athens-Clarke County Departments, Mr. Miller electronically copied one or more Athens-Clarke County Assistant Attorneys, in their capacity as representation for DA Gonzalez, in all written, duly-requested Open Records Requests.

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<sup>1</sup> The Open Records Act permits simultaneous discovery efforts and Open Records Requests. The Georgia Court of Appeals has stated, "the right to obtain records through discovery does not preclude pursuing those same records through an open records request." Jaraysi v. City of Marietta, 294 Ga. App. 6, 11 (2008).

<sup>2</sup> To the extent any concern remains over the duty to provide a civil litigant's counsel with Open Records Requests, DA Gonzalez has supplied her counsel in the Mandamus Action with copies of at least some, if not all, of Mr. Miller's Open Records Requests. A copy of an email exhibiting DA Gonzalez's production of various Open Records Requests to Jeff Baxter is attached hereto as Exhibit "1".

12.

Since February 15, 2023, DA Gonzalez has failed to produce records in response to at least twenty-two (22) written, duly-requested Open Records Requests in their entirety. True and correct copies of the twenty-two (22) Open Records Requests for which DA Gonzalez has not produced records are attached hereto as Exhibits “2” – “23.”

13.

Since February 15, 2023, DA Gonzalez has failed to produce records responsive to sub-requests in at least twelve (12) written, duly-requested Open Records Requests. True and correct copies of the twelve (12) partially answered Open Records Requests are attached hereto as Exhibits “24” – “35.”

14.

Since February 15, 2023, even when DA Gonzalez has produced records, she has repeatedly failed to produce requested records within three business days as provided by O.C.G.A. § 15-18-71 (b)(1)(A). True and correct copies of the Open Records Requests that the DA has responded to are attached hereto as Exhibits “36” – “57.”

15.

In any instances where records exist but are not available, as of the filing of this action, DA Gonzalez has *never* provided the undersigned counsel with a description of the records and a timeline for the production of the records. Id.

16.

On April 5, 2023, DA Gonzalez informed undersigned counsel that she had re-allocated the time of an employee to assist with the production of records. Unfortunately, DA Gonzalez has

still failed to produce requested records since this reallocation. A true and correct copy of DA Gonzalez's April 5, 2023 email to undersigned counsel is attached hereto as Exhibit "58."

17.

Importantly, DA Gonzalez's campaign and subsequent administration feigned a commitment to transparency, accountability, and access to information. For example, a true and correct copy of the DA's "Media Release 3.30.21" which lauds the DA's Office for "promot[ing] transparency and accountability" is attached as Exhibit "59." Ironically, DA Gonzalez hosts a podcast entitled "Open Records with Deborah Gonzalez." A screenshot of DA Gonzalez's Public Facebook Page for the podcast is attached hereto as Exhibit "60."

18.

During her tenure as District Attorney, DA Gonzalez has suffered many failures. Unfortunately, she has also subsequently failed to uphold her commitment to transparency, accountability, and access to information. This is epitomized by DA Gonzalez's failure to lawfully provide complete and adequate responses to Mr. Miller's Open Records Requests.

19.

DA Gonzalez has gone beyond her official duties to intentionally frustrate the purpose of the Open Records Act by requesting that a subordinate delete potentially responsive correspondence. On March 10, 2023, DA Gonzalez instructed former Western Judicial Circuit Assistant District Attorney June Teasley ("ADA Teasley") to delete correspondence between the two because "[DA Gonzalez would not want [ADA Teasley's] information in the newspapers in case [DA Gonzalez] received an open records request." A true and correct copy of ADA Teasley's sworn affidavit is attached hereto as Exhibit "61."

20.

Although she has disregarded her obligation to produce public records in accordance with the Open Records Act, DA Gonzalez has consistently sent an invoice form-response to the requests within the required three business days under O.C.G.A. § 50-18-71 (b)(1)(A). True and correct copies of DA Gonzalez's invoice form-responses are attached hereto as Exhibits "62" – "91." As such, DA Gonzalez is aware of her obligation to produce unexempted and responsive records within three business days. Her failure to do so is a willful obstruction of the right of the public to a free, open, and democratic society. O.C.G.A. § 50-18-70(a).

**COUNT ONE**

**TO COMPEL DISCLOSURE OF RECORDS  
UNDER THE OPEN RECORDS ACT**

21.

Mr. Miller incorporates by reference all previous allegations of this Complaint as though fully set forth herein.

22.

The Georgia General Assembly has found and declared that: (a) "the strong public policy of this state is in favor of open government;" (b) "open government is essential to a free, open, and democratic society;" and (c) "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." O.C.G.A. § 50-18-70(a). The Open Records Act establishes "a strong presumption that public records should be made available for public inspection without delay." *Id.*

23.

All records sought by Mr. Miller's Open Records Requests are "public records" as defined

by O.C.G.A. § 50-18-70(b)(2).

24.

Pursuant to O.C.G.A. § 50-18-71(a), “[a]ll public records shall be open for personal inspection and copying, except those which by order of a court of this state or by law are specifically exempted from disclosure.”

25.

The Open Records Act must “be broadly construed to allow the inspection of governmental records,” and the statutory exceptions to disclosure must “be interpreted narrowly.” O.C.G.A. § 50-18-70(a).

26.

Indeed, the Supreme Court of Georgia has held, “*any* purported statutory exemption from disclosure under the Open Records Act must be narrowly construed.” *Hardaway Co. v. Rives*, 262 Ga. 631, 634 (1992) (emphasis in original).

27.

DA Gonzalez, as the duly elected constitutional officer over the DA’s Office has custody, possession, and control of all records sought by Mr. Miller’s Open Record Requests.

28.

Pursuant to the Open Records Act, Mr. Miller requested that DA Gonzalez and the DA’s Office produce the records sought by the Open Records Request.

29.

In violation of the Open Records Act and Georgia public policy, DA Gonzalez failed to produce records for approximately twenty-two (22) of Mr. Miller’s requests in their entirety and failed to partially produce records for approximately twelve (12) other requests.



30.

Pursuant to O.C.G.A. § 50-18-71(d), in all instances in which retrieval of the records costs in excess of \$25.00,<sup>3</sup> Mr. Miller has agreed to pay and/or paid the estimated costs imposed by DA Gonzalez. True and correct copies of emails notifying DA Gonzalez of undersigned counsel's willingness to pay estimated costs attached hereto as Exhibit "92" – "95." True and correct copies of checks paid for Open Records Requests are attached hereto as Exhibit "96" – "104."

31.

In regard to the current outstanding requests for records, DA Gonzalez has not informed Mr. Miller that any records would be withheld in entirety or part due to an exemption, as required by O.C.G.A. § 50-18-71 (d). Instead, DA Gonzalez has simply withheld the requested records.

32.

O.C.G.A. § 50-18-71(a) leans heavily in favor of the production of all public records "except those which by order of a court of this state or by law are specifically exempted from disclosure."

33.

O.C.G.A. § 50-18-72(a)(4) provides a narrow exception to public disclosure under the Open Records Act for "[r]ecords of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity," and states that "an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving such investigation and prosecution has become final or otherwise terminated." As such,

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<sup>3</sup> Under O.C.G.A. § 50-18-71 (d), any request with an estimated cost less than \$25.00 must be produced within the three (3) days prescribed by § 50-18-71 (b)(1)(A). Several of Mr. Miller's outstanding Open Records Requests were estimated by DA Gonzalez to cost less than \$25.00, thus not requiring Mr. Miller's agreement to pay at all.

DA Gonzalez has claimed exemption due to pending prosecution for two requests. The outstanding records requests do not involve pending prosecution and must be produced.

34.

Nevertheless, even if DA Gonzalez were claiming an exemption for the outstanding records requests, she has not satisfied her duty to “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.” O.C.G.A. § 50-18-71 (d). Although DA Gonzalez has sent an invoice form response to nearly all of Mr. Miller’s requests, each response contains nearly identical form language:

The following information, to the extent that it exists, will be exempt from release pursuant to the following described provisions of the Open Records Act: O.C.G.A. § 50-18-72 (a) [with a summary of the type of exception]:

- (1) O.C.G.A. § 50-18-72(a)(41) [attorney-client privilege]
- (2) O.C.G.A. § 50-18-72 (a)(42) [attorney work product]
- (3) O.C.G.A. § 50-18-72(a)(2) [individual’s social security number, personal email or cell phone number, etc.]
- (4) O.C.G.A. § 50-18-72 (a)(21) [public employee personal information].

35.

Such a form response is insufficient under the Open Records Act because it is not particularized to each responsive record to adequately provide notice to Mr. Miller as to whether, or why each record or some portion of each record is exempt from disclosure.

36.

Accordingly, Mr. Miller prays that this Court enter an interlocutory and final injunction directing DA Gonzalez to immediately produce to Mr. Miller the requests sought by Open Records Request.

**COUNT TWO**

**PENALTIES AGAINST DEFENDANT DA GONZALEZ  
FOR VIOLATIONS OF THE OPEN RECORDS ACT**

37.

Mr. Miller incorporates by reference all previous allegations of this Complaint as though fully set forth herein.

38.

Pursuant to O.C.G.A. § 50-18-74 (a), the Open Records Act permits the prosecution of public officers that (1) knowingly and willfully violate the Open Records Act “by failing or refusing to provide access to records not subject to exemption from this article, by knowingly and willingly failing or refusing to provide access to such records within the time limits set forth in this article, or by knowingly and willingly frustrating or attempting to frustrate the access to records by intentionally making records difficult to obtain or review shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000 for the first violation, and (2) destroy records for the purpose of preventing their disclosure under the Open Records Act. Specifically, under O.C.G.A. § 45-11-1(a), “[i]f any public officer or other person shall...alter [or] falsify, or avoid any record, process...or if any person shall cause or procure any of these offenses to be committed...he shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment and labor in the penitentiary for not less than two years nor more than ten years.”

39.

DA Gonzalez ordered her subordinate, ADA Teasley, to destroy records of text messages specifically for the purpose of altering and falsifying records of communication to frustrate and prevent the disclosure of such communications.

40.

Rather than redact the records or claim an exemption, DA Gonzalez ordered the destruction of the records.

41.

The Western Judicial Circuit's chief prosecuting attorney, DA Gonzalez, has knowingly and willfully frustrated the access to records by intentionally making potentially responsive records, including, at minimum, her text messages with ADA Teasley, difficult or impossible to obtain or review. These actions are direct violations of O.C.G.A. § 50-18-74(a) and O.C.G.A. § 45-11-1(a).

42.

Accordingly, DA Gonzalez actions warrant the Court to issue a citation in the same manner as an arrest warrant for a peace officer pursuant to O.C.G.A. § 17-4-40. See O.C.G.A. § 50-18-74(b).

43.

Further, the Open Records Act permits private parties to seek the imposition of civil penalties against "any person" who violates its requirements. O.C.G.A. § 50-18-74(a).

44.

Mr. Miller, by and through undersigned counsel, has properly requested that DA Gonzalez produce documents that are deemed subject to public disclosure under the Open Records Act.

45.

DA Gonzalez, on behalf of the DA's Office, nonetheless refused to provide and continues to withhold, the requested records from public disclosure despite her plain ministerial duty to disclose them.

46.

The purpose and intent of DA Gonzalez's strident attempts to evade the public eye is to thwart the public from discovering her administration's misconduct and abhorrent decisions.

47.

To the extent applicable, the DA is not entitled to official immunity because she had a ministerial duty to disclose the records pursuant to the Open Records Act, and she violated that duty at minimum negligently, if not recklessly and intentionally.

48.

Therefore, Mr. Miller prays this Court will find DA Gonzalez has, at minimum, negligently violated the requirements under the Open Records Act and impose civil penalties in the amount of \$1,000 for the first violation and \$2,500 per violation imposed for each subsequent violation committed with the twelve (12) month period from the date the first penalty is imposed.

### **COUNT THREE**

#### **ATTORNEYS' FEES AND COSTS OF LITIGATION**

49.

Mr. Miller incorporates by reference the previous allegations of this Complaint as though fully set forth herein.

50.

Pursuant to O.C.G.A. § 50-18-73(b), if the Court determines that DA Gonzalez "acted without substantial justification" in failing to comply with the Open Records Act, she "shall, unless [the Court] finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred."

51.

DA Gonzalez's failure to produce records responsive to the Open Records Requests lacked any, much less substantial, justification. DA Gonzalez has not attempted to offer justification for her failure and refusal to respond to the Open Records Requests.

52.

Nevertheless, whether DA Gonzalez is unable to produce the requested documents due to insufficient staffing or the interference of other responsibilities, these potential excuses do not constitute a "substantial justification" for a "special circumstance" under the Open Records Act.

53.

Pursuant to O.C.G.A. § 50-18-71 (b)(1)(B), "the absence or *unavailability* of the designated agency officer or employee shall not be permitted to delay the agency's response." (emphasis added). Therefore, the inability of DA Gonzalez to properly staff her office is not a "special circumstance" within the purview of the Open Records Act that overcomes the strong public policy in favor of furthering open government.

54.

DA Gonzalez intentionally sought to frustrate the purpose of the Open Records Act and to avoid her obligations under the Open Records Act by knowingly and willingly violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from the Open Records Act, by knowingly and willingly failing or refusing to provide timely access to requested records not subject to exemption under the Open Records Act, by knowingly and willfully frustrating or attempting to frustrate timely access to records by intentionally making records difficult to obtain or review, and/or by directing the destruction of records for the purpose of preventing their disclosure under the Open Records Act.

55.

DA Gonzalez has displayed a total disregard for her obligations under the Open Records Act and left Mr. Miller with no way to obtain the requested records other than filing this enforcement action.

56.

Pursuant to O.C.G.A. § 50-18-73(b), Mr. Miller has incurred, and is entitled to an award of his reasonable attorney's fees and other litigation costs in bringing this enforcement action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court:

- (a) Issue summons and process for the Defendant as provided by law;
- (b) Enter an interlocutory and final injunction directing Defendant to immediately produce to Plaintiff all of the records sought by the Open Records Requests, pursuant to the Open Records Act;
- (c) Impose civil penalties against Defendant for her violations of the Open Records Act, in the amount of \$1,000 for the first violation and in the amount of \$2,500 for each violation committed thereafter;
- (d) Issue a citation in the same manner as an arrest warrant for a peace officer pursuant to O.C.G.A. § 17-4-40(c), as provided for by O.C.G.A. § 50-18-74(b); and
- (f) For such other and further relief as this Court deems equitable and just.

*[Signatures are on the next page.]*

Respectfully submitted, this 7<sup>th</sup> day of June 2023.

**EPPS, HOLLOWAY, DELOACH &  
HOIPKEMIER, LLC**

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**VERIFICATION**

Personally appeared before me the undersigned, JARROD MILLER, Plaintiff in the within and foregoing verified *Complaint to Compel Disclosure of Public Records and for Penalties Under the Open Records Act* who, being first duly sworn, deposes and says on oath that the facts set forth therein are true and correct.

  
JARROD MILLER

Sworn and subscribed before me this  
7 day of June, 2023.

  
Notary Public  
My Commission Expires:

