In the Superior Court of Clarke County
State of Georgia

Jarrod Miller,

Plaintiff
Versus

Case № SU23CV0254

Deborah Gonzalez in her capacity
as District Attorney,
Defendant

ORDER ON DEFENDANT'S MOTION TO DISMISS

The defendant District Attorney moves for the court to dismiss the plaintiff's action in which he seeks an order to compel her to produce various records pursuant to the Georgia Open Record Act (ORA).

A motion for judgment on the pleadings should be granted only if the moving party is clearly entitled to judgment as a matter of law.[1]

The court must accept the truth of the factual allegations contained in the pleadings of the nonmoving party, and it must view the pleadings in the light most favorable to the nonmoving party.[2]

The court heard the defendant's motion to dismiss on November 2, 2023.

She argues that the office of the District Attorney is entitled to exemption from the ORA because it is in judicial branch.[3]

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[1] Sherman v. Fulton County Bd. of Assessors, 288 Ga. 88, 90, 701 S.E.2d 472 (2010) and Pryce v. Rhodes, 316 Ga. App. 523, 523, 729 S.E.2d 641, 641 (2012).

[2] Ford v. Whipple, 225 Ga.App. 276, 277, 483 S.E.2d 591 (1997).

[3] The ORA does not apply to the judicial branch of Georgia's government. Fathers Are Parents Too, Inc. v. Hunstein, 202 Ga. App. 716, 717, 415 S.E.2d 322, 323 (1992).

"The judicial authority is the final and common arbiter, under the distribution of power by the Constitution, of all questions which, from their nature, require and admit of legal investigation and decision. The friends of republican government and public liberty, have uniformly denounced and rebuked, in the strongest terms, the usurpation of judicial powers, by the Legislature or Executive, as constituting the very essence of tyranny and despotic government."[4]

"The judicial power of the state shall be vested exclusively in the following classes of courts: magistrate courts, probate courts, juvenile courts, state courts, superior courts, state-wide business court, Court of Appeals, and Supreme Court. Nothing in this paragraph shall preclude a superior court from creating a business court division for its circuit in a manner provided by law. Magistrate courts, probate courts, juvenile courts, and state courts shall be courts of limited jurisdiction. In addition, the General Assembly may establish or authorize the establishment of municipal courts and may authorize administrative agencies to exercise quasi-judicial powers. Municipal courts shall have jurisdiction over ordinance violations and such other jurisdiction as provided by law. Except as provided in this paragraph and in Section X, municipal courts, county recorder's courts and civil courts in existence on June 30, 1983, and administrative agencies shall not be subject to the provisions of this article. The General Assembly shall have the authority to confer "by law" jurisdiction upon municipal courts to try state offenses."[5]

This paragraph of Georgia's Constitution does not include "district attorney" or "district attorney's office" in this list of offices or officers with judicial power. This court concludes there is no "judicial power" conferred on any district attorney of this state by our state Constitution.

District attorneys are generally considered to be quasi judicial officers. 27

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[4] Beall v. Beall, 8 Ga. 210, 213 (1850).

[5] Ga. Const. art. VI, § 1, ¶ I.

C.J.S. p. 622, District of Pros. Atty.. § 1; 63 Am.Jur. 2d 337, § 1; Fortson v. Weeks, 232 Ga. 472, 478, 208 S.E.2d 68, 74 (1974).

O.C.G.A. § 15-18-6 delineates the duties of prosecuting attorneys:

> The duties of the district attorneys within their respective circuits are:
> (1) To attend each session of the superior courts unless excused by the judge thereof and to remain until the business of the state is disposed of;
> (2) To attend on the grand juries, advise them in relation to matters of law, and swear and examine witnesses before them;
> (3) To administer the oaths the laws require to the grand and trial jurors and to the bailiffs or other officers of the court and otherwise to aid the presiding judge in organizing the courts as he may require;
> (4) To review every individual case for which probable cause for prosecution exists, and make a prosecutorial decision available under the law based on the facts and circumstances of each individual case under oath of duty as provided in Code Section 15-18-2;
> (5) To draw up all indictments or presentments, when requested by the grand jury, and to prosecute all indictable offenses;
> (6) To prosecute civil actions to enforce any civil penalty set forth in Code Section 40-6-163 and to prosecute or defend any other civil action in the prosecution or defense of which the state is interested, unless otherwise specially provided for;
> (7) To attend before the appellate courts when any criminal case emanating from their respective circuits is tried, to argue the same, and to perform any other duty therein which the interest of the state may require;
> (8) To advise law enforcement officers concerning the sufficiency of evidence, warrants, and similar matters relating to the investigation and prosecution of criminal offenses;
> (9) To collect all money due the state in the hands of any escheators and to pay it over to the educational fund, if necessary, compelling payment by rule or order of court or other legal means;
> (10) To collect all claims of the state which they may be ordered to collect by the state revenue commissioner and to remit the same within 30 days after collection; and on October 1 of every year to report to the state

revenue commissioner the condition of the claims in their hands in favor of the state, particularly specifying:
(A) The amounts collected and paid, from what sources received and for what purposes, and to whom paid;
(B) What claims are unpaid and why;
(C) What judgments have been obtained, when, and in what court; and
(D) What actions are instituted, in what courts, and their present progress and future prospects;
(11) To ensure disposition information is submitted in accordance with subsection (g) of Code Section 35-3-36 when a final disposition decision is made by a district attorney;
(12) To assist victims and witnesses of crimes through the complexities of the criminal justice system and ensure that the victims of crimes are apprised of the rights afforded them under the law; and
(13) To perform such other duties as are or may be required by law or which necessarily appertain to their office.

The Official Code of Georgia places this code section in Chapter 18 of Title 15 with the title "Prosecuting Attorneys."

Ga. Const. art. VI, § 8, ¶ I(d) provides:

It shall be the duty of the district attorney to represent the state in all criminal cases in the superior court of such district attorney's circuit and in all cases appealed from the superior court and the juvenile courts of that circuit to the Supreme Court and the Court of Appeals and to perform such other duties as shall be required by law.[6]

Ga. Const. art. V, § 3, ¶ IV provides:

"The Attorney General shall act as the legal advisor of the executive

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[6] O.C.G.A. § 17-12-1 as amended in 2007 expressly moved the Georgia Public Defender Council to the executive branch of state government. It was previously placed under the judicial branch.

department, shall represent the state in the Supreme Court in all capital felonies and in all civil and criminal cases in any court when required by the Governor, and shall perform such other duties as shall be required by law."

Notably absent from any of these duties is anything that resembles the interpretation of state law or the adjudication of civil or criminal cases. This court rejects the defendant's contention that she is somehow a judicial officer who is entitled to claim she is exempt from the Georgia ORA.

The defendant's contention that she is part of the judicial branch necessarily requires the court to look at a number of fundamental principals of the Georgia Constitution's structure of our state's government.

> "Under the Georgia Constitution, which provides specific roles for the three branches of state government, the legislative branch enacts the law, the judiciary interprets those laws, and the executive branch enforces those laws until they are amended or held to be unconstitutional."[7]

Obviously, the defendant is a prosecuting officer who has the duty to appear in the superior court and represent the state in felony proceedings. That is not a judicial function.

The Supreme Court of Georgia gave us this framework for the analysis of ORA requests in Hardaway v. Rives, 262 Ga. 631 (1992):

> We begin by outlining the steps in analysis of Open Records Act cases. OCGA § 50–18–70(b) provides that
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> [a]ll state ... records, except those which by order of a court of this state or by law are prohibited or specifically exempted from being open to inspection by the general public, shall be open for a personal inspection by any citizen of this state at a reasonable time and place; and those in

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[7] Ga. Const. arts. 3, 5, 6. Georgia Dep't of Human Servs. v. Steiner, 303 Ga. 890, 815 S.E.2d 883 (2018).

charge of such records shall not refuse this privilege to any citizen.

Another statute, OCGA § 50–18–72, sets forth a list of instances in which disclosure of public records is not required, but the list is not exhaustive, as prohibitions or exemptions from disclosure may be found in other areas of the code, see generally Napper v. Georgia Television Co., 257 Ga. 156, 165–169(2), 356 S.E.2d 640 (1987) (discussing whether disclosure was prohibited or exempted by various statutes other than § 50–18–72). In suits under the Open Records Act, the first inquiry is whether the records are "public records." Napper, supra, 257 Ga. at 160, 356 S.E.2d 640. If they are public records, the second inquiry is whether they are protected from public disclosure pursuant to §§ 50–18–70 or 50–18–72. Id. If they are not exempt under the list of exemptions found in § 50–18–72 or under any other statute, then the question is whether they should beprotected by court order under § 50–18–70, Napper at 161, 356 S.E.2d 640, but only if there is a claim that disclosure of the public records would invade individual privacy, Board of Regents v. Atlanta Journal & Constitution, 259 Ga. 214, 216–18(4), 378 S.E.2d 305 (1989); Georgia Hospital Association v. Ledbetter, 260 Ga. 477, 479(5), 396 S.E.2d 488 (1990). In the instant case, appellee concedes that the ECE is a public record; that no question of individual privacy is present; and that the only possible statutory exemption from disclosure of the ECE would be found in §§ 24–9–21 and 24–9–27. Thus, the applicability of the latter Code sections is the dispositive issue."

Chua v. Johnson presented a common scenario in which a criminal defendant filed an ORA request for documents from an earlier prosecution:

Noel Chua appeals from an order of the Camden County Superior Court dismissing with prejudice Chua's complaint against Jackie Johnson, in her capacity as the District Attorney for the Brunswick Judicial Circuit (the "District Attorney" or the "District Attorney's office"). That complaint, which alleged a violation of Georgia's Open Records Act, OCGA § 50–18–70, et seq. ("ORA"), sought to require the District Attorney's office to provide Chua with a copy of a specific document contained in the

> District Attorney's files related to that office's criminal prosecution of Chua. On appeal, Chua contends that the trial court erred in refusing to order the District Attorney to provide him with the document at issue. Specifically, Chua asserts that the District Attorney's office failed to provide him with the timely and detailed written notice required by ORA, setting forth the reasons for the office's refusal to produce the document at issue, and that this failure, without more, entitles him to that document. Chua also claims that the trial court erred by failing to hold an evidentiary hearing to determine whether the document in question falls within the attorney work-product exception to ORA. We agree with Chua that the District Attorney's response to Chua's document request failed to meet all of the requirements set forth in OCGA § 50–18–71(d). We find, however, that such a failure does not automatically entitle Chua to the relief he seeks—i.e., the production of the document. We further find that we cannot determine from the current record whether the document in question falls within an exception to ORA. The trial court, therefore, erred when it refused to hold an evidentiary hearing on this issue. Accordingly, we vacate the order of the trial court and remand the case for further proceedings consistent with this opinion.[8]

There is also the opinion of the Supreme Court in Wolcott v. State where the Court concluded that probation supervisors are authorized to bring petitions to revoke probation. There is this language that notes that with an awkward double negative that the district attorney works for the executive branch of state government:

> Thus, **not unlike a district attorney**, Ms. Clark works for the executive branch of state government and is charged with providing the trial court with information relevant to pending criminal proceedings over which the court alone exercises judicial authority.[9]

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[8] Chua v. Johnson, 336 Ga. App. 298, 298, 784 S.E.2d 449, 450 (2016).

[9] Wolcott v. State, 278 Ga. 664, 666, 604 S.E.2d 478, 481 (2004).

In another case, the district attorney of the August Judicial Circuit sought to challenge an order from the judges of that circuit requiring him to provide them with the defendants' names, charge or charges, and indictment date or the date the case was made if not indicted. The district attorney contended that this violated the separation of branches doctrine on the theory that the judges were in the judicial branch, and they could not require him as a part of the executive branch to provide the needed case data.

The Court held:

> The three departments of government are not kept wholly separate in the Georgia Constitution. Such is the case here. Our Constitution requires district attorneys, '. . . to perform such other services as shall be required of him by law.' Ga.Const., Art. VI, Sec. XI, Par, II (Code Ann. § 2-4602). One of these statutory requirements is that district attorneys are '. . . otherwise to aid the presiding judge in organizing the courts as he may require.' Code § 24-2908, subd. 3. **District attorneys are also required to prosecute all indictable offenses.** Code § 24-2908, subd. 4. They may not nolle prosequi a case without the consent of the court. Code § 27-1801. In certain instances the presiding judge may appoint a special prosecutor or 'command the services of a district attorney of any other circuit accessible.' Code § 24-2913.
> In view of the foregoing we conclude that the functions of district attorneys are not exclusively executive and that the presiding judge may call upon the district attorney to furnish the information requested here as to pending criminal cases if for no other reason than to schedule trials which we conceive to be 'organizing the courts' so as to dispose of criminal matters promptly and efficiently.[10]

The district attorneys duties are pre-eminently executive since they are Georgia's prosecutors for felony cases.

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[10] In re Pending Cases, Augusta Judicial Circuit, 234 Ga. 264, 265, 215 S.E.2d 473, 474–75 (1975).

Next, there is the opinion in Felker v. Lukemire, another action by a death row inmate under the ORA seeking records pertaining to his murder trial. The Court held that the district attorney's response to the request that records would be made available for inspection and copying had complied with the ORA. There is no contention that the district attorney was entirely exempt from the ORA.[11]

During the motion hearing, the defense contended that the office of the district attorney is not among those regulated by the ORA.

The court will look first at the ORA text itself.

> (a) The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions. The General Assembly further finds and declares that there is a strong presumption that public records should be made available for public inspection without delay. This article shall be broadly construed to allow the inspection of governmental records. The exceptions set forth in this article, together with any other exception located elsewhere in the Code, shall be interpreted narrowly to exclude only those portions of records addressed by such exception.
> (b) As used in this article, the term:
> (1) **"Agency" shall have the same meaning as in Code Section 50-14-1** and shall additionally include any association, corporation, or other similar organization that has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state, their officers, or any combination thereof and derives more than 33 1/3 percent of its general operating budget from payments from such political subdivisions.
> (2) "Public record" means all documents, papers, letters, maps, books,

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[11] Felker v. Lukemire, 267 Ga. 296 (1996).

> tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use.[12]

O.C.G.A. § 50-14-1(a) As used in this chapter, the term:
(1) "Agency" means:
(A) **Every state department, agency, board, bureau, office, commission, public corporation, and authority;**
(B) Every county, municipal corporation, school district, or other political subdivision of this state;
(C) Every department, agency, board, bureau, office, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state;
(D) Every city, county, regional, or other authority established pursuant to the laws of this state; and
(E) Any nonprofit organization to which there is a direct allocation of tax funds made by the governing body of any agency as defined in this paragraph which constitutes more than 33 1/3 percent of the funds from all sources of such organization; provided, however, that this subparagraph shall not include hospitals, nursing homes, dispensers of pharmaceutical products, or any other type organization, person, or firm furnishing medical or health services to a citizen for which they receive reimbursement from the state whether directly or indirectly; nor shall this term include a subagency or affiliate of such a nonprofit organization from or through which the allocation of tax funds is made.

With regard to criminal investigative files, the Supreme Court has held that:

> We hold that once the trial has been held, the conviction affirmed on direct appeal, and any petition or petitions for certiorari denied (including

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[12] O.C.G.A. § 50-18-70.

> to the Supreme Court of the United States), the investigatory file in the case should be made available for public inspection. If there are any specific items in the file which are exempt from the disclosure provisions of the Act, or which in the public interest should not be disclosed, the burden is on the party opposing disclosure to make this showing. Likewise, if there is information, the disclosure of which would jeopardize a future law enforcement proceeding, see Robbins, supra, the burden is on the party opposing disclosure to make that showing. In our opinion, these burdens have not been met here.[13]

The defendant does not assert the requested records fall into the statutory exceptions provided by O.C.G.A. § 50-18-72(a)(3) or (4). To qualify for that protection, the Court required the sheriff and the district attorney to carry the burden to prove the records requested related to a case in which the prosecution was imminent and of a finite duration.

There was no contention of complete exemption such as the defendant has asserted here.

This case also ruled that: OCGA § 50–18–70(b) provides that public records "shall be open for a personal inspection by any citizen of this state," and that "those in charge of such records shall not refuse this privilege to any citizen." We thus find no reason to distinguish Parker's (or any other individual citizen's) right of access from news organizations' right of access.[14]

The court has found no case in which the defense of Sovereign Immunity has been asserted to bar the inspection of public records under the ORA. Indeed, the entire policy stated by the General Assembly is to allow public access to government agency records.

The court denies the motion to dismiss that relies on the defense of sovereign immunity.

The court notes further that the defendant's argument that she is under

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[13] Napper v. Georgia Television Co., 257 Ga. 156, 165, 356 S.E.2d 640, 647 (1987).

[14] Parker v. Lee, 259 Ga. 195, 199, 378 S.E.2d 677, 681 (1989).

the judicial branch does not help her.

> In this state, "the public and the press have traditionally enjoyed a right of access to court records." Atlanta Journal & Atlanta Constitution v. Long, 258 Ga. 410, 411, 369 S.E.2d 755 (1988); see R.W. Page Corp. v. Lumpkin, 249 Ga. 576 n. 1, 292 S.E.2d 815 (1982). To preserve this right, this court and the council of superior court judges have adopted a rule that presumes the public will have access to all court records. See Long, 259 Ga. at 413, 369 S.E.2d 755. State Court Rule 21 provides: "All court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below."[15]

All court records public and they are to be available for public inspection absent limitation by law or pursuant to the procedure in USCR 21.2. The defendant does not specify what would except her records from disclosure under Rule 21.

The defendant's position would dangerously take away the protection afforded to her prosecution records by O.C.G.A. § 50-18-72(a)(3) or (4), or even the ability to have a court determine whether requested records do or do not qualify for those exemptions from disclosure. This is dangerous because it could put law enforcement informants' names or witnesses' names into the public sphere.

The defendant assertion that sovereign immunity bars the plaintiff's action. That argument ignores the plain language of the ORA.

The court notes this declared policy:

> (a) The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions. The

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[15] Green v. Drinnon, Inc., 262 Ga. 264, 264, 417 S.E.2d 11, 12 (1992).

> General Assembly further finds and declares that there is a strong presumption that public records should be made available for public inspection without delay. This article shall be broadly construed to allow the inspection of governmental records. The exceptions set forth in this article, together with any other exception located elsewhere in the Code, shall be interpreted narrowly to exclude only those portions of records addressed by such exception.[16]

Plainly, the Legislature adopted the ORA to make state officers expressly subject to suit in the event they fail to make their records available for inspection.

The Supreme Court also told us that violations of the Open Meetings Act are to be enforced against officers in their individual capacities. The Court also told us that a private person has standing to seek to impose a civil penalty for non-compliance with the Open Meetings Act.[17] While that case relates to the Open Meetings Act, the language and policy is instructive for our scenario.

The defendant contends that the requests were made by Mr. Epps, and not the plaintiff himself. The complaint alleges that the requests were made by him through counsel. This is not an adequate ground for dismissal of the complaint since there is no barrier to a citizen employing counsel to make Open Records requests.

The defendant contends that the superior court does not have subject matter jurisdiction of the claims made in this case. The General Assembly expressly gives the superior court the authority to hear actions to enforce this law:

> The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article. **Such actions may be brought by any**

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[16] O.C.G.A. § 50-18-70(a).

[17] Williams v. DeKalb County, 308 Ga. 265 (2020).

person, firm, corporation, or other entity. In addition, the Attorney General shall have authority to bring such actions in his or her discretion as may be appropriate to enforce compliance with this article and to seek either civil or criminal penalties or both.[18]

The defendant's assertion that this court does not have subject matter is baseless.

The defendant asserts that the plaintiff does not have standing to bring this action. That contention again ignores the plain language of §50-18-73(a) that allows any person to bring an action to enforce access.

The defendant contends the complaint is inadequate to state a claim under the ORA against her in her individual capacity. Applying the usual standard required for a motion for judgment on the pleadings, the court finds that complaint does adequately state a claim against the defendant in her individual capacity. That motion to dismiss is denied.[19]

The defendant contends the court should dismiss any claim relating to alleged criminal conduct by the defendant in the destruction of records. The plaintiff's counsel made it clear that the plaintiff does not seek criminal prosecution during the motion hearing.

The court notes that this is a civil action, and while the ORA does allow criminal prosecution for certain violations, the court views any such prosecution as outside the scope of this matter. Plaintiff's counsel also made it clear during the hearing that this is not relief they seek in the context of this civil matter.

As to the fifth ground in support of the defendant's motion to dismiss (as enumerated in the defendant's reply in support of her motion to dismiss dated November 1, 2023), the defendant argues that the exhibits the plaintiff has attached to the complaint show that she has complied with the ORA in regard to the requested records.

Paragraph twelve of the complaint alleges a complete failure to produce records in response to at least twenty-two Open Records requests relating to

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[18] O.C.G.A. § 50-18-73(a).

[19] Williams v. DeKalb County, supra.

Exhibits 2 to 23.

Paragraph thirteen alleges that the defendant failed to produce "records responsive to sub-requests in at least twelve (12) written, duly-requested Open records requests."

The defendant contends that the exhibit compel a finding that she has complied with the requests.

As to Exhibits 63, 64 and 92, the defendant's letter to plaintiff's counsel indicates that the records are attached. That said, the plaintiff is entitled to his version of the facts-for the purposes of this motion.

As to Exhibits 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 97, 98, 99, 100, 101, 102, 103, and 104, the defendant's letter to Mr. Epps is that the records "will be prepared for your review" subject to the standard exemptions allowed by the ORA.

As to Exhibits 93, 94, and 95, the court could not see whether there was compliance with the request or not because of the limited text in those exhibits.

In summary, there are thirty-six exhibits in which the defendant says the records will be prepared. The complaint alleges those records were never actually received.

There are only three exhibits that indicate compliance by the defendant. The court will not grant any further relief as to the three requests listed in Exhibit 63, 64 and 92.

The defendant claimed exemption for a pending prosecution as to the request listed in Exhibit 87. The court notes the plaintiff is entitled to a hearing on that claimed exemption. As to claimed exemptions, there is this ruling:

> Although exemptions from disclosure under the Open Records Act are narrowly construed, the Act obviously should not be construed "in derogation of its express terms...." The Corp. of Mercer Univ. v. Barrett & Farahany, 271 Ga.App. 501, 503(1)(a), 610 S.E.2d 138 (2005). OCGA § 50–18–72(a)(4) provides an exemption for law enforcement records in "any pending investigation or prosecution of criminal or unlawful activity...."
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> The focus of subsection (a)(4) ... is not upon the specific type of

information contained in law enforcement and prosecution records. That subsection broadly exempts from disclosure the entirety of such records to the extent they are part of a "pending investigation or prosecution" and cannot otherwise be characterized as the initial arrest ... or incident report.
Atlanta Journal & Constitution v. City of Brunswick, 265 Ga. 413, 414(1), 457 S.E.2d 176 (1995). The plain and ordinary meaning of the adjective "pending" is "[r]emaining undecided; awaiting decision...." Black's Law Dictionary 1154 (7th ed.1999). " '[T]he term "pending" means nothing more than "remaining undecided."[20]

The court denies the motion to dismiss as to the ORA requests listed in Exhibits 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, and 104.

As to grounds eight and nine, the complaint states a claim on those allegations.

So ordered this November 3, 2023.

David Emerson
Senior Judge of Superior Courts
Presiding in Clarke County

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[20] Unified Gov't of Athens-Clarke Cnty. v. Athens Newspapers, LLC, 284 Ga. 192, 195, 663 S.E.2d 248, 250–51 (2008).