

SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JOEL PAEZ,

Plaintiff,

v.

CITY OF ATLANTA,

Defendant.

Civil Action No. 2023CV377267

**COMPLAINT TO ENFORCE COMPLIANCE
WITH THE GEORGIA OPEN RECORDS ACT**

Plaintiff Joel Paez files this Complaint to enforce compliance with the Georgia Open Records Act, O.C.G.A. §§ 50-18-70 *et seq.*, and shows the following to the Court:

STATEMENT OF FACTS

Plaintiff's Open Records Request and Atlanta Police Department's Response

1. Joel Paez is the father of Manuel Paez Teran, an environmental activist who protested the construction of a new Atlanta Public Safety Training Center that would destroy hundreds of acres of the South River Forest in Metro Atlanta. On January 18, 2023, an unknown number of law enforcement officers fired more than a dozen rounds into Manuel's body, killing him.
2. Since their child's death, Manuel's parents have sought to gain access to information that would allow them to understand the circumstances that led to their child's death.
3. On January 26, 2023, Plaintiff's attorney submitted a request to the Atlanta Police Department ("APD"), which was one of nine agencies disclosed by the Georgia Bureau of Investigation ("GBI") as having participated in the raid on January 18, 2023, that led to Manuel's death. Plaintiff attaches a copy of this request as Exhibit "A."
4. The letter included the following requests, which are the subject of this lawsuit:

Req. 3 - Any images or recordings (whether video, audio, or otherwise) made by individual members of your agency relating to the task force's planned operation or made while at the Atlanta Public Safety Training Center on January 18, 2023.

Req. 4 - Any recordings made by your agency at the site of the Atlanta Public Safety Training Center on January 18, 2023, including, but not limited to, body cam or dash cam recordings.

5. On January 31, 2023, the Atlanta Police Department responded to Plaintiff's GORA request by email. Plaintiff attaches a copy of APD's response as Exhibit "B."

6. The APD's response provided records responsive to at least one request. It further identified responsive records to requests 3 and 4 that the agency was able to locate but stated that the release of those records would be on a "rolling basis."

7. On February 8, 2023, Plaintiff's counsel received fourteen body-worn camera videos as "the first release in a series" in response to requests 3 and 4. The APD released these videos to members of the media, as well.

8. The audio portion of the recordings revealed that officers unleashed a hail of gunfire on Manuel and, shockingly, revealed that one officer suggesting that a wounded law enforcement officer at the scene had been hit by "friendly fire."

Executive Agencies Interfere with Disclosure of Open Records

9. Immediately following Manuel's death, the Georgia Bureau of Investigation ("GBI") began self-publishing press releases¹ about the incident in which it selectively released details from its investigation about the events leading to Manuel's death. This included photos from the scene and summaries of information about Manuel's alleged possession and use of a firearm.

¹ GBI's press releases may be found at <https://gbi.georgia.gov/press-releases/2023>. At the time of this Complaint, the most recent release was on February 9, 2023, which provided the sixth update of the release entitled "GBI Investigates Officer Involved Shooting Following Multi-Agency Operation at Site of Future Atlanta Public Safety Training Center." <https://gbi.georgia.gov/press-releases/2023-02-09/gbi-investigates-officer-involved-shooting-following-multi-agency>

10. GBI's selective distribution of investigative material has repeatedly sought to justify Manuel's death by law enforcement while simultaneously claiming that publicly releasing other investigative materials about the officers' actions would impede its investigation.

11. GBI's narrative was part of a larger effort from other agencies in the state executive branch, including Attorney General Carr and Governor Kemp, to criminalize the protests in which Manuel participated under Georgia's Domestic Terrorism statute.

12. In response to the body camera footage APD released to Plaintiff's attorneys and the public generally, the GBI issued a press statement for the sole purpose of minimizing the harm to its version of events caused by the conversations heard on the body camera video.²

13. On February 13, 2023, the division director of GBI's Legal Division took the extraordinary step of sending a letter to Chief of Police Darin Schierbaum requesting that the APD "withhold those records" responsive to open records requests that related to GBI's investigation. Plaintiff attaches a copy of that letter as Exhibit "C."

14. The following day, a senior assistant attorney general in the Georgia Department of Law sent an advisory letter to the City of Atlanta Department of Law, copying the GBI Legal Division Director regarding the release of records under the Open Records Act. Plaintiff attaches a copy of this letter as Exhibit "D."

15. The acts of the GBI and Attorney General's Office were part of a coordinated effort to prevent public records from being released to Manuel's family and the public at large.

APD Changes Course and Asserts New Reason to Withhold Documents

16. On February 15, 2023, the APD sent a revised response to Plaintiff's requests 03 and 04,

² The first paragraph of its February 9, 2023, release states that its investigation does not support the observation by the officers heard talking in the videos. <https://gbi.georgia.gov/press-releases/2023-02-09/gbi-investigates-officer-involved-shooting-following-multi-agency>

which stated that because of the GBI's request and the letter from the Attorney General's office, "APD will not be releasing further footage at this time." Plaintiff attaches a copy of APD's email as Exhibit "E."

17. On March 6, 2023, Plaintiff's counsel responded to APD's email, contesting its decision to withhold additional responsive records.

Claim for Relief

18. The Georgia Open Records Act grants a right to the public to inspect and copy public records that are prepared, maintained, and received in the course of operation of a public office or agency. O.C.G.A. § 50-18-70(a)-(b).

19. The City of Atlanta is an agency of the State of Georgia and is therefore subject to the requirements of the Open Records Act under O.C.G.A. § 50-18-70(b).

20. Plaintiff is an individual entitled to enforce the Georgia Open Records Act under O.C.G.A. § 50-18-73(a).

21. Plaintiff's request asked for public records as defined in O.C.G.A. § 50-18-70(a).

22. Defendant timely responded to Plaintiff's request as required by O.C.G.A. § 50-18-71(b)(1)(A).

23. In its response, Defendant did not withhold any documents in accordance with O.C.G.A. § 50-18-71(d) and did not assert any exemptions to providing the records requested by Plaintiff.

24. Defendant's subsequent decision to withhold responsive records as a result of communications from the GBI or the Attorney General's office violates the Georgia Open Records Act.

25. Plaintiff is therefore entitled to relief as described in the prayers for relief.

WHEREFORE, Plaintiff asks that the Court:

- a. Assume jurisdiction over this matter;
- b. Grant Plaintiff declaratory relief that Defendant has violated the Open Records Act when it withheld documents in violation of O.C.G.A. § 50-18-71(d);
- c. Order Defendant to release the records responsive to Plaintiff's requests;
- d. Grant Plaintiff reasonable attorney's fees and costs incurred in filing this action;
- e. Provide such further relief as the Court deems just and proper.

Submitted on March 10, 2023

/s/ Wingo F. Smith

G. Brian Spears

Bar No. 670112

bspears@civil-rights.law

Jeff Filipovits

Bar No. 825553

jeff@civil-rights.law

Wingo F. Smith

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WINGO SMITH
WINGO@CIVIL-RIGHTS.LAW

January 26, 2023

Sent via email to dschierbaum@atlantaga.gov

Darin Schierbaum
Chief of Police
226 Peachtree St SW
Atlanta, Ga. 30303

Re: Spoliation and Open Records Request

Dear Chief Schierbaum,

Our firm represents the family of Manuel Esteban Paez Teran, whom law enforcement officers shot and killed on the morning of January 18, 2023. According to a Georgia Bureau of Investigation press release issued on January 18, 2023, your agency was one of the member agencies of the joint task force that planned and carried out the operation that ultimately led to Manuel's death.

The family has engaged our firm to represent them and investigate the circumstances surrounding Manuel's death. We ask that you preserve any and all information related to the task force, the operation undertaken on January 18, and any subsequent investigation related to the causes and circumstances of his death. Please also direct any future communications with Manuel's family to our office.

In addition to the notice of spoliation and representation, we request that your agency provide us with records pursuant to Georgia's Open Records Act. For purposes of this request, references to the task force and its members include the following agencies enumerated by the Georgia Bureau of Investigation and any agencies that you know to be actively participating in the task force:

1. Georgia Bureau of Investigation;
2. Atlanta Police Department;
3. Georgia Attorney General's Office;
4. DeKalb County District Attorney's Office;
5. Georgia State Patrol;

Exhibit A

Spoliation and Open Records Request to Atlanta Police Department

January 26, 2023

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6. FBI;
7. DeKalb County Police Department;
8. Department of Natural Resources; and the
9. Georgia Emergency Management Agency (GEMA).

Pursuant to the GORA, we request that your agency provide:

1. Any agreements, memorandum of understanding, or similar written acknowledgments between your agency and any other members of the task force pertaining to the task force operation conducted at the Atlanta Public Safety Training Center (aka “Cop City” or “Weelaunee Forest”) on January 18, 2023.
2. Any records showing your agency’s officers assigned to the task force and those officers who were present at the Atlanta Public Safety Training Center at or around the time of Manuel’s death on January 18, 2023.
3. Any images or recordings (whether video, audio, or otherwise) made by individual members of your agency relating to the task force’s planned operation or made while at the Atlanta Public Safety Training Center on January 18, 2023.
4. Any recordings made by your agency at the site of the Atlanta Public Safety Training Center on January 18, 2023, including, but not limited to, body cam or dash cam recordings.
5. Any electronic communications between your agency’s officers and/or any other task force member made or received on January 18, 2023, and relating to the task force’s operation at the Atlanta Public Safety Training Center.
6. Copies of any statements made by your agency’s officers, other task force members, or other persons with knowledge of the events occurring at the Atlanta Public Safety Training Center on January 18, 2023, before and after Manuel’s death.
7. Any notes taken at or in conjunction with any pre-action or other planning meeting associated with the task force’s operation conducted on January 18, 2023.
8. Any written communications between your agency and the Office of the Mayor of Atlanta related to the task force planning and the operation carried out on January 18, 2023, at the Atlanta Public Training Center.

Spoliation and Open Records Request to Atlanta Police Department

January 26, 2023

Page 3 of 3

9. Copies of other open records requests received by your agency related to the events surrounding the death of Manuel Esteban Paez Teran on January 18, 2023, at the Atlanta Public Safety Training Center, and copies of any written response by your agency to those requests.

Should you have questions concerning these requests or the spoliation notice, please do not hesitate to contact our office. You may reach me at wingo@civil-rights.law or by telephone at (404) 407-5418.

Sincerely,

A handwritten signature in black ink, appearing to read "Wingo F. Smith". The signature is written in a cursive style with a large initial "W".

Wingo F. Smith

cc: APD Open Records (via fax to (404) 653-7987)

Subject: RE: Manuel Paez Teran
Date: Tuesday, January 31, 2023 at 4:07:12 PM Eastern Standard Time
From: Jimenez, Scott A.
To: Wingo Smith
CC: Schierbaum, Darin, Hickson, Nina R., Robinson, Amber, Denius, Kristen, Aman, Peter, Brian Spears, Jeff Filipovits, Jimenez, Scott A.
Attachments: image001.png, Sign In Sheets 2023 Redacted.pdf

Mr. Smith,

Good afternoon. We have begun work to collect and deliver records responsive to your Open Records Request.

I will provide more individual detail on the numbered requests **in red** below:

1. Any agreements, memorandum of understanding, or similar written acknowledgments between your agency and any other members of the task force pertaining to the task force operation conducted at the Atlanta Public Safety Training Center (aka "Cop City" or "Weelaunee Forest") on January 18, 2023.

- **There are no responsive records.**

2. Any records showing your agency's officers assigned to the task force and those officers who were present at the Atlanta Public Safety Training Center at or around the time of Manuel's death on January 18, 2023.

- **We have collected the APD officer sign-in sheets for January 18th at the site.**
- **That record has been processed and is attached.**

3. Any images or recordings (whether video, audio, or otherwise) made by individual members of your agency relating to the task force's planned operation or made while at the Atlanta Public Safety Training Center on January 18, 2023.

- **I have located responsive records from January 18th at the site.**
- **It will take approximately 3 weeks to process those records.**
- **I will provide them on a rolling production basis.**

4. Any recordings made by your agency at the site of the Atlanta Public Safety Training Center on January 18, 2023, including, but not limited to, body cam or dash cam recordings.

- **Please see response to #3 above.**

5. Any electronic communications between your agency's officers and/or any other task force member made or received on January 18, 2023, and relating to the task force's operation at the Atlanta Public Safety Training Center.

- **There is not enough specificity in this request to generate a search for communications in our systems.**

6. Copies of any statements made by your agency's officers, other task force members, or other persons with knowledge of the events occurring at the Atlanta Public Safety Training Center on January 18, 2023, before and after Manuel's death.

- **There are no responsive records.**

- (Press conference statements on the incident were delivered by
 - GBI Director Michael Register, and
 - GA Dept of Public Safety Commissioner Colonel Chris Wright.)

7. Any notes taken at or in conjunction with any pre-action or other planning meeting associated with the task force's operation conducted on January 18, 2023.

- **There are no responsive records.**

8. Any written communications between your agency and the Office of the Mayor of Atlanta related to the task force planning and the operation carried out on January 18, 2023, at the Atlanta Public Training Center.

- **There is not enough specificity in this request to generate a search for communications in our systems.**

9. Copies of other open records requests received by your agency related to the events surrounding the death of Manuel Esteban Paez Teran on January 18, 2023, at the Atlanta Public Safety Training Center, and copies of any written response by your agency to those requests.

- **There are no responsive records logged to date.**
- **I have placed an inquiry with our APD Public Affairs Unit which handles media requests separately.**

Please let me know if you have any questions.

Thank you for your time,

Lieutenant Scott Jimenez
Open Records Unit Commander
City of Atlanta Police Department
226 Peachtree St SW
Atlanta, GA 30303
Mobile – 404-450-4392
E-Fax – 404-739-0275
sajimenez@atlantaga.gov





GEORGIA BUREAU OF INVESTIGATION

3121 Panthersville Road
P.O. Box 370808
Decatur, Georgia 30037-0808

Michael J. Register
Director

February 13, 2023

Chief Darin Schierbaum
Chief of Police
Atlanta Police Department
226 Peachtree Street SW
Atlanta, Georgia 30303

VIA EMAIL

Re: Use of Force Investigation – Case No. 10-0170-34-23

Dear Chief Schierbaum:

On January 18, 2023, the Georgia Bureau of Investigation (“GBI”) received a request from the Georgia State Patrol (“GSP”) to investigate an officer involved shooting, which occurred on the same date during a multi-jurisdictional enforcement operation at the site of the future Atlanta Public Safety Training Center (“APSTC”) located in Dekalb County. During this incident, law enforcement officers encountered Manuel Paez Taren, who shot and injured a GSP Trooper. Multiple GSP Troopers discharged their firearms, striking Taren, who died on the scene. This investigation is currently pending.

We recognize that the Atlanta Police Department has received requests pursuant to O.C.G.A. § 50-18-70, et. seq. (“Open Records Act”), for records pertaining to the APSTC operation that resulted in the shooting of a GSP Trooper and Teran, to include audio/video footage from the incident. These records constitute evidence in an ongoing investigation and as such, are exempted from public disclosure by Georgia law, which provides in pertinent part:

(4) Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, 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; and provided, further, that this paragraph shall not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution;

Exhibit C

1/18/23 OIS Investigation
February 13, 2023
Page Two

O.C.G.A. 50-18-72(a). In the interest of justice and to protect the integrity of a current and ongoing investigation, the GBI requests that, in response to requests for records related to the above-referenced matter, the APD withhold those records.

If you have any questions or concerns, please do not hesitate to contact me or our Open Records Unit at OpenRecords2@gbi.ga.gov.

Sincerely,



Laura W. McDonald
Division Director
Legal Division
Georgia Bureau of Investigation

LWM:cda

cc: - Nina Hickson



GEORGIA DEPARTMENT OF LAW

40 Capitol Square SW
Atlanta, Georgia 30334-1300

CHRISTOPHER M. CARR
ATTORNEY GENERAL

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(404) 656-3300

Writer's Direct Dial:
404-458-5232
Fax 404-657-9932
jcolangelo@law.ga.gov

February 14, 2023

Via Email Correspondence: ninarhickson@atlantaga.gov

Nina Hickson, Esquire
City of Atlanta Department of Law
55 Trinity Avenue SW Suite 5000
Atlanta, GA 30303, United States

RE: *The Open Records Act exception in O.C.G.A. 50-18-72(a)(4)*

Dear Ms. Hickson:

I am writing to follow up on our previous conversations about how O.C.G.A. 50-18-72(a)(4) would apply in situations where the City of Atlanta Police Department has records that are being used in another law enforcement agency's investigation, even where APD itself doesn't have an open investigation.

This factual situation has occurred before with a variety of different law enforcement agencies. It is not unusual for a local law enforcement agency to have evidence (such as videos or documents) that another law enforcement agency is using in an investigation. The local agencies will withhold the evidence in their possession, citing the (a)(4) exemption, until all agencies involved have closed their investigations and prosecution is complete.

Similarly, the GBI conducts chemical analyses of blood or other substances that it receives from local law enforcement agencies and sends the results back to those agencies to use in their investigations and/or prosecutions. The GBI will not release its own copies of those scientific results until the local agency has finished its investigation and any resulting prosecution is complete.

When looking at the actual text of the (a)(4) exemption, language within the text itself clearly leads to a statutory construction authorizing custodial agencies to assert the (a)(4) exemption for investigations or prosecutions undertaken by other agencies. The proviso within the exemption, where "this paragraph shall not apply to records in the possession of an agency that is the subject

Exhibit D

Nina Hickson, Esq.
February 14, 2023
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of the pending investigation or prosecution” would be rendered mere surplusage under a construction where the (a)(4) exemption could only be asserted by custodial agencies conducting an investigation or prosecution, as it would be rare that an agency would conduct an investigation of itself and it would be an impossibility that an agency would be conducting a prosecution of itself.

That construction of the (a)(4) exemption is further supported by Georgia’s appellate courts. In *Media Gen. Operations, Inc. v. St. Lawrence*, 337 Ga. App. 428 (2016), a media organization sought records from the offices of both the district attorney and the sheriff’s office, and those agencies sought declaratory relief that the records were exempt from production. The Court of Appeals held that, despite the fact that the investigation had concluded, the ongoing prosecution by the district attorney exempted production of the records of the district attorney and the sheriff’s office. *Id.* at 431. Thus, even though the prosecution was conducted by the district attorney, the records still within the custody of the sheriff were exempt from production.

Accordingly, it seems clear from both the text of the (a)(4) exemption and appellate caselaw interpreting that exemption that a custodial agency, even one not actually conducting the investigation or prosecution, would be entitled to assert the (a)(4) exemption as long as another agency had an open and active investigation or prosecution. I hope that you find this analysis helpful as you evaluate requests under the (a)(4) exemption.

Sincerely,

/s/Jennifer Colangelo

JENNIFER COLANGELO
Senior Assistant Attorney General

cc: Ms. Laura McDonald, Legal Division Director, GBI
Ms. Kristen Denius, Chief Transparency Officer, City of Atlanta

Subject: RE: Manuel Paez Teran
Date: Wednesday, February 15, 2023 at 4:02:35 PM Eastern Standard Time
From: Jimenez, Scott A.
To: Wingo Smith
CC: Schierbaum, Darin, Hickson, Nina R., Robinson, Amber, Denius, Kristen, Aman, Peter, Brian Spears, Jeff Filipovits, Jimenez, Scott A.
Attachments: image001.png, 2023-01-26 SP LTR and ORR to APD .pdf, AG-to-ATL-re-a4.pdf, 2.13.23 APD letter.pdf

Good afternoon,

On January 31, 2023 in response to your Thursday, January 26, 2023 Georgia Open Records Act request, wherein you requested the following:

3. Any images or recordings (whether video, audio, or otherwise) made by individual members of your agency relating to the task force's planned operation or made while at the Atlanta Public Safety Training Center on January 18, 2023.

4. Any recordings made by your agency at the site of the Atlanta Public Safety Training Center on January 18, 2023, including, but not limited to, body cam or dash cam recordings.

the Atlanta Police Department informed you that

- I have located responsive records from January 18th at the site.
- It will take approximately 3 weeks to process those records.
- I will provide them on a rolling production basis.

On February 8, 2023 the Atlanta Police Department informed you:

RE: #3 & #4 -

I have shared a folder of video material via Microsoft OneDrive to your team.

This will be the first release in a series.

On February 13, 2023, the Atlanta Police Department received the attached correspondence from the Georgia Bureau of Investigation (GBI) wherein it provided the City of Atlanta official notice that the GBI has included any audio/video footage of the January 18, 2023 officer involved shooting incident near the site of the Public Safety Training Center that is in the custody of the Atlanta Police Department, in its pending criminal investigation into that incident. On February 14, 2023 the City of Atlanta received the attached correspondence from the Georgia Attorney General's Office in which it states that a custodial agency, even one not actually conducting the investigation or prosecution, would be entitled to assert the exemption at OCGA Sec. 50-18-72(a)(4) as long as another agency had an open and active investigation or prosecution. OCGA Sec. 50-18-72(a)(4) provides that public disclosure shall not be required for records that are:

Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, 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; and provided, further, that this paragraph shall not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution; and provided, further, that the release of booking photographs shall only be permissible in accordance with Code Section 35-1-19;

Per the attached request and guidance from the GBI and Attorney General's office, APD will not be releasing further footage at this time. Please contact the GBI or Attorney General's Office with any further questions regarding the ongoing investigation.

Thank you for your time,

Lieutenant Scott Jimenez
Open Records Unit Commander
City of Atlanta Police Department
226 Peachtree St SW
Atlanta, GA 30303
Mobile – 404-450-4392
E-Fax – 404-739-0275
sajimenez@atlantaga.gov

