

***Banbridge Post-Searchlight, Inc. v. Decatur County, Decatur County Superior Court,***  
**No.: 96-V-302 (Order dated Sept. 10, 1996)**  
**&**  
***Allen v. Athens-Clarke County, Athens-Clarke County Superior Court,***  
**No.: SU-99-CV-1112-J (Order dated Aug. 2, 1999)<sup>1</sup>**

Georgia's Open Records Act ("ORA") states that public disclosure is not required for:

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.

O.C.G.A. § 50-18-72(a)(4) (emphasis added). Interpreting the application of this provision to "9-1-1" emergency dispatch records and audio recordings, a pair of cases from the Decatur County Superior Court and the Athens-Clarke County Superior Court established that Georgia agencies must release 9-1-1 documents under the ORA, even if the documents relate to a pending investigation. *See Banbridge Post-Searchlight, Inc. v. Decatur County, Decatur Superior Court, No.: 96-V-302 (Order dated Sept. 10, 1996) (hereinafter "1996 Order"); Allen v. Athens-Clarke County, Athens-Clarke County Superior Court, No.: SU-99-CV-1112-J (Order dated Aug. 2, 1999) (hereinafter "1999 Order")*. These two orders represent a significant contribution to ORA jurisprudence in Georgia, laying the groundwork for expanded access to 911 audio recordings and corresponding records.

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<sup>1</sup> Copies of both Orders are attached to this summary as they are not accessible through Westlaw or LexisNexis.

### ***Bainbridge Post 1996 Order***

In *Bainbridge Post*, the Decatur County Superior Court held that 9-1-1 incident cards, which “register, dispatch and preserve information from callers that is necessary . . . for an appropriate emergency agency to effectively respond to the emergency,” are initial police incident reports under O.C.G.A. § 50-18-72(a)(4) and subject to public inspection. *See* 1996 Order at 8.

*Bainbridge Post* arose from the following facts: The Decatur-Grady County 911 Unit (“Unit”) was created to provide centralized emergency services for the citizens of the Decatur and Grady Counties by serving as the single dispatch center for police, fire, and other emergency services in the area. *Id.* at 3. Prior to the creation of the Unit, the various emergency agencies in the counties would maintain their own dispatchers’ log books, which were open for public inspection. *Id.* Instead of recording information in log books, the Unit maintained 9-1-1 incident cards (“cards”). *Id.* at 4. The cards were used to record information from callers “necessary or important for an appropriate emergency agency to effectively respond to the emergency.” *Id.* While fielding a call coming into the Unit, a dispatcher would manually fill out the card. *Id.* After the call was handled, neither the dispatcher nor any other employee added additional information to the card. *Id.* at 5. The dispatchers stored the cards at the Unit and provided a copy of the card to the emergency agency assigned to the call. *Id.*

A local newspaper, The Bainbridge Post-Searchlight, made open records requests to the Unit under the Open Records Act (“ORA”) for access to the cards that specifically related to calls requesting “police, fire, or emergency services” and cards related to the dispatch of “fire, ambulance, police, sheriff’s, rescue or other emergency units.” *Id.* at 6-7. The Unit refused to grant access to the cards. *Id.* The Unit admitted that the incident cards were public records, but

argued they were barred, both legally and contractually, from publicly disclosing any names, addresses, telephone numbers, or vehicle registration information contained on the cards. *Id.* at 2-3. Therefore, the Unit argued that they were allowed to deny all access to the cards. *Id.*

The court rejected the Unit's argument that the cards were exempted under the ORA from public disclosure, holding that the cards were "initial police reports" as contemplated by O.C.G.A. § 50-18-72(a)(4). *Id.* at 7. Therefore, the Unit was required to allow reasonable access to all requested cards. *Id.* Further, the Court held that even if the cards contained confidential information, the Unit's wholesale denial of access was not the appropriate remedy. *Id.* at 8-9. Rather, the Unit had the burden of redacting the information on the cards that was not required to be disclosed. *Id.* Thus, because the cards are initial police reports under O.C.G.A. § 50-18-72(a)(4), the Unit was required to make the cards available to The Bainbridge Post-Searchlight for inspection at the 911 facility "at a reasonable time and manner." *Id.* at 9.

### ***Allen 1999 Order***

Three years later, in *Allen v. Athens-Clarke County, et al.*, No.: SU-99-CV-1112-J, the Athens-Clarke County Superior Court held that 9-1-1 tapes and Computer Aided Dispatch ("CAD") records were subject to public disclosure under the ORA, even if part of a pending investigation or prosecution. *See* 1999 Order at 8.

*Allen* arose from the following facts: Plaintiff Robert Allen was criminally indicted for arson and murder. He sent an open records request to the county and the police chief (collectively "Defendants") requesting: (1) CAD records that pertained to the underlying incidents for which he was indicted, and (2) the accompanying 9-1-1 audio recordings. *Id.* at 1. The Defendants denied his request. They argued in relevant part that the transcripts and tapes involved activities that were part of an ongoing criminal investigation or prosecution and

therefore exempt from disclosure under O.C.G.A. § 50-18-72(a)(4), and that, for privacy reasons, the Open Records Act excludes CAD transcripts and 911 tapes from disclosure when requested by individual name under O.C.G.A. § 50-18-72(a)(2).

The court began by noting that the first inquiry in an open records request is whether the records are public records. *Id.* at 2. The court found that CAD records and 9-1-1 calls are clearly public records – that is, records “prepared and maintained in the course of the operation of a public office” – because the records were maintained by the Athens-Clarke County Police Department in accordance with their emergency response system. *Id.* (quoting *Houston v. Rutledge*, 237 Ga. 764 (1976)).

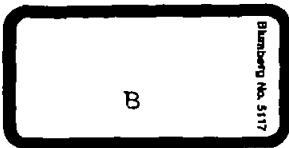
However, a public record can still be withheld from public disclosure under one of the many exemptions under the ORA. Under O.C.G.A. § 50-18-72(a)(2), public disclosure of a public records is not required when it would lead to an “invasion of personal privacy.” *Id.* at 4. The Defendants argued that disclosure of the CAD records and 9-1-1 audio recordings would violate the privacy rights of the complainant and suspects referenced in the documents. *Id.* However, the court found that neither complainants nor suspects referenced in CAD records and 9-1-1 audio records have expectations of privacy as the reporting of a crime is a matter of “legitimate public inquiry.” *Id.* at 4-5.

Further, the court reasoned that the vast majority of initial incident reports contain information about the complainant, the suspect, and the victim, and initial incident reports are subject to public disclosure under the ORA. Rather than make a bright-line rule about what exceptional interests might exempt 9-1-1 audio recordings and CAD records from public disclosure, the court reasoned the determination “has to be done on a case by case basis.” *Id.* at 6.

The court then addressed the Defendants' argument that 9-1-1 audio recordings and CAD records are exempt from public disclosure under O.C.G.A. § 50-18-72(a)(4) when they are part of an ongoing criminal investigation or prosecution. The court disagreed, ruling that the records are still subject to public disclosure because an initial call to 9-1-1 is "more in line with being an incident report," as opposed to being "part of a pending investigation," due to the fact that the initial call to 9-1-1 is what gives rise to an investigation. *Id.* at 7-8. The court acknowledged the possibility that a 9-1-1 call could be made regarding a case already under investigation. *Id.* But even in that instance, the court ruled that the request for the 9-1-1 audio or CAD records should be treated like an initial incident report, which is still subject to public disclosure even if it is part of an ongoing investigation. *Id.* at 8.

Importantly, 9-1-1 audio recordings and CAD records, like initial incident reports, may still be subject to other applicable exemptions under the ORA. *Id.* For example, agencies can withhold law enforcement records that are reasonably likely to disclose confidential sources, surveillances, or investigations, or that would endanger the life of persons, under O.C.G.A. § 50-18-72(a)(3). However, the *Allen* Order importantly clarified that 9-1-1 audio recordings and CAD records are subject to public disclosure under O.C.G.A. § 50-18-72(a)(4), even when the records are part of a pending investigation or contain the identification of the complainant, suspect, and/or victim.

*Prepared December 2022 by Clinic Fellow Lindsey Floyd and Clinic Student Jack Beaman.*



IN THE SUPERIOR COURT FOR THE COUNTY OF DECATUR  
STATE OF GEORGIA

THE BAINBRIDGE POST  
SEARCHLIGHT, INC.,

Plaintiff,

vs.

DECATUR COUNTY, GEORGIA,  
and JERRI SLEMONS, in her  
capacity as Director of  
the Decatur-Grady County  
911 Unit,

Defendants.

CIVIL ACTION  
FILE NO. 96-V-302

*Rebecca M. O'Connell*  
CLERK OF SUPERIOR COURT

DECATUR COUNTY, GEORGIA  
FILED IN OFFICE  
96 SEP 10 AM 9 15

ORDER WITH  
FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-styled action having come on for trial and  
having been tried by the Court without a jury, the Court hereby  
makes the following Findings of Fact and Conclusions of Law in  
accordance with O.C.G.A. § 9-11-52(a).

FINDINGS OF FACT

1. Defendant Decatur County is a governmental subdivision of the State of Georgia and is subject to the jurisdiction of this Court wherein venue is proper.
2. Defendant Jerri Slemons is employed by Decatur County as the Director of the Decatur-Grady County 911 Unit located at the Decatur County Jail Complex at 912 Spring Creek Road,

Bainbridge, Decatur County, Georgia, and is subject to the jurisdiction of this Court wherein venue is proper.

3. Plaintiff is a Georgia corporation with its office and principal place of business at 301 North Crawford Street, Bainbridge, Georgia. Plaintiff owns and publishes a newspaper, *The Post-Searchlight*, having general circulation in Decatur County, Georgia.

4. Plaintiff filed a Petition for Mandamus in this court seeking to compel defendants to perform their official duties by allowing plaintiff, at reasonable times, to inspect, take extracts from and copy incident reports generated by the Decatur-Grady 911 Unit.

5. Defendants, Decatur County and its 911 Director, Jerri Slemons, filed their answer to the petition and admitted that the incident cards generated by the operation and maintenance of the 911 Unit are public records, but denied all remaining material allegations of the petition.

6. Defendants aver legal and contractual proscriptions against public disclosure and dissemination of certain information that may be recorded on 9-1-1 Incident Cards.

7. The Georgia Crime Information Center (GCIC) and five (5) telephone systems provide support services for the Decatur-Grady County 911 Unit, pursuant to written contracts with Defendant Decatur County.

8. Defendants' contract with GCIC provides that the 911 Unit may only disseminate Driver History Information and Vehicle

Registration Information obtained from its data base to law enforcement or criminal justice officials.

9. Decatur-Grady County 911 Unit is what is termed an "enhanced 9-1-1 system", due to telephone technology, through the aid of a computer, that routes calls and provides for Automatic Number Identifications and Automatic Location Identifications.

10. Some telephone subscribers have non-published telephone numbers for which a fee is paid to the telephone company to assure non-disclosure.

11. The BellSouth Telecommunications, the principal telephone company providing telephone service to the Decatur-Grady County 911 Unit, has an agreement with Decatur County that provides, inter alia, that the 911 Unit will not distribute, disclose or disseminate confidential subscriber information, and specifically including subscriber telephone numbers, names and addresses, except to those persons having a need to know such information in conjunction with the operation of a 911 Unit.

12. Decatur County, under agreement with Grady County, operates the Decatur-Grady County 911 Unit at the Decatur County Jail Complex in Decatur County, Georgia. The Decatur-Grady County 911 Unit dispatches police, fire, and other emergency services for the citizens of Decatur and Grady Counties. The Bainbridge Department of Public Safety, the Decatur County Fire Unit, the Decatur County Emergency Medical Services, the Decatur County Sheriff's Office, and the Police



Departments for the Cities of Climax and Attapulgu are among the local agencies dispatched through the Decatur-Grady County 911 Unit.

13. Prior to the advent of the 911 Unit in Decatur County, the various agencies handled their own dispatching. For example, the Bainbridge Department of Public Safety would have its own dispatchers, and those dispatchers would generate a log book that the news media were routinely allowed to review.

14. When Decatur County implemented the 911 system, the 911 Unit assumed all of the dispatching responsibilities and the various county agencies served by the 911 Unit ceased to maintain their own dispatchers' log books.

15. Instead of maintaining a dispatcher's log book, the dispatchers employed at the 911 Unit complete what is referred to as "9-1-1 Incident Cards" as they handle their dispatching duties. The 9-1-1 Incident Cards, designed by Mrs. Slemons, are used to register, dispatch and preserve information from callers that is necessary or important for an appropriate emergency agency to effectively respond to the emergency. In evidence as Plaintiff's Exhibit "A" is a blank 9-1-1 Incident Card. As a call is handled by the 911 dispatcher, this card is completed with the dispatcher manually writing the information called for by the form.

16. The 911 dispatcher handles two types of calls: (i) a call to the 911 Unit by telephone and (ii) communications via radio to or from government agencies. If a member of the

general public calls 911 to request emergency services or to report an emergency, the 911 dispatcher, by use of a caller identification system from BellSouth, is able to know the telephone number and location of the telephone from which the call originated, as well as the name of the person or entity in whom the telephone is listed. The 911 dispatcher responds by contacting the appropriate government agency by radio giving the agency the information necessary to answer to the call. The 911 dispatcher's radio communications with the agency is over radio frequencies that can and are monitored by the general public with "scanners". Thus, much, if not all, of the information placed on the 9-1-1 Incident Cards is disseminated to the public via the airwaves.

17. The 911 dispatcher's duties are not limited to receiving emergency calls by telephone. On occasion, law enforcement officers radio the 911 Unit for information with the request that the dispatcher make a notation on a card.

18. Although the 911 dispatchers can communicate with law enforcement via a scrambled radio frequency, information exchanged between law enforcement and the 911 dispatcher over a scrambled frequency does not typically end up on a 9-1-1 Incident Card. No completed 9-1-1 Incident Card was tendered or produced at trial that contained information obtained from a "scrambled" radio communication.

19. After the call is handled and the 9-1-1 Incident Card is completed, neither the dispatcher nor anyone else goes back to the card and adds additional information to the Card.

20. The 911 Unit works in 8-hour shifts and at the end of each shift the shift supervisor collects and copies the cards generated by that shift. Each agency served by the 911 Unit receives copies of the 9-1-1 Incident Cards applicable to that agency, with the originals remaining in the custody and control of the 911 Unit at the Decatur County Jail Complex. The Decatur County Sheriff's Office is in the same building as the 911 Unit and its copies are received daily by hand delivery. The Bainbridge Department of Public Safety sends a police officer by the 911 Unit to pick up its copies of the 9-1-1 Incident Cards three (3) times daily. Other agencies receive copies of their 9-1-1 Incident Cards by fax no less than once every twenty-four (24) hours.

21. *The Post-Searchlight* regularly sends its reporters to visit major law enforcement/rescue agencies in Decatur County to determine whether any events or incidents have been reported to or handled by that agency that may be newsworthy.

22. The Bainbridge Department of Public Safety has routinely allowed *The Post-Searchlight*, other media and the general public unrestricted review of Public Safety's copies of completed 9-1-1 Incident Cards at the Public Safety Department.

23. In December, 1995, Plaintiff, by and through its publisher, Sam Griffin, Jr., both orally and in writing, made

requests to Defendants under the Open Records Act (O.C.G.A. § 50-18-70, et seq.) that it be allowed access to the 911 Call/Dispatch cards [9-1-1- Incident Cards] recording incidents where calls requesting police, fire or emergency services are received, and to which fire, ambulance, police, sheriff's, rescue or other emergency units might be dispatched at the 911 facility at the Decatur County Jail Complex.

24. Defendants refused to comply with Plaintiff's request to inspect the 9-1-1 Incident Cards.

25. Neither the Bainbridge Department of Public Safety nor the Decatur County Sheriff's Office have objected to *The Post-Searchlight* having access to the 9-1-1 Incident Cards at the 911 facility. Director Funderburke is in agreement with *The Post-Searchlight* being able to inspect the cards at the 911 facility.

26. No credible evidence has been submitted to establish, nor does Public Safety Director Larry Funderburke consider, the 9-1-1 Incident Cards to contain or call for confidential information of the type contemplated in O.C.G.A. § 50-18-72(a)(3). No evidence or authority has been presented to bring the 9-1-1 Incident Cards within the ambit of O.C.G.A. § 50-18-72(a)(1).

27. The 9-1-1 Incident Cards are initial police incident reports as contemplated in O.C.G.A. § 50-18-72(a)(4).

28. The security and objectives of the 911 Unit would be adversely affected by permitting unrestricted access to the premises by the public.

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and of the subject matter of this action. Venue is proper in this Court.
2. The 9-1-1 Incident Cards are public records "Public Records" as that term is defined by O.C.G.A. § 50-18-70(a).
3. The Decatur-Grady County 911 Unit is the custodian of the 9-1-1 Incident Cards at its facility in the Decatur County Jail Complex.
4. Unless specifically exempted by law, the 9-1-1 Incident Cards, are, as public records, required to be open for inspection by the public at reasonable times at the 911 facility where the cards are kept.
5. As custodian of the 9-1-1 Incident Cards, Defendants are under a legal duty under the Open Records Act to provide reasonable access to all requested 9-1-1 Incident Cards. If Defendants deny access, Defendants have the burden of explaining why the requested records should not be furnished. If Defendants contend a portion or portions of information appearing on completed 9-1-1 Incident Cards are exempted from disclosure under the Open Records Act, then Defendants have the

burden of separating or redacting those parts of the 9-1-1 Incident Cards which are not required to be disclosed.

6. Defendants have failed to establish a basis for exempting the completed 9-1-1 Incident Cards from disclosure under the Open Records Act. The Court finds that the completed 9-1-1 Incident Cards are not exempt from disclosure under O.C.G.A. § 50-18-72. Accordingly, The Post-Searchlight is entitled to a judgment ordering Defendants to make the completed 9-1-1 Incident Cards available to The Post-Searchlight for inspection at the 911 facility at the Decatur County Jail Complex at a reasonable time and manner.

7. The Court finds that a reasonable basis for providing access to The Post-Searchlight and the general public for inspection of the 9-1-1 Incident Cards at the 911 facility is as follows: the shift supervisor coming on duty at the 7:00 o'clock a.m. shift change shall, between 7:00 o'clock a.m. and 8:00 o'clock a.m., place a copy of all 9-1-1 Incident Cards generated by the previous three shifts on a suitable clipboard which on oral request shall be made available for inspection by the general public in the lobby of the Decatur County Jail Complex between the hours of 8:00 o'clock a.m. and 5:00 o'clock p.m. daily. The cards shall remain on the clipboard and subject to inspection by the general public for a period of three days before they may be removed. Persons desiring copies of 9-1-1 Incident Cards shall be furnished same at a cost of no more than that allowed by law. The 911 staff shall have a

reasonable time within which to furnish copies consistent with the exigencies of the circumstances and the discharge of their primary 911 duties.

8. Pursuant to the stipulation of the parties, the Court reserves the issue of attorney's fees under O.C.G.A. §50-18-73 for later consideration by the Court.

9. Any Finding of Fact contained herein which should be considered a Conclusion of Law, and any Conclusion of Law which should be considered a Finding of Fact, is hereby deemed to be such.

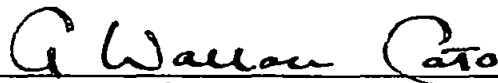
#### ORDER

IT IS, THEREFORE, ORDERED AND ADJUDGED that Defendants shall make copies of completed 9-1-1 Incident Cards available for inspection by the general public and, in particular, *The Post-Searchlight*, at the 911 facility at the Decatur County Jail Complex in accordance with the Open Records Act. The shift supervisor coming on duty at the 7:00 o'clock a.m. shift change shall, between 7:00 o'clock a.m. and 8:00 o'clock a.m., place a copy of all 9-1-1 Incident Cards generated by the previous three shifts on a suitable clipboard which on oral request shall be made available for inspection by the general public in the lobby of the Decatur County Jail Complex between the hours of 8:00 o'clock a.m. and 5:00 o'clock p.m. daily. The cards shall remain on the clipboard and subject to

inspection by the general public for a period of three days before they may be removed. Persons desiring copies of 9-1-1 Incident Cards shall be furnished same at a cost of no more than that allowed by law. The 911 staff shall have a reasonable time within which to furnish copies consistent with the exigencies of the circumstances and the discharge of their primary 911 duties.

The issue of attorney's fees and costs under O.C.G.A. § 50-18-73 is reserved by the Court for later consideration.

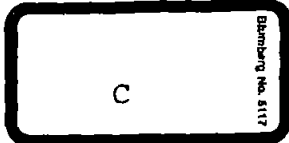
ORDERED this 10th day of SEPTEMBER, 1996.



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Hon. A. Wallace Cato  
Chief Judge, Superior Courts  
South Georgia Judicial Circuit





IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY

STATE OF GEORGIA

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ROBERT ALLEN,  
Plaintiff

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CASE NO.: SU-99-CV-1112-J

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VS.

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ATHENS-CLARKE COUNTY AND  
JACK LUMPKIN, INDIVIDUALLY  
AND IN HIS OFFICIAL CAPACITY  
AS CHIEF OF THE ATHENS-  
CLARKE COUNTY DEPARTMENT  
OF POLICE SERVICES,  
Defendant

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ORDER

The Plaintiff, Robert Allen, by and through his attorneys, filed a Complaint seeking access to public records pursuant to the Open Records Act, O.C.G.A. 50-18-70 et seq.

Robert Allen has been indicted for arson and for the murder of Carolyn Lawrence on January 4, 1999, in Athens-Clarke County, Georgia.

Plaintiff made a request on April 19, 1999, to review Computer Aided Dispatch (CAD) records involving Defendant Robert Allen and Carolyn Lawrence.

On June 17, 1999, Plaintiff made a request for copies of "911" recordings relating to the CAD reports identified in Robert Allen's April 19, 1999, open records request. The Defendants denied the Plaintiff's request.

The Defendants argue that CAD transcripts and "911" tapes which reflect or involve activities that are part of an ongoing criminal investigation or prosecution are exempt from disclosure under the Open Records Act, the Open Records Act excludes

8/2/99 copy to DA, Hight, Fieman + Gabriel

CAD transcripts and "911" tapes from disclosure when requested by reference to individual name, and that the Plaintiff's Open Records Act request is too broad and burdensome to require enforcement.

"Where there is a request for disclosure of documents under the [Open] Records Act, the first inquiry is whether the records are 'public records.'" Napper v. Georgia Public Television Co., 257 Ga. 156 (1987). Public records are defined as 'documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared and maintained or received in the course of the operation of a public office or agency.' O.C.G.A. § 50-18-70(a).

"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 . . . 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 be protected by court order under § 50-18-70, but only if there is a claim that disclosure of the public records would invade individual privacy." Hardaway Co. v. Rives, 262 Ga. 631, 633 (1992).

The statute clearly shows that the "911" tapes and CAD transcripts are public records within the meaning of the Open Records Act. The information is information maintained and received by a public office selected by the Athens-Clarke County Government to receive "911" emergency calls and maintain CAD records.

"[D]ocuments, papers, and records prepared and maintained in the course of the operation of a public office are 'public records' within the meaning of this statute . . ."  
Houston v. Rutledge, 237 Ga. 764 (1976).

Unless specially exempted by law, the information on the "911" tapes and CAD transcripts are public records available for public inspection.

O.C.G.A. § 46-5-121(a), states "It is the intent of the General Assembly to establish and implement a cohesive state-wide emergency telephone number "911" system which will provide citizens with rapid, direct access to public safety agencies by dialing telephone number "911" with the objective of reducing the response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services."

The public office or agency presently selected to do this is the Athens-Clarke County Police Department.

The Georgia Emergency Telephone Number "911" Service Act of 1977, O.C.G.A. § 46-5-120, refers to the location where "911" calls are received as the "Public Safety Answering Point."

O.C.G.A. § 46-5-122(8) and (8.1), states:

(8) "Public safety agency" means a functional division of a public agency which provides fire-fighting, law enforcement, emergency medical, suicide prevention, civil defense, poison control, drug prevention, child abuse, spouse abuse, or other emergency services.

(8.1) "Public safety answering point" means the public safety agency which receives incoming "911" telephone calls, and dispatches appropriate public safety agencies to respond to such calls.

The Athens-Clarke County Police Department is a public safety agency which provides law enforcement to the citizens of Athens-Clarke County. The Police Department meets the definition of a public agency or public office as defined in O.C.G.A. § 50-14-1. Therefore, the Court finds that "911" tapes and CAD transcripts are public records within the meaning of the Open Records Act.

The public records requested by the Plaintiff are not protected by O.C.G.A. §§ 50-18-70 or 50-18-72(a)(1). Since the Defendants are not claiming protection under O.C.G.A. §§ 50-18-70 or 50-18-72(a)(1), the Court will not discuss these statutes.

O.C.G.A. § 50-18-72(a)(2), states “Public disclosure shall not be required for records that are: medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy.”

The Defendants argue that “911” records fall within the privacy exemption when requested by reference to name. According to the Defendants, “public disclosure of 911 tapes related to a particular individual would amount to public disclosure of occurrences in which that person was a complainant or a suspect with respect to real or perceived criminal activity.”

The Defendants further argue that disclosure to the public of “911” tapes and CAD transcripts would invade the Constitutional, statutory or common law rights to privacy. Napper v. Georgia Public Television Co., 257 Ga. at 160.

However, the Georgia Supreme Court has held that “[t]he right of privacy, protectable in tort . . . extends only to unnecessary public scrutiny.” Athens Observer v. Anderson, 245 Ga. 63 (1980).

“[W]here an accident is a matter of public interest, or the subject matter of a public investigation, a publication in connection therewith can be a violation of no one’s legal right of privacy.” Id. at 66.

In Doe v. Board of Regents of the University System, 215 Ga. App. 684 (1994), the Court held “[a] report of a crime, whether the report is true or false, is such a public matter.”

“[T]he commission of the crimes, police investigation, and departmental decision . . . are matters of public interest” Macon Telegraph Publishing Co. v. Tatum, 263 Ga. 678 (1993).

A complainant calling “911” reporting a crime is a matter of legitimate public inquiry, and is not protected by law from disclosure. The individual cannot really have an expectation of privacy once he or she makes the emergency calls to “911.”

A blanket holding that the Open Records Act excludes CAD transcripts and “911” tapes from disclosure when requested by reference to individual name goes against the belief that a narrow interpretation of the exceptions are to be used. Hardaway Co. v. Rives, 262 Ga. 631 (1992).

The Defendants’ argument that revealing the information about private individuals who are complainants, victims, and arrestees is an invasion of privacy overlook the fact that probably 90% or more incident reports give the names of the complainant, victim, and the person arrested.

The local newspaper police blotter section prints the name of the victim and the person arrested, unless the victim’s name cannot be published by law in cases such as rape. The local radio stations broadcast the name of the person arrested in a case and the victim’s name unless the victim’s name cannot be broadcast by law.

If the person is listed as a suspect or is someone investigated for a crime but not charged with the crime, unless the trial court determines that exceptional interests militate in favor of disclosure, the information would be deleted. Napper v. Georgia Public Television Co., 257 Ga. 156 (1987).

Therefore, the Defendants can protect the privacy of individuals investigated but not charged or prosecuted by deletion of information identifying such individuals. There is not need to exclude CAD transcripts and "911" tapes from disclosure when requested by reference to individual name.

The public's right to know the complainant to a crime outweighs the Defendants' argument for exclusion by reference to name. The determination of what is excepted by subsection (a)(2) has to be done on a case by case basis.

Finally, the Court agrees with the Plaintiff that in this case Carolyn Lawrence has no right to privacy because she is deceased, and the tort of invasion of privacy cannot be committed by giving a person or his attorney information about himself as would be the case for Robert Allen. Pavesich v. New England Life Ins. Co., 122 Ga. 190 (1905).

Next, the Plaintiff argues that "911" tapes are not law enforcement records and even if they are law enforcement records they are records of initial incident reports.

O.C.G.A. § 50-18-72(a)(4), states "Public disclosure shall not be required for records that are: [r]ecords 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 deemed to be pending when all direct litigation involving said investigation and prosecution has become final or otherwise terminated."

Defendants argue that the CAD transcripts and "911" tapes are exempted under (a)(4) because they are law enforcement records of a pending investigation.

The Court finds that 911 tapes and CAD transcripts are law enforcement records where they record law enforcement activity. The Court does not find that the initial call to "911" for law enforcement can be classified as part of a pending investigation.

The Court agrees with the Plaintiff that an initial call to "911" is more in line with being an incident report.

If the initial call to "911" is part of a pending investigation then the information in an incident report should be part of the pending investigation.

O.C.G.A. § 50-18-72(a)(4), says the incident report is not exempted and can be disclosed.

When the initial call comes in to "911" there is no pending investigation.

"Statements, memoranda, narrative reports, etc. made and maintained in the course of a pending investigation should not in most instances, in the public interest, be available for inspection by the public." Houston v. Rutledge, 237 Ga. 764 (1976).

The initial call to "911" is not made and maintained in the course of a pending investigation.

The Court acknowledges that it is possible for someone to call "911" about a case in which an investigation has begun. This should be handled the same way you would deal with an incident report.

"[T]he entirety of an initial arrest, accident or incident report would not be exempted from disclosure under subsection (a)(4), even if that report is a part of a pending investigation or prosecution." Atlanta Journal and Constitution v. City of Wick, 265 Ga. 413 (1995).

Therefore, if the "911" tape or CAD transcript is like an incident report, the entirety would not be excepted from disclosure even if it is a part of a pending investigation or prosecution.

"To exclude the entire document because it contains exempted material 'would be unresponsive to the legislative intent underlying the . . . Act.'" City of Brunswick v. Atlanta Journal and Constitution, 214 Ga. App. 150 (1994).

The Court finds that the "911" tapes and CAD transcripts are not exempted by subsection (a)(4).

However, the Plaintiff is incorrect in his argument that he is entitled to everything on the "911" tape and CAD transcript just like he would be for an incident report.

Incident reports are exempted from disclosure to the extent they contain the type of confidential information specified in subsection (a)(3) of O.C.G.A. § 50-18-72.

If such a record is not part of a pending investigation or prosecution and exempted from disclosure in its entirety by subsection (a)(4), it may still contain "confidential" information exempted from disclosure by subsection (a)(3).

If the "911" tapes and CAD transcripts contain information that would be exempted by subsection (a)(3), the Plaintiff would not be entitled to this information. Also, if the tapes or transcripts contain information exempted by other statutes, the Plaintiff would not be entitled to the information. See Doe v. Board of Regents, 215 Ga. App. 684 (1994).

Defendants argue that information contained in the "911" tapes and transcripts are "clearly records to which Plaintiff is not entitled . . . relating to confidential sources of information protected under (a)(3)."



The Plaintiff requested “copies of any and all CAD transcripts involving Robert Thomas Allen and Carolyn Lawrence,” and “copies of all 911 recordings related to the CAD reports.”

The Defendants further argue that they are not required to “. . . locate, inspect and produce the documents sought by a citizen pursuant to an [Open Records Act] request.” Felker v. Lukemire, 267 Ga. 296, 298 (1996).

They also argue that “[n]o public officer or agency shall be required to prepare reports, summaries, or compilations not in existence at the time of the request.” O.C.G.A. § 50-18-70(d).

The Court totally agrees with the Defendants’ argument that they are not required to locate, inspect, and produce documents, nor are they required to prepare reports and summaries not in existence; however, in this case they have done all of the above and submitted it to the Court.

It would not be practical for the Court to not make the material available to the Plaintiff since the Defendants have already compiled the information.

The Defendants argue that there is information in the “911” tapes and CAD transcripts submitted that are exempted by subsection (a)(3).

The Court will conduct an in camera inspection of the information submitted and determine what if anything should be redacted in accordance with subsection (a)(3). The material will then be given back to the Defendants and the Defendants will provide it to the Plaintiff upon receiving payment for cost or credit through Athens-Clarke County Government.

For future requests for "911" tapes and CAD transcripts, the individual or organization requesting the information must keep in mind all that is required of public records custodian is that he provide reasonable access to the files sought. O.C.G.A. § 50-18-70(b).

However, since this information is not maintained in boxes or files but on computer discs and other recording devices in the police department, it would not be realistic to allow the public to have access to this equipment for many reasons.

In the case of Plante v. State, 203 Ga. App. 33 (1992), the appellant requested that the custodian of the hospital produce at trial "a certified copy of any and all records, documents and papers or any other tangible things concerning the case and any and all treatment of [the victim] . . ." The Court held that "[n]o court should impose upon the opposite party the onerous task of producing great quantities of records which have no relevancy. The notice should be specific enough in its demands to relate the documents sought to the questions at issue." Also, "[t]he need for specificity is particularly acute where . . . the records sought . . . necessarily would contain confidential and privileged communications."


Since the custodian of the "911" tapes and CAD transcripts will have to retrieve the information, all future requests for this information should be specific.

The Court cannot give a bright line rule for what future requests for "911" tapes and CAD transcripts should say because Open Records Act requests take on many different variations; however, a request for "any and all 911 tapes and CAD transcripts" related to a particular person is an onerous task for the public office or agency to comply with and is overly broad and oppressive.

The Defendants will not be required to conduct the remaining search unless the Plaintiff provides a more specific request.

Let a copy of this Order be served on Plaintiff's Counsel, Mr. Russell Gabriel and Mr. Colin Fieman, and Defendants' Counsel, Mr. Ellen Hight and Mr. Gerald Brown.

SO ORDERED, this 2nd day of August, 1999.

  
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Steve C. Jones  
JUDGE, Superior Courts  
Western Judicial Circuit