Campaign for Accountability v. Consumer Credit Research Foundation, 815 S.E.2d 841 (Ga. 2018)

In this case the Georgia Supreme Court ruled in a unanimous decision that unless an enumerated exemption in the Georgia Open Records Act (ORA) specifically prevents a public agency from releasing records, then the decision to release exempted records is within the agency's discretion.

Turning to the facts of the case, the Consumer Credit Research Foundation (CCRF) entered into a consulting agreement with the Kennesaw State University Research and Service Foundation (the Foundation) under which Dr. Jennifer Lewis Priestley, a professor at Kennesaw State University (KSU), "would research the effects of payday loans on the financial health of their consumers." 815 S.E.2d 841, 843. Dr. Priestley, but neither KSU nor the Foundation, signed a confidentiality agreement. *Id.* Third-party Campaign for Accountability (CFA) sent a request to KSU "for copies of all correspondence, electronic or otherwise, between Dr. Priestley and a number of organizations and individuals, including CCRF and its chairman and CEO." *Id.* The request explained that CFA sought the information "to educate the public about the true financial interests behind purportedly academic studies claiming payday loans do not pose a financial harm to borrowers." *Id.* KSU notified CFA and CCRF that KSU would be producing the requested records and CCRF brought a suit to stop this, arguing that KSU's disclosure was prevented by two provisions of the Open Records Act -- O.C.G.A. § 50-18-72 (a)(35) & (36) -- that exempt certain research materials from public production. *Id.*

The trial court held that KSU had the discretion to release the requested information, but the Georgia Court of Appeals reversed this decision, ruling that the ORA prohibited the disclosure of all materials, regardless of discretion, that were covered by the ORA's exemptions.

Id. The Georgia Supreme Court disagreed with the Georgia Court of Appeals. It ruled that CCRF could not prevent KSU's disclosure of its own records of the study under O.C.G.A. § 50-18-72(a)(35) & (36) because those exemptions allowed KSU discretion regarding whether to release the records or not. Further emphasizing the discretionary nature of the exemptions, the Georgia Supreme Court ruled that the phrase "exempted from disclosure" contained in O.C.G.A. § 50-18-71(a) of the ORA did not mean "prohibited from disclosure," and that the phrase "disclosure shall not be required" as used in § 50-18-72(a) did not mean that "disclosure shall be prohibited." *Id.* at 844-845.

The Georgia Supreme Court went on to address its earlier decision in *Bowers v. Shelton*, 453 S.E.2d 741, 743 (Ga. 1995), which stated that the Open Records Act "mandates the nondisclosure of certain excepted information." *Campaign for Accountability*, 815 S.E.2d at 847-48. The court clarified that this statement referred to only specific exemptions, such as personal tax information, that specifically are prohibited from disclosure in the ORA. *Id.* However, the research records that KSU was willing to disclose -- and, indeed, the majority of the more than 50 enumerated exemptions under the ORA -- are discretionary. *Id.*[1]

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[1] Public disclosure is expressly prohibited by the ORA in such paragraphs as: (a)(5) that prevents Georgia Uniform Motor Vehicle Accident Reports from inspection or copying absent a written statement showing the need for the report; (a)(16) that prevents disclosure of agricultural or food system records that are part of the critical infrastructure without a court order; (a)(17) that prevents disclosure of confidential records of the national animal identification system without a court order; (a)(33) that prevents disclosure of records that are "expressly exempt from public inspection pursuant to Code Sections 47-1-14 and 47-7-127"; (a)(34) that prevents agencies from disclosing certain trade secret records; (a)(48) that prevents disclosure of records that are "expressly exempt from public inspection pursuant to Code Section 47-20-87"; (c)(1) that prevents inspection by the public of an exhibit used as evidence in a criminal or civil trial without approval from the judge; and (d) that prevents inspection by the public of any physical evidence used as an exhibit in a criminal or civil trial to show or support an alleged violation of child sex offenses. *Id.* at 845-47; O.C.G.A. § 50-18-72. Several more paragraphs of the ORA prevent disclosure of certain records by invoking the confidentiality requirements of other laws.

In sum, the decision from Georgia's highest court in *Campaign for Accountability v. Consumer Credit Research Foundation* is significant because it clarifies that most exemptions to the ORA are discretionary as opposed to absolute, and holds that if a public entity exercises its discretion to release the information -- notwithstanding that the information is covered by an ORA exemption -- other individuals and organizations affected cannot stop that disclosure and prevent the public from being informed.

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This includes O.C.G.A. § 50-18-72(a)(1) that prevents disclosure of records that are "[s]pecifically required by federal statute or regulation to be kept confidential," and O.C.G.A. § 50-18-72(a)(43) that prevents disclosure of "[r]ecords containing tax matters or tax information that is confidential under state or federal law." *Id.*