

***Augusta Press, et al. v. City of Augusta, Superior Court of Richmond County,  
Case No.: 2021-RCCV-00274 (May 5, 2021)***

Georgia’s Open Records Act (“ORA”) states that public disclosure is not required for:

Records which identify persons applying for or under consideration for employment or appointment as executive head of an agency or of a unit of the University System of Georgia; *provided, however*, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position of executive head of an agency or five business days prior to the meeting at which final action or vote is to be taken on the position of president of a unit of the University System of Georgia, *all documents concerning as many as three persons under consideration whom the agency has determined to be the best qualified for the position shall be subject to inspection and copying.*

O.C.G.A. § 50-18-72(a)(11) (emphasis added). Interpreting this provision, the Superior Court of Richmond County held in *Augusta Press, et al. v. City of Augusta*, 2021-RCCV-00274 (Order dated May 5, 2021) (hereinafter “Order”), that “as many as three” does not give Georgia agencies the discretion to release documents *for fewer than* three candidates, if three or more candidates are under consideration at the time the records request is received.

*Augusta Press* arose from the following facts: In December 2020, the City of Augusta (“City”)’s fire chief resigned and the City began searching for a successor. *Order* at 1. On April 13, 2021, the Augusta Chronicle sent the City an open records request for the “names and cities of the four finalists” for the fire chief position. *Id* at 2. On April 15, 2021, the Augusta Press sent the City an open records request for all records related to the “candidates being interviewed” that day and WJBF-TV sent an open records request for records “pertaining to no less than three finalists for the position.” *Id*. That same day, the City interviewed four candidates for the fire chief position. *Id*.

On April 20, 2021, the City Commission met in executive session to discuss the applicants, and subsequently responded to the various media requests by providing redacted

records for the sole “finalist.” The City did not identify or provide information on the other three individuals interviewed. The City scheduled a vote on whether to hire the sole finalist for May 11, 2021. Augusta Press, the Augusta Chronicle, WJBF-TV, and WRDW-TV (hereinafter “the Media”) brought a lawsuit against the City, alleging the production of records pertaining only to the sole finalist was insufficient and in violation of O.C.G.A. §50-18-72(a)(11). *Id.* at 1. In its suit, the Media sought a preliminary injunction against the City’s taking action to appoint a new fire chief for at least 14 days following the City’s release of the requested records to the Media. *Id.*

O.C.G.A. §50-18-72(a)(11) is one of the numerous exceptions to the disclosure of public records under the ORA. Under this exception, agencies are not required to produce records “which identify persons applying for or under consideration for employment or appointment as executive head of an agency.” *Id.* However, “at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position of executive head of an agency,” the agency must produce “all documents concerning as many as three persons under consideration whom the agency has determined to be the best qualified for the position,” if requested. *Id.*

In analyzing the issue, the Court first highlighted the ORA’s “important public policy of bringing transparency and ‘sunshine’ to the process of governing.” Order at 3. The Court noted that this primary function is reflected in the statute’s mandate that the ORA be “broadly construed to allow the inspection of governmental records.” *Id.* (quoting O.C.G.A. § 50-18-70(a)). The Court further highlighted the statute’s mandate that exceptions to the ORA are to be “narrowly” interpreted. *Id.*

With that backdrop, the Court then provided guidance on O.C.G.A. 50-18-72(a)(11)’s provision requiring the public disclosure of “all documents concerning *as many as three persons*

*under consideration* whom the agency has determined to be the *best qualified* for the position.” Order at 4. The City argued that the phrase “as many as” sets a maximum, not a minimum, number of applicants that must be disclosed prior to a final action or vote being taken, consequently permitting the City to disclose just one candidate. *Id.* However, the Media argued that the phrase “as many as” set a minimum number, meaning “at least” three candidates determined to be the best qualified out of the pool of applicants had to be disclosed. *Id.* The Court did not adopt either interpretation, instead finding the phrase “as many as” to refer to “the maximum number of applicants for which Media can insist on obtaining disclosure” and holding that the City had discretion to disclose more than three candidates if it chose to. The Court did, however, acknowledge there will be instances in which three applicants simply do not exist. *Id.*

The Court then addressed what it means to be the “best qualified” applicants “under consideration.” O.C.G.A. 50-18-70(a)(11). The Court left to the City to determine who is a “best qualified” applicant. But the Court noted that to satisfy the “under consideration” requirement, the applicant must be under consideration at the time the open records request is made. *Id.*

Last, the Court turned to the provision of O.C.G.A. § 50-18-72(a)(11) which allows an agency to permit applicants to withdraw their names from consideration to avoid disclosure of their records to the public. In this event, the City must release the information of the “next most qualified person under consideration who does not decline the position.” O.C.G.A. § 50-18-72(a)(11). The court noted the City had not indicated that it had allowed any of the candidates for the fire chief position to withdraw their names. Order at 5.

In this case, at least four “best qualified” candidates were “under consideration” and were scheduled to be interviewed when the Media made their open records requests. *Id.* at 4. Therefore, the City was required to disclose the information of at least three of those candidates.

The Court therefore ordered the City to make full disclosure to the press, within three business days, of all records pertaining to the three interviewees determined by the City to be the “best qualified” of the four applicants under consideration as of April 13, 2021, the date of the Media’s first open records request. *Id.* at 6. The Court further granted the Media’s request for interim injunctive relief and restrained the City from appointing a fire chief for at least 14 days following the City’s release of the three applicants’ records to the Media. *Id.* at 7.

Explaining the basis for granting injunctive relief, the court highlighted that O.C.G.A. § 50-18-72(a)(11) “is intended to allow a requesting party to have the information on applicants ‘at least 14 calendar days’ prior to the government agency taking final action on the appointment.” *Id.* The Court is “compelled [to issue injunction relief] to avoid the matter becoming moot” by virtue of the City proceeding to make a final decision on the appointment before the public has had access to the information about the candidates to which the public is entitled. Order at 5. The court emphasized that access to this type of information is critical so that the citizenry may “engage in effective discourse with their elected representatives” about the candidates for agency head. *Id.* at 6.

The *Augusta Press* holding is significant for interpreting O.C.G.A. § Sec. 50-18-72(a)(11) in favor of the public having access to information about a greater, not lesser, number of candidates under consideration for appointment to executive head of agency. However, this holding does not expand public access to more than three best qualified candidates, even if more than three are under consideration.

*Prepared December 2022 by Jack Beaman (2L) and Lindsey Floyd (Legal Fellow).*