Case Summary
UGA First Amendment Clinic

Blau v. Georgia Department of Corrections, 873 S.E.2d 464 (Ga. App. 2022)

The Georgia Court of Appeals held in *Blau v. Georgia Department of Corrections*, 873 S.E.2d 464 (2022), that the Secrecy Act, O.C.G.A. §42-5-36 (d), which protects certain identifying information of people and entities involved in administering execution by lethal injection for the Georgia Department of Corrections (GDOC), does not render documents containing such identifying information exempt in their entirety from disclosure under the Open Records Act (ORA). The court found that so long as the "identifying information" is redacted and therefore not revealed, there is no violation of the Secrecy Act if the documents are disclosed, and the redacted documents are therefore subject to production under the ORA.

When Max Blau, an investigative journalist, sought records related to the drugs the GDOC uses in executions by lethal injection, the GDOC claimed that these documents were exempt from disclosure under the Secrecy Act. *Id.* at 466. The Secrecy Act protects "identifying information" about the people and entities involved in the production and transportation of lethal-injection drugs used in executions. *Id.* at 467. The GDOC claimed that because the requested documents contained information protected under the Secrecy Act, the documents were exempt from public disclosure. *Id.* Blau sued the GDOC arguing that the records must be produced after redacting the information specifically protected by the Secrecy Act. *Id.* The GDOC moved to dismiss Blau's complaint. *Id.* The Superior Court of Fulton County granted this motion, relying on the text of the Secrecy Act to find that the entirety of the records sought by Blau were protected and did not have to be disclosed. *Id.* at 468.

On appeal, the Georgia Court of Appeals reversed the dismissal of Blau's claim under the ORA. *Id.* at 470. The appellate court found that the Secrecy Act only protects "identifying information" and producing records with this information redacted is consistent with the text of the Act. *Id.* To support its ruling the Court first noted that "courts must remain mindful that the legislature has . . . directed that the [Open Records] Act be 'broadly construed to allow the inspection of government records,' . . . while the exceptions to disclosure 'shall be interpreted narrowly to exclude only those portions of records addressed by such exception.'" *Id.* at 468; O.C.G.A. § 50-18-70 (a). The Secrecy Act is not an enumerated exemption under the ORA, but the appellate court still applied

this construction, citing Georgia Supreme Court precedent in *Smith v. Northside Hosp., Inc.*, 820 S.E.2d 758 (2018). *See* 873 S.E.2d at 468. The *Blau* ruling therefore establishes that any basis for withholding public records, whether one codified in the ORA or elsewhere in the Georgia code, must be narrowly construed. It follows that redacted documents must be produced if the exempted information can be redacted. The *Blau* decision affirms this stating, "the Secrecy Act is properly construed to exclude from disclosure (and thus require the redaction of) only those portions of public record that would reveal [identifying information]." *Id.* at 470. The court further reasoned that if the identifying information were redacted it would not be revealed, and therefore disclosure of the redacted documents would not violate the Secrecy Act. *Id.* Accordingly, the Court of Appeals ruled that the trial court erred in construing the Secrecy Act to grant a blanket exemption of the requested documents from disclosure. *Id.* at 469.

The purpose of the Open Records Act is to "foster confidence in government" and allow the public to "evaluate the expenditure of public funds and the efficient and proper functioning of its institutions." O.C.G.A. § 50-18-70 (a). The holding in *Blau* is significant because it establishes that government agencies cannot circumvent the public's access to information by arguing a blanket exemption for production when exempted information can be redacted from documents, and therefore be made accessible.

Prepared October 2022 by First Amendment Clinic student Maryam Shokry