

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

Southern Center for Human Rights,

Petitioner,

v.

Omotayo Alli, in her individual capacity and official capacity as the executive Director of the Georgia Public Defender Council; **John Doe I–V**, in their individual capacities and their official capacities with the Georgia Public Defender Council.

Respondents.

CIVIL ACTION

2023CV381036

FILE NO. _____

JURY TRIAL DEMANDED

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Southern Center for Human Rights (“SCHR”) files this Complaint for declaratory relief, injunctive relief, and civil penalties to compel the Respondents, Omotayo Alli and John Doe I–V, to comply with Georgia’s Open Records Act (“Act”) regarding the production of records that are or should be in the custody of the Georgia Public Defender Council (“GPDC”).

BACKGROUND¹

In recent years, GPDC's failure to provide conflict-free counsel to accused people who cannot afford it has left hundreds of Georgians languishing in jails for months or years without representation, without any meaningful progress in their criminal cases, and without any sense of how long this indefinite denial of their rights will continue. Through investigation, SCHR has learned that over 600 people are awaiting conflict-free counsel, and many more have a lawyer in name only. Put simply, the state of conflict-free representation in Georgia has reached a breaking point.

In investigating this crisis, SCHR has submitted a series of Open Records Requests to GPDC. GPDC has failed to comply with the Act by (1) charging unreasonable fees, (2) delaying the production of records for months, (3) failing to produce all responsive records—including complete lists of persons awaiting the appointment of counsel—and (4) improperly withholding records in its custody. Inexplicably, GPDC has failed to fully comply with many requests *identical* to those it has fulfilled in the past and has refused to even identify the agency's records custodian while signing correspondence "custodian of records."

GPDC's failure to comply with the Act is frustrating access to public records that demonstrate the scope of the present constitutional crisis and is undermining

¹ This section of the complaint is not allegations for the purposes of admission or denial.

SCHR's efforts to advocate for people across Georgia who cannot afford, but are nevertheless entitled to, conflict-free representation. This failure comes at a time of increased public scrutiny of GPDC. Furthermore, other members of the public, including journalists and civil rights organizations, have experienced similar obstacles when attempting to access similar public records in GPDC's custody. Court intervention is necessary to enforce GPDC's compliance with the Act and to ensure public access to GPDC records reflecting a statewide crisis of representation.

PARTIES

1. The Petitioner is Southern Center for Human Rights ("SCHR"), a nonprofit, public interest law office in Atlanta, Georgia that seeks to improve legal representation for indigent people accused of crimes and advocates for more fair and just criminal legal systems in the Southern United States.

2. Respondent Omotayo Alli, sued in her individual and official capacity as Executive Director of GPDC, is responsible for maintaining the public records that are sought in this action and for complying with all provisions of the Act.

3. John Doe I-V, sued in their individual and official capacities, are GPDC employees who are charged with responding to Open Records Requests sent to openrecords@gapubdef.org and communications@gapubdef.org. These employees are not identified on the GPDC website, and they did not identify themselves when responding by email to any of the Requests described in this

Complaint. SCHR is unaware of the identity of the employees who handled its Requests: SCHR will amend this complaint to add the names of those officer(s) as they are identified through the discovery process.

JURISDICTION AND VENUE

4. Under O.C.G.A. § 50-18-73(a), this Court has “jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article.”

5. The Respondents are subject to the personal jurisdiction of this Court because they work in this State. The GPDC principal office address is 270 Washington Street, Atlanta, Georgia 30334 in Fulton County.

6. Venue is proper in this Court pursuant to Ga. Const. 1983, Art. VI, § II, ¶ VI, and O.C.G.A. § 9-10-30.

STATEMENT OF FACTS

A. Statewide Crisis of Representation in Conflict Cases

7. The State of Georgia is required by the United States and Georgia Constitutions to provide counsel to people accused of crimes who cannot afford to hire an attorney. In 2003, the Indigent Defense Act was enacted in Georgia, establishing the Georgia Public Defender Standards Council, now the Georgia Public Defender Council (“GPDC”), and the Circuit Public Defender Office system.

See O.C.G.A. § 17-12-1.

8. The Circuit Public Defender Offices are the first line of representation. When a conflict of representation arises in multi-defendant or other criminal cases that prevents the Circuit Public Defender from representing an accused person, GPDC has a duty to appoint counsel outside the public defender's office. O.C.G.A. § 17-12-22(a). In two-person co-defendant cases, attorneys in judicial circuits with regional conflict defender offices represent the second co-defendant.² When multi-defendant criminal cases involve more than two co-defendants—creating a conflict of representation for both the Circuit Public Defender Office and the regional conflict office—GPDC then contracts with private attorneys, referred to as “C-3 counsel,” at a flat rate per criminal case.

9. In recent years, GPDC has failed to perform its most basic duty of appointing counsel to accused persons in need of C-3 counsel. People around the state charged in multi-defendant cases have languished in jail for months or years unrepresented, and their cases have remained at a standstill. In many cases, court records show a pattern of C-3 counsel serially entering appearances and withdrawing over a period of years, leaving the accused effectively unrepresented in cases that

² Georgia Public Defender Council, *The Current State of Georgia's Public Defender System*, <https://gapubdef.org/the-current-state-of-georgias-public-defender-system/> (describing that the state has over a dozen regional conflict defender offices).

could result in sentences as severe as life without parole.

10. In 2022, the situation grew so alarming in the Atlanta Judicial Circuit, where over 100 people were awaiting the appointment of C-3 counsel, that the Superior Court of Fulton County designated American Rescue Plan Act funds to establish its own stopgap program to hire C-3 attorneys.³ The goal of the program was to address the “unacceptable crisis that there are people sitting incarcerated not able to move their case forward because the system can’t find them a lawyer.”⁴

11. SCHR sent GPDC a warning letter on August 18, 2022, alerting the agency to the growing constitutional crisis created by GPDC’s failure to timely appoint lawyers to people who could not afford their own. GPDC never responded to the letter, but the press did. Multiple media outlets covered SCHR’s letter to GPDC and the broader C-3 crisis in articles titled “‘An Unacceptable Crisis’: Defendants Languishing in Jail Because of Public Defender Shortage,” “Crisis in Georgia’s Public Defender System Fuels Case Backlog, Jail Overcrowding,” and “In

³ See John Ruch, *Fulton Superior Court Uses Pandemic Funds for Shortage of Public Defenders*, Saporta Report (Sept. 30, 2022), <https://saportareport.com/fulton-superior-court-uses-pandemic-funds-for-shortage-of-public-defenders/sections/reports/johnruch/>.

⁴ Andy Pierrotti, *Here’s Why These Public Defenders Left Their Jobs*, Atlanta News First (Dec. 30, 2022), <https://www.atlantaneWSfirst.com/2022/12/30/sixth-part-three-why-theyre-leaving/> (quoting Fulton Superior Court Judge Robert McBurney).

Georgia, Hundreds of People Charged with Crimes Have no Legal Representation.”⁵

12. Without access to counsel, pretrial investigations are nonexistent, motions practice—beyond the handwritten letters and motions unrepresented people file from their jail cells—grinds to a halt, and people sit in jail for indeterminate periods of time without anyone to advocate for their interests in the adversarial process.

13. But the full extent of GPDC’s constitutional and statutory failures and the ensuing consequences remains unknown to the public because of GPDC’s repeated violations of the Act.

B. SCHR’s Open Records Requests

14. SCHR has a long history of submitting Open Records Requests to GPDC as part of its investigation of and advocacy for a strong, robust indigent defense system in Georgia. Among other things, these requests have sought caseload data, budget information, and other documents that shed light on the health of our indigent defense system. Historically, GPDC has substantially complied with the

⁵ See Andy Pierroti, *‘An Unacceptable Crisis’ Defendants Languishing in Jail Because of Public Defender Shortage*, Atlanta News First (Dec. 30, 2022), <https://www.atlantanewsfirst.com/2023/01/03/an-unacceptable-crisis-defendants-languishing-jail-because-public-defender-shortage/>; Dylan Jackson, *Crisis in Georgia’s Public Defender System Fuels Case Backlog, Jail Overcrowding*, Atlanta J. & Const. (Nov. 10, 2022), <https://www.ajc.com/news/investigations/crisis-in-georgias-public-defender-system-fuels-case-backlog-jail-overcrowding/6G47GRR3HJGRZLDQBPSZES2MBU/>; Bill Rankin, *In Georgia, Hundreds of People Charged with Crimes Have No Legal Representation*, Atlanta J. & Const. (Sept. 16, 2022), <https://www.ajc.com/news/crime/in-georgia-hundreds-of-people-charged-with-crimes-have-no-legal-representation/FD7ZBO5EMZCPPDCHIUADLYANIA/>.

Act, typically producing responsive records quickly and often waiving any associated fees.

15. Consistent with this historical practice, SCHR began requesting records regarding the statewide C-3 representation crisis in March 2022. GPDC substantially complied with the Act at first. In recent months, however, GPDC has shifted and repeatedly violated several provisions of the Act, even if responding to requests similar to those it had previously filled promptly at low or no cost. Altogether, these violations obstruct access to public records and demand this Court's intervention.

March and August 2022 Requests

16. The first Request, which included ten items, was submitted on March 31, 2022.⁶ GPDC requested advance payment of \$714.04 and produced responsive records six days after payment was received.

17. The anonymous GPDC employee handling this Request signed their correspondence "Custodian of Records," as would be the case with all correspondence with GPDC concerning records requests.

18. SCHR was concerned by GPDC's response to the March 2022 Request.

⁶ Among the items requested and produced was, "[a]ll correspondence between superior court judges and Georgia Public Defender Council employees regarding conflict and/or appellate staffing needs in their courtrooms."

For example, SCHR requested a list of all C-3 attorneys in the Atlanta Judicial Circuit and their contracts. GPDC produced hundreds of pages in response to the overall Request, but none of the documents included a list of C-3 attorneys, and the response only included three signed contracts. SCHR raised these concerns to GPDC in the aforementioned August 18, 2022 warning letter.

19. SCHR submitted its second Request on August 18, 2022. When GPDC failed to respond to the Request at all, SCHR renewed its Request on September 1, 2022. GPDC provided the responsive records on September 8, 2022, fifteen business days after the initial Request and waived fees.

20. SCHR submitted its third Request on August 22, 2022. On the third business day, GPDC provided an estimate of costs, a partial set of the responsive records, and an estimate for production of the remaining records. The remaining records were provided by September 2, 2022, nine business days after the initial request.

November 2022 Request

21. On November 7, 2022, SCHR submitted its fourth Request seeking updated information substantially similar to that requested in March 2022. GPDC provided no responsive records within the first three business days. Rather, the agency provided a cost estimate of \$2,929.69—more than four times the payment required for the substantially similar March 2022 Request—which was premised on

an estimate of 94 hours of staff time required to comply with the request. GPDC required advance payment before proceeding with the Request.

22. Given the significant increase in cost and time estimates compared to prior responses to similar requests, SCHR requested that GPDC:

1. Disaggregate the projected amount of hours and corresponding cost for each of the ten requests;
2. Specify how many of the projected hours will be spent on search and retrieval versus copying for each of the ten requests; and
3. Identify which of the documents are available for in-person review at no cost.

23. On November 15, 2022, GPDC declined to comply with any of the above requests, instead producing just two sheets of paper reflecting C-3 fee schedules from January 1, 2022 to present⁷ and estimating that the majority of the estimated staff time would be spent on the production of email correspondence.⁸

24. On November 17, 2022, SCHR withdrew the majority of its November 7, 2022 Request out of financial necessity, namely five sets of records that would

⁷ This document was readily available and had previously been shared with members of the public but was not produced until November 15, more than three business days after the November 7 Request. This violated GPDC's obligation to provide all readily available documents within three business days of receiving an open records request. O.C.G.A. § 50-18-71(b)(1)(A).

⁸ One request for email correspondence—“[a]ny and all correspondence between superior court judges and Georgia Public Defender Council employees regarding conflict staffing needs in their courtrooms from August 1, 2022 to present”—was identical to a request that GPDC had previously filled promptly and at a reasonable cost. *Infra*.

require the production of email correspondence. Later that day, GPDC produced a partially responsive document and an updated cost estimate of \$70.31 for the narrowed Request.

25. Perhaps the most important document SCHR requested was “[a] complete list of all children and adults in need of C-3 counsel as of the date of this letter.” Months earlier, GPDC provided—for free—a list of over 600 people awaiting C-3 counsel in response to SCHR’s August 18, 2022 Request. On November 23, 2022, however, GPDC said it could no longer generate these lists because:

GPDC’s case management system identifies clients awaiting the assignment of counsel on a rolling basis. It outputs this data current to the time a report is generated; it cannot backdate data or generate data from within a set timeframe or specific date.

The single document GPDC did produce contained the name of a single person awaiting the appointment of counsel. GPDC provided no explanation as to why it had previously been able to provide a list of hundreds of individuals awaiting counsel without encountering this issue.

26. SCHR advised GPDC that it would be acceptable to use November 23 as a date to identify responsive records and requested that GPDC provide the responsive records maintained in the electronic database. GPDC provided additional records on December 2, 2022, but these only included twenty-four additional names of people in need of C-3 counsel across Georgia. Based on SCHR’s months of

investigation, these records omitted entire judicial circuits in which people were awaiting counsel and were so underinclusive as to be entirely unreliable.⁹

December 2022 Request

27. To avoid another cost-prohibitive estimate, SCHR further narrowed its November 7, 2022 Request and submitted a fifth request for information related to C-3 counsel on December 13, 2022. In response, GPDC provided a cost estimate of \$4,867.19 and a time estimate of 156 hours of staff time to complete the request. Even though this fifth request was a narrower version of a previous one, the costs and time estimates were significantly higher. Again, GPDC required advance payment before processing the Request.

28. On January 5, 2023, SCHR wrote GPDC requesting GPDC “revise the costs estimate and the estimated timeline so that they comply with the Georgia Open Records Act, and disaggregate the costs estimate by each set of records included in the December 13 request.”

29. GPDC responded on January 31, 2023, maintaining that its initial response complied with the Act. GPDC disaggregated the times estimated for each item and explained that the Request for “[a]ny and all correspondence between superior court judges and GPDC employees regarding conflict staffing needs in their

⁹ The records provided on December 2, 2022, call into question whether GPDC is properly maintaining records.

courtrooms from August 1, 2022 to present,” required “significant administrative time to fulfill.” But GPDC did not provide any explanation as to why the time and cost for producing this email correspondence had increased dramatically since a virtually identical Request had been filled in March at a fraction of the cost.

30. SCHR notified GPDC on February 8, 2023, that it would provide advance payment for one set of records included in the December 13, 2022 Request, a list of all persons currently represented by C-3 counsel. The advance payment of \$937.50 was delivered to the GPDC office on February 10, 2023. GPDC deposited the payment on February 23, 2023. SCHR wrote to GPDC on March 3, 2023, requesting that GPDC confirm receipt and provide an update on the status of the Request. SCHR wrote to GPDC requesting the same on March 6, 2023. SCHR did not receive any responsive documents or other communication related to the Request between February 8, 2023 and March 6, 2023.

31. GPDC resumed communications on March 7, 2023, and produced records between March 22 and March 25, 2023. The records produced were a list of about 1800 individuals represented by C-3 counsel as of March 10, 2023. Based on SCHR’s investigation, the list omitted people represented by C-3 counsel as of March 10, 2023 and was thus inaccurate.

32. GPDC did not provide any explanation as to why the records were not produced earlier. Nor did GPDC provide any invoice, documentation, or even a

simple explanation that would account for why the associated fees were so high, given that the records appeared to be a report generated from a computer program.

33. SCHR has not received the remaining five sets of records from the December 13, 2022 Request, nor has GPDC provided any revised costs or time estimates as required by the Act for these outstanding records.

March 2023 Request

34. SCHR submitted its sixth Request related to the C-3 representation crisis on March 27, 2023. GPDC provided a response for one item and notified SCHR that it had begun processing two additional items on March 30, 2023.

35. SCHR included in its Request, “[a]ny documents regarding requests from C-3 attorneys for funds for investigators and experts from January 1, 2022 to present.” GPDC withheld the responsive documents in their entirety, stating that the requested records “constitute confidential attorney work product under O.C.G.A. § 50-18-72 (a)(42) and are not subject to disclosure.”

36. SCHR requested that GPDC “redact any confidential information, such as client names, and produce the responsive records.” GPDC responded that it would withhold the documents in their entirety.

37. SCHR additionally sought “any document(s) reflecting the record custodian(s) by name.” The GPDC “Custodian of Records” wrote:

2. "Record custodian(s)" is overly broad and too vague to initiate a search without further clarification. Please define record custodians with any corresponding citations under the O.C.G.A.

On March 31, 2023, SCHR wrote to the GPDC "Custodian of Records," providing clarification that the term "Custodian of Records" is not vague and is a term of art in the ORA itself:

2. "Record custodian(s)" is overly broad and too vague to initiate a search without further clarification. Please define record custodians with any corresponding citations under the O.C.G.A.

Response: The Open Records Act permits each Agency to designate a "custodian of agency records." O.C.G.A. § 50-18-71(b)(1)(B). These individuals are frequently referred to as records custodians or custodians of records, as you have identified yourself in your correspondence with our office. I again request records reflecting the name(s) of any person designated as such by the Georgia Public Defender Council (GPDC). Alternatively, please notify me of the name(s) by email, or if GPDC has not designated a custodian.

On April 5, 2023, the GPDC "Custodian of Records" provided no further records on enumerated item 2, writing that:

2. There are no responsive records for this subsection of your request, as further defined in your March 31 letter.

The GPDC employee(s) signing correspondence "Custodian of Records" remains unidentified.

38. Another of the items sought was, "[a]ny documents related to hiring and working with a public relations firm from January 1, 2022 to present including, but not limited to, contracts, requests for proposal, budgets, invoices, and correspondence regarding the same."

39. On April 10, 2023, GPDC sent SCHR records in response to this Request, which did not include any invoices or correspondence, email or otherwise. On April 19, 2023, SCHR wrote: “Would you please confirm that this response includes all the responsive records to the request, including all the relevant correspondence and invoices?” GPDC never responded.

40. On April 10, 2023, GPDC sent the journalist Andy Pierrotti records in response to a Request for:

1. All communications between Georgia Public Defender Council staff and the public relations firm Lucie (<https://luciecontent.com/>) from Feb. 1, 2023 to present, which includes, but is not limited to:

- Emails (all folders: sent, received, with attachments, deleted, in draft [sic])
- Text messages
- Documents
- Calendar invites

2. All invoices paid, received or outstanding between the Georgia Public Defender Council staff and the public relations firm Lucie (<https://luciecontent.com/>) from Feb. 1, 2023 to present

This response included email correspondence that was not produced to SCHR.

41. Both SCHR and Andy Pierrotti were charged duplicative fees for the production of identical records on the same day.

C. Increased Media Scrutiny on GPDC and the Indigent Defense Crisis

42. There has been an increase in media scrutiny of GPDC’s conflict-free representation system over the past year, and especially in late 2022, as the agency

fails to fulfill its constitutional obligations. This heightened media coverage coincides with GPDC's decline in compliance with the Act.

43. There was a deluge of coverage in the final quarter of 2022, overlapping with GPDC's responses to SCHR's November and December 2022 Requests. This included news stories from the Atlanta Journal-Constitution in September 2022 following SCHR's August 2022 letter to GPDC, *In Georgia, Hundreds of People Charged with Crimes Have no Legal Representation*, and November 2022, *Crisis in Georgia's Public Defender System Fuels Case Backlog, Jail Overcrowding*.

44. Other news outlets also covered this issue in late 2022 and early 2023. See John Ruch, *Fulton Superior Court Uses Pandemic Funds for Shortage of Public Defenders*, Saporta Report (Sept. 30, 2022), <https://saportareport.com/fulton-superior-court-uses-pandemic-funds-for-shortage-of-public-defenders/sections/reports/johnruch/>; Andy Pierrotti, *Here's Why These Public Defenders Left Their Jobs*, Atlanta News First (Dec. 30, 2022), <https://www.atlantaneWSfirst.com/2022/12/30/sixth-part-three-why-theyre-leaving/>; Andy Pierrotti, *Georgia's Top Public Defender Flips, Admits her Agency Cannot Hire Enough Lawyers*, Atlanta News First (Jan. 25, 2023), <https://www.atlantaneWSfirst.com/2023/01/25/georgia-public-defenders-council-director-admits-she-cannot-find-enough-attorneys/>.

45. It is significant that GPDC's frustration of records access comes at a

time when the agency's handling of conflict-free appointments is receiving increased public attention.

D. GPDC's Violations of the Open Records Act in Response to SCHR Requests

46. GPDC is (1) charging excessive fees, (2) not producing records within a reasonable timeline, (3) not producing all responsive records, and (4) improperly withholding responsive records—and therefore violating almost every requirement of the Act. Taken together, GPDC's actions amount to a knowing and willful attempt to “frustrate . . . access to [public] records by intentionally making records difficult to obtain or review.” O.C.G.A. § 50-18-74(a).

47. It is *necessary to conduct discovery* into GPDC's processes of maintaining records, discovering responsive records, producing responsive records, and determining production costs and timelines to unearth the extent of GPDC's violations of the Act, as well as to explore the inconsistencies in responses between particular requesters and inconsistencies in current responses as compared to prior similar requests.¹⁰

¹⁰ Parties regularly conduct discovery in litigation brought to enforce the Open Records Act. *See United Healthcare of Ga., Inc. v. Ga. Dep't of Comm. Health*, 293 Ga. App. 84, 86 (2008) (referring to discovery that had concluded); *Northwest Ga. v. Healthcare Sys., Inc. v. Times-Journal, Inc.*, 218 Ga. App. 336, 337 (1995) (discussing discovery that had concluded); *Dooley v. Davidson*, 260 Ga. 577, 583 (1990) (remanding for further discovery); *see also* Order on Defendant's Motion for Protective Order, *American Oversight v. Brad Raffensperger*, No. 2020CV341511 (Fulton Co. Sup. Ct. Oct. 1, 2021) (denying defendants' request to limit discovery generally, limit the number of depositions, or quash the subpoena for the Secretary of State defendant).

I. *GPDC is Charging Excessive Costs*

48. The Act does not require agencies to charge fees for access to public records. However, an agency is permitted to “impose a reasonable charge for the search, retrieval, redaction, and production or copying costs for the production of records.” O.C.G.A. § 50-18-71(c)(1).

49. In the past, GPDC imposed reasonable fees or waived them entirely. Now, inexplicably, the agency charges vastly different and excessive fees, claims unreasonable timelines to produce records that were previously provided with relative ease, and produces records that are sorely incomplete. At this point, GPDC is flouting the legislature’s “strong presumption” in favor of open records and the admonition that public records be provided “without delay,” O.C.G.A. § 50-18-70(a), and it is erecting impermissible barriers to public records.

50. Indeed, GPDC’s cost estimates were so excessive in November and December 2022, and the agency was so unwilling to revise them, that SCHR had to forgo multiple public records requests. In response to the November 7 Request, GPDC initially provided a cost estimate of \$2,929.69 for records that it had previously provided for free or for substantially less.¹¹ The only way to avoid the high cost was to narrow the Request, which SCHR did.

¹¹ On September 2, 2022, GPDC provided a large volume of email correspondence with an invoice for \$140.62 in response to the August 22, 2022 Request. On September 8, 2022, GPDC

51. For the December 13 Request (which was a narrowed version of a previous one), GPDC provided a cost estimate of \$4,867.19, even though the Request contained fewer sets of records than the one submitted on November 7, and one set of records contained narrower parameters than those included in the November 7 Request.

52. Between March 2022 and February 2023, the costs increased as follows:

provided a list of over 600 persons in need of C-3 representation at no charge in response to the August 18, 2022 Request.

Date of Request	Cost
March 31, 2022	\$714.04
August 18, 2022	No fees
August 22, 2022	\$132.81
November 7, 2022	\$2929.69 estimated
November 17, 2022 <i>(Revised and Narrowed Version of November 7 Request due to high cost estimated)</i>	\$70.31
December 13, 2022	\$4867.19 estimated
February 8, 2023 <i>(Revised and Narrowed Version of December 13 Request due to high cost estimated)</i>	\$937.50

53. It is unclear why the same or similar records have now become significantly more expensive to produce over the past year, and GPDC has refused to provide an explanation. For example, SCHR requested, “[a]ll correspondence between superior court judges and Georgia Public Defender Council employees regarding conflict and/or appellate staffing needs in their courtrooms” in the March 2022 Request, which included a total of ten items. GPDC produced responsive records for the entire Request for a total of \$714.04 within six business days of payment.

54. In the November 2022 Request, SCHR included a virtually identical request for, “[a]ny and all correspondence between superior court judges and GPDC employees regarding conflict staffing needs in their courtrooms from August 1, 2022 to present,” but SCHR was forced to withdraw it because the cost estimate was four times that of a nearly identical one. SCHR re-submitted the item in the December 2022 Request. GPDC eventually disaggregated the time estimate, predicting that it would take 124 hours to comply with the request for correspondence.¹² At a rate of \$31.25 per hour, the total cost for the correspondence alone would be \$3,875—more than four times the cost of the entire March 2022 Request, which included the same correspondence and nine additional items.¹³

55. It is also impossible for SCHR to assess the accuracy of these estimates prior to discovery, because GPDC refuses to provide sufficient detail about how the estimates are derived or how staff time is deployed on search, retrieval, and production of records.¹⁴

¹² GPDC has not provided any explanation as to why it was able to produce this item in March within six business days, along with other records, while it would now require a GPDC employee working nearly continuously for six days solely on this item to produce the same records.

¹³ The cost for the item in the December 2022 Request is also higher than the estimate for the entire November 2022 Request, which included an identical item.

¹⁴ The only redactions GPDC has ever made to C-3 related materials that the agency produced were the names of accused children awaiting the appointment of or currently represented by C-3 counsel.

56. SCHR has been unable to access the majority of the public records included in the November and December 2022 Requests because of the unreasonable and prohibitive costs.

57. SCHR has paid the exorbitant fees to access a limited set of public records. In February 2023, SCHR paid \$937.50 for a computer-generated list of individuals currently represented by C-3 counsel. GPDC did not provide an explanation as to why the fees for this list were so high; rather, GPDC informed SCHR at the time of production—and weeks after receiving payment—that it did not maintain all the information that had been requested months earlier.¹⁵ For comparison, GPDC provided a list of over 600 persons awaiting the appointment of C-3 counsel in September 2022 at no cost.

58. Furthermore, GPDC has charged fees to both SCHR and another requester, investigative journalist Andy Pierrotti, for the production of the exact same documents on April 10, 2023. The Act permits an agency to charge search and retrieval fees for time that the agency actually spends responding to requests, but the Act does not permit an agency to turn Open Records Requests into a source of profit.

59. The fees estimated and charged for records by GPDC are unreasonable and therefore impermissible under the Act. O.C.G.A. § 50-18-71(c)(1); *see also*

¹⁵ It is unclear why GPDC did not notify SCHR of this by providing a detailed description of the records to be produced as required by the Act either within the three-day requirement or before receiving and depositing advance payment.

Howard v. Sumter Free Press, Inc., 272 Ga. 521, 521 (2000) (affirming high retrieval fees were a “violation of the spirit and intent” of the Act).

II. *GPDC is Not Producing Documents Within a Reasonable Timeframe*

60. The Act requires agencies to produce all available records “within three business days of receipt of request.” O.C.G.A. § 50-18-71(b)(1)(A). When records are “unavailable within three business days of receipt of the request,” the agency is still required to provide requesters with a “description of such records and a timeline for when the records will be available” within three business days and must “provide the responsive records or access thereto as soon as practicable.” *Id.*; *see also* O.C.G.A. § 50-18-70(a) (declaring “there is a strong presumption that public records should be made available for public inspection without delay”).

61. GPDC has claimed increasingly lengthy estimated timelines for the production of documents and has not been providing records as soon as practicable. For example, GPDC’s estimated timeline of 75 days—or two and a half months—to respond to the December 13 Request far exceeds the time it has taken GPDC to produce similar records in the past. These production timelines are clearly not “as soon as practicable.”

62. GPDC does not produce documents “without delay.” For example, SCHR renewed its Request for a list of individuals currently represented by C-3 counsel on February 8 and provided advance payment on February 10, 2023. GPDC

produced the responsive records between March 22 and 24. The responsive records were simple computer-generated reports; and it is highly unlikely these took a month to generate, review, or redact. Upon production, GPDC advised SCHR that the records were not completely accurate as of the production date.

63. Between March 2022 and February 2023, the production timelines increased as follows:

Date of Request	Time to Fulfill Request
March 31, 2022	6 days (after payment was received)
August 18, 2022	15 days
August 22, 2022	9 days
November 7, 2022	94 hours estimated
November 17, 2022 <i>(Revised and Narrowed Version of November 7 Request due to high cost estimated)</i>	9 days
December 13, 2022	156 hours and 75 days estimated
February 8, 2023 <i>(Revised and Narrowed Version of December 13 Request due to high cost estimated)</i>	28 days (after payment was received)

64. Both GPDC's estimated timelines and actual production timelines have violated the Act. *See Schick v. Board of Regents of Univ. System of Ga.*, 334 Ga.

App. 425, 429 (2015) (“The Act is designed to make the production of records expeditious.”). GPDC’s timelines for producing similar records have become significantly lengthier in recent months, without any justification.

III. *GPDC is Not Producing All Responsive Records*

65. The Act requires agencies to produce “*all* records responsive to a request.” O.C.G.A. § 50-18-71(b)(1)(A) (emphasis added). An agency’s failure to discover and produce all responsive documents constitutes a violation of the Act. *See Schick*, 334 Ga. App. at 429.

66. GPDC has provided incomplete records reflecting individuals in need of C-3 counsel and has refused to provide records that it previously produced without explanation.

67. On August 18, 2022, SCHR requested “a complete list of all individuals in need of C-3 counsel as of the date of this letter.” On September 8, 2022, GPDC provided a list of over 600 accused people in need of C-3 counsel. Over the following months, SCHR learned that the list was underinclusive, as staff encountered people in jails around Georgia who had been awaiting the appointment of C-3 counsel for months but who were not on the list.

68. On November 7, 2022, SCHR again requested a list of individuals awaiting the appointment of C-3 counsel and alerted GPDC to the potential problems with the list provided on September 8, 2022. On November 23, 2022, GPDC

responded with a document it claimed was “[a] complete list of all children and adults in need of C-3 counsel as of the date of this letter.” But these records looked nothing like the list of over 600 individuals provided on September 8. Rather, the November document listed only one person in the entire state who was awaiting a C-3 appointment. When questioned about this “list,” GPDC claimed that the agency could no longer provide a list of people awaiting C-3 counsel and confirmed it was likely that more individuals were awaiting the appointment of counsel.¹⁶ After SCHR requested that GPDC “provide responsive documents from the electronic record-keeping system,” GPDC then provided twenty-four additional names on December 2, 2022, alleging they had fulfilled the Request for “[a] complete list of all children and adults in need of C-3 counsel.” The records were again underinclusive, omitting people across the state awaiting the appointment of C-3 counsel.

69. On December 13, 2022, SCHR requested:

A list of all persons currently represented by C-3 counsel, including counsel employed in the Georgia Public Defender Council’s (GPDC) central office; the name of their appointed counsel; the date at which their request for counsel was submitted or the most recent date at which they became eligible for counsel; the date at which counsel was appointed; and the county or judicial circuit in which they have been charged.

70. On March 22, 2023, after the follow-up communications described in

¹⁶ The Custodian of Records indicated that GPDC software was incapable of providing these records for past dates, including the date requested.

paragraphs 29 to 31, GPDC produced a list of about 1,800 individuals currently represented by C-3 counsel. This list did not include all of the individuals SCHR is aware of who were then represented by C-3 counsel.

71. There are individuals who have been languishing in jail for years—both those awaiting the appointment of C-3 counsel and those who have serious concerns about their current C-3 counsel—who are not included on any list of people entitled to C-3 counsel produced by GPDC. For example, Maurice Jimmerson, who has been entitled to C-3 counsel for seven years, was not on any list provided by GPDC, either of people awaiting C-3 counsel or of people currently represented.¹⁷

72. Regardless of whether this is a negligent failure to discover and produce all responsive records or an intentional effort to obfuscate access to public records, GPDC has yet to comply with the Act by providing SCHR with the complete number and names of individuals awaiting the appointment of C-3 counsel across the state. This is a clear violation of the Act. *See* O.C.G.A. § 50-18-71(b)(1)(A).

IV. *GPDC is Improperly Withholding Documents*

73. Agencies are required to disclose public records and are only permitted to withhold documents when there is a proper exemption. Even when an agency identifies an exemption, they must produce any portion of the record that does not

¹⁷ *See* Andy Pierrotti, *Georgia Man Behind Bars 10 Years, Still Waiting for his Day in Court*, Atlanta News First (April 26, 2023).

fall within the exemption. The Act “directs a narrow construction of its exclusions, exempting ‘*only that portion of a public record to which an exclusion is directly applicable.*’” *Hardaway Co. v. Rives*, 262 Ga. 631, 634 (1992) (citing O.C.G.A. § 50-18-72(b)).

74. GPDC has withheld entire documents rather than redacting the relevant portions in response to SCHR’s most recent records request.

75. On March 27, 2023, SCHR requested “[a]ny documents regarding requests from C-3 attorneys for funds for investigators and experts from January 1, 2022, to present.” On March 30, 2023, GPDC provided the following response: “[a]ny documents regarding requests from C-3 attorneys for funds for investigators and experts from January 1, 2022 to present’ constitute confidential attorney work product under O.C.G.A. § 50-18-72 (a)(42) and are not subject to disclosure.” On March 31, 2023, SCHR wrote to GPDC as follows:

The Open Records Act “shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable.” O.C.G.A. § 50-18-72(b). Accordingly, I renew my request for documents regarding requests from C-3 attorneys for funds for investigators and experts from January 1, 2022 to present. Please redact any confidential information, such as client names, and produce the responsive records. *See* O.C.G.A. § 50-18-71(b)(1)(B).

GPDC responded on April 5, 2023, similarly to its initial response:

As previously communicated, “Any document regarding requests from C-3 attorneys for funds for investigators and exports from January 1, 2022, to present” constitutes confidential and privileged attorney work products under O.C.G.A. § 50-18-72 (a) (41) & (43). These records, in their entirety,

are accordingly withheld.

GPDC's response does not comply with the Act. Furthermore, GPDC's improper decision to withhold these records is particularly concerning because of GPDC's attempts to evade its obligation to pay for conflict-free investigators¹⁸ and experts¹⁹ to which indigent persons are constitutionally entitled.

76. GPDC's failure to produce records in their entirety because they contain exempted material is "unresponsive to the legislative intent underlying the Open Records Act." *Hardaway Co. v. Rives*, 262 Ga. 631, 634 (1992). The Georgia Supreme Court has repeatedly held that agencies must redact the statutorily exempted portions and produce the responsive records. *Id.*; *City of Brunswick v. Atlanta J. & Const.*, 214 Ga. App. 150, 152 (1994). In the instant case, GPDC is required to redact any identifying information that falls within the scope of an exemption and produce the responsive records expeditiously. *See Blau v. Ga. Dep't of Corrections*, 364 Ga. App. 1, 8 (2022).

77. Moreover, GPDC is now claiming—for the first time in SCHR's decade-plus experience of requesting public records from the agency—that the Rules of Professional Conduct forbid the production of certain records. For

¹⁸ Andy Pierrotti, *Atlanta Murder Suspect Denied Resources After Years in Jail*, Atlanta News First (Mar. 14, 2023), <https://www.atlantaneWSfirst.com/2023/03/14/jailed-four-years-atlanta-murder-suspect-denied-investigative-resource/>.

¹⁹ *See Duke v. State*, 306 Ga. 171 (2019).

instance, on March 22, 2023, GPDC provided a list of adults currently represented by C-3 counsel. But GPDC followed this partial production with a redacted version of the same list and ordered SCHR to return the one previously provided as explained below:

GPDC has omitted the names of adult indigent clients under Rule 1.6 of the Georgia Rules of Professional Responsibility. Based on the GPDC's understanding of Rule 1.6, GPDC is not authorized to provide the names of clients outside the scope of representation or without consent from the clients. Previously, GPDC inadvertently provided an unredacted list to the SCHR. Based on Rule 1.6, GPDC instructs the SCHR to either redact the list or return all unredacted copies to GPDC. Any client names should not be used or published by SCHR due to the applicability of Rule 1.6.

78. This sudden invocation of Georgia's ethical rules to prevent the production of public records showing the appointment status of indigent clients and their counsel is unprecedented, unsupported by the rules, and contrary to Georgia's strong presumption in favor of sharing public information.

79. Though Plaintiff's own investigation calls into question the completeness of GPDC's productions, discovery is necessary to understand the extent of GPDC's nondisclosure. *See Griffin Industries, Inc. v. Ga. Dep't of Agriculture*, 313 Ga. App. 69, 74 (2011) (relying on deposition testimony in deciding whether the defendant violated the Act).

E. Other Members of the Public Have Experienced Similar Hurdles When Requesting Public Records in GPDC's Possession

80. SCHR is not the only requester that has had difficulty accessing public

records in GPDC's custody.

81. The NAACP Branch of Georgia ("NAACP") recently requested caseload data for Circuit Public Defender Offices. SCHR had requested similar data in years past and had received the records expeditiously with no associated fees. But GPDC provided the NAACP with an estimate of \$695.31. This included fees for working with consultants to determine how to produce the data. Such fees are not among those that agencies are permitted to collect under the Act. O.C.G.A. § 50-18-71(c).

82. GPDC told the NAACP that it did not maintain staffing data for individual Circuit Public Defender Offices and would charge fees for contacting each office to determine staffing levels. But GPDC has provided this staffing data to the media quickly and free of charge by simply consulting a computer program.

83. Members of the media are facing similar challenges when requesting public records from GPDC. As described above, Andy Pierrotti, an investigative journalist with Atlanta News First, requested "[a]ll invoices paid, received or outstanding between the Georgia Public Defender Council staff and the public relations firm Lucie (<https://luciecontent.com/>) from Feb. 1, 2023 to present." GPDC provided no invoices in its response.

84. On April 17, 2023, Matthew S.L. Cate, an attorney at Ballard Spahr, LLP, wrote to Respondent Alli and GPDC Director of Communications, Thomas

O'Connor, seeking the production of the records Pierrotti had requested under the Act. Though GPDC Chief Legal Officer Natalie Glaser informed Pierrotti over email that the cost of the contract was \$24,500, GPDC never produced any responsive records or claimed an exemption for any records.

F. SCHR's Attempts to Resolve the Dispute

85. SCHR has made several attempts to resolve the dispute with GPDC.

86. SCHR initially attempted to resolve the dispute directly, by sharing its concerns with GPDC and requesting that GPDC revise its estimates. GPDC refused to revise any cost or time estimates and only disaggregated the hours estimate for the December 2022 Request.

87. SCHR then filed a request for mediation with the Attorney General's Office.²⁰ SCHR and GPDC continued to exchange communication regarding the outstanding Requests. GPDC denied the existence of both a dispute and—strangely—the Attorney General's mediation program itself. The Attorney General's Office failed to respond to or even confirm receipt of the request for mediation.²¹

²⁰ See Office of the Attorney General, *Open Government Mediation Program*, <https://law.georgia.gov/open-government-mediation-program>.

²¹ The Attorney General's Office has previously taken the position that it is conflicted out of mediating or resolving complaints concerning Open Records Act compliance made against state agencies because the Attorney General is charged with representing such agencies in any relevant litigation. The Attorney General's inaction should not be read as an endorsement of GPDC's conduct here, but rather as a function of the Attorney General's conflicting obligations.

88. The Attorney General's Office similarly failed to use its enforcement powers under O.C.G.A. § 50-18-73(a) upon learning of GPDC's many violations of the Act.

89. At this point, the dispute will not be resolved without this Court's intervention.

90. Further, discovery, including depositions conducted under O.C.G.A. § 9-11-30(b)(6), is necessary to assess whether GPDC's methods for maintenance and production of records are in compliance with the Act's requirements.

91. Respondents' failures to comply with the Open Records Act lack "substantial justification," particularly when considering both their shift to non-compliance for similar prior requests and the attempts by Plaintiff to resolve this matter without litigation. Attorneys' fees and costs are therefore compensable under O.C.G.A. § 50-18-73(b).

CLAIM FOR RELIEF

COUNT ONE

Violation of Georgia's Open Records Act

92. The allegations of paragraphs 1 through 91 above are hereby incorporated by reference as allegations of paragraph 92 of Count One of the Complaint.

93. Respondents have failed to comply with the requirements of the Open Records Act by (1) charging unreasonable fees, (2) not producing records expeditiously, (3) failing to produce responsive records, and (4) improperly withholding responsive records as set forth above.

94. Respondents lack substantial justification for failing to comply with the Open Records Act.

95. On information and belief, Respondents' failures to comply with the provisions of the Open Records Act are knowing and willful and/or negligent.

96. On information and belief, Respondents' failures to comply with the provisions of the Open Records Act are intended to frustrate public access to records by making them difficult to obtain.

97. Respondents' most egregious failures to comply with the Act include treating similarly situated requesters differently, charging different requesters duplicative fees for the same records, claiming records previously produced are not maintained by GPDC, increasing fees for previously produced records by thousands of dollars, and refusing to identify its Records Custodian on the grounds that it is an overly broad and vague term.

98. SCHR is entitled to injunctive relief directing Respondents to fully comply with their obligations under the Open Records Act.

COUNT TWO

Pattern and Practice of Violating the Georgia Open Records Act

99. The allegations of paragraphs 1 through 91 above are hereby incorporated by reference as allegations of paragraph 99 of Count Two of the Complaint.

100. As the Executive Director, Respondent Alli has supervisory authority over the responses to Open Records Requests sent to GPDC. She is also responsible for ensuring GPDC complies with all applicable laws and regulations, including the Open Records Act.

101. Respondents John Doe I–V are individuals responsible for responding to Open Records Requests sent to GPDC, including SCHR’s requests. These individuals directly committed the violations of the Open Records Act described throughout this Complaint.

102. GPDC’s responses to SCHR’s Requests demonstrate a pattern and practice of deliberate obfuscation and avoidance of the agency’s obligations under the Act. The agency’s persistent violations of the Act and refusal to come into compliance are irreconcilable with an open government. Rather, the violations described herein, on information and belief, reflect a systemic rejection of government transparency within GPDC.

103. Respondents have violated the Act by (1) charging unreasonable fees, (2) not producing records expeditiously, (3) failing to produce responsive records, and (4) improperly withholding responsive records as set forth above.

104. On information and belief, Respondents intentionally acted to frustrate the purpose of the Act and to prevent members of the public, including SCHR, from obtaining public records in GPDC's custody.

105. The Open Records Act allows for civil penalties of \$1,000 "against any person who negligently violates the" Act per each violation. O.C.G.A. § 50-18-74(a).²² The civil penalties shall be payable to the Plaintiff who initiated the action.

106. Respondents have intentionally and/or negligently violated the Act, and these violations warrant the imposition of civil penalties. Once the precise number of violations has been determined, for which discovery is necessary, the Court should impose civil penalties against all Respondents for \$1,000 per violation.

REQUEST FOR RELIEF

WHEREFORE, SCHR respectfully prays for the following relief:

(1) that the Court enter a judgment declaring the Respondents violated the Open Records Act;

(2) that the Court enter an Order directing Respondents to promptly and

²² The civil penalty increases to a maximum of \$2,500 per subsequent violation for the year following the date the first civil penalty is imposed. O.C.G.A. § 50-18-74(a).

completely comply with their obligations pursuant to the Open Records Act regarding all outstanding Requests and certify its compliance;

(3) that the Court conduct an in-camera review of any documents the Respondents have withheld because of an alleged exemption as permitted by O.C.G.A. § 50-18-72(a)(41);

(4) that the Court enter a judgment against Respondents for civil penalties of \$1000 for each violation of the Act as permitted under O.C.G.A. § 50-18-74(a);

(5) that the Court award Plaintiff reasonable attorney's fees and other litigation costs pursuant to O.C.G.A. § 50-18-73(b); and

(6) that the Court award such other relief as shall appear proper and just.

Respectfully submitted, this 5th day of June, 2023.

/s/Vanessa Carroll

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