

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

**GARLAND FAVORITO, MICHAEL
SCUPIN, TREVOR TERRIS, SEAN
DRAIME, CAROLINE JEFFORDS,
STACEY DORAN, CHRISTOPHER
PECK, and ROBIN SOTIR,**

PETITIONERS,

v.

CIVIL ACTION NO. 2020CV343938

**MARY CAROLE COONEY, VERNETTA
KEITH NURIDDIN, KATHLEEN RUTH,
AARON JOHNSON, MARK WINGATE,
and RICHARD BARRON in their
individual capacities,**

RESPONDENTS.

**MOTION FOR EXPEDITED HEARING
and
SUPPLEMENTAL BRIEF REGARDING PETITIONERS' REQUEST FOR
TEMPORARY RESTRAINING ORDER**

This brief addresses two issues. First, Petitioners request an expedited hearing because they have uncovered reason for concern that no one is assuming responsibility for complying with the Court's temporary injunction. Second, at the end of the 1/15/2021 hearing, the Court posed four questions. This brief response to those questions.

I. THE COURT SHOULD GRANT AN EXPEDITED HEARING TO DETERMINE WHAT IS BEING DONE TO PRESERVE THE DOCUMENTS AS ORDERED BY THE COURT.

On 1/7/2021, this Court issued an order for a temporary injunction to preserve paper ballots, spoiled ballots, paper adjudicated ballots, and data from Fulton County's electronic election management system. At the 1/15/2021 hearing, Fulton County's custodian, Steve Rosenberg, testified that the paper ballots were being held by the Clerk of Superior Court:

Q Do you know where these absentee ballots are currently being held?

A I believe that they are with the Clerk of Superior Court under seal.

Rosenberg, 01/15/2021 Hearing Tr. at 101.¹

However, on 01/19/2021, the Fulton County Superior Clerk's office, replying to an Open Records Request, **denied that it has the documents**:

The Fulton County Clerk of Superior and Magistrate Court does not have any responsive documents or other materials related to what was requested in your letter referencing "Open Records Request Pursuant to O.C.G.A. § 50-17-70 et seq." and dated January 15, 2021. I would recommend contacting the Fulton County Registration and Elections Department. Use the link below for contact information.

01/19/2021 Email from Isaac Standard (att. as Exh. 1). Today, the Fulton County Superior Court Clerk sent a new email, stating:

I apologize for providing you incorrect information in my previous email. We have now identified the location of records related to your original request in our warehouse. Without waiving any other objections to your request, the election records held and maintained by the Clerk are under seal pursuant to O.C.G.A. 21-2-500 as well as the regulations promulgated by the Secretary of State. Thus, they cannot be produced at this time.

01/22/2021 Email from Isaac Standard (att. as Exh. 2). The email did not specify exactly what records had been located.

¹ At the 01/06/2021 hearing, the Court and Fulton County attorney Cheryl Ringer had this exchange:

THE COURT: All right. So you're saying that pursuant to that Code section, they are to leave your custody and be transferred to the custody of the Superior Court, but the details of exactly how that occurs is not something that you're able to express at this time and perhaps due to the fact that this has been a short time frame to respond; is that true?

MS. RINGER: That is correct, Your Honor.

THE COURT: All right. Well, that's one of the main issues I wanted to address with you.

01/06/2021 Tr. at 28.

The abrupt about-face raises serious questions about whether anyone is taking responsibility for complying with the Court's order. Petitioners request that the Court hold an Emergency Hearing in order to:

- (1) **Determine where the ballots and data are being stored;**
- (2) **Determine who has been charged with complying with the Court's order to preserve them; and**
- (3) **Determine what is being done to comply with the Court's order to preserve the ballots and data.**

Petitioners request that Respondents be ordered to bring Richard Barron (the Fulton County Elections Director), Ralph Jones, Sr. (Elections Registration Manager for Fulton County), Steven Rosenberg, and any other individual who is authorized to speak on behalf of the Fulton County Elections Board, to address these critical issues.

This Court has full authority "to enforce compliance with the provisions of" (O.C.G.A. § 50-18-73) the Open Records Act. Depending on the information learned at the hearing, the Court may need to order full and immediate production or grant other relief in order to ensure the documents are preserved and maintained in their current form.

II. RESPONSES TO THE COURT'S QUESTIONS FROM THE 1/15/2021 HEARING.

At the end of the hearing on 01/15/2021, the Court posed four questions:

- (1) "[W]hether or not Mr. Rosenberg has been properly designated as the custodian of records." 01/15/2021 Hearing Tr. at 126.
- (2) Whether "the agency – in this case the Department of Elections – requires that request be made upon the individual identified in (B), which would be, apparently, Mr. Rosenberg." 01/15/2021 Hearing Tr. at 127.
- (3) "Whether or not there should be some finding that there's been a violation of the Freedom of Information Act and whether or the standard's been met to justify and authorize a fine of some sort." 01/15/2021 Hearing Tr. at 128-129.
- (4) Whether "we need to have some further proceeding in connection with" Fulton County's additional submissions about the designation of Rosenberg. 01/15/2021 Hearing Tr. at 129.

Petitioners will address each of these questions in turn.

For the Court's assistance, Petitioners have compiled the facts about the three Open Records Act requests in a single location:

REQUEST #1	
What was requested?	Fulton Co. interim election results summaries
Date	11/05/2020; submitted again on 11/12/2020; request made again orally at 11/13/2020 board meeting during public comments
Submitted by	Garland Favorito
Submitted to	All three requests submitted to: Rick Barron, Wingate, Aaron Johnson McCooney, Vernetta Nuriddin, Dr. Kay Ruth, Cheryl Ringer (attorney)
Response date	None.
Response	None.

REQUEST #2	
What was requested?	Fulton County 2020 absentee ballots
Date	12/03/2020; submitted again on 12/07/2020
Submitted by	Garland Favorito
Submitted to	Mariska Bodison, Rick Barron, Wingate, Aaron Johnson McCooney, Vernetta Nuriddin, Dr. Kay Ruth, Cheryl Ringer (attorney)
Response date	01/04/2021 email from Steven Rosenberg, cc Shana Eatmon, Unique McCray, Kaye Burwell, Cheryl Ringer
Response	<p>"As you know, I am the duly appointed records custodian for open records purposes for Fulton County. As such, pursuant to O.C.G.A. 50-18-71, the three day time period for responding to requests does not begin to run until I receive the request. I did not receive your request below until Monday, December 28. Due to the holidays, the three business day time period for response ends today."</p> <p>"At any rate, I believe the election result have been certified and that records you are seeking are now exempt from disclosure pursuant to O.C.G.A. 21-2-500. I am in the process of confirming that information."</p>

REQUEST #3	
What was requested?	<ul style="list-style-type: none"> * All original, paper absentee mail-in ballots as well as the scanned/electronic copies that were counted towards the 2020 Presidential Election vote totals which were scanned at State Farm Arena located at 1 State Farm Drive, Atlanta, GA 30303 between the dates of November 3, 2020 and November 4, 2020; and * All original, paper absentee mail-in ballots as well as the scanned/electronic copies for the 2020 Presidential Election that were discarded or otherwise not counted for the 2020 Presidential Election. * The originals of the spoiled absentee mail-in ballots.
Date	12/28/2020
Submitted by	Robert Cheeley, acting as attorney for Caroline Jeffords
Submitted to	Mariska Bodison, Henry Chalmers, Rick Barron, Wingate, Aaron Johnson, McCooney, Vernetanuriddin, Dr. Kay Ruth, Cheryl Ringer (attorney)
Response date	1/4/2021
Response	Production of non-responsive documents; no ballots were produced.

- (1) **QUESTION: Was Mr. Rosenberg properly designated as the custodian of records?**
ANSWER: No. Mr. Rosenberg was not properly designated as the Custodian of Records for the *Fulton County Elections Board*.

Fulton County has never responded in any way to Request #1, and it responded to Request #2 almost a month late. Respondents claim that they were not subject to any time limitation on their response, because those two requests were not sent directly to Mr. Rosenberg, Fulton County's custodian. Rosenberg, 01/16/2021 Hearing Tr. at 54 ("once an agency appoints a custodian, the three-day sort of trigger doesn't start until that custodian receives the request.") Mr. Rosenberg even admitted that Request #2 was "adequate" and was sent to the designated Open Records liaison for the Fulton County Elections Board:

Is that an adequate request to the Fulton County, you know, Department of Registration and Elections? Sure, it's an adequate request to them. Does the three-

day response time for Fulton County trigger upon sending it to Mariska? No, it does not. I have to get it.

Rosenberg, 1/16/2021 Hearing Tr. at 76-77.

At the hearing, the Court gave the Respondents additional time to submit evidence that Mr. Rosenberg had in fact been appropriately designated as the sole person to receive Open Records Act requests *for the Fulton County Elections Board*. After the hearing, Respondents submitted three documents, none of which was authenticated in any way: (1) a resolution appointing Mr. Rosenberg as the custodian *for Fulton County* (Def. Exh. 4) ("D-4"); (2) an 11/9/2016 public announcement stating that: "The Custodian or Open Records Officer named *for Fulton County* is as follows: Steve Rosenberg, Supervising Attorney, Open Records Officer, Office of the Fulton County Attorney... If you have any questions, please do not hesitate to contact Mr. Rosenberg" (D-5) (phone numbers omitted); and (3) a screen shot of the Open Records page on Fulton County's website, stating: "To assist individuals seeking information and to comply with Georgia Open Records law, Fulton County has designated an Official Custodian of Records *for Fulton County* and has an online Open Records portal." D-6 (emphasis added in all three citations above).

All three of those (unauthenticated) documents miss the mark, because they relate to whether Mr. Rosenberg was appointed custodian *for Fulton County*. Respondents did not submit a single document to show that Mr. Rosenberg is the appropriately designated custodian for the *Fulton County Board of Elections and Registration* ("*Fulton County Elections Board.*")

The Fulton County Elections Board is a separate and distinct entity that was created by the General Assembly under an enabling act:

The General Assembly may by local Act create a board of elections and registration in any county of this state and empower the board with the powers and duties of the election superintendent relating to the conduct of primaries and elections and with the powers and duties of the board of registrars relating to the registration of voters and absentee-balloting procedures.

O.C.G.A. § 21-2-40. The General Assembly created the Fulton County Elections Board in 1989:

Pursuant to O.C.G.A. § 21-2-40, there is created the Fulton County Board of Elections and Registration which shall have the powers and duties of the election superintendent of Fulton County relating to the conduct of elections and the powers and duties of the board of registrars relating to the registration of voters and absentee balloting procedures.

1989 Ga. Laws (Act No. 250), page 4577, § 1, available at https://library.municode.com/ga/fulton_county/codes/code_of_ordinances?nodeId=PTILOCOAMLOAC_CH14EL_ARTIIBOELRE_S14-31TEDE.

The Open Records Act provides that *every agency* wishing to use a custodian – not merely every county – must follow all of the requisite procedures to designate the custodian:

Any agency that designates one or more open records officers upon whom requests for inspection or copying of records may be delivered shall make such designation in writing and shall immediately provide notice to any person upon request, orally or in writing, of those open records officers. If the agency has elected to designate an open records officer, the agency shall so notify the legal organ of the county in which the agency's principal offices reside and, if the agency has a website, shall also prominently display such designation on the agency's website. In the event an agency requires that requests be made upon the individuals identified in subparagraph (B) of paragraph (1) of this subsection, the three-day period for response to a written request shall not begin to run until the request is made in writing upon such individuals. An agency shall permit receipt of written requests by e-mail or facsimile transmission in addition to any other methods of transmission approved by the agency, provided such agency uses e-mail or facsimile in the normal course of its business.

O.C.G.A. § 50-18-71(b)(2).

At this point the Court has not received any evidence at all to support the claim that *the Fulton County Elections Board* appointed Mr. Rosenberg as its sole custodian, or that it notified the public about the appointment.

(2) **QUESTION: Does the agency require that Open Records Act requests be made on Mr. Rosenberg?**

ANSWER: No, the Elections Board has not required citizens to submit requests to Mr. Rosenberg.

Nothing on the Fulton County Election Board's web page notifies a citizen that the Board *requires* that all Open Records Act statements go through Mr. Rosenberg. In fact, Mr. Rosenberg's name does not appear anywhere on the page for the Fulton County Election Board. The page also does not even mention the Open Records Act, unless a person goes to the very bottom of the page and opens the drop-down menu that is labeled as relating to Fulton County, not the Elections Board. A screenshot is attached for the Court's convenience as Exh. 2.²

Additionally, the resolution that the Respondents produced as D-4 shows that Fulton County instructed its agencies to designate "liaisons" who *also* could accept Open Records Act requests. The Resolution instructs agencies to designate a liaison "in writing and provide such written designation to the Clerk of the Fulton County Commission and to the Fulton County Attorney." 03/2/2016 Resolution Amending Fulton County Policy and Procedure 600-10 Governing Implementation of the Open Records Act (Arrington) at 2 (Def. Exh. 4). The resolution gave Mr. Rosenberg the authority to act directly through the liaison: "With respect to an action required by this Policy, the Custodian may act through the Custodian's designee; such designee shall be either the Liaison, legal counsel for that Department, or Agency, or an employee of that Fulton County Department or Agency." 03/2/2016 Resolution Amending Fulton County Policy and Procedure 600-10 Governing Implementation of the Open Records Act (Arrington) at 4 (Def. Exh. 4). Thus, Fulton County did not *require* requesting parties to go through Mr. Rosenberg.

² People using larger monitors may see the drop-down menu already open.

Since the Elections Board has not designated a sole custodian to receive Open Records Act requests, the Elections Board must respond to requests submitted in a reasonable manner to persons who could reasonably be expected to respond.

Request #3: Request #3 was submitted via the portal, and went straight to Ms. Bodison. While Fulton County responded in a timely manner, the response was wholly inappropriate. The Request had asked for ballots, yet not one ballot was produced. Instead, Ms. Bodison, on behalf of the Elections Board, sent some 600 pages of completely irrelevant materials that were already publicly-available.

Request #2: The Fulton County Elections Board waited a full month to object to Request #2, even though the request was submitted directly to Mariska Bodison, the Board's designated Open Records Act liaison. Favorito, 01/15/2021 Hearing at 18. Mr. Rosenberg conceded that the Elections Board had designated Mariska Bodison as its liaison, and that requests sent to the portal that relate to the Elections Board go directly to Ms. Bodison:

With respect to the portal -- it's interesting -- the fact of the matter is there's just too many requests, like I can't do them all, right, nor do I care to, frankly. So each liaison has access to the portal, so they can go in and just respond directly to requests; and for the most part, they do.

Rosenberg, 01/16/2021 Transcript at 57.

Request #1: This request was submitted to numerous members of the Election Board as well as Ms. Ringer, the Fulton County attorney who represents the Petitioners in this case. Ms. Bodison knew about Request #1 by at least 11/13/2020, because she was present at the Election Board meeting where Mr. Favorito raised the issue. Nonetheless, Fulton County has yet to respond or object in any way to Request #1.

(3) QUESTION: Should the Court find a violation of the Freedom of Information Act and impose a fine of some sort?

ANSWER: Yes. The Court should impose a fine of \$1000 or \$2500 and assess attorneys' fees and litigation costs.

At a minimum, Fulton County negligently violated the terms of the Open Records Act, and therefore "a civil penalty may be imposed by the court in any civil action brought pursuant to this article against any person who negligently violates the terms of this article in an amount not to exceed \$1,000.00 for the first violation." O.C.G.A. § 50-18-74(a). Attorneys' fees and "other litigation costs" are also appropriate because Fulton County acted "without substantial justification" "in not complying with this chapter." O.C.G.A. § 50-18-73(b).

In this case, the Court also should consider two aggravating factors.

First, Fulton County failed to comply with the requirement that legal counsel was to "advise the Liaisons as to the legal appropriateness of the Request and, based on the responsive documentation identified by the Liaison, the Custodian shall set forth in the Response any applicable exemptions set forth in the Act or otherwise." 3/2/2016 Resolution Amending Fulton County Policy and Procedure 600-10 Governing Implementation of the Open Records Act (Arrington) at 3 (Def. Exh. 4). Mr. Rosenberg testified that Ms. Bodison answered the request without consulting him:

Q Did you review her response to my open records request before she sent it back out to me?

A I did not.

Q Are you supposed to do that since you're the lawyer and she's not?

A You know, "supposed to" is an interesting question; right? In retrospect, it would certainly have been better if I did so. Again, I, you know -- we get in a ton of these. I cannot promise you that they are all perfect. Some are better than others, and we do the best that we can. That's just my blanket statement. Sorry.

Rosenberg, Hearing Tr. at 85-86. He also conceded that no other attorney was available to consult with her:

Q Do you -- are you a one-man show with respect to open records requests?

A Remarkably, I am the only attorney assigned to that, yes.

Rosenberg, Hearing Tr. at 86-87.

Second, Fulton County also failed to comply with its own directive that employees who received misdirected Open Records Act requests were to turn them over to Mr. Rosenberg within one day:

Whenever any employee, department head or appointed official of a Fulton County Department or Agency receives a Request under the Act for public records that are not maintained by that Department or Agency, then, not later than the end of business on the day following the receipt of the Request, the Request shall be brought to the attention of the Custodian in the County charged with responding to requests under the Open Records Act. The Custodian shall then determine the appropriate Liaison to receive and assist the Custodian in responding to such Request.

3/2/2016 Resolution Amending Fulton County Policy and Procedure 600-10 Governing Implementation of the Open Records Act (Arrington) at 4-5 (Def. Exh. 4). If the Fulton County employees and officials who received the requests thought that Mr. Rosenberg was the appropriate party to respond, and not they themselves, then the Fulton County directive required that they forward the request to Mr. Rosenberg. However, Mr. Rosenberg testified that he did not receive Request 2 until December 28, nearly a month after it was made. Rosenberg, Hearing Tr. at 61. *See also* Rosenberg, Hearing Tr. at 63 ("So I went to check and to find out what went wrong, and I learned that, you know, essentially it was sent to the department and the department did not really tell me in a meaningful way such that we could respond or I could respond appropriately.") As of today's date, no one has responded to Request #1; it is unclear whether Mr. Rosenberg claims he still has not received that request.

Additionally, Petitioners submit that the facts before the Court justify imposing attorneys' fees and costs under the Open Records Act:

(b) In any action brought to enforce the provisions of this chapter in which the court determines that either party acted without substantial justification either in not complying with this chapter or in instituting the litigation, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

O.C.G.A. § 50-18-73(b).

- (4) QUESTION: Do the parties need additional proceedings related to Fulton County's additional submissions about the designation of Rosenberg?**
ANSWER: Yes.

As stated above, the Petitioners do request an additional hearing. Petitioners also suggest that Mr. Rosenberg should be recalled to answer questions such as whether the County or he has been fined within the past 12 months, as that will enable the Court to establish whether the fine should be \$1000 or \$2500, pursuant to O.C.G.A. § 50-18-74(a).

CONCLUSION

Petitioners ask the Court to grant an expedited hearing to determine where the ballots and data are being stored, who is the custodian assuming responsibility for ensuring that the ballots and data are not spoliated in any way, and what actions are being taken to comply with the Court's order to preserve them. The Court also should fine the Respondents \$1000, or \$2500 if this is a second offense within 12 months, and award attorneys' fees and litigation costs to the Petitioners.

Respectfully submitted this 21st day of January, 2021.

[Signature block on next page]

MADDOX & HARDING, LLC

/s/ Todd A. Harding

Todd A. Harding, for the Firm

Ga. Bar No.: 101562

113 E. Solomon Street

Griffin, GA. 30223

770-229-4578

kamikazehitman@comcast.net

Attorney for Petitioners

CHEELEY LAW GROUP, LLC

/s/ Robert D. Cheeley

Robert D. Cheeley

GA Bar No. 122727

2500 Old Milton Parkway, Suite 200

Alpharetta, GA 30009

T: 770-814-7001

bob@cheeyleylawgroup.com

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January, 2021, I electronically filed the within and foregoing *Petitioners' Motion for Expedited Hearing and Supplemental Brief Regarding Petitioners' Request for Temporary Restraining Order* with the Clerk of Court using the Odyssey eFile/GA system which will provide automatic notification to the following counsel of record:

Cheryl Ringer, Esq.
Cheryl.ringer@fultoncountyga.gov
David R. Lowmann, Esq.
David.lowmann@fultoncountyga.gov
141 Pryor Street
Suite 4038
Atlanta, GA 30303

CHEELEY LAW GROUP, LLC

/s/ Robert D. Cheeley
Robert D. Cheeley
GA Bar No. 122727

EXHIBIT 1

From: Standard, Issac

Sent: Tuesday, January 19, 2021 4:48 PM

To: bob@cheeyleylawgroup.com

Cc: Smith, Monical <Monical.Smith@fultoncountyga.gov>; Cotten, Nicholas <Nicholas.Cotten@fultoncountyga.gov>

Subject: RE: letter concerning Open Records Request Pursuant to O.C.G.A. § 50-17-70 et seq.

Mr. Cheeley.

The Fulton County Clerk of Superior and Magistrate Court does not have any responsive documents or other materials related to what was requested in your letter referencing “Open Records Request Pursuant to O.C.G.A. § 50-17-70 et seq.” and dated January 15, 2021. I would recommend contacting the Fulton County Registration and Elections Department. Use the link below for contact information.

<https://www.fultoncountyga.gov/inside-fulton-county/fulton-county-departments/registration-and-elections>

Kind Regards,

Issac Standard

Chief of Records and Information Services Bureau

Fulton County Clerk of Superior and Magistrate Court

Honorable Cathelene "Tina" Robinson

136 Pryor St

Atlanta, GA 30303

Office: 404-612-9074

CHEELEY LAW GROUP, LLC

Trial Lawyers

www.cheeleylawgroup.com

2500 Old Milton Parkway, Suite 200

Alpharetta, Georgia 30009

ROBERT D. CHEELEY
bob@cheeleylawgroup.com

Phone: 770.814.7001
Fax: 678.559.0273

January 15, 2021

Catheleen Robinson
Clerk of Court
136 Pryor Street, Suite 106
Atlanta, GA 3030

Re: *Open Records Request Pursuant to O.C.G.A. § 50-17-70 et seq.*

Dear Ms. Robinson:

The undersigned represents Caroline Jeffords, a resident of Fulton County who is registered to vote, and did vote, in the November 3, 2020 election.

Pursuant to O.C.G.A. § 50-17-70 *et seq.* (Open Records Act), we request that you, as the Clerk of the Superior Court, produce the November 3, 2020 absentee paper ballots which are presently in your custody and control. The undersigned will have 4 high-speed scanners delivered to the location where the absentee paper ballots are stored Fulton County, Georgia shall provide an indoor location with electrical power for the electronic scanning of the paper ballots. I ask that you inform the undersigned on Tuesday, January 19, 2021 of the address where the absentee paper ballots are stored so that I may make arrangements to have the scanners delivered on Friday, January 22, 2021. Please note that this will be non-destructive inspection, scanning, and/or imaging of the following documents and things:

1. The absentee paper ballots cast for all mail-in and absentee ballots which were counted in the November 3, 2020 general election in Fulton County, Georgia which have now been certified.
2. The spoiled paper ballots cast from the November 3, 2020 general election by any registered voter in Fulton County, Georgia which were spoiled or otherwise unable to be electronically scanned.
3. The paper adjudicated ballots, or ballots cast by election officials for voters whose ballots were spoiled or otherwise unable to be electronically scanned, from the November 3, 2020 general election in Fulton County, Georgia.
4. From the Dominion electronic election management system or other electronic election management system used by Fulton County, Georgia, the:

- a) Dominion or other Electronic Cast Vote Record;
- b) Ballot Images - Raw Images;
- c) Ballot Images - Ballot Audit and Review;
- d) Vote-by-Mail Ballot Report;
- e) Provisional Ballot Report;
- f) Conditional Voter Registration Ballot Report;
- g) Cast Vote Record (Raw data) - JSON;
- h) ImageCast Central Logs;
- i) Ballot Scanning/Tabulation Machine Logs;
- j) Ballot Scanning/Tabulation Machine Tape;
- k) Ranked-Choice Voting: Board of Supervisors, Final Detailed Report;
- l) Report of all spoiled ballots; and,
- m) Report of all the adjudicated ballots

These systems generated reports should be provided as (a) an XML file, and (b) a JSON file, and also (c) a TXT file.

This request is made pursuant to O.C.G.A. § 50-18-71(b)(1)(A), which provides as follows:

O.C.G.A. § 50-18-70. Inspection of public records; printing of computerized indexes of county real estate deed records; time for determination of whether requested records are subject to access; electronic access to records

(a) As used in this article, the term "public record" shall mean all 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. "Public record" shall also mean such items received or maintained by a private person or entity on behalf of a public office or agency which are not otherwise subject to protection from disclosure; provided, however, this Code section shall be construed to disallow an agency's placing or causing such items to be placed in the hands of a private person or entity for the purpose of avoiding disclosure. Records received or maintained by a private person, firm, corporation, or other private entity in the performance of a service or function for or on behalf of an agency, a public agency, or a public office shall be subject to disclosure to the same extent that such records would be subject to disclosure if received or maintained by such agency, public agency, or public office. As used in this article, the term "agency" or "public agency" or "public office" shall have the same meaning and application as provided for in the definition of the term "agency" in paragraph (1) of subsection (a) of Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization which: (1) has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state or their officers or any combination thereof; and (2) derives a substantial portion of its general operating budget from payments from such political subdivisions.

January 15, 2021

Page 3

(b) All public records of an agency as defined in subsection (a) of this Code section, except those which by order of a court of this state or by law are prohibited or specifically exempted from being open to inspection by the general public, shall be open for a personal inspection by any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen.

Clearly, cast ballots are not exempt under Georgia law from the Open Records Act. Additionally, I have verified with the Attorney General's Office that there are *no* advisory opinions issued by that agency which would exempt these absentee paper ballots from production under the Open Records Act.

Please contact the undersigned by email at bob@cheeyleylawgroup.com to specify a location for the inspection. The undersigned will have experts accompanying to analyze the originals and the electronic stored version of these ballots.

Thank you for your immediate attention to this matter.

Sincerely,

/s/ Robert D. Cheeley

cc: Cheryl Ringer, Fulton County Attorney
Caroline Jeffords, client
Vicky Dracos, Paralegal
Charles Bundren, Esq.

EXHIBIT 2

From: "Standard, Issac" <Issac.Standard@fultoncountyga.gov>
Date: January 22, 2021 at 2:03:31 PM EST
To: Bob Cheeley <Bob@cheeyleylawgroup.com>
Cc: "Smith, Monical" <Monical.Smith@fultoncountyga.gov>, "Cotten, Nicholas" <Nicholas.Cotten@fultoncountyga.gov>
Subject: [EXTERNAL] RE: RE: letter concerning Open Records Request Pursuant to O.C.G.A. § 50-17-70 et seq.

Mr. Cheeley,

I apologize for providing you incorrect information in my previous email. We have now identified the location of records related to your original request in our warehouse. Without waiving any other objections to your request, the election records held and maintained by the Clerk are under seal pursuant to O.C.G.A. 21-2-500 as well as the regulations promulgated by the Secretary of State. Thus, they cannot be produced at this time.

Please let us know if we can be of further assistance.

Issac Standard
Chief of Records and Information Services Bureau
Fulton County Clerk of Superior and Magistrate Court
Honorable Cathelene "Tina" Robinson
136 Pryor Street
Atlanta, Georgia 30303
404.612.9074
www.fultonclerk.org

EXHIBIT 3



GET A COVID-19 TEST

[CLICK HERE TO LEARN MORE](#)



ELECTION RESULTS

Results for the Tuesday, January 5, 2021, General Election Runoff can be found [HERE](#).



VOTING AND ELECTIONS

[Fulton Home](#) > [All Fulton County Services](#) > [Voting and Elections](#)

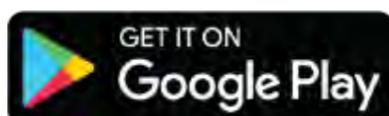
DEPARTMENT OF REGISTRATION AND ELECTIONS

JANUARY 5 - GENERAL ELECTION RUNOFF RESULTS

Results for the Tuesday, January 5, 2021, General Election Runoff can be found [HERE](#).

NEW FULTON COUNTY VOTER APP

Download the new Fulton County Voter app for [Apple](#) or on [Google Play](#). This app gives you information such as early polling locations, sample ballots, key dates to remember, election results, and so much more. Download available for any mobile.



MOST POPULAR



[JANUARY 5 VOTER GUIDE](#)

[MORE >](#)



[VOTE BY MAIL \(ABSENTEE BALLOT\)](#)

[MORE >](#)



[FIND EARLY VOTING LOCATIONS](#)

[MORE >](#)



[FIND ABSENTEE BALLOT DROP BOXES](#)

[MORE >](#)



[VIEW SAMPLE BALLOTS](#)

[MORE >](#)



[EARLY VOTING MOBILE UNIT](#)

[MORE >](#)



[FIND MY POLLING SITE](#)

[MORE >](#)



[GO TO THE GEORGIA MY VOTER PAGE](#)

[MORE >](#)





[VIEW EARLY VOTING TURNOUT](#)

[MORE >](#)



[ELECTION NEWS](#)

[MORE >](#)



[SEARCH ELECTION RESULTS](#)

[MORE >](#)



[REGISTRATIONS & ELECTIONS BOARD](#)

[MORE >](#)



[INFORMATION FOR CANDIDATES](#)

[MORE >](#)



[GET A VOTER ID](#)

[MORE >](#)



[BECOME A POLL WORKER](#)

[MORE >](#)



[REQUEST VOTER EDUCATION](#)

[MORE >](#)



[REGISTER TO VOTE](#)

[MORE >](#)



[VIEW THE 2020 VOTING CALENDAR](#)

[MORE >](#)



[VIEW VOTING FAQs](#)

[MORE >](#)



[REQUEST A VOTER LIST](#)

[MORE >](#)

REGISTRATION & ELECTIONS

CONTACT INFORMATION

ABSENTEE VOTING

 [404-612-7060](tel:404-612-7060)

VOTER REGISTRATION

 [404-612-3816](tel:404-612-3816)

ELECTIONS MAIN LINE

 [404-612-7020](tel:404-612-7020)



CONTACT US



HELPFUL LINKS

