



Nov. 28, 2022

VIA EMAIL

Tim Schnabel, Esq., Executive Director
Vince DeLiberato, Esq., Committee Chair
Barbara Ann Bintliff, Esq., Committee Reporter
Uniform Law Commission
111 N. Wabash Avenue, Suite 1010
Chicago, Illinois 60602
TSchnabel@uniformlaws.org
vdeliberato@palrb.us
bbintliff@law.utexas.edu

RE: Preliminary recommendations from Uniform Law Commission study committee on Redaction of Personal Information from Public Records

Dear Mr. Schnabel:

I write concerning the work of the Uniform Law Commission's study committee on Redaction of Personal Information from Public Records. As the study committee continues its work, the Georgia First Amendment Foundation would like to offer insight into the existing open records law in Georgia and how it could be used as an alternative way of addressing the problems that gave rise to the study committee's work.

Georgia's Open Records Act contains two provisions that allow for (and in some cases, require) the withholding of personal information from public records—for example, by redacting home addresses—while still safeguarding public access to government records.

First, O.C.G.A. § 50-18-72(a)(20)(A) instructs government agencies to redact a host of personal information from public records, including “an individual's social security number, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information, insurance or medical information in all records, unlisted telephone number if so designated in a public record, personal email address or cellular telephone number, day and month of birth, and information regarding public

Board of Directors

Nora Benavidez, Esq.
Free Press

Sarah Brewerton-Palmer, Esq.
Caplan Cobb LLP

Kathy Brister
KB Media Inc.

Jon Burton, Esq.
LexisNexis

Peter C. Canfield, Esq.
Jones Day

Tom Clyde, Esq.
Kilpatrick Townsend & Stockton LLP

Cynthia Counts, Esq.
Duane Morris LLP

Lisa Cupid, Esq.
Cobb County Board of Commissioners

F.T. Davis Jr., Esq.
Dentons

Ken Foskett
The Atlanta Journal-Constitution

John Mack Freeman
Georgia Library Association

Richard T. Griffiths
Media Ethicist

David Hudson, Esq.
Hull Barrett Attorneys

Samira Jafari
CNN

Hollie Manheimer, Esq.
Manheimer Law Office

John McCosh
Georgia Recorder

Shawn McIntosh
The Atlanta Journal-Constitution

Clare Norins, Esq.
UGA First Amendment Clinic

Jonathan Peters, Esq.
UGA Grady College of Journalism & Mass Communications

Eric NeSmith
Community Newspapers Inc.

DuBose Porter
The Courier-Herald

Hyde Post
Hyde Post Communications LLC

Dale Russell
WAGA-TV Channel 5

Gerry Weber, Esq.
Law Offices of Gerry Weber LLC
Southern Center for Human Rights

Jim Zachary
Community Newspaper Holdings Inc.
Transparency Project of Georgia

Affiliations appear for purposes of identification only.

7742 Spalding Drive, #209 • Norcross, GA 30092
678-395-3618 • info@gfaf.org • www.gfaf.org

“Because public men and women are amenable ‘at all times’ to the people, they must conduct the public’s business out in the open.”
— The late Charles L. Weltner Sr., Chief Justice, Georgia Supreme Court, *Davis et al v. City of Macon* (1992)

utility, television, internet, or telephone accounts held by private customers, provided that nonitemized bills showing amounts owed and amounts paid shall be available.” The provision then enumerates a list of scenarios where the agency should refrain from redacting such personal information, including: when it appears in court records; when journalists are seeking the records in the course of their work; when government employees are seeking the records for official purposes; when so ordered by a court; when the individual whose personal information is in the record is requesting production; when it concerns a deceased person; when consumer reporting agencies are requesting records; or when it appears in criminal records. O.C.G.A. § 50-18-72(a)(20)(B).

Unlike the proposal being considered by the study committee, Georgia’s redaction rule applies to every member of the public—not just preferred categories of public employees. This type of generally applicable provision ensures that everyone receives the same protection for their personal information. In addition, Georgia’s exceptions to the redaction rule ensure that journalists can still obtain information that is necessary to do their jobs. As noted in the National Freedom of Information Coalition’s June 17, 2022, letter to the ULC, the study committee’s proposal is likely to seriously hinder journalists who have a legitimate need for personal information to properly scrutinize the actions of public officials. The structure of O.C.G.A. § 50-18-72(a)(20) strikes a better balance between avoiding unnecessary disclosure of personal information while protecting the legitimate uses for such information.

Second, O.C.G.A. § 50-18-72(a)(21) provides that public disclosure of government records is not required for “[r]ecords concerning public employees that reveal the public employee's home address, home telephone number, personal mobile or wireless telephone number, day and month of birth, social security number, insurance information, medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data and information other than compensation by a government agency, unlisted telephone number if so designated in a public record, and the identity of the public employee's immediate family members or dependents.”

This exception to Georgia’s general rule of access to public records provides broad protection to any public employee—not just certain categories of public officials, as contemplated by the study committee’s proposal—and includes a comprehensive range of personal information. At the same time, this provision ensures that the public’s right to access government records is not unnecessarily eroded by limiting its application only to records that “specifically identify public employees or their jobs, titles, or offices.” *Id.* That limitation allows government agencies to more easily identify the records to which this exception applies. As the National Freedom of Information Coalition’s letter pointed out, one of the problems with the study committee’s proposal is that it would create administrative difficulty for government agencies trying to determine which records include information subject to a mandatory redaction requirement. This in turn will almost certainly lead to either delays in the production of open records or to overbroad enforcement that prevents access to entire categories of documents. Georgia has avoided these problems by cabining O.C.G.A. § 50-18-72(a)(21) to records that identify someone as a public employee and are thus easily identifiable for the government agency responding to an open record request. Notably, public employees who wish to have broader protection for their personal information are still protected by O.C.G.A. § 50-18-72(a)(20), just like the rest of the public.

Overall, the Georgia First Amendment Foundation believes that a uniform law on this topic would be detrimental to the public’s right of access to public information across the country. Should the ULC and the study committee conclude that such legislation is necessary, then the Foundation encourages the ULC to consider the structure of Georgia’s Open Records Act as a better way to address the concerns

animating this effort, without harming the public's right to know. We have appended a copy of Georgia's Open Records Act to this letter to allow you to review the provisions outlined above in more detail and in the full context of the law.

Please reach out to us if you have any questions about this letter; we would be happy to discuss Georgia's open records laws with you in more detail any time. My contact information is spalmer@caplancobb.com and (404) 596-5609. Or you may contact GFAF President Kathy Brister at kathybrister@yahoo.com and (404) 394-6103.

Regards,

A handwritten signature in black ink, appearing to read "Sarah Brewerton-Palmer". The signature is fluid and cursive, with the first name "Sarah" being more prominent and the last name "Palmer" following in a similar style.

Sarah Brewerton-Palmer
GFAF Legislative Chair

cc: Kathy Brister