

OCT 15, 2021 03:16 PM

Lynn G. Purvis
Lynn G. Purvis, Clerk
Colquitt County, Georgia

IN THE SUPERIOR COURT OF COLQUITT COUNTY
STATE OF GEORGIA

DR. WILLIAM LEAMON MADISON

Plaintiff,

v.

COLQUITT COUNTY SCHOOL DISTRICT;

Defendant.

Civil Action No.

VERIFIED COMPLAINT FOR GEORGIA OPEN RECORDS ACT VIOLATION

I. PRELIMINARY STATEMENT

Dr. William Leamon Madison was a hometown hero in Colquitt County, graduating from Colquitt County Schools as a star football athlete, then working his way up for nearly two decades within the school system from a paraprofessional all the way to high school principal. For the past 17 years, Dr. Madison received stellar job evaluations until he spoke out against race discrimination where he was subjected to a hostile work environment and explicit discrimination. Dr. Madison was threatened with lynching and reported this hate crime. Three days after reporting the lynching threat, the Board of Education voted to non-renew Dr. Madison's contract.

II. PARTIES

1. Plaintiff Dr. William Leamon Madison is an African American resident of Colquitt County.
2. Defendant Colquitt County School District is an agent of the State of Georgia and may be served with process pursuant to O.C.G.A. § 9-11-4(e) by personal service on the Superintendent Mr. Ben Wiggins at 710 Lane Street, Moultrie, Georgia 31768.

III. JURISDICTION AND VENUE

3. This Court has jurisdiction over this action.

4. Venue is proper in Colquitt County as Plaintiff seeks relief against Defendant residing in Colquitt County.

IV. FACTS

5. Dr. Madison served as a Principal of Colquitt County Schools since 2018 to spring of 2021 and Assistant Principal for 8 years prior to that starting in 2010.

6. Dr. Madison was born and raised in Colquitt County and also graduated from Colquitt County Schools as a high school student and star football athlete.

7. Dr. Madison began work seventeen years ago (2004) at the school district: first as a paraprofessional, then as a teacher, and then going into administration.

8. For the past seventeen years, Dr. Madison always received stellar end of year satisfactory work performance evaluations.

9. It wasn't until after Dr. Madison sent out an email letter, subsequent to the murder of George Floyd concerning race discrimination during the 2020-2021 school year, that he became subjected to overt retaliation and a hostile work environment.

10. The email letter Dr. Madison sent was to faculty and staff at Cox Elementary School, as its Principal, encouraging the staff to be supportive of our students, as well as speaking out against injustice and discrimination in a positive affirming way.

11. In response, the Superintendent met with Dr. Madison to discuss the "George Floyd email" and informed him that several Board of Education members were upset by the email and calling for his job.

12. For the first time in his career, subsequent to writing the letter opposing discrimination, Dr. Madison received a letter from the Superintendent reprimanding him and criticizing his performance.

13. Retaliating against someone for speaking out against discrimination is in clear violation of Title VII of the Civil Rights Act of 1964 as well as 42 U.S.C.S. § 1981.

14. Prior to that incident, Dr. Madison had always received good reviews and feedback.

15. During the 2020-2021 school year, the retaliation continued against Dr. Madison. Various white teachers became emboldened by the Board's discriminatory actions and directly spoke with central office and the board members.

16. One of the white teachers actually threatened Dr. Madison with lynching, which is a racist hate crime, threatening him by saying: "We're going to lynch you."

17. When Dr. Madison complained about the threat of lynching to Defendant, they denied it but claimed he could write the teacher up.

18. On March 19, 2021, Dr. Madison, along with his Assistant Principal, Mindy Palmer, met with the teacher regarding the threat that she had made to his face where she had clearly told him: "we're going to lynch you."

19. The teacher became very angry, denied it, and informed Dr. Madison and Ms. Palmer that she had been speaking to a Board of Education member, the HR Director, and the Superintendent who had instructed her to tape record him, making it clear to him that his employer was not taking his complaint of discrimination seriously, or the racist threat to his life.

20. After reporting the threat of lynching, approximately three days later the Board of Education decided to terminate Dr. Madison on March 22, 2021.

21. On March 29, 2021, the Superintendent met with Dr. Madison to tell him that the Board intended to non-renew him for the following year.

22. Dr. Madison continued to work the remainder of the school year until May 28, 2021, all the while waiting for his official non-renewal letter and continuing to experience discrimination and retaliation.

23. For example, the Superintendent drafted a letter of directive to Dr. Madison on March 25, 2021, filled with false accusations. The Superintendent then secretly placed the letter in Dr. Madison's personnel file to "pad the record" making it look as if he had given it to Dr. Madison when in fact the Superintendent intentionally kept Dr. Madison from seeing the letter, so he was unable to respond to the false allegations.

24. On Monday, April 12, 2021, Dr. Madison sent the following Open Records Request to the Superintendent:

To: James (Doug) Howell <james.howell@colquitt.k12.ga.us>

Dear Superintendent Doug Howell:

At our last meeting you told me to follow up with you if I have any questions and concerns regarding the Board's decision to not renew my contract. I am writing you to request such information. I cannot understand why just a few days after reporting a discriminatory complaint over a teacher who had made a threat against me--specifically stating that I would be lynched---that rather than receiving support from my school system, that the result would be to end my future employment.

This is disheartening and I am simply looking for answers. Would you be willing to meet with me to discuss this issue? Additionally, I am requesting you provide me Open Records that might provide me insight into what I can only perceive as continued discriminatory treatment, conspiring efforts on behalf of some to cause me to lose my job and lack of support.

I respectfully request:

1. All documents and records-- including cell phone text messages and emails-- exchanged to or from the Superintendent Doug Howell, HR Director James Harrell, Board members Mary Beth Watson, John Schwalls, Robbie Pitts,

Teachers Ronda Tucker, Autumn Dickens, Rachel Crew, Marcie Tadlock, Brandi Curles, Aralee Smith, Lauren Stinson, Allison Creech, Nacole Knutson, Margaret Presley Allison Bivins, Selena Henry, Myra Hill concerning me, Dr. Leamon Madison.

2. All documents and records in support of the decision to non-renew me.

3. My complete personnel file.

4. All information related to the consent decree, consent order, unitary status, and the lawsuit U.S. v. State of Georgia, et al., C.A. No. 12972, between the U.S. Department of Justice, Office of Civil Rights, Department of Education and Colquitt County School District as well as documents pertaining to any school system accreditation (state or federal), especially in regards to the demographic makeup of the Colquitt County School System as it pertains to Blacks in teaching positions and positions of leadership.

Sincerely,
Dr. Leamon Madison

25. The Open Records Act responses Dr. Madison received back from the school were incomplete and deficient, specifically as it related to paragraph number one, cell phone text messages between various Board members, the Superintendent, and other District employees.

26. Dr. Madison alerted the District of their deficiency in their response and the Defendant through their counsel made clear that it did not produce such electronic messages sourced from the District employee or Board member's cell phones that would be responsive to such open records request as it was not in the possession of these District employee or Board members' cell phones.

27. Nevertheless, Georgia public records that are subject to Open Records Act requests include electronic messages that are exchanged via cell phones of public employees and officials. O.C.G.A. § 50-18-71.

28. Public officials routinely seek to evade the Georgia Open Records Act by exchanging electronic messages subject to public records requests on their personal cell phone devices and personal email accounts. However, the Attorney General for the State of Georgia has

criminally prosecuted public employees who have evaded the Georgia Open Records Act that have included text messages on their cell phones and stated that he has hoped this will “encourage others to bring to light instances of open records abuses”....“If there are other instances out there and the facts take us to where they took us in this trial then we are willing to stand up again for the people of Georgia,” Chris Carr said. <https://www.ajc.com/news/reed-aide-first-official-convicted-public-records-violations/ImqpLWZLh9aMU89t6vcwtI/>

29. Courts in fact have ordered Georgia Board of Education members and Superintendents to submit their personal cell phone devices to computer forensic examination to search for racial slurs and derogatory terms against African Americans where they evaded Open Records Act requests by failing to produce text messages that were on their personal cell phones. See Exhibit A

30. Dr. Madison is entitled to obtain text messages that were exchanged to and from Board of Education members and the Superintendent concerning his employment. As is the commonplace best practice in e-discovery when electronically stored information is sought, a party’s counsel should not simply rely on an honesty policy which depends on potential ‘bad actors’ to produce potentially self-damning disclosures and allows them to evade it by simply producing an affidavit claiming such communications are not there. Rather, best practices require Parties utilize ESI vendors, electronic tools, and electronic search protocols and methodologies that will solely extract relevant, key word search terms from both personal computer and cell phone devices while maintaining the owner’s privacy. E.g. The Sedona Conference, *Best Practices Commentary on the Use of Search and Information Retrieval Methods in E-Discovery*, 15 Sedona Conf. J. 217-263 (2014); *The Sedona Conference Commentary on Achieving Quality in the E-Discovery Process*, 15 Sedona Conf. J. 265-304 (2014); *Managing E-Discovery and ESI From Pre-Litigation Through Trial* 441 (Michael D. Berman, Courtney Ingrassia Barton, and

Paul W. Grimm, eds., 2011); *United States v. O'Keefe*, 537 F. Supp. 2d 14 (D.D.C. 2008); *Equity Analytics, LLC v. Lundin*, 248 F.R.D. 331 (D.D.C. 2008); *Victor Stanley, Inc. v. Creative Pip, Inc.*, 250 F.R.D. 251, 262 (D. Md. 2008) (Compliance with the Sedona Conference Best Practices for use of search and information retrieval will go a long way towards convincing the court that the method chosen was reasonable and reliable.)

31. Whether the information sought concerns a defendant corporation's work matter or a governmental entity's public records, the Courts routinely order defendants to produce their personal cell phones to be forensically imaged and then electronically searched for relevant discoverable evidence. *See* Exhibit A. All private and privileged information is carefully protected. An e-discovery company would only extract the relevant information and would identify what if any information was deleted. Then, before such information is produced to Plaintiff's Counsel, it would produce the documents to Defendants' Counsel for review and if a privilege exception is claimed, the documents would be submitted to the Court for an in-camera inspection. *E.g., see* Exhibit A, p. 3. Utilizing a third-party company is not a privacy violation but a standard best practice within e-discovery which establishes that "devising a defensible electronic search protocol...that includes quality checks and that is well supervised are central to a well-constructed search methodology, especially in the absence of cooperation with or by opposing counsel. Close supervision of the whole process is crucial." *Managing E-Discovery and ESI From Pre-Litigation Through Trial* 474-475 (Michael D. Berman, Courtney Ingraffia Barton, and Paul W. Grimm, eds., 2011) citing *The Sedona Conference Commentary on Achieving Quality in the E-Discovery Process*, 15 Sedona Conf. J. 265-304 (2014).

32. Moreover, one of the important suggestions by the Sedona Conference, a non-profit group made up of judges and lawyers whose principles form the most authoritative guidelines for e-discovery to date, is that "independent testing by third party professionals" be

done in order to be sure that data such as emails and text messages were “successfully extracted.” *Id.* The aim of such a strategy is “not only to be prepared to defend the reasonableness of a search protocol” but “to assure quality control and quality assurance in the e-discovery context” because “the practical consequences of failing to institute quality checks on the process can be severe” where the Courts have sanctioned parties and waived privilege “based on a party’s failure to institute quality control sampling.” *Id.* at 476.

33. To date, the District remains deficient in producing cell phone text messages exchanged between District employees including the HR Director, Board of Education members, and the Superintendent concerning Dr. Madison.

**COUNT ONE:
VIOLATION OF GEORGIA OPEN RECORDS ACT O.C.G.A. §50-18-70 et seq.**

34. Plaintiff fully incorporates paragraphs 1-33, and *any paragraph this Court deems relevant*, as fully stated herein to support Plaintiff’s Count One.

35. Under Georgia law, agencies shall produce for inspection all records responsive to a request within a reasonable amount of time not to exceed **three business days** of receipt of a request. O.C.G.A. § 50-18-71.

36. Plaintiff requested open records on April 12, 2021. To date, no documents have been produced, nor an explanation been given as to the delay.

37. Plaintiff requires these records and seeks the Court to enjoin the Defendant to comply with the Georgia Open Records Act by producing these records and any other records she will subsequently request as is his right under Georgia law.

ATTORNEY FEES

38. Plaintiff is entitled to an award of costs, attorney’s fees, and litigation expenses pursuant O.C.G.A. § 13-6-11 as well as the Georgia Open Records Act, which affords Plaintiff

“attorney’s fees and other litigation costs reasonably incurred” under O.C.G.A. § 50-18-73; and a
“a civil penalty... not to exceed \$1,000.00 for the first violation.” O.C.G.A. § 50-18-74.

PRAYER FOR RELIEF

WHEREFORE Plaintiff demands:

- (a) That summons issue and service be perfected upon Defendant requiring Defendant to be and appear in this Court within the time required on the attached Rule Nisi;
- (b) That the Clerk of this Court issue second originals or originals of summons and this Complaint as required for service to be perfected upon Defendant;
- (c) That this Court order Defendant’s school board members, HR Director, and previous superintendent to make available their personal electronic devices and to work with Plaintiff’s Counsel to utilize an agreed upon ESI vendor, electronic search protocols and methodologies that will solely extract relevant, key word search terms from all ESI sources. Defendant will assume the cost of this retrieval.
- (d) That all documents withheld by Defendant’s school board members, HR Director, or previous Superintendent, or their Counsel, including such records produced by the e-discovery company that are withheld on grounds of a claimed exception pursuant to O.C.G.A. §50-18-72 or work product/attorney-client privilege, must be submitted to this Court for *in camera* inspection.
- (e) That Defendant is further enjoined to comply with the Georgia Open Records Act by producing these records and any other records Plaintiff will subsequently request as is his right under Georgia law.

- (f) That all costs and expenses of this action, including reasonable attorney's fees, be assessed against Defendant, pursuant to O.C.G.A. § 50-18-73;
- (a) That a civil penalty of \$1000.00 be assessed against Defendant, pursuant to O.C.G.A. § 50-18-74; and,
- (b) That Plaintiff has such other and further relief as this Court deems just and proper.

Respectfully submitted this 15th day of October 2021,

WILLIAMS OINONEN LLC

/s/ JULIE OINONEN

Julie Oinonen (Ga. Bar No. 722018)

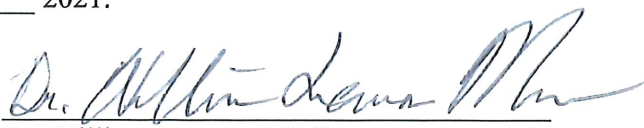
Counsel for Plaintiff

44 Broad Street, NW, Suite 200
Atlanta, Georgia 30303
(404) 654-0288/ (404) 592-6225 FAX
julie@goodgeorgialawyer.com

VERIFICATION

Personally appeared before the undersigned officer authorized to administer oaths, Dr. William Leamon Madison who states that the statements contained in the attached VERIFIED COMPLAINT FOR GEORGIA OPEN RECORDS ACT VIOLATION are true and correct to the best of his knowledge and belief.

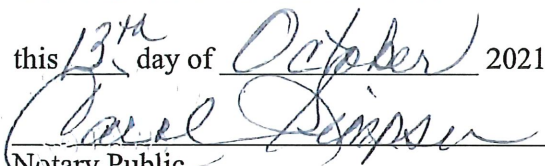
This 13 day of October 2021.



Dr. William Leamon Madison

Sworn to and subscribed before me

this 13th day of October 2021.



Notary Public

My Commission Expires: _____

My Commission Expires
May 11, 2024

RULE NISI

The above and foregoing pleading having been read and considered let the Defendant appear before the Honorable _____, Judge of the Superior Court of Colquitt County on the ____ day of _____ 2020, at ___ o' clock ____.m. in Courtroom ____ to show cause why relief sought by Plaintiff should not be granted.

This ____ day of _____, 2021.

Judge Superior Court of Colquitt County

Presented by:
Julie Oinonen, Counsel for Plaintiff
julie@goodgeorgialawyer.com

Exhibit A

OCT 31, 2018 10:15 AM



Nora L. Rogers, Clerk
Echols County, Georgia

IN THE SUPERIOR COURT OF ECHOLS COUNTY
STATE OF GEORGIA

DR. LANA FOSTER

Petitioner Plaintiff,

v.

ECHOLS COUNTY SCHOOLS;
MR. ROCKY CROSBY, BOARD CHAIR IN
HIS INDIVIDUAL CAPACITY; MS
FLORENCE STATEN, VICE BOARD CHAIR
IN HER INDIVIDUAL CAPACITY; MS.
PATRICIA GRAY IN HER INDIVIDUAL
CAPACITY; MR. BO CORBETT IN HIS
INDIVIDUAL CAPACITY; AND MR.
MITCHELL CHURCH IN HIS INDIVIDUAL
CAPACITY; SUPERINTENDENT MR.
LANCE HEARD IN HIS INDIVIDUAL and
OFFICIAL CAPACITY;

Respondents/Defendants.

CIVIL ACTION

NO. 2018cv24

ORDER CONCERNING OPEN RECORDS ACT VIOLATION

Plaintiff filed suit, one of the counts of her complaint filed pursuant to O.C.G.A. §§ 50-18-70 et seq., the Georgia Open Records Act and a hearing was held. Concerning the Open Records Act violation, Plaintiff seeks an order 1) finding Defendants in violation of the Act; 2) enjoining Defendants from continued violations of the Act; 3) compelling disclosure of all



requested records, in particular the text messages from cell phones. The Court having carefully reviewed the record and having held a hearing enters this Order.

Plaintiff's initial Open Records Act request was sent on June 28, 2018. As of the date the lawsuit was filed on July 19th, 2018, no responsive records had been produced in response to the Georgia Open Records Act request or an explanation for the delay provided. (Petition ¶ 48.) Additionally, Plaintiff sought a second Open Records Request on July 13th and as of the date of the lawsuit filing, Defendants had failed to respond, produce the records, or even acknowledge the request. (Petition ¶ 49.)

Based on the foregoing, the Court finds that the Defendant failed to make a timely response in compliance with O.C.G.A. § 50-18-70 and was without substantial justification in doing so. The intent of the General Assembly in enacting the Open Records Act was to encourage public access to information in order to promote confidence in government and to allow the public to evaluate the function of its institutions. *See Wallace v. Greene County*, 274 Ga. App. 776, 782 (2005). The Act is to be strictly construed with narrow construction of all its exemptions. *City of Brunswick v. Atlanta Journal & Constitution*, 214 Ga. App. 150, 152(1) (1994). "Compliance with the Act is not discretionary, but mandatory." *Griffin Indus., Inc. v. Georgia Dep't of Agric.*, 313 Ga. App. 69, 72, 720 S.E.2d 212, 215 (2011).

Under Georgia law, a "public record" means all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use." O.C.G.A. § 50-18-70. This includes electronic records such as text messages. O.C.G.A. § 50-18-71. During the hearing, the Superintendent admitted under oath that one of the major

ways that he, Echols County School Board, and Echols County administrators communicated with one another is through text messages on their cell phones. (T-85: 6-14.) Based on the foregoing, the Court finds the Plaintiff entitled to open records that also includes text messages as she requested. (Petition, Exhibit C.)

Accordingly,

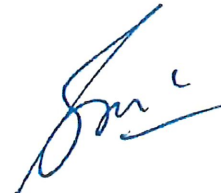
IT IS HEREBY ORDERED that Defendants provide Plaintiff with access to all requested records immediately that to date have not been produced;

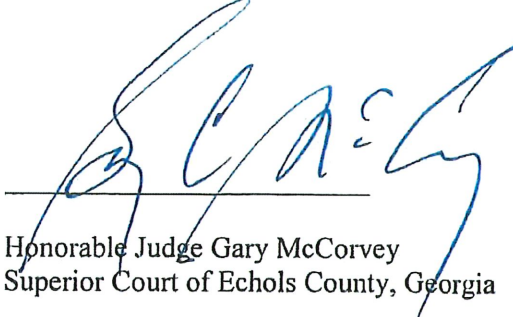
IT IS FURTHER ORDERED that Defendants is enjoined from withholding requested records;

IT IS FURTHER ORDERED that Defendants make available to an E-discovery company that will obtain forensic digital imprints of their cell phones. Defendant will assume the cost of this retrieval. The E-discovery company should extract and produce all information contained on them about Plaintiff Dr. Lana Foster or her termination, as well as any electronic messages that speak derogatorily about race or African Americans, or use racially derogatory terms or slurs. Additionally, the E-Discovery company should produce analytic information showing what electronic messages were deleted from the phone subsequent to the Georgia Open Records request and spoliation notice being submitted by Dr. Foster on June 28, 2018. (Petition, Exhibit C.) After such applicable information is extracted it will first be produced to Defendants' counsel for review before it is then provided to Plaintiff's counsel.

IT IS FURTHER ORDERED that any such open records withheld by Defendants or their Counsel, including such records produced by the E-discovery company that are withheld on grounds of a claimed exception pursuant to O.C.G.A. §50-18-72 or work product/attorney-client privilege, must be submitted for *in camera* inspection;

SO ORDERED this 29th day of Oct, 2018





Honorable Judge Gary McCorvey
Superior Court of Echols County, Georgia

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Fax: 404-592-6225

Presented by: _____

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