

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CONSUMER CREDIT RESEARCH)
FOUNDATION,)

Plaintiff,)

v.)

BOARD OF REGENTS OF THE)
UNIVERSITY SYSTEM OF)
GEORGIA,)

Defendant,)

and)

CAMPAIGN FOR)
ACCOUNTABILITY,)

Intervenor.)

Civil Action No. 2015CV262308

FINAL
ORDER

This matter is before the Court on cross-motions for summary judgment filed by each of the parties to this proceeding. The Court has considered the arguments of counsel, including at oral argument on August 11, 2016, and has reviewed the briefs and supporting documents submitted by the parties, as well as all other relevant materials of record.

The undisputed facts are as follows: on or around June 10, 2015, Intervenor Campaign for Accountability (“CfA”) submitted a request under the Georgia Open Records Act (“Georgia Open Records Act”) to Kennesaw State University. CfA’s open records request sought communications between KSU professor Jennifer Lewis Priestley and Plaintiff Consumer Credit Research Foundation (“CCRF”), among others. KSU¹ informed CfA that KSU did not object to releasing the requested records (the “Requested Records”), subject to some possible redactions.

CCRF opposes the release of the Requested Records and filed the instant action seeking to prevent their disclosure by the Board of Regents. In support of its motion for summary judgment, CCRF argues that the Requested Records are exempt from the Georgia Open Records Act’s disclosure requirement because they fall within the exemptions found at O.C.G.A. § 50-18-72(a)(35) and O.C.G.A. § 50-18-72(a)(36). CCRF further argues that, because the Requested Records fall within these exemptions, the Board of Regents has no discretion to release them to CfA, arguing that the statutory exemptions set forth in O.C.G.A. § 50-18-72(a) create a mandatory prohibition on disclosure.

The Board of Regents opposes CCRF’s motion and filed its own motion for summary judgment, arguing, among other things, that even if the Requested Records

¹ Although the Open Records Act request was sent to KSU, the proper defendant in this case is the Board of Regents of the University System of Georgia (“Board of Regents”).

were subject to the exemptions in O.C.G.A. §§ 50-18-72(a)(35)-(36), those exemptions do not mandate the withholding of covered documents from disclosure. Rather, the Board of Regents argues, the Georgia Open Records Act leaves it to the government entity's discretion whether or not to disclose documents that fall within the exemptions. (The Board of Regents notes, however, that certain information in exempted documents may be prohibited from disclosure nonetheless by operation of other statutes.) Thus, the Board of Regents argues that it properly exercised its discretion in deciding to release the Requested Records to CfA.

CfA similarly opposes CCRF's motion for summary judgment and has filed its own motion for summary judgment, arguing, among other things, that the Board of Regents properly exercised its discretion to release the Requested Records. CfA also argues that CCRF was unable to establish any harm that falls within the interests advanced by the exemptions set forth in the Georgia Open Records Act.

The Court notes that the Georgia Open Records Act contains a clear preference for disclosure of public records. *Sæ* O.C.G.A. § 50-18-70(a), wherein the General Assembly declared:

[T]he strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the

expenditure of public funds and the efficient and proper functioning of its institutions.


The General Assembly further explained that “there is a strong presumption that public records should be made available for public inspection without delay.” *Id.* In keeping with the purposes of the Georgia Open Records Act, courts must interpret exemptions to the Georgia Open Records Act narrowly. *Id.*; see also *Hardaway Co. v. Rives*, 262 Ga. 631, 634 (1992).

Having considered the foregoing, the Court finds that there is no genuine issue as to any material fact, and that the Board of Regents and CfA are entitled to summary judgment as a matter of law. More specifically, the Court finds that, even if the Requested Records fall within the exemptions to the Georgia Open Records Act found at O.C.G.A. §§ 50-18-72(a)(35) and (36), those exemptions do not mandate that covered documents be withheld in response to a valid Georgia Open Records Act request. Rather, those exemptions vest in the government the discretion to withhold or disclose covered documents, whose disclosure otherwise would be mandatory under the Georgia Open Records Act but for the exemptions.

The Court therefore **GRANTS** the Board of Regents’ motion for summary judgment; **GRANTS** CfA’s motion for summary judgment; and **DENIES** the motion for summary judgment filed by CCRF. The Court **STAYS** application of this order pending appeal, such that the Board of Regents shall not release the disputed

documents until after the completion of the appellate process. The Court defers ruling on CfA's oral motion for attorney's fees until the completion of the appellate process.

SO ORDERED this 19 day of August, 2016.



HONORABLE JERRY W. BAXTER
FULTON COUNTY SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

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