IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

RYAN MILLIRON, *Plaintiff*, v. MANOS ANTONAKAKIS, *Defendant*.	Case No. 2022 CV 368332 Judge Schwall

ORDER GRANTING MOTION TO DISMISS
AND AWARDING REASONABLE ATTORNEYS' FEES AND COSTS

This matter comes before the Court on Defendant Dr. Emmanouil[1] Antonakakis's ("Dr. Antonakakis") motion to dismiss the complaint and for an award of attorneys' fees and costs ("Motion"), filed September 6, 2022. Plaintiff Ryan Milliron ("Mr. Milliron") filed an opposition on October 6, 2022. The Motion is fully briefed, ripe, and ready for the Court's review, so the Court heard oral argument on the Motion on October 20, 2022.

For the reasons discussed below, the Motion is **GRANTED**. Further, because the Court finds that Mr. Milliron "acted without substantial justification . . . in instituting the litigation," the Court "shall" award Dr. Antonakakis his reasonable attorneys' fees and costs under O.C.G.A. § 50-18-73(b).

I. Background

This matter arises under the Georgia Open Records Act ("ORA"), which gives all citizens the right to view certain public state agency records, as defined by the ORA. *See* O.C.G.A. § 50-

[1] The case caption uses Dr. Antonakakis's nickname, "Manos," rather than his legal name, which is Emmanouil.

18-70(b)(1). On Sunday, July 10, 2022, Mr. Milliron, who is a resident of Ottawa County, Michigan, Compl. ¶ 1, submitted an ORA request to the Georgia Institute of Technology ("Georgia Tech"). *Id.* ¶¶ 15, 17. Mr. Milliron also submitted an identical request to Dr. Antonakakis personally. *See id.* Dr. Antonakakis has advised Mr. Milliron that he is not required to personally produce any records and does not intend to produce any documents directly to Mr. Milliron. *See id.* ¶ 18. Georgia Tech, his employer, is the appropriate entity to make such a production. *See* Def.'s Mot. to Dismiss at 4-6. Mr. Milliron brought this action for an injunction requiring Dr. Antonakakis to produce documents directly to Mr. Milliron.

The main question presented is whether a requestor, like Mr. Milliron, is entitled to force any and every state employee, like Dr. Antonakakis, to personally produce documents directly to the requestor. Mr. Milliron contends that this is how the ORA works; every individual state employee must personally correspond with, and produce documents to, anyone who wants to inspect that employee's records. Dr. Antonakakis, on the other hand, refers to the clear language of the ORA that obligates only "Agencies" to respond to document requests. The Court agrees with Dr. Antonakakis.

II. Analysis

A. The complaint fails to state a claim.

The ORA gives all citizens the right to view certain public state agency records, as defined by the ORA. *See* O.C.G.A. § 50-18-70(b)(1). Georgia Tech, which employs Dr. Antonakakis, is an "Agency" as defined by, and subject to, the ORA. Dr. Antonakakis, however, is not an "Agency" subject to production under the ORA. Although a state employee may possess "Public Records," as defined by the ORA, the ORA does not saddle individual state employees with the responsibility of personally responding to public records requests. The ORA makes "Agencies"

the only proper party for producing "Public Records," even when a private person possesses such records. *See, e.g.*, *Media Gen. Operations, Inc. v. St. Lawrence*, 337 Ga. App. 428, 432 (2016) (Under the ORA, "the term 'agency' does not include the employees of the agency.").

The "Public Records" that an agency like Georgia Tech must produce include "material prepared and maintained or received . . . by a private person or entity in the performance of a service or function for or on behalf of an agency . . . ." *Id.* § 50-18-70(b)(2). But nothing in the ORA obligates each and every state employee to personally produce such records. *See id.* §§ 50-18-70 through 50-18-77. Rather, the "Agency" is obligated to locate,[2] review, and produce those "Public Records." *See id.* § 50-18-71(b)(1)(A) ("Agencies shall produce . . . ."); *Deal v. Coleman*, 294 Ga. 170, 182 (2013) (emphasis added) (citing O.C.G.A. § 50-18-74(a)) ("[A] court could sanction an agency that negligently violated the Act with civil penalties.").

Georgia courts analyzing the ORA consistently reach similar conclusions about the meaning of "Agency" under the ORA. In *St. Lawrence*, the court held that "the correct reading of [the ORA], and the one that is most natural and reasonable, is that the term 'agency' is not synonymous with 'employee.'" 337 Ga. App. at 432. "Thus, the term 'agency' does not include the employees of the agency; had the legislature intended 'agency' to include all individuals employed by the agency, it could have so provided." *Id.* This makes common sense, too.

Even allowing, let alone requiring, individual employees to decide which agency records to disclose would be unwieldy, impractical, and would risk the improper disclosure of sensitive information that is exempt from the ORA based on the uniformed judgment of a single employee.

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[2] Mr. Milliron suggests that Georgia Tech may not have collected all responsive documents because he believes that there are some such documents on Dr. Antonakakis's private email accounts. Even if true, the appropriate method of challenging this perceived deficiency would be to institute an action against the agency, Georgia Tech, not against the individual employee.

Cf., *e.g.*, *Garland v. State*, 361 Ga. App. 724, 725 (2021) ("Because the requested records involved the Mayor and his family, the Director understood that she was required to obtain approval from the Mayor's office before the records could be released . . . .").

In spite of these authorities, Mr. Milliron argues that "Dr. Antonakakis is directly and personally obligated to provide public records . . . ." Pl.'s Opp'n to Mot. to Dismiss at 15. In doing so, he relies on O.G.C.A. § 50-18-71, which provides: "[a] request made pursuant to this article may be made to the custodian of a public record orally or in writing." *Id.* § 50-18-71(b)(1)(B). However, courts "consider a statutory provision not in isolation, but in the context of the other statutory provisions of which it is a part." *Abdel-Samed v. Dailey*, 294 Ga. 758, 763 (2014). Mr. Milliron's argument ignores the adjacent statutory subsection, (1)(A), which governs the production of documents and provides only that "[a]gencies shall produce for inspection all records responsive . . . ." *Id.* § 50-18-71(b)(1)(A).[3] When reading (1)(A) and (1)(B) together, it becomes clear that subsection (1)(A) governs who must *produce* documents (i.e., Agencies), while subsection (1)(B) governs to whom a request may be *submitted*. Indeed, subsection (1)(B) is concerned solely with how to *submit* a request to an Agency. It provides:

> An agency may, but shall not be obligated to, require that all written requests be made upon the responder's choice of one of the following: the agency's director, chairperson, or chief executive officer, however denominated; the senior official at any satellite office of an agency; a clerk specifically designated by an agency as the custodian of agency records; or a duly designated open records officer of an agency; provided, however, that the absence or unavailability of the designated agency officer or employee shall not be permitted to delay the agency's response. At the time of inspection, any person may make photographic copies or other electronic reproductions of the records using suitable portable devices brought to the place of inspection.

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[3] Mr. Milliron likewise conflates § 50-18-70(a), which governs *what* documents are "public records," with § 50-18-71(b), which governs *who* must produce such documents.

Id. § 50-18-71(b)(1)(B). The statute's full text informs the first sentence, on which Mr. Milliron erroneously relies. Agencies may designate someone other than a custodian of records, such as the Director or CEO, to receive requests under the ORA. And, absent such designation, "[a] request made pursuant to this article may be made to the custodian of a public record orally or in writing." *Id.* § 50-18-71(b)(1)(B).

Furthermore, here Georgia Tech ***has*** designated an "open records officer of an agency," as permitted by subsection (1)(B), *see* Compl. ¶¶ 17, 21, so individuals like Mr. Milliron cannot make ORA requests its custodians. The Georgia Tech website on "Legal Affairs," which Mr. Milliron cites in his Complaint, *see id.* ¶ 21, even states that "[i]n responding to such requests, the Open Records Officer acts on behalf of the campus custodian of the requested records"; "[i]f individual employees are named in the request, those employees are advised that the request has been received and the Open Records Officer will work with the custodian of the requested records to respond"; and "[t]he Open Records Officer will identify and forward all other requests to the records custodian for the specific campus unit." Georgia Tech, *Legal Affairs*, Open Records Act, https://legal.gatech.edu/open-records-act. Thus, even if Mr. Milliron's interpretation of the ORA statute was correct in general, he still would not have a claim against Dr. Antonakakis because the relevant agency, Georgia Tech, has a "duly designated open records officer of an agency."

Accordingly, the Complaint is dismissed for failure to state a claim.

B. The Court will award Dr. Antonakakis reasonable fees and costs.

Under the ORA, when a plaintiff institutes litigation "without substantial justification," the Court "shall" award a defendant its "reasonable attorney's fees and other litigation costs reasonably incurred," absent special circumstances. O.G.C.A. § 50-18-73(b). Similarly, O.G.C.A. § 9-15-14 empowers the Court to award reasonably fees and costs when "it finds that an attorney

or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct." The Supreme Court has said that "the fees authorized by the [ORA are] not much different from the fees authorized under the law generally applicable in civil actions," *Deal*, 294 Ga. at 182 n.20, which in turn defines "lacked substantial justification" as meaning "substantially frivolous, substantially groundless, or substantially vexatious," O.G.C.A. § 9-15-14(b).

This case is a textbook example of litigation filed "without substantial justification." It is frivolous, groundless, and vexatious. There can be no genuine dispute that (1) Georgia Tech is the Agency responsible for all of the records that Mr. Milliron requested; (2) Georgia Tech produced records in response to the July 10 Milliron Request, including records created and maintained by Dr. Antonakakis; (3) Mr. Million demanded that Dr. Antonakakis respond to an identical request; and (4) Dr. Antonakakis's attorney told Mr. Milliron multiple times that Dr. Antonakakis was not required to produce (a duplicate set of) documents under the ORA. *See* Def.'s Counterclaim ¶ 9 (incorporating by reference allegations in Dr. Antonakakis's motion to dismiss and appended Affidavit of Jamila Hudson-Allen ("Hudson-Allen Aff.")). Thus Mr. Milliron was on notice that his theory was "without substantial justification," yet he nonetheless filed this lawsuit.[4]

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[4] Relevant to the question of Mr. Milliron's justification (or lack thereof) in instituting this litigation, the Court takes notice that Mr. Milliron is currently involved in litigation in federal court in the Western District of Michigan regarding claims he has made against the Department of Defense under FOIA. *See Milliron v. U.S. Dep't of Defense*, No. 1:22-cv-0616 (W.D. Mich. July 7, 2022); *Milliron v. U.S. Dep't of Defense, et al.*, No. 1:22-cv-0782 (W.D. Mich. Aug. 25, 2022). Mr. Milliron's suit against the Department of Defense is similar to this suit against Dr. Antonakakis, in that it is seeking information to support Mr. Milliron's unsubstantiated assumption that various groups are conspiring against his preferred political candidate and withholding evidence of that conspiracy.

Further, the Affidavit submitted in support of Dr. Antonakakis's counterclaim for fees and costs shows that "Mr. Milliron has submitted more than thirty-eight (38) ORA requests to Georgia

Accordingly, the Court will award Dr. Antonakakis his reasonable attorneys' fees and costs. Dr. Antonakakis's counsel are directed to file under seal an affidavit of their fees and costs incurred in defending this matter, which the Court will assess against Mr. Milliron.

III. Conclusion

For all of these reasons, it is hereby

ORDERED that Defendant's Motion to Dismiss is **GRANTED**. It is further

ORDERED that Plaintiff shall be, and hereby is, assessed the reasonable costs and attorneys' fees that Dr. Antonakakis incurred in defending this action. Defense counsel is directed to submit under seal proof of such fees and costs within thirty (30) days of this Order. It is further

ORDERED that all other pending motions (Pl.'s Mot. for Attorneys' Fees, dated Oct. 6, 2022; Pl.'s Mot. for Refusal of Def.'s Purported Mot. for Summary Judgment, dated Oct. 6, 2022; and Pl.'s Emergency Mot. to Conduct Discovery, dated Oct. 6, 2022) are **DENIED** as moot.

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Dated: _____, 2022

Hon. Craig L. Schwall Sr.

Tech since December 2021, including two (2) filed on Sunday, September 4, 2022 (Labor Day Weekend)." Hudson-Allen Aff. ¶ 5. Georgia Tech has already produced "over 3,000 pages of documents" in response to Mr. Milliron's many demands. *Id.*