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)
 SOUTHERN CENTER)
 FOR HUMAN RIGHTS,)
)
 Plaintiff,)
)
)
 v.)
)
)
 VICTOR HILL, Sheriff,)
 Clayton County, Georgia;)
)
 ALAN PARKER, Legal Advisor,)
 Clayton County Sheriff's Office;)
)
 PHILLIP PRICE, Assistant to Sheriff,)
 Clayton County Sheriff's Office,)
)
 Defendants.)
)
)

CIVIL ACTION
 NO. _____

Plaintiff Southern Center for Human Rights files this complaint against Defendants Victor Hill, Alan Parker, and Phillip Price. In support thereof, Plaintiff states as follows:

1. This is an action to obtain records about a public health crisis and its effects on the Clayton County Jail—records that Defendant Victor Hill, the Clayton County Sheriff, is required to disclose under the Georgia Open Records Act. *See* O.C.G.A. §§ 50-18-70 *et. seq.*

2. On April 29, 2020, the Southern Center for Human Rights sent a letter to the Clayton County Sheriff's Office requesting records concerning the impact of the coronavirus pandemic at the Clayton County Jail. The Southern Center sent the request as part of a larger effort to understand how the Covid-19 pandemic is affecting people in jails across Georgia.

3. The Southern Center's records request sought no protected health information or other private information. Instead, it sought records showing only raw numbers regarding Covid-19 testing and infections among Clayton County Jail detainees and staff members. Similar requests were sent to other jails around the state—specifically those that had not affirmatively published testing and infection data. Some agencies, including the Georgia Department of Corrections, regularly release similar data to the public on their own initiative, but many agencies do not.

4. The Clayton County Sheriff's Office responded with a series of shifting representations. On May 4, 2020, the Sheriff's Office claimed flatly to have “no responsive documents/records.” The next day, the Sheriff's Office changed course, stating that it would provide the requested “statistical data” and was “working on a response.” Two days after that, the Sheriff's Office changed its position yet again. Citing no authority, the Sheriff's Office stated that it had decided to withhold responsive records because the Open Records Act “will not allow” it to disclose information obtained by “accessing medical records.” When

the Southern Center attempted to resolve the dispute through a letter dated May 9, the Sheriff's Office did not respond. Defendants have provided neither the requested records nor a legitimate explanation for their actions.

5. Despite the strong public interest in transparency, especially during a pandemic, Defendant Hill has refused to make public *any document* that would show the effects of Covid-19 at the Clayton County Jail—even such basic information as the number of infected detainees. This information must be tracked and reported for effective prevention and mitigation efforts.

6. Therefore, Defendant Hill and the Clayton County Sheriff's Office have violated the Georgia Open Records Act by failing to produce public records within a reasonable time, and failing to follow the procedures in the Open Records Act. Defendants' actions in this regard are willful and unjustified. Plaintiff Southern Center files this suit to enforce Defendants' compliance with the Act.

PARTIES

7. Plaintiff Southern Center for Human Rights ("Southern Center") is a nonprofit, public interest organization located in Atlanta, Georgia. Through litigation and advocacy, the Southern Center seeks to ensure humane conditions in prisons and jails, adequate legal representation for indigent people accused of crimes, and equality and fairness in the criminal justice system. To that end, the Southern Center relies on the Georgia Open Records Act to obtain official records.

8. Defendant Victor Hill is sued in his individual capacity and in his official capacity as Sheriff of Clayton County, Georgia. As Sheriff, Defendant Hill is the custodian of all records produced and/or maintained by the Clayton County Sheriff's Office. Defendant Hill, through his own actions and those of his subordinates, maintains the public records that are sought in this action, and has failed to timely produce them in response to repeated requests.

9. Defendant Alan Parker is sued in his individual capacity and in his official capacity as legal advisor to the Clayton County Sheriff. Defendant Parker acted as the Clayton County Sheriff's authorized agent in responding to the records request at issue in this action.

10. Defendant Phillip Price is sued in his individual capacity and in his official capacity as assistant to the Clayton County Sheriff. Defendant Price acted as the Clayton County Sheriff's authorized agent in responding to the records request at issue in this action.

JURISDICTION AND VENUE

11. This Court has jurisdiction under O.C.G.A. § 50-18-73(a) ("The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article.").

12. Venue is proper in this Court because all Defendants reside in Clayton

County. *See* Ga. Const. Art. VI, § 2, ¶¶ 4-6; O.C.G.A. § 9-10-30.

STATEMENT OF FACTS

A. Access to Public Health Information Is Essential to Preventing and Mitigating Covid-19 Outbreaks in Jails.

13. The Coronavirus Disease 2019 (Covid-19) pandemic has been at the center of public life for over two months. The World Health Organization declared a global pandemic on March 11, 2020.¹ Within three days, the President of the United States² and the Governor of Georgia³ had declared public health emergencies. By early April, significant segments of the state and national economy had shut down as a result of efforts to slow the spread of the virus that causes Covid-19.

14. The pernicious characteristics of Covid-19 are by now well known. The virus that causes the disease is highly contagious, “spreading very easily and sustainably between people.”⁴ In densely populated settings, the virus can easily infect many people.⁵ Because “COVID-19 may be spread by people who are not

¹ World Health Organization, *Rolling Updates on Coronavirus Disease (COVID-19)* (March 11, 2020), <https://bit.ly/2Zsz0iZ>.

² Presidential Proclamation No. 9994, *Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, 85 F.R. 15337 (March 13, 2020), <https://bit.ly/3cXFSsu>.

³ Office of the Governor, *Public Health Emergency in Georgia Effective March 14, 2020* (March 16, 2020), <https://bit.ly/2ZvDhlQ>.

⁴ Ctrs. for Disease Control & Prevention, *How COVID-19 Spreads* (Apr. 13, 2020), available at <https://bit.ly/2ZsQPyz>.

⁵ *See, e.g.,* Lea Hamner et al., Ctrs. for Disease Control & Prevention, *High SARS-CoV-2 Attack*

showing symptoms,”⁶ it is often impossible for people to determine whether they or those with whom they interact are infected.

15. The health effects of Covid-19 infections are not fully understood, but what is known is troubling. In a significant number of cases, patients suffer respiratory distress requiring intensive care, potentially overwhelming healthcare systems.⁷ There are indications that the disease may be associated with other serious health problems.⁸ Over 1.5 million Americans have tested positive for Covid-19, and nearly 100,000 Americans have died.⁹ There is presently no known cure for Covid-19 and no widely available vaccine.

Rate Following Exposure at a Choir Practice — Skagit County, Washington, March 2020 (May 15, 2020) (describing “superspreading event” in which “a 2.5-hour choir practice attended by 61 persons” resulted in “32 confirmed and 20 probable secondary COVID-19 cases”), *available at* <https://bit.ly/3bQQvfn>; Ellen Barry, *Days After a Funeral in a Georgia Town, Coronavirus ‘Hit Like a Bomb’*, N.Y. Times, Mar. 30, 2020, *available at* <https://nyti.ms/2AUCpwT>.

⁶ Ctrs. for Disease Control & Prevention, *How COVID-19 Spreads*.

⁷ See, e.g., Alan Judd, *As Virus Spreads, a Growing Fear of Overwhelmed Georgia Hospitals*, Atlanta J.-Const., Mar. 25, 2020.

⁸ See, e.g., Ctrs. for Disease Control & Prevention, Official Health Advisory, *Multisystem Inflammatory Syndrome in Children (MIS-C) Associated with Coronavirus Disease 2019 (COVID-19)*, May 14, 2020, *available at* <https://bit.ly/2LB3Luc>; Roni Caryn Rabin, *Coronavirus May Pose a New Risk to Younger Patients: Strokes*, N.Y. Times, May 14, 2020 (“Patients with severe Covid-19 may develop clots in the legs and lungs that can be life-threatening, doctors said. Their blood can be so thick and viscous that it blocks intravenous lines and catheters.”); Jason Horowitz, *Surviving Covid-19 May Not Feel Like Recovery for Some*, N.Y. Times, May 10, 2020 (“But even some of the infected who have avoided pneumonia describe a maddeningly persistent and unpredictable illness, with unexpected symptoms. Bones feel broken. The senses dull. Stomachs are constantly upset. There are good days and then bad days without apparent rhyme nor reason.”).

⁹ Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19) Cases in the US* (May 22, 2020), *available at* <https://bit.ly/2TtboH5>.

16. The only way to prevent Covid-19 is to avoid exposure to infected persons and contaminated surfaces. This is accomplished by avoiding close contact with others through social distancing and the use of personal protective equipment; maintaining good personal hygiene, particularly through handwashing and avoiding touching one's face; and disinfecting surfaces that may be contaminated.¹⁰ In addition, public health experts have noted the importance of testing to identify and isolate those who have contracted Covid-19. As explained by Dr. Kathleen Toomey, the Commissioner of the Georgia Department of Public Health, Covid-19 testing “is critical to understanding where there are hotspots of infection and how best to mitigate them.”¹¹

17. Prevention and mitigation strategies are particularly important in prisons and jails, as illustrated by numerous large-scale outbreaks over the past two months.¹² “Correctional and detention facilities are considered at very high risk for

¹⁰ Ctrs. for Disease Control & Prevention, *How to Protect Yourself & Others* (Apr. 24, 2020), available at <https://bit.ly/2ypHL2c>.

¹¹ Press Release, Ga. Dep't of Public Health, *Georgia DPH Exceeds 100,000 COVID-19 Tests in 10 Days Testing Now Available to All Georgians* (May 7, 2020), available at <https://bit.ly/2LSOfK4>.

¹² See, e.g., Peter Eisler et al., ‘Death Sentence’—*The Hidden Coronavirus Toll in U.S. Jails and Prisons*, Reuters, May 18, 2020, available at <https://reut.rs/3cZDHVE>; *Prisons Worldwide Risk Becoming Incubators of Covid-19*, The Economist, Apr. 20, 2020, available at <https://econ.st/2WCsq7Y>; Sadie Gurman, *More Than 70% of Inmates Tested in Federal Prisons Have Coronavirus*, Wall. St. J., Apr. 30, 2020, available at <https://on.wsj.com/3dPk15r>; Alejandro Lazo & Zusha Elinson, *Inside the Largest Coronavirus Outbreak in Immigration Detention*, Wall St. J., Apr. 30, 2020, available at <https://on.wsj.com/2Wy67jF>; Deanna Paul & Ben Chapman, *Rikers Island Jail Guards Are Dying in One of the Worst Coronavirus Outbreaks*, Wall St. J., Apr. 22, 2020, available at <https://on.wsj.com/2Wxxhah>.

COVID-19 spread and outbreaks due to having a high volume of people within a close, congregate setting.”¹³ In prison systems that have recently undertaken large-scale testing of all inmates, “some are seeing infection rates up to 65%.”¹⁴

18. A key component of effective prevention and mitigation is vigilance in tracking and responding to Covid-19 outbreaks. In its official guidance for jails and prisons, the Georgia Department of Public Health emphasizes that “[a]ll [prison and jail] employees should be on high alert for potential COVID-19 cases within their population, including among staff.”¹⁵ If “any individuals in [a prison or jail] facility, including employees, begin to exhibit symptoms” of Covid-19, jailers must “call the [local] health district immediately” and work with an epidemiologist for “COVID-19 testing if warranted” and assistance in performing “a risk assessment to determine how to best mitigate any spread.”¹⁶ In red, boldface text on the first page of its policy guidance, the Department of Public Health warns jailers, “Any cases of COVID-19 in correctional or detention facilities should be immediately reported to your local Health District.”¹⁷

19. The U.S. Centers for Disease Control and Prevention similarly warns

¹³ Ga. Dep’t of Public Health, *Interim Guidance for Management of COVID-19 in Correctional and Detention Facilities in Georgia* 1 (Apr. 15, 2020), available at <https://bit.ly/3bvWECh>.

¹⁴ Eisler, ‘*Death Sentence*’.

¹⁵ Ga. Dep’t of Public Health, *Interim Guidance* 1.

¹⁶ *Id.* at 2.

¹⁷ *Id.* ag 1.

that the “congregate environments” in prisons and jails “heighten[] the potential for COVID-19 to spread once introduced.”¹⁸ The CDC has urged jailers to “ensure that COVID-19 cases will be appropriately *isolated, evaluated, tested (if indicated), and given care.*”¹⁹

20. In Georgia, responding to known, likely, and suspected Covid-19 infections is not optional. Under a public health control order entered by Georgia Department of Public Health Commissioner Kathleen Toomey, individuals with suspected or confirmed cases of Covid-19 are currently required to self-isolate, and those who have been exposed to Covid-19 under circumstances likely to result in an infection are required by law to self-quarantine.²⁰ Failure to comply with the order is punishable as a misdemeanor.²¹

21. As implied by the measures discussed above, effective prevention and mitigation depends on access to accurate and timely information. Surveillance “to monitor the spread and intensity of the pandemic, to enable contact tracing to slow transmission, and to identify disease clusters requiring special intervention” is a

¹⁸ U.S. Ctrs. for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* 6 (Mar. 23, 2020), available at <https://bit.ly/3bu83xS>.

¹⁹ *Id.* at 15 (emphasis added).

²⁰ Ga. Dep’t of Public Health, Fifth Am. Admin. Order for Public Health Control Measures 1-4 (May 12, 2020). With minor changes not relevant here, the order has been in effect since March. *See, e.g.*, Ga. Dep’t of Public Health, Am. Admin. Order for Public Health Control Measures 1-4 (Mar. 23, 2020).

²¹ *Id.* at 4; *see* O.C.G.A. § 31-5-8.

pillar of the CDC’s plan for controlling the virus.²² In connection with public health surveillance, the CDC recommends that states implement “public facing” data platforms about Covid-19 to “maximize transparency and maximize information to communities at the most granular level.”²³

B. The Southern Center Requested Public Records from the Clayton County Sheriff’s Office Concerning Covid-19 Testing and Infections.

22. By late April 2020, massive outbreaks at prisons and jails around the country raised concerns that similar outbreaks might be occurring in one or more of Georgia’s over 60 correctional facilities²⁴ and 143 county jails.

23. As news of the Covid-19 pandemic spread, incarcerated people and their family members began contacting the Southern Center to express concerns about the welfare of people in certain facilities, including the Clayton County Jail.

24. Reliable and timely information was not available for most detention and correctional facilities. Although the Georgia Department of Corrections began publishing daily prison-by-prison information on Covid-19 shortly after the Governor declared a public health emergency,²⁵ most county jails did not

²² U.S. Ctrs. for Disease Control & Prevention, *CDC Activities and Initiatives Supporting the COVID-19 Response and the President’s Plan for Opening America Up Again* 3 (May 2020), available at <https://bit.ly/2TtWLTW>.

²³ *Id.* at 12.

²⁴ This figure includes 34 state prisons, 4 private prisons, 21 county prisons, 14 transitional centers, 7 residential substance abuse treatment centers, 8 probation detention centers, and 2 integrated treatment facilities. Some smaller facilities are collocated with larger ones.

²⁵ See Ga. Dep’t of Corr., *Confirmed COVID-19 Cases*, available at <https://bit.ly/2ZuMR8o>.

affirmatively provide information regarding outbreaks, testing, and similar matters.

25. To obtain information about the impact of Covid-19 in Georgia, Plaintiff Southern Center for Human Rights sent requests for records to several of Georgia's larger county jails.

26. Nick Barber, a Southern Center paralegal, sent a public records request by letter to the Clayton County Sheriff's Office on April 29, 2020. (Ex. A.) The request sought five categories of records:

- Documents sufficient to show the total number of incarcerated individuals and staff tested for COVID-19 at your jail;
- Documents sufficient to show the number of incarcerated individuals and staff who have tested positive for COVID-19 at your jail;
- Documents sufficient to show the number of incarcerated individuals currently in quarantine or medical isolation for showing symptoms associated with COVID-19 (with or without a positive COVID-19 test);
- Documents sufficient to show the number of incarcerated individuals at your jail who have died after contracting COVID-19 or showing COVID-19 symptoms (with or without a positive test);
- Documents sufficient to show the total inmate population count at your jail as of April 29, 2020.

(*Id.*)

27. The request was transmitted by email and was addressed to Defendant

Hill. (*Id.*)

C. The Clayton County Sheriff's Office Willfully Violated the Open Records Act by Falsely Denying That It Had Responsive Records.

28. On May 4, 2020, Defendant Phillip Price responded to the records request by email. (Ex. B.) Regarding the first four categories of documents sought in the records request, Defendant Price stated unequivocally, “This agency has no responsive documents/records.” (*Id.*) Defendant Price did not identify any exemption that justified withholding the records.²⁶

29. Defendant Price further stated that “any testing at our facility would be done by our contracted medical provider Correct Health. The point of contact for their records is Deborah Pilgrim at deborah.pilgrim@correcthealth.org.” (*Id.*)²⁷

30. As noted above, it is widely understood in the public health community that surveillance of Covid-19 cases is essential to preventing and mitigating outbreaks, particularly in jails and prisons. Georgia jailers are required to report known or suspected cases to local health departments. Georgia law

²⁶ In response to the request for documents sufficient to show “the total inmate population,” Defendant Price provided an image reflecting the jail’s population. That portion of the records request is therefore not at issue in this case. Similarly, the Clayton County Sheriff’s Office responded to a May 6 request for the inmate handbook, disciplinary policy, and grievance policy; that request is not at issue here.

²⁷ On May 4, the Southern Center contacted CorrectHealth, LLC, the Clayton County Jail’s medical services provider, requesting statistical information. The next day, Ebony Cameron, a CorrectHealth employee, responded that the request had been forwarded to Health Services Administrator Elizabeth Smith. To date, CorrectHealth has provided no further response.

requires isolation of individuals believed to have the virus, and quarantine of those exposed to it, with criminal sanctions for noncompliance.

31. In light of the importance of the information requested and concerns that Defendants' response was inaccurate, the Southern Center sent a letter to Defendant Hill on May 4 asking that he "ensure that [his] agency ha[d] provided records responsive to our April 29 request, or a timeline for their prompt production." (Ex. C.) The letter was sent by email to Defendant Price and Jack Hancock, an attorney. (*Id.*)

D. The Clayton County Sheriff's Office Willfully Violated the Open Records Act by Refusing to Disclose Responsive Records.

32. On May 5, 2020, Defendant Alan Parker responded to the May 4 letter via email. (Ex. D.) The email was addressed to Elizabeth Smith and was copied to Defendant Price and the Southern Center. (*Id.*)

33. Defendant Parker stated in the email that the Sheriff's Office's "records custodian"—presumably referring to Defendant Price—was "under the impression that the initial request he responded to was protected by an 'Exemption'" for medical records. (*Id.*) Defendant Parker stated that the records custodian "sought further clarification" from Parker, who represented that "limited" information "for statistical data purposes" would "be provided to SCHR." (*Id.*) No timeline was provided for producing the records.

34. Attached to Defendant Parker’s May 5 email was a Microsoft Word document with the filename, “Information for Southern Center for Human Rights.” (Ex. E.) The document contained fields corresponding to the first four categories of documents requested in the Southern Center’s April 29 records request. (*Id.*) A note at the top of the document stated, “This information will be provided by the DON, Ms. Smith in numbers form only due to HIPPA restrictions.” (*Id.*)

35. On May 7, 2020, Defendant Parker sent another email to the Southern Center. (Ex. F.) In that email, Defendant Parker stated that he “could not be of assistance” in providing responsive records, because a response would “entail accessing medical records.” (*Id.*) Because “the content sought is in the Medical Record,” Defendant Parker claimed that he was “precluded from removing information and providing it to a third party.” (*Id.*) Defendant Parker cited no statutory provision or other legal authority supporting his position.

36. On May 9, 2020, the Southern Center attempted to resolve the dispute by a letter emailed to Defendant Parker. (Ex. G.) The letter noted that the medical records exemption applies only to medical records, and that records such as “emails, text messages, internal memoranda, reports, and the like” containing the requested information—though perhaps subject to redaction—would not be subject to a categorical exemption for medical records. (*Id.* at 3-4.) Rather, the text of the Open Records Act provides that it “shall be interpreted narrowly to exclude only

those portions of records addressed by such exception.” O.C.G.A. § 50-18-70(a).

37. The May 9 letter further noted that the Sheriff’s Office waived reliance on the medical records exemption by failing to cite the exemption in its initial response and instead denying that it had responsive records. (Ex. G at 3.) To claim an exemption under the Open Records Act, an agency must identify “by Code section, subsection, and paragraph” the “specific legal authority” exempting the requested records from disclosure. O.C.G.A. § 50-18-71(d). Failure to cite an exemption in the initial response denying a request for records waives reliance on that exemption. *See Hoffman v. Oxendine*, 268 Ga. App. 316, 318 (2004) (holding an agency head “can rely only on the legal authority he specified in his response denying the request”).

38. The letter noted that the Open Records Act does not require agencies to prepare new records, but that the Southern Center “assume[d] that the Clayton County Sheriff’s Office has been tracking the types of data requested” based on “known practices at other jails.” (Ex. G at 4 n.4.)

39. The letter requested that Defendants respond by May 13, 2020, with the requested records.

40. To date, Defendants have not responded to the May 9 letter. No responsive records have been produced, no unavailable records have been identified, no legal authority has been cited, and no timeline has been provided for

the production of responsive records that are currently unavailable.

41. The Georgia General Assembly has declared that “the strong public policy of this state is in favor of open government” 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.” O.C.G.A. § 50-18-70(a). To that end, the Open Records Act establishes “a strong presumption that public records should be made available for public inspection without delay.” *Id.*

42. The relief sought in this action is in the public interest. Members of the public, whose tax dollars fund the Clayton County Sheriff’s Office, are entitled to understand and intelligently consider the practices of the Clayton County Sheriff’s Office and the conditions in the Clayton County Jail. That interest is particularly weighty in this case given the importance of transparency in responding effectively to the Covid-19 pandemic.

43. Defendants’ failure to comply with the Open Records Act is willful and without justification. *See* O.C.G.A. §§ 50-18-71, 50-18-73, 50-18-74. Accordingly, the Court should order Defendants to properly respond to the Southern Center’s April 29, 2020, request for records. The Court should further order an appropriate sanction against Defendants to deter future violations of the Open Records Act by Defendants and similarly situated officials.

PRAYER FOR RELIEF

For the foregoing reasons, Plaintiff prays that this Court will:

- (a) Issue an injunction ordering that Plaintiff be provided full access to records requested under the Open Records Act;
- (b) Issue an injunction ordering that Defendants employ the most economical means of compiling the requested records;
- (c) Assess statutory penalties authorized by O.C.G.A. § 50-18-74;
- (d) Award Plaintiff reasonable attorneys' fees and litigation costs as provided in O.C.G.A. § 50-18-73; and
- (e) Grant such other and further relief as justice may require.

Respectfully submitted,

Kosha Tucker
Ga. Bar No. 214335
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/s/ Ryan Primerano
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Counsel for Plaintiff

May 27, 2020

EXHIBIT A

April 29, 2020

BY EMAIL

Sheriff Victor Hill
Clayton County Sheriff's Office
9157 Tara Blvd.
Jonesboro, Georgia 30236

Re: Open Records Act Request

To whom this may concern:

I am writing to request the following documents pursuant to the Georgia Open Records Act, O.C.G.A. §§ 50-18-70 through 50-18-77:

- Documents sufficient to show the total number of incarcerated individuals and staff tested for COVID-19 at your jail;
- Documents sufficient to show the number of incarcerated individuals and staff who have tested **positive** for COVID-19 at your jail;
- Documents sufficient to show the number of incarcerated individuals currently in quarantine or medical isolation for showing symptoms associated with COVID-19 (with or without a positive COVID-19 test);
- Documents sufficient to show the number of incarcerated individuals at your jail who have died after contracting COVID-19 or showing COVID-19 symptoms (with or without a positive test);
- Documents sufficient to show the total inmate population count at your jail as of **April 29, 2020**.

The Open Records Act requires that public agencies provide an available, requested public document within three (3) business days. See O.C.G.A. § 50-18-71. I am prepared to pay for the cost of copying the requested documents if necessary.

In light of the CV-19 epidemic, please send the responsive documents by email to nbarber@schr.org, if at all possible. Please do not hesitate to contact me by email or telephone at (404) 688-1202 if I can provide further information to facilitate this request.

We recognize that your time is valuable and thank you so much in advance for your kind cooperation.

Sincerely,

/s/ Nick Barber
Nick Barber
Investigator/Paralegal

EXHIBIT B

From: Philip Price
To: Nick Barber
Cc: Terrance Gibson; Alan Parker
Subject: Open Records Request
Date: Monday, May 4, 2020 12:16:24 PM
Attachments: image001.png

Good afternoon Mr. Barber. Please see the following response to your open records request:

This agency has no responsive documents/records for the following requests:

- Documents sufficient to show the total number of incarcerated individuals and staff tested for COVID-19 at your jail;
- Documents sufficient to show the number of incarcerated individuals and staff who have tested positive for COVID-19 at your jail;
- Documents sufficient to show the number of incarcerated individuals currently in quarantine or medical isolation for showing symptoms associated with COVID-19 (with or without a positive COVID-19 test);
- Documents sufficient to show the number of incarcerated individuals at your jail who have died after contracting COVID-19 or showing COVID-19 symptoms (with or without a positive test);

This is the Jail Census for 4/30/2020: Total Population is 1829

- Documents sufficient to show the total inmate population count at your jail as of April 29, 2020.

4/30/2020										CLAYTON COUNTY SHERIFF JAIL OPERATIONS										SHRPC465A									
15:12										CURRENT INMATE STATISTICS										SJI225R									
H/U 1	182	26	Sec: 1	25	2	26	3	8	4	33	1	5	42	10	6	47	15												
H/U 2	255	63	Sec: 1	40	8	2	44	12	3	44	12	4	44	12	5	42	10	6	41	9									
H/U 3	193	11	Sec: 1	23	2	34	2	3	34	2	4	38	6	5	31	6	33	1											
H/U 4	113	11	Sec: 1	10	2	12	3	43	11	4	16	5	15	6	17														
H/U 5	232	40	Sec: 1	38	6	2	39	7	3	37	5	4	43	11	5	39	7	6	36	4									
H/U 6	207	16	Sec: 1	36	4	2	35	3	3	32	4	31	5	39	7	6	34	2											
H/U 7	210	22	Sec: 1	37	5	2	40	8	3	30	4	40	8	5	33	1	6	30											
H/U 8	220	28	Sec: 1	43	11	2	33	1	3	45	13	4	32	5	32	6	35	3											
Dorm 1	34																												
Dorm 2	32																												
Dorm 3	27																												
Dorm 4	15																												
Dorm 5	6																												
Dorm 6	26																												
Dorm 7	35																												
Dorm 8	1																												
Intake	15																												
Release	0																												
Medical	26																												
Total	1829	217																											
F3-Exit																													

Per our conversation any testing at our facility would be done by our contracted medical provider Correct Health. The point of contact for their records is Deborah Pilgrim at deborah.pilgrim@correcthealth.org. Thank you.

Philip Price

Philip Price – Assistant to Sheriff Victor Hill
Clayton County Sheriff's Office
 9157 Tara Blvd.
 Jonesboro, GA 30236
Phone: 678-479-5398 / **Fax:** 678-479-5358
Email: Philip.Price@claytoncountyga.gov

The contents of this e-mail message and any attachments are confidential and are intended solely for the addressee. The information may also be legally privileged. If you are not the intended recipient, please immediately **notify** the sender by reply e-mail or phone and **delete** this message and its attachments, if any.

EXHIBIT C

May 4, 2020

BY EMAIL

Sheriff Victor Hill
Clayton County Sheriff's Office
9157 Tara Blvd.
Jonesboro, Georgia 30236

Re: Open Records Act Request

To whom it may concern:

I write to follow up on your May 4, 2020, response to my office's Georgia Open Records Act request dated April 29, 2020. Our records request, which is attached hereto for your reference, *see* Attachment A, sought the following documents:

1. Documents sufficient to show the total number of incarcerated individuals and staff tested for COVID-19 at your jail;
2. Documents sufficient to show the number of incarcerated individuals and staff who have tested positive for COVID-19 at your jail;
3. Documents sufficient to show the number of incarcerated individuals currently in quarantine or medical isolation for showing symptoms associated with COVID-19 (with or without a positive COVID-19 test);
4. Documents sufficient to show the number of incarcerated individuals at your jail who have died after contracting COVID-19 or showing COVID-19 symptoms (with or without a positive test); and
5. Documents sufficient to show the total inmate population count at your jail as of April 29, 2020.

On May 4, we received an emailed response from your office with an image purporting to represent the jail's inmate population. The message claimed that the "agency has no responsive documents/records" regarding the other requests. That email is also attached for your reference. *See* Attachment B.

Under the Open Records Act, your office is required to produce any records "prepared, maintained, or received" that are responsive to the aforementioned four requests for figures concerning COVID-19 within the county jail. O.C.G.A. § 50-18-70(b)(2). The Act defines records to include "computer based or generated information, data, data fields, or similar material." *Id.* Accordingly, your office is required to produce documents in its possession—including electronic records such as emails and text

messages—that reflect the categories of information sought in our April 29 Open Records Act request.

For these reasons, I respectfully ask that you ensure that your agency has provided records responsive to our April 29 request, or a timeline for their prompt production, within three business days of this letter. *See* O.C.G.A. § 50-18-71.

Please do not hesitate to contact me by email at rprimerano@schr.org or by telephone at (404) 688-1202 if I can provide further information to facilitate this request. Thank you in advance.

Sincerely,

/s/ Ryan Primerano

Ryan Primerano

Staff Attorney

cc: Jack Hancock

EXHIBIT D

Ryan Primerano

From: Alan Parker <Alan.Parker@claytoncountyga.gov>
Sent: Tuesday, May 5, 2020 4:07 PM
To: Elizabeth Smith
Cc: Philip Price; Ryan Primerano
Subject: REf: Information Requested by SCHR
Attachments: Information for Southern Center For Human Rights..docx

Importance: High

Good Afternoon Ms. Smith,

Per our conversation, I have enclosed a sheet for only the insertion of numerical stats requested by Southern Center for Human Rights (S.C.H.R), our records custodian shared concerns that he was under the impression that the initial request he responded to was protected by an "**Exemption**" that Medical Records are exempt from production pursuant to the Open records Act, and he is correct. The custodian then received a second request for the same information from SCHR and then sought further clarification from my office. The limited embedded information that can be gleaned from the document for statistical data purposes, and only that data will be provided to SCHR, anything more will require a court order. I have included Mr. Primerano in this thread so that he is aware that we are working on the response pursuant to the ORA.

Respectfully,

Alan G. Parker

Alan G. Parker Esq.
Attorney At Law
Legal Advisor
Sheriff
Clayton County Sheriff's Office
9157 Tara Blvd.
Jonesboro, GA 30236
Office: 770-477-4469 / **Cell:** 678-371-4175
Fax: 678-479-5358
Email: Alan.Parker@claytoncountyga.gov

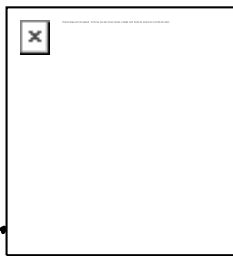


EXHIBIT E

This information will be provided by the DON, Ms. Smith in numbers form only due to HIPPA restrictions.

A) Documents sufficient to show the total number of incarcerated individuals and staff tested for COVID-19 at your jail; -.

- # Of Inmates Tested =
- # Of Staff Tested =

B) Documents sufficient to show the number of incarcerated individuals and staff who have tested positive for COVID-19 at your jail.

- # Of Inmates Tested Positive =
- # Of Staff Tested Positive =

C) Documents sufficient to show the number of incarcerated individuals currently in quarantine or medical isolation for showing symptoms associated with COVID-19 (with or without a positive COVID-19 test);

- # Of Individuals quarantined/Medical Isolation w/COVID -19=
- #

D) Documents sufficient to show the number of incarcerated individuals at your jail who have died after contracting COVID -19 or showing COVID-19 symptoms (with or without a positive test); and

- # Of Incarcerated individuals that have died from w/COVID -19 = 0
- # Of Incarcerated individuals that have died from w/o COVID -19 = 0

E) Documents sufficient to show the total inmate population count at your jail as of April 29, 2020.

- Responded.

EXHIBIT F

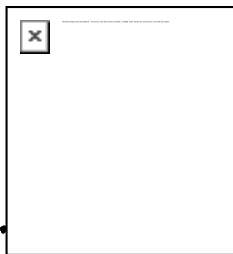
Ryan Primerano

From: Alan Parker <Alan.Parker@claytoncountyga.gov>
Sent: Thursday, May 7, 2020 3:02 PM
To: Ryan Primerano
Cc: Philip Price
Subject: Re: EXTERNAL: RE: Information Requested by SCHR

Atty Primerano,

My attempt to assist in providing you with the information you seek, will ultimately **entail accessing medical records**, since the content sought is in the Medical Record, we are precluded from removing information and providing it to a third party. The Medical Records protection pursuant to the Open Records Act, will not allow. Sorry that I could not be of assistance.

Respectfully,



Alan G. Parker

Alan G. Parker – Legal Advisor
Clayton County Sheriff's Office
9157 Tara Blvd.
Jonesboro, GA 30236
Office: 770-477-4469 / **Cell:** 678-371-4175
Fax: 678-479-5358
Email: Alan.Parker@claytoncountyga.gov

From: Ryan Primerano <rprimerano@schr.org>
Sent: Wednesday, May 6, 2020 1:17 PM
To: Alan Parker
Subject: EXTERNAL: RE: Information Requested by SCHR

This email originated from outside your organization. Do **NOT** click links or open attachments from this email unless you know the sender and trust the content. If you suspect this email to be a phishing attempt, please forward this message to phishing@claytoncountyga.gov.

Dear Mr. Parker:

Thank you for looking into this and for the update. I appreciate it.

Sincerely,

Ryan Primerano
Staff Attorney
Southern Center for Human Rights
60 Walton Street, NW

Atlanta, GA 30303
(404) 688-1202
(404) 688-9440 (fax)
rprimerano@schr.org

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) and may contain legally privileged and/or confidential information. If you are not the intended recipient, please do not disclose, distribute or copy this communication. Please notify the sender that you have received this e-mail in error and delete the original and any copy of the e-mail.

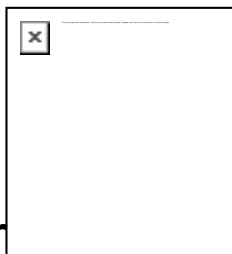
From: Alan Parker <Alan.Parker@claytoncountyga.gov>
Sent: Tuesday, May 5, 2020 4:07 PM
To: Elizabeth Smith <elizabeth.smith@correcthealth.org>
Cc: Philip Price <Philip.Price@claytoncountyga.gov>; Ryan Primerano <rprimerano@schr.org>
Subject: REf: Information Requested by SCHR
Importance: High

Good Afternoon Ms. Smith,

Per our conversation, I have enclosed a sheet for only the insertion of numerical stats requested by Southern Center for Human Rights (S.C.H.R), our records custodian shared concerns that he was under the impression that the initial request he responded to was protected by an "**Exemption**" that Medical Records are exempt from production pursuant to the Open records Act, and he is correct. The custodian then received a second request for the same information from SCHR and then sought further clarification from my office. The limited embedded information that can be gleaned from the document for statistical data purposes, and only that data will be provided to SCHR, anything more will require a court order. I have included Mr. Primerano in this thread so that he is aware that we are working on the response pursuant to the ORA.

Respectfully,

Alan G. Parker



Alan G. Parker Esq.
Attorney At Law
Legal Advisor
Sheriff
Clayton County Sheriff's Office
9157 Tara Blvd.
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Office: 770-477-4469 / **Cell:** 678-371-4175
Fax: 678-479-5358
Email: Alan.Parker@claytoncountyga.gov

EXHIBIT G



60 Walton Street NW
Atlanta, GA 30303
Ph: 404.688.1202
F: 404.688.9440

May 9, 2020

BY U.S. MAIL & E-MAIL

Mr. Alan Parker
Clayton County Sheriff's Office
9157 Tara Boulevard
Jonesboro, GA 30236
alan.parker@claytoncountyga.gov

Re: Follow-Up on Request for Records Dated April 29, 2020

Dear Mr. Parker:

I write once again to ask that the Clayton County Sheriff's Office ensure that it has completely and accurately responded to the Open Records Act request submitted by my office on April 29, 2020. As discussed below, that request sought documents that are not subject to the Act's medical records exemption. To the extent that responsive records contain certain exempt data, the Act requires your office to redact the records, not withhold them altogether. Accordingly, I ask that your office reconsider its decision to withhold responsive records if such records exist.¹

A. Background

The Southern Center for Human Rights is a nonprofit law office that, among other things, engages in litigation and advocacy on behalf of people in jail. As a result of the current Covid-19 pandemic, we have received many communications from people in jails and their loved ones expressing concerns about the spread of the coronavirus in facilities throughout Georgia, including the Clayton County Jail. Although some sheriffs have voluntarily publicized information about the numbers of infected people in their jails, the numbers of coronavirus tests administered, measures taken to reduce infections, and so forth, others have not. Accordingly, we have requested this critical information from certain jails under the Open Records Act. Numerous jails have complied with the Act and provided the requested numerical and statistical information without disclosing protected health information or patients' medical records.

On April 29, 2020, Nick Barber, a paralegal with our office, sent a letter to the Clayton County Sheriff's Office requesting the following information:

¹ The Open Records Act provides for civil and criminal penalties when public officials willfully fail to disclose records. See O.C.G.A. § 50-18-73; see, e.g., Scott Trubey, *Reed Aide Guilty in Records Case*, Atlanta J.-Const., Dec. 19, 2019 (noting jury convicted public official for "two misdemeanors by ordering a subordinate to delay release of public documents").

1. Documents sufficient to show the total number of incarcerated individuals and staff tested for COVID-19 at your jail;
2. Documents sufficient to show the number of incarcerated individuals and staff who have tested positive for COVID-19 at your jail;
3. Documents sufficient to show the number of incarcerated individuals currently in quarantine or medical isolation for showing symptoms associated with COVID-19 (with or without a positive COVID-19 test);
4. Documents sufficient to show the number of incarcerated individuals at your jail who have died after contracting COVID-19 or showing COVID-19 symptoms (with or without a positive test);
5. Documents sufficient to show the total inmate population count at your jail as of April 29, 2020.

(See Attach. A.) On May 4, Phillip Price responded by email with an apparent computer screenshot presumably reflecting the jail population and a blanket claim to have “no responsive documents/records” concerning the other requests. (See Attach. B.) Mr. Price did not identify any exemption that justified withholding records, but instead claimed that your office did not have responsive records.

After I wrote on May 4 asking that your office ensure that it had provided all relevant records (*see* Attach. C), you sent an email to Elizabeth Smith stating that Mr. Price had in fact withheld responsive records on the grounds that “Medical Records are exempt from production” (*see* Attach. D). You indicated in that email that your office would provide “statistical data,” and you attached an apparent draft document with fields reflecting the numbers of incarcerated individuals and staff members tested for Covid-19, the numbers of incarcerated individuals and staff members who tested positive for Covid-19, the number of incarcerated individuals currently in quarantine or medical isolation for showing symptoms associated with Covid-19, and the number of incarcerated individuals who have died after contracting or showing symptoms of Covid-19. (*See* Attach. E.)

On May 7, 2020, you sent an email indicating that your office would not provide the numerical and statistical information requested. (*See* Attach. F.) You stated that the Open Records Act “will not allow” a response because providing statistical information “will ultimately entail accessing medical records.” (*Id.*) Your email cited no authority for that proposition.

B. Lack of Justification for Withholding the Records

None of the information in the April 29 request for records is exempt from disclosure because it requests only numerical and statistical information about Covid-19 testing and cases at the Clayton County Jail. Accordingly, the Clayton County Sheriff's Office is required under the Georgia Open Records Act to produce documents containing this information.

The Open Records Act provides that all public records must be made available unless "specifically exempted from disclosure." O.C.G.A. § 50-18-71(a). When an agency determines that a record contains exempt information, the burden is on the agency to identify "by Code section, subsection, and paragraph" the "specific legal authority exempting the requested record or records from disclosure." O.C.G.A. § 50-18-71(d). In addition, all exemptions "shall be interpreted narrowly to exclude only those portions of records addressed by such exception." O.C.G.A. § 50-18-70(a).

As an initial matter, the Clayton County Sheriff's Office has no basis for failing to disclose responsive records under any exemption because it did not identify any exemption in its response denying our request for records. Instead, Mr. Price represented that your office "has no responsive documents/records." (Attach. B.) In claiming an exemption under the Open Records Act, an agency official "can rely only on the legal authority he specified in his response denying the request." *Hoffman v. Oxendine*, 268 Ga. App. 316, 318 (2004). Your office's failure to identify an applicable exemption in its response, and to instead claim incorrectly that no responsive records exist, waived any exemption that might otherwise apply. See O.C.G.A. § 50-18-71(d) (requiring agency to identify specific exemption relied on "by Code section, subsection, and paragraph").

Even if your office had not waived its reliance on any exemption, its failure to disclose responsive records is unjustified by the Open Records Act and the cases applying it. Your May 7 email relies on an exemption for "medical records." (Attach. F.) Presumably this refers to O.C.G.A. § 50-18-72(a)(2), which exempts "[m]edical or veterinary records and similar files, *the disclosure of which would be an invasion of personal privacy.*" *Id.* (emphasis added). But that exemption cannot apply here, because disclosure of "a matter of public interest" is "a violation of no one's legal right of privacy." *Doe v. Bd. of Regents of U. Sys. of Ga.*, 215 Ga. App. 684, 687 (Ga. Ct. App. 1994) (quoting *Waters v. Fleetwood*, 212 Ga. 161, 167 (1956)). Moreover, there is no invasion of an individual's personal privacy unless the matter made public is "offensive and objectionable to a reasonable man of ordinary

Ltr. to Alan Parker
May 9, 2020
Page 4 of 4

sensibilities under the circumstances.” *Dortch v. Atlanta Journal*, 261 Ga. 350, 352 (Ga. 1991) (quoting *Napper v. Ga. Television Co.*, 257 Ga. 156, 160-61 (1987)).

Nothing in our April 29 records request falls under the medical records exemption in O.C.G.A. § 50-18-72(a)(2). First, the request clearly concerns “a matter of public interest,” *Doe*, 215 Ga. App. at 687, as demonstrated by the numerous articles by journalists about the subject of Covid-19 spreading in jails and prisons.² Second, nothing about the disclosure of the limited statistical information we requested would be “offensive and objectionable to a reasonable man of ordinary sensibilities under the circumstances.” *Dortch*, 261 Ga. at 352. This is the same kind of information that many agencies, including the Georgia Department of Corrections, routinely disclose to the public.³ Therefore, to the extent that records exist reflecting this information—including emails, text messages, internal memoranda, reports, and the like—your office is required to disclose it, subject to redactions of names and other personal identifying information of affected individuals.⁴

C. Conclusion

For the reasons discussed above, I ask that the Clayton County Sheriff’s Office respond as soon as possible, and no later than May 13, 2020, with documents in its possession, custody, or control showing the information sought in our April 29, 2020, request for records.

Sincerely,



Ryan Primerano
Staff Attorney

encl.

² See, e.g., Justin Carissimo, *CDC Report Details Extent of Coronavirus Outbreaks in U.S. Jails and Prisons*, CBS News, May 6, 2020; Christian Boone, *Georgia Jails and Prison Remain Crowded as COVID-19 Spreads*, Atlanta J.-Const., Apr. 20, 2020; Christian Boone, *Eligible for Home Release, Inmates Remain at Atlanta Federal Prison*, Atlanta J.-Const., Apr. 9, 2020.

³ Ga. Dep’t of Corr., *Confirmed COVID-19 Cases*, available at <http://www.gdc.ga.gov/content/cases>.

⁴ We recognize that the Open Records Act does not require agencies “to prepare new reports, summaries, or compilations not in existence at the time of the request.” O.C.G.A. § 50-18-71(j). Based on known practices at other jails, we assume that the Clayton County Sheriff’s Office has been tracking the types of data requested by our records request.