



First Amendment Clinic

School of Law

UNIVERSITY OF GEORGIA



April 11, 2022

VIA EMAIL

S. Mark Mitchell, Esq., Grantville City Attorney

mark@smmitchelllaw.com

Douglas Jewell, Grantville Mayor

mayor@grantvillega.org

Jim Sells, Grantville Council Member

jim.sells@grantvillega.org

Ruby Hines, Grantville Council Member

ruby.hines@grantvillega.org

Casey Evans, Grantville Council Member

casey.evans@grantvillega.org

Alan Wacaser, Grantville Council Member

awacaser@grantvillega.org

VIA FAX – (770) 254-7305

John Herbert Cranford, Jr.

Coweta District Attorney

Coweta County Justice Center

72 Greenville St.

Newnan, GA 30263

Mr. Mitchell, District Attorney Cranford, and Grantville Mayor & Council Members:

We write to express concern regarding the March 28, 2022 vote by the Grantville City Council to seek criminal charges against Grantville resident Robert Royce for exercising his rights under Georgia’s Open Records Act (“ORA”). As reported by *The Newnan Times-Herald*, the City Council voted to ask the Coweta District Attorney to charge Mr. Royce with harassing and intimidating first responders because his ORA requests purportedly place a burden on the City, its police department, and City employees.¹ This vote, as well as any resulting request or decision to criminally prosecute Mr. Royce, amounts to retaliation against him for engaging in protected activity and is deeply chilling to both Mr. Royce and other members of the Grantville community.²

Mr. Royce has lived in Grantville, Georgia since 2020. His interest in local government has prompted him to make multiple ORA requests to the City and its subdivisions. He posts the results of his ORA requests on his public website, www.grantvillecorruption.com, where he also expresses criticism of City officials.

Mr. Royce’s actions are wholly consistent both with Georgia public policy, as discussed below, and with the First Amendment’s guarantee of free speech. See *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (“speech on public issues occupies the highest rung of the hierarchy of First

¹ Jeffrey Cullen Dean, “Grantville council prepares for lawsuit against resident,” *The Newnan Times-Herald* (Mar. 31, 2022), available at: <https://times-herald.com/news/2022/03/grantville-council-prepares-for-lawsuit-against-resident>.

² *Id.* (“Grantville resident Dee Berry said she felt the city was suggesting that residents should not request records from city hall.”).

City of Grantville & Coweta District Attorney
Re: Robert Royce
April 11, 2022

Amendment values, and is entitled to special protection”) (internal quotations and citations omitted); *New York Times Co. v. Sullivan*, 376 U.S. 254, 276, 282 (1964) (the First Amendment protects “criticism of government and public officials” . . . “It is as much [a citizen’s] duty to criticize [the government] as it is the official’s duty to administer.”).

Specifically, the ORA provides that “the strong public policy of this state is in favor of open government [which] is essential to a free, open, and democratic society [and] 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 function of its institutions.” O.C.G.A §50-18-70(a). A local government agency is obligated to respond to all ORA requests within three business days, either with the requested records or a timeline of when the records can be expected. O.C.G.A §50-18-71(a). In recognition of the administrative costs the ORA places on agencies, the ORA provides that agencies “may impose a reasonable charge for the search, retrieval, redaction, and production of copying costs” when responding to ORA requests, with limitations on how those charges may be calculated. O.C.G.A § 50-18-71(c)(1).

In promoting “open government,” the ORA neither contemplates nor condones restricting how many ORA requests a person may submit. While this issue has not been litigated under Georgia’s ORA, under a similar open records law in New Jersey, the court declined to excuse a municipality from responding to records requests considered to be burdensomely voluminous. *See Township of Teaneck v. Jones*, No. C-014-17, 2017 WL 958270, at *7 (N.J.Super.Ch. Mar. 09, 2017). There, the Township of Teaneck claimed that the resident’s open records requests were “unreasonable, excessive, abusive, retaliatory and specifically designed to coerce a financial settlement with public funds of a separate litigation commenced by [the resident].” *Id.*, at *2. The resident had made 380 requests within two months, equaling more than fifty percent of ORA requests received by the township throughout the year. *Id.* at *3. The court reasoned that if the resident had threatened a public official with harm or caused a breach of the peace, then he could be enjoined under basic tort or criminal laws. But the court found no evidence of such conduct based solely on the number and content of the resident’s open records requests. The court therefore denied the township’s request to be relieved from responding to the requests. *Id.* at *8. *See also Township of Teaneck v. Jones*, No. A-0840-17T3, 2019 WL 3063728, at *6 (N.J. Super. Ct. App. Div. July 12, 2019) (affirming award of attorneys’ fees to resident for having to sue the township over its non-compliance with New Jersey’s open records law).

Here, Mr. Royce has made far fewer than the 380 records requests in *Teaneck*. He also has not threatened any official with physical harm or caused a breach of the peace. Thus, like in *Teaneck*, the City of Grantville has no defensible basis for objecting to Mr. Royce’s lawful open records requests, let alone for seeking to criminally prosecute him for making them. Doing so gives rise to federal causes of action under 42 U.S.C. § 1983 for violation of Mr. Royce’s First Amendment rights.

City of Grantville & Coweta District Attorney
Re: Robert Royce
April 11, 2022

The City’s vote to seek criminal charges against Mr. Royce for making, in its view, too many ORA requests is not only antithetical to the Open Records Act and federal civil rights law, but further contravenes public policy reflected in Georgia’s anti-Strategic Litigation Against Public Participation (“anti-SLAPP”) statute. This law protects citizens from retaliatory lawsuits that are filed to deter them from exercising their First Amendment rights to speak on matters of public concern. O.C.G.A. §9-11-11.1. While the anti-SLAPP statute applies in civil practice, the law nonetheless evidences Georgia’s strong interest in protecting citizens’ First Amendment speech rights and ability to hold their government accountable.

In sum, the Grantville City Council’s vote to request criminal prosecution of Mr. Royce offends the letter and spirit of the ORA, undermines the public policy goals embodied in Georgia’s anti-SLAPP legislation, violates Mr. Royce’s First Amendment right to gain access to and express critique of his local government, and chills other residents from doing the same. We call on the City Attorney and the District Attorney to resoundingly reject the City Council’s unlawful request.

Sincerely,

Samantha Luzader

Samantha Luzader
Student Attorney, First Amendment Clinic

Ashley Waterfill

Ashley Waterfill
Student Attorney, First Amendment Clinic

Clare R. Norins

Clare R. Norins
Director, First Amendment Clinic

David Afahame

David Afahame
Legal Fellow, First Amendment Clinic

Kathy Brister

Kathy Brister
President
Georgia First Amendment Foundation

Cc. Jennifer Colangelo, Georgia State Attorney General’s Office