

IN THE SUPERIOR COURT OF FULTON COUNTY

MATTHEW CARDINALE)	
858 VEDADO WAY NE APT 5)	
ATLANTA, GA 30308)	CIVIL ACTION
Plaintiff,)	NO.
)	
)	
v.)	
)	
)	
CITY OF ATLANTA,)	
AND CEASAR MITCHELL,)	
FELICIA A. MOORE,)	
RHONDA DAUPHIN JOHNSON,)	
CARLA SMITH,)	
IVORY LEE YOUNG,)	
ALEX WAN,)	
HOWARD SHOOK,)	
JOYCE M. SHEPERD,)	
& H. LAMAR WILLIS, IN OFFICIAL CAPACITIES)	
55 TRINITY AVENUE, S.W.)	
ATLANTA, GA 30303)	
Defendants.)	
_____)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Now comes Matthew Charles Cardinale, Plaintiff in the above-styled action, and states his complaint as follows:

1. This action is brought under the Georgia Open Meetings Act, O.C.G.A. § 50-14-1 through 50-14-6 ("OMA"), to challenge the decision of the City of Atlanta et al. to fail to adequately record the details of a vote held during the February 2010 Retreat of the City Council of Atlanta ("CCA"); its decision to fail to amend the minutes of the meeting after multiple requests to include the omitted vote information; its decision to argue that the illegal action was in fact in compliance with the law; the refusal of six out of fifteen Council Members to respond to a request to state how they voted; and the argument by at least two of those Council Members that they do not need to disclose how they voted.

JURISDICTION

2. This court has jurisdiction under O.C.G.A. § 50-14-5.

PARTIES

3. Plaintiff Matthew Cardinale is a concerned citizen and the News Editor of The Atlanta Progressive News ("APN"), a local news service covering news of concern to working families, available on the World-wide Web at <http://www.atlantaprogressivenews.com>. APN has covered the controversy of attempts by some members of the CCA to limit public comment time at Committee meetings of the CCA. Plaintiff Cardinale requested that the City provide him a copy of the minutes at issue. Upon receipt of those minutes and upon seeing that the minutes were incomplete because the Council Members' votes were not documented, Plaintiff requested that the CCA cause the minutes to be amended and augmented to include the individual votes.

4. Defendant, City of Atlanta, is a municipal government. CCA is the policymaking body of the City, made up of fifteen Council Members and a non-voting Council President. CCA and the Atlanta Municipal Clerk are components of the City of Atlanta and are responsible for conducting public meetings in compliance with the Georgia OMA.

5. Defendant, Ceasar Mitchell, is the President of City Council. His office responded to a request for the minutes to be amended with a copy of a law department memo arguing that, despite the clear language of the Georgia OMA, the vote details did not need to be recorded.

6. Defendant, Felicia Moore, is the Chairwoman of Committee on Council ("COC"). She is the individual who conducted the vote whose details were not recorded. She stated that neither she nor the Clerk would revise the minutes.

7. Defendant, Rhonda Dauphin Johnson, is the Atlanta Municipal Clerk. She is the individual who composed and whose office produced the incomplete minutes. Moore stated that Johnson would not revise the minutes.

8. Defendant, Carla Smith, is a Council Member for District 1. She did not respond to Plaintiff's request for her to state how she voted.

9. Defendant, Ivory Young, is a Council Member for District 3. He did not respond to Plaintiff's request for him to state how he voted, and stated during a Committee meeting that he believed the Council had a right to an unrecorded, informal vote, and verbally invited any member of the public to spend their own money to challenge him on it.

10. Defendant, Alex Wan, is a Council Member for District 6. He did not respond to Plaintiff's request for him to state how he voted, and stated in an email to the City's law department that he had no intention of answering and wanted to make sure the City's legal team was prepared to defend him. He described Plaintiff's threat of a lawsuit as bullying tactics that he would not succumb to.

11. Defendant, Howard Shook, is a Council Member for District 7. He did not respond to Plaintiff's request for him to state how he voted.

12. Defendant, Joyce Sheperd, is a Council Member for District 12. She did not respond to Plaintiff's request for her to state how she voted.

13. Defendant, Lamar Willis, is a Council Member for the Post 3-at-large seat. He did not respond to Plaintiff's request for him to state how he voted.

FACTUAL BACKGROUND

Council Retreat and Vote on Public Comment Limits

14. On February 18 and 19, 2010, the CCA held its annual elected official retreat (also known as the "Council Retreat") at the Georgia Aquarium. According to Clerk Johnson, the meeting was advertised as a public meeting and was open for members of the public to attend, although it is not immediately clear whether the meeting was adequately advertised in compliance with the law.

15. During the second day of the Retreat, on Friday, February 19, 2010, the CCA took a vote on whether to establish the so-called "issue" of public comment as a priority of the COC, for the Council to draft rules which would limit public comment in every Council Committee.

16. The vote was 7 to 8--that is, 7 yeas and 8 nays--thus, representing a collective decision to keep the current rules governing public comment. The current rules are that each committee sets its own rules. Members raised their hands to indicate a yes or no vote, and Moore counted the totals. However, the vote details were not recorded.

Request for Minutes

17. On March 01, 2010, Plaintiff made a written request to the Office of the Clerk for a copy of the official minutes of the Council Retreat.

18. On March 08, 2010, the Clerk's office sent a copy of the minutes to Plaintiff by email (See: EXHIBIT A). A copy was also sent to the Atlanta Progressive News post office box.

19. The minutes stated the following in regards to the vote on public comment:

"During a working lunch, Council members discussed public comment at Council committee meetings. Committee on Council (COC) Chair Felicia Moore polled the members (emphasis added) asking if they wanted to amend the current governing Code Section 2-136 entitled Remarks from Public, to set uniform time limits/ rules for public comment at committee meetings," the minutes stated.

"After an extensive discussion it was determined that the membership was not in support of amending the existing law. Currently, public comment time limits are set (or not) at the discretion of the Committee chair," the minutes said. "According to Robert's Rules of Order, which the Council and its Committees operate under, a Chair's decision may be overruled by a required vote of the membership."

20. The minutes did not state how many members voted against the proposal or abstained, nor list who they were.

21. On or around March 08, 2010, Clerk Rhonda Dauphin Johnson spoke with Plaintiff by telephone to explain why the vote details were not recorded. Johnson stated the reason was because it was not a vote on legislation, but was a "straw poll."

22. On or around March 08, 2010, Councilwoman Felicia Moore (District 9) spoke with Plaintiff by telephone regarding the vote at the Retreat and gave the same explanation for why the vote details were not recorded as Johnson did.

APN Challenges CCA On Georgia OMA Compliance at Council Meetings

23. On April 19, 2010, Plaintiff spoke at the COC, of which Felicia Moore is Chair. Plaintiff distributed copies of the Georgia OMA to all Members of the Committee, with highlighted sections. A video of this meeting is available on the World-wide Web at:

<http://citycouncil.atlantaga.gov/media/CoC041910.wmv>

24. Plaintiff read the following section of the law aloud to the Committee:

"A summary of the subjects acted on and those present at a meeting of any agency shall be written and made available to the public for inspection," Plaintiff read aloud.

"Said minutes shall, as a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made (emphasis added) and a record of all votes," Plaintiff read aloud.

"In the case of a roll-call vote the name of each person voting for or against a proposal shall be recorded and in all other cases (emphasis added) it shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining," Plaintiff read aloud.

25. Plaintiff also added the following analysis:

"Again, the minutes, which I obtained, did not list how anybody voted at all," the Plaintiff said.

"So if it wasn't a roll-call vote, then, you know, if it was unanimous, that would be one thing; but if it was split in any way--and I understand the decision was 8 to 7--my understanding is that that should have been listed," the Plaintiff said.

"I believe the action taken could've fallen under 'other proposal' made," the Plaintiff said.

"I think this is important. This isn't personal for anybody. This is about public policy," the Plaintiff said. "First of all, my readers want to know... how people voted. It was a public meeting. Moreover, I am concerned about the precedent this sets and how this could be used in the future. Could this be used as a mechanism for the Council at a Retreat, at a private--well, I guess it wasn't private--but at a private place, make a decision that is too controversial to make publicly, and this is kind of a back-door way to do that?"

26. Councilwoman Moore replied that she had asked the law department to provide an opinion on the matter. She stated that if the law department said it needed to be done the way Plaintiff had described, that she did not have a problem with it.

27. Plaintiff then verbally requested of Moore that the minutes be amended to include the omitted vote information. Moore said Plaintiff could poll Council Members himself, but that the vote was not otherwise recorded. She said she personally voted to keep the current rules.

28. Later that day, Plaintiff also spoke at the Full Council meeting, where Council President Ceasar Mitchell presides. The clip is available on the World-wide Web on the Council's website and also has been published on Youtube at: <http://www.youtube.com/watch?v=ccldc7Zjp2k>

29. Councilwoman Moore reiterated that she had asked the law department to provide an opinion on the matter.

Letter to Council President Mitchell, Requesting Minutes to be Amended and for Legal Opinion

30. On April 20, 2010, Plaintiff sent an email to Council President Mitchell (See: EXHIBIT B) officially requesting:

"I'm requesting two things: (1) that your office explain why you believe you're in compliance with the Open Meetings Act, if you do believe that."

"(2) And that the incomplete minutes be amended to include how people voted, that is unless you have something to hide."

31. On April 27, 2010, Plaintiff sent a follow-up email to Mitchell, asking whether he intended to reply (See: EXHIBIT C).

City Attorneys Argue Vote Details Did Not Need to Be Recorded

32. On April 27, 2010, Mitchell's staff member, Stephanie Johnson, replied to Plaintiff on behalf of Mitchell, sending a copy of a legal opinion (See: EXHIBIT D) authored by Peter J. Andrews, Acting City Attorney, and Kristen Denius, Assistant City Attorney.

33. The legal opinion, authored on April 23, 2010, and written in a memo to Councilwoman Moore and Clerk, Ms. Rhonda Dauphin Johnson, argued that the vote details did not need to be recorded because it was not a roll-call vote:

"The minutes of the Atlanta City Council Retreat do not violate the requirements of the Georgia Open Meetings Act. These minutes include a description of the straw poll that was taken and the results of the vote. As this was not a roll-call vote, the law does not require that the names of each Council member voting for and against the proposal be recorded in the minutes," the memo stated.

Chairwoman Moore Refuses to Amend Minutes

34. On April 28, 2010, Councilwoman Moore sent an email asking whether the law department could release a copy of its memo to Plaintiff, copying Plaintiff and others on the email. Apparently, she was unaware Plaintiff already had a copy of the memo.

35. On April 28, 2010, Plaintiff replied (See: EXHIBIT E) that a copy of the memo was already received and that it was disappointing. Plaintiff again cited the Georgia OMA and asked, "Perhaps you should request the law department to reconcile their assertions with the clear language of the law?"

"I believe that you in good faith requested the law department's opinion, but it appears their only goal was to defend the actions already taken by the City," Plaintiff wrote.

Plaintiff said lawsuit was already being drafted and offered to settle out of court. Plaintiff reiterated request for amended minutes and wanted to ensure that the secret votes would not happen again, especially given the law department's defense of the practice.

36. On April 29, 2010, Councilwoman Moore replied (See: EXHIBIT F):

"The 'goal' of asking the law department's opinion was to get a legal opinion. One was received and you got a copy of it. I'm sorry you were disappointed. Neither I nor the Clerk will be asking members how they voted. Perhaps your lawsuit will help you reach your 'goal'. I have no need to further discuss this issue with you."

37. Plaintiff has exhausted all administrative remedies with respect to the incomplete meeting minutes produced by the CCA.

APN Emails All Fifteen Council Members to Request how They Individually Voted; Nine Respond

38. On April 30, 2010, Plaintiff emailed all 15 Council Members to request information on how they voted (See: EXHIBIT G), to see whether they individually were in agreement with the secretive character of the vote or whether they were willing to be transparent.

39. On May 01, 2010, Councilman Kwanza Hall's Chief of Staff emailed to report Hall's vote (See: EXHIBIT H). "Thanks for your e-mail. Kwanza reports that he voted, with Felicia and Michael, not to change the current procedure of leaving things to the discretion of each committee." Hall is not included as an individual defendant.

40. On May 02, 2010, Councilwoman Natalyn Archibong emailed to report her vote (See: EXHIBIT I). "I supported the continuation of our current practice of allowing each committee to exercise discretion." Archibong is not included as an individual defendant.

41. On May 03, 2010, Plaintiff spoke before Full Council and reminded Members of the request for how they voted. A video of this speech is available at:
<http://citycouncil.atlantaga.gov/media/fc050310b.wmv>

42. On May 03, 2010, Councilman C.T. Martin emailed to report his vote (See: EXHIBIT J). "I would like to thank you for your email. I voted no [to continue to allow discretion to each Cmte]. If you have any questions or concerns please contact me at 404-330-6055." Martin is not included as an individual defendant.

44. On May 04, 2010, Plaintiff sent a second email reminder to the remaining Members who had not disclosed their votes (See: EXHIBIT K).

45. On May 04, 2010, Councilman Michael Bond, who had already stated his vote verbally to Plaintiff, reported his vote again in an email (See: EXHIBIT L): "I voted in support of 'public comment.'" Bond is not included as an individual defendant.

43. On May 05, 2010, Councilwoman Keisha Lance Bottoms reported her vote verbally to Neighborhood Planning Unit R. On May 06, 2010, Plaintiff emailed Bottoms to confirm the information, writing: "Ben

Howard reported that you stated at last night's NPU meeting that you voted yes to draft legislation limiting public comment in all Cmtes..." Bottoms responded (EXHIBIT M): "Hi Matthew. Yes, that is correct. As Mr. Howard may have told you, I shared my reasoning with the NPU." Bottoms is not included as an individual defendant.

46. On May 07, 2010, Councilwoman Clea Winslow reported her vote verbally in a phone conversation with Plaintiff. She stated she voted to keep the current rules in place. Winslow is not included as an individual defendant.

47. On May 07, 2010, Councilman Aaron Watson's Chief of Staff, Jill Strickland Luse, sent the following statement reporting his vote (See: EXHIBIT N): "I appreciate your interest in keeping our government transparent and honest by questioning the activities of the Atlanta City Council during its retreat held last February. At the retreat, I indicated that I would support each council member having the authority to limit public comments during committee meetings."

APN followed up with Luse in a phone conversation, clarifying that all committees currently have discretion to set rules, and asking whether Watson's vote was a yea vote to draft rules affecting all Committees. Luse said yes. Watson is not included as an individual defendant.

48. On May 09, 2010, Councilwoman Yolanda Adrean reported her vote in an email (See: EXHIBIT O): "Yes, I got your email. I regret that you feel this is a necessary step. The purpose of the retreat was to share ideas and not act in an official capacity. I voted not to change the rules. I am telling you this not in fear of a misdemeanor, but to put you on notice that we were simply discussing an idea during a retreat and I believe, regardless of vote, all my colleagues are devoted to service and relationship with their constituents and have nothing to hide." Adrean is not included as an individual defendant.

49. On May 09, 2010, Plaintiff emailed a final request to the Council Members who had not replied (See: EXHIBIT P). None of the remaining Council Members have responded and are included as individual defendants in this lawsuit: Smith, Young, Wan, Shook, Sheperd, and Willis.

50. Plaintiff has confirmed by telephone the receipt of the previously sent emails with the offices of each of the Council Members who have not responded, except for Smith.

On May 07, 2010, at 11:27am, Mi Lan Henderson confirmed receipt of emails by Council Member Young.

On May 07, 2010, at 10:46am, Sheila Poole confirmed receipt of emails by Council Member Wan.

On May 07, 2010, at 10:49am, Corona Horton confirmed receipt of emails by Council Member Shook.

On May 07, 2010, at 10:57am, Latoya Johnson confirmed receipt of emails by Council Member Sheperd.

On May 07, 2010, at 11:22am, Adrienne Smith confirmed receipt of emails by Council Member Willis.

Council Member Smith wrote in an email to Plaintiff that she had not received emails. Plaintiff then spoke with Smith's assistant, Brenda, who said Smith would not be able to respond in time for the filing of this complaint.

Councilman Young Defends Secret Vote, Invites Lawsuit

51. On May 11, 2010, at the Community Development and Human Resources Committee meeting, community activist Ben Howard remarked that another city, Peachtree City, videorecords its retreats. In response, Young and Wan launched into speeches regarding their personal philosophies regarding public comment. However, neither of them stated how they voted. A video of this exchange is available on the World-wide Web at: <http://citycouncil.atlantaga.gov/media/CD051110.wmv>

During Young's remarks, he defended the secret vote by arguing that it was an informal poll where Council Members were merely asking each other their opinion. "No vote was taken. And so, I encourage anybody that wants to challenge that to do so, if they want to spend their funds to do it. But I didn't take a vote, I was polled, somebody asked me a question, but you will never see as a formal record of any sort a vote that was taken on the opinion on public comment," Young said.

Councilman Wan Refuses to Respond, Seeks Legal Backing

52. On May 11, 2010, Plaintiff emailed Young and Wan to clarify to them that they had still not publicly stated how they voted, even though they had generally remarked on their philosophies.

53. On May 11, 2010, Wan copied Plaintiff on an email to the law department, stating that he had no intention of replying to what he referred to as Plaintiff's bullying tactics (See: EXHIBIT Q): "I have no intentions of answering his question. I don't appreciate this manner of bullying over a matter I believe he will have little or no grounds for any lawsuit. I base much of that on the written opinion you provided to Councilmember Moore... about this matter," Wan wrote. "That said, I wanted to make sure that as our counsel, you're comfortable with my position and that if he does end up filing the lawsuit as threatened that the City is prepared to defend me and any other Councilmembers that choose not to submit to his tactics."

CAUSES OF ACTION

FIRST CAUSE OF ACTION

53. Plaintiff has a statutory right under Georgia OMA to complete records of the February 2010 Council Retreat, including details of votes on all motions and other proposals, as to which the City has failed to produce. No legal basis exists for Defendants' failure to produce complete records

SECOND CAUSE OF ACTION

54. Plaintiff has a statutory right under Georgia OMA to complete records of the February 2010 Council Retreat, including details of votes on all motions and other proposals, even if the City originally failed to produce such records. No legal basis exists for Defendants' failure to attempt to produce the records through amendment.

THIRD CAUSE OF ACTION

55. Defendants have a statutory obligation to observe the Georgia OMA in their administration of public meetings. No legal basis exists for the City to argue it has no obligation to produce complete records of open meetings. The City continues to misrepresent the Georgia OMA, suggesting that these violations will continue to occur.

FOURTH CAUSE OF ACTION

56. Defendants have a statutory obligation to observe the Georgia OMA in their administration of public meetings. However, six out of fifteen Council Members have failed to respond to a request for them to state how they voted, and at least two have argued that they are legally entitled to keep their votes a secret, suggesting that these violations will continue to occur.

CLAIM FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

(A) Declare that Defendants' failure to record the vote details is unlawful under Georgia OMA, pursuant to O.C.G.A. § 50-14-5 (a);

(B) Declare that Defendants' position--that it is unnecessary to record those voting in the minority on a proposal in non-role call votes--is inconsistent with the Georgia OMA, pursuant to O.C.G.A. § 50-14-5 (a);

(C) Grant injunction ordering Defendants City of Atlanta and Rhonda Dauphin Johnson to amend the minutes to include the omitted vote details. Order the six Council Members who have not yet done so, to disclose how they voted [if they have not already done so by the end of this proceeding], pursuant to O.C.G.A. § 50-14-5 (a);

(D) Fine the individual Defendants five hundred dollars (\$500) each and charge each with misdemeanors, in order to discourage Defendants from continuing to violate the law, pursuant to O.C.G.A. § 50-14-6;

(E) Pay any reasonable legal costs incurred by Plaintiff in bringing this action, pursuant to O.C.G.A. § 50-14-5 (b); and

(E) Grant all other appropriate relief.

Dated: May 17, 2010

Respectfully submitted,

MATTHEW CARDINALE