

Sunshine Laws from a Faculty Perspective

by

Theodore P. Hill, Professor of Mathematics Emeritus,
Georgia Institute of Technology

and

Hugh D. Hudson, Professor and Chair of History, Georgia State University, and
Executive Secretary of the Georgia Conference of the *AAUP*

The cover of the May-June 2005 issue of *Academe* posed the question “**Do We Need Sunshine Laws?**” referring to the article inside by Professors James Hearn and Michael McLendon on state versions of the federal Freedom of Information Act. The article reported results of their “in-depth study of sunshine laws” which included interviews with 92 people, namely, “members of governing boards; presidents, chancellors, and provosts of individual institutions; university attorneys; heads of faculty senates; education reporters; heads of university systems and state agencies; state attorneys general; legislators; and other informed observers”. No mention is made, however, of interviewing any ordinary professor who actually *filed* an open records request, or was *punished* for doing so.

What Hearn and McLendon’s article did **not** report was that their study was funded by the *Association of Governing Boards of Universities and Colleges*, whose website (<http://www.agb.org/>) proudly proclaims “*AGB serves 34,500 trustees, regents, presidents, chancellors, rectors, executive directors, board secretaries, [and] senior administrators*”. This may help put into context the authors’ claim (emphasized in large print) that “*Openness is a widely and deeply shared value among presidents, vice-presidents, and board members in higher education.*”

Our experience has been exactly the opposite – obtaining records from senior administrators, university lawyers and boards of regents is like pulling eyeteeth. The reason is very simple – few decision-makers are willing to expose errors to external examination. Congressmen, CEO’s, governors, and American presidents – all fight tooth and nail to prevent exposure of secret memos and dealings, particularly if those dealings suggest ethical or legal failings. Universities, unfortunately, are no different.

Hearn and McLendon present “dissenter and advocate views” that they admit “are, of course, caricatures.” In contrast, we will describe a number of concrete actual events, over seven years of open records requests in one leading university - the Georgia Institute of Technology (Georgia Tech), ranked as one of the nation’s top ten public universities by *U.S. News and World Report*. We hope that dissemination of this information will help both balance the record for *Academe* readers, and facilitate understanding and use of sunshine laws by rank-and-file faculty members.

In the mid 1990’s, one of us (TH) became concerned about misuse of public funds in his college, and made several Georgia Open Records Act requests to see certain of Georgia Tech’s basic financial records, **none of which were subject to disclosure under the Freedom of**

Information Act. One request asked to see the “source and disbursement of funds to and from” a mathematical research Center in the College of Sciences for the previous eight years, during which time the Center went through millions of dollars of state and federal support. After many delays, the university lawyers finally replied, first via emails, and then with a formal letter, saying that there were no such records [[ora01](#), [ora02](#), [ora03](#)].

Financial documents eventually extracted from the university via persistent Open Records requests suggested extensive misuse of public funds, and when the Chair and Dean refused to act, TH filed a grievance asking for an audit. Resulting audits found that “of course” financial records for the Center existed, and, not surprisingly, that the Center was running annual shortfalls of hundreds of thousands of dollars [[aud01](#), p 6]. The audits also found multiple instances of diversion of university funds for personal travel [[aud01](#), [ago01](#), [ago02](#)], for books, and even for a baby shower [[aud01](#), p 10]. The Georgia Attorney General’s review of the audit labeled the abuse of travel expenses at Georgia Tech “systemic” [[ago01](#), p 1], and ordered repayment [[ago02](#), p 3].

Subsequent investigations by the Georgia Tech Faculty Status and Grievance Committee found evidence of complicity by the Office of Legal Affairs in the false official responses to the Open Records requests [[fsg01](#), p 1], and labeled the denials of basic financial records “patently false” [[fsg02](#), p 1]. The Grievance Committee had already recommended reprimands for the persons who made the false statements [[fsg03](#)], and later the Committee also recommended external investigations [[fsg04](#), p 2].

The Georgia Tech President refused to approve reprimands or investigations, and the Board of Regents of the University System of Georgia upheld his decision. Perhaps board members in higher education in some states have a “widely and deeply shared value” in openness, as Hearn and McLendon claim, but the Georgia body that rules on all appeals of public university grievance decisions, the Regents’ Committee on Organization and Law, conducts its deliberations and reaches its decisions behind closed doors, with no explanations or written opinions or even handwritten notes of the proceedings.

In some Open Records requests by TH, Georgia Tech attorneys said they would not accept requests via email [[ora04](#), [ora05](#)] (they later admitted that email requests are perfectly legitimate). For another Open Records request, the university lawyers demanded \$1500 advance payment to search for records [[ora06](#)], knowing that, by Georgia law, the requestor pays costs after the records are produced. For other requests, the Georgia Tech attorneys withheld records claiming “attorney-client privilege” [[ora07](#)], even though the Georgia Attorney General had previously ruled that attorney-client privilege does not exist between state university lawyers and administrators. When confronted with this fact, the Georgia Tech Office of Legal Affairs admitted that it was true, but claimed they had not been aware of that ruling [[ago03](#), p 10].

At the annual evaluation following his initial Open Records Act requests, his supervisor wrote that TH performed “below expectations, [and was] counseled”, the only one of some 50 professors in his department rated below expectations. (A Regents-mandated external evaluation later placed his performance in the top ten in the department [[aau01](#), p 1]). The Chair said the

reason for the rock-bottom rating was “disservice”, specifically, for *use of the Open Records Act and Grievance processes*. No other reasons were given, and the Dean supported the evaluation.

The Grievance Committee unanimously found those actions to be a violation of basic faculty rights – writing, “Open Record requests are the right of all citizens of the State of Georgia”, and “grievance is the right of all Georgia Tech faculty” [fsg02, p 5], and recommended that the Chair and Dean be reprimanded [fsg02, p 7]. The Georgia Tech president again refused to reprimand, and the Regents again backed his decision. (A federal lawsuit filed against the Georgia Tech administrators for retaliation for using the Open Records Act was dismissed by the 11th Court of Appeals solely on grounds of sovereign immunity.)

As a last resort, TH contacted the AAUP, and HH (Executive Secretary of the Georgia Conference) wrote the Georgia Tech president about the retaliatory low evaluations and low salary raises for using the Open Records Act, citing the 1940 AAUP Statement of Principles on Academic Freedom and Tenure [aau01]. The Georgia Tech president did not answer that letter, and the following semester, his subordinate Dean of Sciences placed TH on involuntary leave of absence without pay. HH again wrote the Georgia Tech president about the retaliatory raises, adding that the new involuntary leave without pay issue “raises serious new questions regarding possible retaliation” for using the Open Records Act and Grievance processes [aau02]. He received a terse response, not from the president, but from the Georgia Tech Chief Legal Officer.

The Chancellor of the University System of Georgia, however, did respond, and discussions between Georgia Tech and the Georgia Conference ensued. With the help of HH and the AAUP, TH eventually received back salary, raises, and paid leave amounting to nearly half a million dollars.

The status of Open Records rights on the Georgia Tech campus, on the other hand, did not improve. In communication with the State Department of Administrative Services, Georgia Tech officials had previously said, “[TH] is something of an activist, having obtained many records through Open Records Act requests” [das01], thereby prompting state officials to provide legal defense funds for one of the Open Records critics, even after the judge ruled he was “not acting in the scope and course of his employment”. Later, that critic, and two other members of the mathematics department who spoke out publicly against use of Open Records, were promoted to Associate Chair.

For other professors, including the Grievance Committee itself, who were not aware of the Attorney General’s ruling against attorney-client privilege, the Georgia Tech attorneys simply continued to withhold information under claims of privilege [fsg05, fsg06]. Atlanta’s *WSBT Action News* investigated allegations based on documents obtained through Open Records, and on the 6 o’clock news on February 23 and 24, 2004, broadcast two *Whistleblower Reports* exposing some of the corruption, including double-billing of travel expenses and double-dipping of salaries.

The investigative reporter emphasized the crucial role played by Open Records requests, and the Georgia Tech spokesman countered by claiming that TH’s large number of Open Records Act requests had cost the university “more than a million dollars”. (Georgia Tech did not, however,

explain that estimate – by Georgia law, the records requester is responsible for all costs, searching and copying, after the first fifteen minutes of work on each request.) More importantly, the *WSBTV* Anchor quoted the *AAUP*'s representative, HH, as saying that the retaliation against TH for using the Open Records and Grievance processes was “severe”, and that it is the *duty* of professors to question the status quo – “If we did not challenge accepted wisdom,” HH said in the newsclip, “if we didn’t challenge authority, we would still be arguing the world is flat.”

These *WSBTV* reports made other Georgia Tech employees aware of their basic rights to records, and soon employees across campus who claimed retaliation, including campus policemen, custodians, and the Georgia Tech Barbell Club, as well as professors from Georgia Tech and other Georgia public universities, came to TH for tips in making Open Records requests. Realizing that his own retaliation was probably not unique within the College of Sciences, TH filed a new formal Open Records request to see copies of “All lawsuits filed against [that same Dean] since Jan 1, 2003”. The Georgia Tech Senior Attorneys’ official response was that “It is not clear what you mean by this request” [[ora08](#)], while the Regents Associate Vice Chancellor simply denied possession of any such documents [[reg01](#)].

After TH received independent confirmation of exactly such records, and presented it to the university and Regents’ attorneys, *then* they produced the documents [[reg02](#)], including records of a lawsuit filed by a tenured professor at Georgia Tech whom the Dean had summarily evicted from campus, without warning and without revealing the reason for the eviction [[law01](#)]. In this case, cover-up of its own treatment of faculty superseded any interest the university administration and Regents might have had in truthful responses to Open Records requests or other “openness”.

By Georgia law, citizens with complaints about violations of the Open Records Act by State employees (such as public university officials) are directed to report the violations to the State Attorney General for investigation. When TH filed a formal complaint containing 31 alleged violations of the Act by Georgia Tech, the AG promptly turned the investigation over to the Regents, while admitting that “was like auditing yourself.” The Regents assigned the investigation to a junior auditor (neither a Certified Internal Auditor nor a Certified Public Accountant) who closed the investigation without even interviewing the alleged victim [[ago03](#)]. The reason is very simple – the official legal counsel for the Regents, and Georgia Tech, is none other than the State Attorney General! Lawyers at all levels are loath to prosecute their own clients.

Hearn and McLendon conclude that, “Some problems, when considered under the *glare* [emphasis added] of sunshine, may end up being inadequately understood and addressed, ...[and] thus pose a dilemma”. What dictator would disagree with that statement? “Sunshine” is an unfortunate misnomer for state-level freedom of information laws - too much sunshine “glare”, as we all know, causes cancer, but too much *freedom*?

The article also concludes, “it seems more appropriate to view our commitment to openness as a still-evolving public policy experiment”. Should the federal Freedom of Information Act also be viewed as an *experiment*?

State open records laws complement the Freedom of Information Act, and are equally important, as easy to use, and as much a basic part of our democracy. All that is missing, perhaps, is an awareness of the power of sunshine laws in furthering the causes of academic freedom and civic responsibility.

Do we need sunshine laws in higher education? Not if it is in the best interest of state academic communities, and the citizens who support them, to have basic financial and administrative documents systematically withheld from public scrutiny. Otherwise, the answer must be an emphatic “Absolutely!”

REFERENCES

(All these documents were obtained in response to Georgia Open Records Act requests.)

- [aau01] [AAUP letter to Georgia Tech \(GIT\) President](#)
- [aau02] [AAUP letter to GIT President](#)
- [ago01] [Interoffice AG memo to GA Attorney General](#)
- [ago02] [Letter from GA Attorney General to GA Chancellor](#)
- [ago03] [GA Regents’ report of investigation of violations of Open Records Act](#)
- [aud01] [GIT Internal Audit Report](#)
- [das01] [Letter from GA Dept. of Admin. Services to GA Deputy Attorney General](#)
- [fsg01] [Letter from GIT Faculty Grievance Committee to GIT President](#)
- [fsg02] [Report from GIT Faculty Grievance Committee to GIT President](#)
- [fsg03] [Letter from GIT Faculty Grievance Committee to GIT President](#)
- [fsg04] [Report from GIT Faculty Grievance Committee to GIT President](#)
- [fsg05] [GIT Attorney’s email to GIT Faculty Grievance Committee](#)
- [fsg06] [GIT Faculty Grievance Committee email to GIT Office of Legal Affairs](#)
- [law01] Copy of lawsuit obtained from GA Board of Regents (document removed by request)
- [ora01] [GIT Attorney’s email response to Open Records Act request](#)
- [ora02] [GIT Attorney’s email response to Open Records Act request](#)
- [ora03] [GIT Attorney’s letter response to Open Records Act request](#)
- [ora04] [GIT Attorney’s refusal to accept Open Records Act requests via email](#)
- [ora05] [GIT Attorney’s refusal to accept Open Records Act requests via email](#)
- [ora06] [GIT Attorney’s demand for prepayment of Open Records Act costs](#)
- [ora07] [GIT Attorney’s claim of attorney-client privilege](#)
- [ora08] [GIT Attorney’s response to Open Records Act request](#)
- [reg01] [GA Regents Associate Vice Chancellor’s response to Open Records Act request](#)
- [reg02] [GA Board of Regents subsequent release of records of lawsuit](#)