

From: Keefe, Brendan [<mailto:bkeefe@11alive.com>]
Sent: 02 August, 2017 02:16 PM
To: Alexander, T.R.; Police Records Officer
Subject: Re: News Media Open Records Request

Capt. Alexander,

This is an addendum to our response to your citation of OCGA 35-3-37 in denying access to records from two cases. We stand by all previous assertions that the records requested should be produced.

Please review the email below that you sent to us on 27 March 2017. You provided 85 initial incident reports indicating that *"the original count of 97 included arrests that were not DUI,"* and further that *"there were no other reports excluded due to OCGA 35-3-37."* Cobb County has maintained all along -- in official memos, internal emails, reports to MADD and the Governor's Office for Highway Safety, and in Officer Carroll's annual review -- that Officer Carroll made 90 DUI arrests in 2016. It was puzzling then that we received only 85 initial incident reports as part of our 21 March 2017 request.

What happened to those other five cases?

We were clear in our original request, *"Pursuant to O.C.G.A. § 50-18-71(d), if any record responsive to this request is withheld, in whole or in part (including redactions or omissions), please provide us with the specific provision of the Open Records Act exempting the request from disclosure."* There was no exception claimed or any indication any documents had been withheld, contrary to law. We also added, *"Please also let us know the number of incident reports related to our request are entirely withheld because of similar expungements, or provide redacted records."*

Why then were the initial incident reports for case numbers 16023634 and 16025649 withheld from production on 27 March? Officer Carroll is the officer listed in the citations.

Even if these cases were sealed at that time, OCGA 35-3-37 does not restrict law enforcement access. You also had access to, and possession of, the unredacted DRE log from Officer Carroll (attached), which upon production to us contained improperly redacted toxicology data, even though the same information is routinely shared with other third parties (a non-governmental private organization). Only upon obtaining the unredacted DRE log yesterday through other means did we as journalists discover two more arrests from Officer Carroll that resulted in negative toxicology results for cannabis. This is entirely relevant to our investigation because these are two cases in which Officer Carroll completed the full DRE protocol and developed an opinion contradicted by the GBI lab report.

So you and your department were clearly aware of these two DUI arrests by Officer Carroll when you wrote to us that there were no other DUI arrests, AND no other OCGA 35-3-37 excepted cases. Now your department is claiming an exception to production under OCGA 35-3-37. If that status existed on 27 March, we should have been notified in your response and afforded the opportunity to challenge that determination. If that status has been newly conferred upon those cases in the intervening four plus months, then the records should have been produced back in March and the delay is entirely unreasonable.

These two cases were completely withheld to the point we did not even know they existed -- two cases that appear from the outside to be the most negative for the department.

Transparency means we the people should not have to constantly play 'go fish' to guess which public records the government is hiding. Please produce all records requested for these two cases – AND ANY OTHER INITIAL INCIDENT REPORTS FOR DUI ARRESTS FROM OFFICER CARROLL IN 2016 NOT PREVIOUSLY PRODUCED – without further delay.

O.C.G.A. 50-18-74 (a) *Any person or entity knowingly and willfully violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from this article, by knowingly and willingly failing or refusing to provide access to such records within the time limits set forth in this article, or by **knowingly and willingly frustrating or attempting to frustrate the access to records by intentionally making records difficult to obtain or review shall be guilty of a misdemeanor** and upon conviction shall be punished by a fine not to exceed \$1,000.00*

BRENDAN KEEFE

Chief Investigative Reporter

WXIA 11Alive (NBC/TEGNA)

Atlanta

(404) 291-2691

bkeefe@11alive.com

[@brendankeefe](#)

facebook.com/BrendanKeefe11Alive

C/TEGNA Atlanta)

bkeefe@11alive.com

m (404) 291-2691

[@brendankeefe](#)

facebook.com/BrendanKeefe11Alive

TIPS: theinvestigators@11alive.com

From: "Alexander, T.R." <T.Alexander@cobbcounty.org>

Date: Friday, August 4, 2017 at 2:43 PM

To: "Keefe, Brendan" <bkeefe@11alive.com>

Subject: FW: News Media Open Records Request

Mr. Keefe,

I looked into this matter and discovered an issue with programming in our Records Management System (RMS).

My original response indicating there were 97 reports was sent to you after I checked the database for the total of 2016 arrests using the "Arrest" module for Officer Carroll.

I've attached a screen shot which shows a total number of arrest in the Arrest Module. This list also included arrests that were not titled as DUI. After our correspondence regarding fees and the like, I forwarded your request to an Admin Supervisor in order to have my staff complete the request. They used the "Incident" module because you noted you wanted reports " of any other DUI arrest(s) during the calendar year 2016 in which Officer TT Carroll initiated the stop or was the arresting officer, including all alternate spellings, positions or titles of Officer Carroll". The supervisor believed this would be more inclusive of Ofc Carroll's involvements. However, as we have now discovered, the list of reports returned using this inquiry method , when performed by non-supervisory staff, does not include those reports that have been sealed.

When using the Arrest module or the "Master Name" module, the sealed report case number will appear. If an employee uses one of those query methods, they will check the case number in the Incident module and will be prevented from access to the actual report with a screen message indicating such. When I asked my staff if there were any "expunged" (restricted) records after the list was generated, they did not see the sealed reports while the reports were printed and prepared, so they answered "no".

I've included two report lists to demonstrate the issue: the first is a list of reports using the same incident query method as used by the employee when the request was originally fulfilled. You will notice that the case numbers for reports you are currently requesting are not included. The sequence of reports simply skips the numeric location. There are also only 82 reports included because additional reports have been restricted since your first request. The second list was generated by a supervisor showing the incidents listed in our system for Ofc Carroll during 2016 using the the same module. This list produced 91 reports because it includes the sealed records.

We were unaware of this discrepancy between the two query methods at the time. However, a comparison of the two lists indicates some case numbers either were restricted by the state at the time of your request, or have been restricted by the state since. I've also included a list of those reports. We cannot release these reports pursuant to OCGA 35-3-37.

I hope this clarifies the issue.

Sincerely,

Captain T. R. Alexander
Cobb County Police Department
140 North Marietta Parkway
Marietta, Georgia 30060
(770) 499-3915
t.alexander@cobbcounty.org