

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

BENTLEY MEDIA GROUP

Plaintiff,

v.

FULTON COUNTY DISTRICT  
ATTORNEY'S OFFICE,

Defendant.

CIVIL ACTION

FILE NO.: 24CV002511

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**FULTON COUNTY DISTRICT ATTORNEY'S OFFICE**  
**MOTION TO DISMISS AND BRIEF IN SUPPORT**

COMES NOW, Defendant, Fulton County District Attorney's Office, by and through the undersigned counsel, and moves this Honorable Court to dismiss the claims against it for failure to state a claim upon which relief can be granted, pursuant to O.C.G.A. § 9-11-12(b)(6) because the Fulton County District Attorney's Office is an entity not capable of being sued and because the requested material are statutorily exempt from disclosure under the Open Records Act.

**INTRODUCTION**

On February 26<sup>th</sup>, 2024, Plaintiff filed a Complaint against the Fulton County District Attorney's Office alleging an Open Records Act violation.<sup>1</sup> Plaintiff's claim is subject to dismissal because (1) the Fulton County District Attorney's Office is not a legal entity capable of being sued, and (2) the requested material are statutorily exempt from disclosure under the Open Records Act, O.C.G.A. § 50-18-70 *et seq.* ("the Act"). Accordingly, this Court should dismiss Plaintiff's Complaint with prejudice.

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<sup>1</sup> See generally the Complaint filed by the Plaintiff.

## **FACTS AS ALLEGED BY PLAINTIFF**

On January 11, 2024, Plaintiff made one (1) open records request to the Fulton County District Attorney's Office. (*See generally* Complaint). The Office of the Fulton County District Attorney acknowledged receipt of the request to view county records and responded pursuant to the Open Records Act. Notwithstanding receiving a response from the Office of the Fulton County District Attorney, on or about February 26, 2024, Plaintiff filed a Complaint alleging a violation of the Open Records Act. Plaintiff's civil action was brought against the Fulton County District Attorney's Office, an entity which is not capable of being sued.

## **ARGUMENT AND CITATION OF AUTHORITY**

### **A. Standard for Motion to Dismiss for Failure to State a Claim.**

A party may file a responsive pleading to assert that a complaint has failed to state a claim upon which relief can be granted. *See* O.C.G.A. § 9-11-12 (b)(6). A motion to dismiss will be granted where a complaint shows with "certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof," and the "movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought." *Walker v. Gowen Stores LLC*, 322 Ga App. 376, 376 (2013) (quoting *State of Ga. v. Singh*, 291 Ga. 525, 529 (2012)). Here, Plaintiff's Complaint must be dismissed because the Fulton County District Attorney's Office is an entity not capable of being sued.

### **B. Plaintiff's Complaint fails as a matter of law because the Fulton County District Attorney's Office is an entity not capable of being sued.**

Plaintiff's Complaint against the Fulton County District Attorney's Office should be dismissed as a matter of law because the Fulton County District Attorney's Office is not an entity

that can be sued. *Myers v. Clayton Cnty. Dist. Attorney's Off.*, 357 Ga. App. 705, 709–10 (2020). In *Myers*, the Georgia Court of Appeals explicitly stated that the office of the district attorney cannot be directly sued. *Id.* at 710. (“Although the position of district attorney is provided for in the Georgia Constitution, neither the Georgia Code nor the Georgia Constitution establishes the office of district attorney as a separate legal entity capable of suing or being sued.”) *See also Seibert v. Alexander*, 351 Ga. App. 446, 448 (2019) (holding that although the Georgia Constitution designated the county clerk of superior court as an officer of the county, nothing established the clerk's office as a separate legal entity, subject to direct suit). The holding in *Myers* was based on the general principle that in every action there must be a “legal entity as the real plaintiff and the real defendant.” *Id.* at 708 (citing *Georgia Insurers Insolvency Pool v. Elbert County*, 258 Ga. 317, 318 (1988)).

Georgia law recognizes only three categories of legal entities with the power to sue and be sued: “(1) natural persons; (2) an artificial person (a corporation); and (3) such a quasi-artificial persons as the law recognizes as being capable to sue.” *Id.*; *Cravey v. Southern Underwriters Association*, 214 Ga. 450, 453 (1958). In its reasoning, the appellate court found no instances in which the Georgia appellate courts or the federal courts have applied Georgia law to find that a district attorney’s office could be sued. *Id.* at 708-09. The Fulton County District Attorney’s Office is not a natural person, corporation, or a quasi-artificial person but a mere arm of the county government. *See Id.* at 709 (finding the office of the county district attorney to be an arm of the county government).

Furthermore, as persuasive authority, the District Court for the Northern District of Georgia has recognized that the Fulton County District Attorney’s Office was not a legal entity capable of being sued. *Tyner v. Howard*, No. 1:16-CV-4341-TWT-JFK, 2017 U.S. Dist. LEXIS 19876, at \*4

(N.D. Ga. Jan. 6, 2017).<sup>2</sup> Therefore, Plaintiff's claims against Fulton County District Attorney's Office must be dismissed as a matter of law and with prejudice.

**C. The records requested by Plaintiff are exempt from disclosure under the plain language of the Open Records Act.**

Even if Plaintiff had named an entity capable of being sued in the present civil action, this Court cannot provide Plaintiff relief because the records are exempt under the plain language of the statute. The Open Records Act does not require the disclosure of “[r]ecords of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity.” O.C.G.A. § 50-18-72 (a)(4). In *The Augusta Press, Inc. v. Roundtree*, 368 Ga. App. 64, 65-68 (2023), the Georgia Court of Appeals affirmed a trial court's dismissal of complaint when the requested materials were statutorily exempt from public release. Plaintiff's requested materials, which are records of meetings and communications with the White House and the DOJ, clearly fall under the statutory exemption as they concern a currently pending investigation and prosecution. Plaintiff's complaint recognizes that these communications concern the current prosecution of Defendant Donald Trump and members of the conspiracy to illegally overturn the 2020 presidential election in *State v. Trump, et al.*, Indictment No. 23SC188947 (Fulton Super. Ct). *See Comp.* at 3-4. Further, Judge McAfee acknowledged in his order denying Defendant Jeffrey Clark's motion to compel, which was the subject of the hearing from which Plaintiff has cited in its complaints, that the communications were created “during the State's investigation of this case.” Order on Defendant's Motion to Compel, *State v. Clark*, Indictment No. 23SC188947 at \*7-8 (Fulton Super. Ct. Feb. 6, 2024). There is no question that the records sought concern an ongoing investigation and prosecution. Therefore, under the plain language of O.C.G.A. § 50-18-

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<sup>2</sup> The court in *Tyner* screened a pro se prisoner's complaint under 28 U.S.C. § 1915A for whether it failed to state claim upon which relief may be granted, which is the same standard under Federal Rule of Civil Procedure 12(b)(6). *Leal v. Ga. Dep't of Corr.*, 254 F.3d 1276, 1278 (11th Cir. 2001).

72 (a)(4), Plaintiff's complaint must be dismissed as the records Plaintiff requests are statutorily exempt from disclosure.

For the reasons detailed above, this Motion to Dismiss should be GRANTED, and the Complaint should be dismissed with prejudice.

Respectfully Submitted this 3rd day of April, 2024.

**FANI T. WILLIS**  
District Attorney  
Atlanta Judicial Circuit

/s/Grant Rood  
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**CERTIFICATE OF SERVICE**

This is to certify that I have electronically filed the foregoing **DEFENDANT'S MOTION TO DISMISS AND BRIEF IN SUPPORT** with the Clerk of Court using the CM/ECF system, which will provide email notification of said filing to all attorneys of record:

This 3rd day of April, 2024

/s/Grant Rood

**Grant Rood**

**Georgia Bar No. 955552**

Deputy District Attorney

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