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JUNE 9, 2005

Role of FAA debated in PDK open records hearing

BY [MARY SWINT](#)

Last Thursday morning, after years of meetings to share their suspicions about the neighboring airport and letters to the county and the Federal Aviation Administration (FAA) seeking information about the planes flying over their homes, about 25 DeKalb residents finally heard the facts in the DeKalb Peachtree Airport (PDK) open records case debated in a court hearing.

Charles "Mickey" Feltus, who has lived near PDK for over 20 years, and other residents have sent over 100 open records requests to DeKalb County since 2000 and at least nine requests to the FAA. Feltus brought the lawsuit in DeKalb Superior Court on May 14, 2004 under the Georgia Open Records Act (ORA) to force DeKalb County, Chief Executive Officer Vernon Jones, Airport Director Carl "Lee" Rimmel and PDK to respond fully to his records requests made in January.



Brandon Hornsby

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DeKalb County Attorney Vivica Brown argued at the June 2 hearing that the defendants were caught between a rock and a hard place in dealing with the open records requests. She noted the FAA has sent letters to the airport refusing to allow the release of certain sensitive data. She also said the county has contractual obligations to the FAA under a memorandum of agreement not to disclose certain data and the FAA could cut off an information stream needed by the airport's system. "The plaintiff's arguments are passionate and the FAA is vehement," Brown told Judge Robert Castellani.

Plaintiff's attorney Brandon Hornsby of Atlanta responded that the FAA memorandum of agreement does not prohibit the airport and county from producing records if required by law. Hornsby cited the unofficial opinion of Georgia's Attorney General issued earlier this year.

Noting that the defendants had referred earlier record requests to the FAA, Hornsby pointed out a letter from Ruth Leverenz, an FAA assistant administrator in Washington, to another PDK neighbor, Evelyn Brethour.

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The letter said the FAA does not “generate or maintain” the data and reports Brethour (and Feltus) were seeking. Leverenz also wrote there was nothing in the MOA prohibiting Brethour from receiving data she requested from DeKalb County. The letter came at the end of Brethour’s two year appeal of the FAA regional office’s denial of her records request.

Hornsby also pointed out an October 1, 2002 fax from Rimmel to Frances Mulkey, facility manager of the FAA Atlanta Control Tower. In it, Rimmel said he was attaching a draft response to an open records request PDK had received and said, “this allows you enough time to respond telling us we cannot release such data in accordance with the MOA, etc, etc. However, we do need this in writing, so that we can base our Airport/ County response based on your determination.”

The defendants have refused plaintiff’s requests for computer reports containing FAA registration numbers called N-Numbers for aircraft using PDK. They have argued these numbers are sensitive information and should be protected as part of Homeland Security.

Hornsby pointed out that N-Numbers are available on the FAA web site and in monthly reports published by PDK’s Noise Information Office and are visible on the exterior of the planes. On one report PDK ran for Feltus, the N-Numbers were redacted.

Brown and Hornsby disagreed over how many standard reports have been requested, how difficult it is to run the reports, and whether the county overcharged Feltus for the documents produced. Brown said the records from 1999 to 2002 are stored on compact discs and the law does not require the defendants to search cd’s. They also disagreed over whether the airport would need a new hard drive in order to run the reports. Hornsby pointed out that this objection was raised only recently.

In addition to motions for summary judgment, the hearing covered the defendants’ claim that two memos prepared by the DeKalb Law Department should not be used as evidence since they are confidential under the attorney-client privilege. Former DeKalb Commissioner Judy Yates gave the memos to Feltus while still in office. Brown argued Yates could not waive the privilege for the county, while Hornsby said there is an exception for whistle blowers.

The plaintiff is trying to strike Rimmel’s affidavit, which says he searched the records for Jones. Hornsby contends Jones ignored the records requests.

Castellani gave the defendants until June 13 to respond to the Feltus motion for partial summary judgment filed on May 6. Susan Gouinlock, an attorney who has volunteered her time to help Feltus, said the judge probably would not rule in this case until late July.

“I think the evidence from the community side was pretty compelling, in terms of documentation and the facts,” said Norma Herd, who has been one of the leaders of the PDK Watch group for five years. “The community has always felt the facts were buried.” Herd believes the county stonewalled on the records requests. “That is why we are in court. It is not the place we want to be, but it is the place we have to be.”

If successful in showing a violation of the Open Records Act, the plaintiff can later try to prove the defendants acted in bad faith in failing to produce the requested records. The plaintiff claims DeKalb County has allowed large planes weighing 90,000 to 100,000 pounds to use the airport for 20 years despite the county's promise to the Eleventh Circuit Court of Appeals and the FAA that they would limit PDK to planes weighing no more than 66,000 pounds. Based on this promise, PDK received federal funds for runway expansion and did not have to conduct a large environmental study on the planes' impact on nearby neighborhoods. Feltus also contends the county has concealed the identities of aircraft owners and prevented the tax assessor from collecting ad valorem taxes on many aircraft.

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