

Writing the Final Chapter of the PDK Records Saga

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[Rep. Mike Jacobs](#)

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In August 2005, DeKalb residents won an important victory for openness and transparency in our county government. That was the month Judge Robert Castellani granted summary judgment to residents who were seeking records concerning the flights into and out of DeKalb Peachtree Airport (PDK).

Judge Castellani's order forced DeKalb County to comply with the wishes of residents who wanted nothing more than to keep a watchful eye on the activities of the county government at a county-owned facility.

That sort of openness and transparency should be guaranteed. It shouldn't require a lawsuit that costs residents expensive legal fees in order to obtain the records they are seeking. It also shouldn't embolden DeKalb County to waste substantial amounts of our tax dollars mounting a baseless legal defense to hide records from public scrutiny.

But that's exactly what the DeKalb County administration decided to do. Their legal defense was based in part on an exception in the Georgia Open Records Act that provides public records may be withheld from disclosure if "specifically required by the federal government to be kept confidential." Abusing this exception, DeKalb claimed that a confidentiality clause in a contract the county had negotiated with the Federal Aviation Administration (FAA) was the basis for hiding PDK records from public view. In essence, the county was saying they could sit down behind closed doors and write a contract with the FAA that would negate the Georgia Open Records Act.

That's not the way the "federal government" exception is supposed to work. The exception is only meant to exempt records "specifically required by federal statute or regulation to be kept confidential." The exception is intended to codify a basic legal principle known as preemption, i.e., that the provisions of federal law preempt state law. Attorney General Thurbert Baker issued a legal opinion confirming this interpretation of the exception. Fortunately for DeKalb residents, Judge Castellani agreed with Baker.

Representative Jill Chambers and I have introduced House Bill 39, which changes the wording of this exception to the Open Records Act once and for all. It is our hope that, by making the limited purpose of the exception crystal clear, citizens and taxpayers will never again be forced to spend large sums of money in a legal dispute over records, related to PDK or otherwise, that should have been disclosed in the first place.

DeKalb County's stubborn legal defense was so completely without merit that, at the end of the PDK open records lawsuit, they were ordered and agreed to pay \$150,000 of the citizens' legal expenses. That should not happen again.

House Bill 39 passed the House of Representatives on February 2nd by a vote of 166-0 and is awaiting consideration in the State Senate.

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