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DEKALB AIRPORT DISPUTE SPURS OPEN RECORDS CHALLENGE

*FAA, PDK say agreement shields
data from public scrutiny*

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In the latest round of a two-decade fight to prevent DeKalb Peachtree Airport from becoming "Hartsfield North," airport neighbors have accused county and airport officials of violating the state's open record laws.

The suit—the second filed since 1987 by residents living near the north DeKalb County airfield—claims that county and airport officials are withholding public records that would prove the airport is being used routinely by large planes prohibited from landing there.

According to Atlanta attorney D. Brandon Hornsby, who is representing a neighbor and former member of the airport's advisory board, officials have rejected more than 100 formal public records requests for information on planes using the airport. The airport's director has cited a formal agreement with the Federal Aviation Administration that prevents him from



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Plaintiffs' lawyer D. Brandon Hornsby: PDK officials have denied more than 100 requests for information on planes.

releasing the data.

Hornsby said that information has been kept from the public only because the government agencies have included confidentiality provisions in the interagency agreement that effectively exempt them from the state's open records laws.

The public records battle has culminated in a suit in DeKalb County Superior Court, *Feltus v. DeKalb County*, No. 04CV5630-1 (DeKalb Super. May 14, 2004), in which neighbors seek to force the airport to release data on the number, size

and noise levels of aircraft flying into PDK. Residents hope to prove that the airport is allowing large passenger and cargo jets to use PDK in violation of county policies that ban large planes.

Thomas M. Clyde, who has litigated a number of open records requests for local media, wouldn't comment on this case, but in general, he said, "a government agency cannot get around the Open Records Act by signing an agreement saying it won't apply.

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The Open Records Act is the law of this state. It's not optional."

Airport director Carl "Lee" Rimmel declined comment on the suit and referred questions to DeKalb County Attorney Charles G. Hicks. Hicks was unavailable for comment. County spokesman Burke Brennan said the law department has informed him that the county will have no comment on the litigation.

A 20-Year Fight

The suit is part of a larger fight that PDK neighbors have waged for nearly 20 years.

Residents unsuccessfully sued the FAA in 1987 in an effort to stop DeKalb from extending a runway that they claimed was the first step in expanding PDK to accommodate more and larger planes.

Plaintiff Charles "Mickey" Feltus said that he and others sued in 1987 because they suspected that county officials were lying to them. "We were afraid they wanted to bring in larger, bigger planes, scheduled passenger service, scheduled cargo service and make it Hartsfield North.... We still are."

PDK neighbors have photos of planes as large as DC-9s and Gulfstream V's that have landed at PDK over the past year. County authorities have insisted for years that no planes larger than mid-size corporate jets may use PDK, and that its tarmac was not built to support heavier aircraft.

More than a year ago, airport neighbor Thomas J. Swendiman, a retired employee of Lucent Technologies, began taking photos of the large airplanes that he said routinely use PDK in violation of county policies.

The larger planes have dramatically increased noise pollution, and water and air pollution from jet fuel and exhaust, he said.

"I worry about what size the airport is going to be. It's going to get to the point where it's intolerable to live here," said Swendiman, who bought his home in 1972. "They basically can do what they want to over there, and that's what they've done."

County May Be Losing Tax Money

In their open records requests, neighbors have asked for detailed information



PHOTOS BY THOMAS J. SWENDIMAN

Neighbors of PDK have photographed prohibited planes, including this DC-9, landing and taking off at the county airport.



about the planes that use the airport. The suit claims that all the information is captured by a computer system called the Airport Noise and Operations Monitoring Systems, or ANOMS.

The suit claims the sought-after records will show that the airport has been understating the number of planes housed there whose owners would be subject to the county's ad valorem taxes. Hornsby said the county is losing an estimated \$2 million a year in uncollected taxes on unreported planes.

Eugene James, DeKalb's chief tax assessor, wasn't available for comment.

'Go Fly a Kite'

The county's response to open record requests has been "to go fly a kite," Hornsby said. In letters to Hornsby and PDK neighbors, airport director Rimmel has cited a memorandum of agreement between the county, the city of Atlanta, PDK and the FAA in which the agencies agreed to keep ANOMS data confidential, unless authorized for release by the FAA. That same information is available under federal open records laws elsewhere in the country, Hornsby said.

The former Clayton County prosecutor

said that he has "never in Georgia" seen government agencies use an interagency agreement to exclude themselves from sunshine statutes.

"It renders the sunshine laws meaningless," Hornsby said. "Basically, it allows them to circumvent everything that the Legislature has done. You no longer have open government. It's secret government."

Hornsby said that neighbors have obtained correspondence between airport and FAA officials in which the airport's director details how to thwart the public records requests using the interagency agreement.

The FAA regional office then refused to release the requested records. But after PDK neighbors appealed, FAA officials in Washington responded in a March 2004 letter that the DeKalb airport, not the FAA, had the requested information and the authority to release it.

"This airport was the only one in the country that came up with a policy that said you can't give that information out," Feltus said. "Why do they withhold information? The reason to me is very simple. It's not the same airport it was. And it would prove that they lied." □