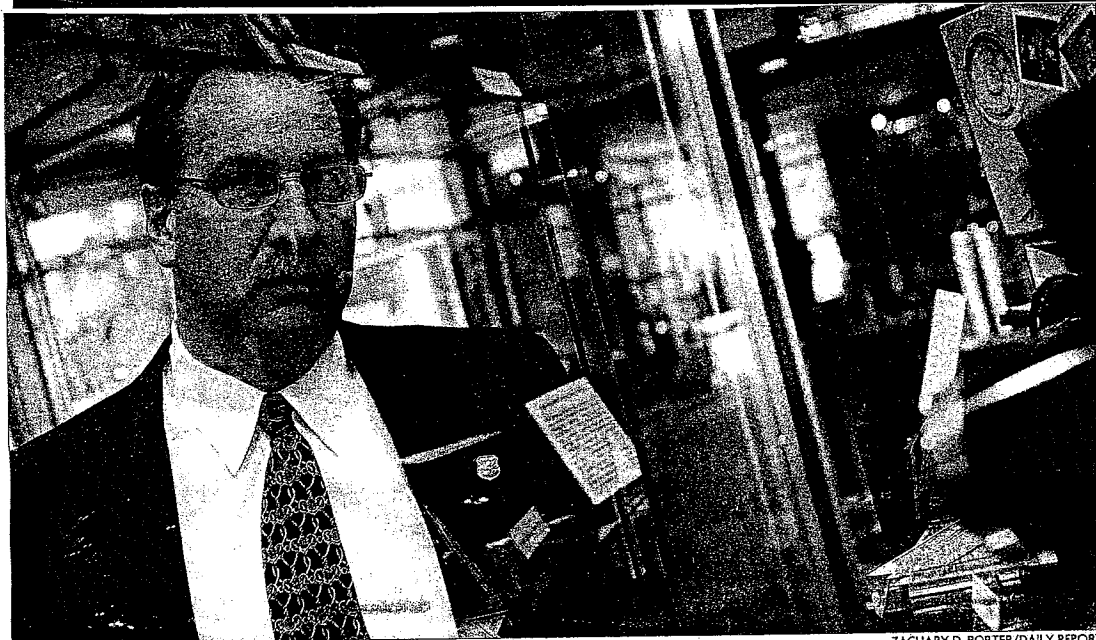


# DAILY REPORT

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ZACHARY D. PORTER/DAILY REPORT

GBI legal chief Mark Jackson fears making violations a felony may punish agency employees for honest mistakes.

## Open Records revamp stirs up debate

LEGISLATOR'S PROPOSED CHANGES have GBI, media and good-government groups speaking up  
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STATE REP. JILL CHAMBERS got the ball rolling this month on rewriting the Open Records Act, she said, because she wants to strengthen the law by increasing penalties, eliminating some exemptions and placing all the exemptions, which now are scattered throughout the Georgia code, in one place.

It turns out lots of other folks want something from this conversation, too.

The Georgia Bureau of Investigation wants its employees, who respond to thousands of Open Records Act requests each year, to be shielded from being charged with a felony for mistakenly violating the law. Current sanctions call for a misdemeanor penalty.

Newspapers and television stations want tougher sanctions imposed on governments when they don't

comply with the law. Oral arguments in a related dispute involving the Athens Banner-Herald and the Athens-Clarke County Police Department are scheduled for Dec. 3 at the Supreme Court of Georgia.

Good-government organizations such as Common Cause and the League of Women Voters want to create a new climate where government agencies think about how to comply with the Open Records Act rather than how to avoid it. These two groups also want to eliminate some of the Open Records Act's countless exemptions.

The Georgia First Amendment Foundation doesn't want anything in the law changed.

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➔ Find a list of existing exemptions from the Open Records Act at [dailyreportonline.com](http://dailyreportonline.com).

## Open Records Act rewrite has all sides voicing their opinions

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Chambers, the two-term Atlanta Republican who opened this can of worms, said a rewrite of the Open Records Act may be the most important project she undertakes during her time as a legislator.

"When I hit the campaign trail and people ask me why I'm running for office, I tell them it's because I want to get revenge on the government for taxing me," Chambers said. "What better way to get revenge on the government than to open it up and get as many eyes as possible on what they're doing."

Chambers said that House Speaker Glenn Richardson and House Rules Committee Chairman Earl Ehrhart both had told her they supported her efforts. Chambers also said during a Nov. 19 meeting at the state Capitol that if at any point during the legislative session next year someone tried to hijack her bill to weaken it, she would withdraw it and kill it.

"If we err on the side of anything, it's going to be to strengthen the Open Records Act," she said.

But some Democrats and the Georgia First Amendment Foundation question whether strengthening the Open Records Act is really what Chambers, Richardson and Ehrhart have in mind.

Rep. Rob Teilhet, D-Smyrna, said Richardson had "consistently opposed" attempts to toughen the Open Records Act and that he voted against former Gov. Roy Barnes' changes to the law in 1999.

"I get very nervous when this crowd talks about clarifying the Open Records Act," Teilhet said.

Gov. Sonny Perdue does not comment on pending legislation, said spokesman Bert Brantley. Lt. Gov. Casey Cagle has not

yet taken a position on the issue, said his spokeswoman, Jaillene Hunter.

The Georgia First Amendment Foundation has expressed skepticism about Chambers' effort. Hollie Manheimer, a Decatur attorney who is executive director of a nonprofit group, which advocates for open government, said that while she thought the Open Records Act could use some tweaking, the law otherwise works fine and doesn't need a major overhaul.

Manheimer also echoed Teilhet's misgivings, observing that some Republicans have been hostile to previous attempts to beef up the Open Records Act. "This is simply too sweeping an effort, too late in the process, in a political environment that has demonstrated too much hostility to access" to records, Manheimer said.

The First Amendment Foundation's board has 27 members, including journalists, publishers, academics and attorneys.

One member of the foundation's board is DuBose Porter, in his capacity as editor of the Courier Herald newspaper in Dublin. But Porter also has another role, one that isn't terribly friendly to Chambers and her Republican counterparts; Porter is the Democrats' leader in the state House, a position in which he frequently clashes with House Republicans on policy matters.

There are other interest groups that have not yet made their positions known on Chambers' efforts to rewrite the Open Records Act. The professional associations that represent city and county governments in Georgia have not attended either of Chambers' two meetings, but Chambers said she expected both the Georgia Municipal Association and Association County Commissioners of Georgia to be deeply interested in the legislation.

"In general, we've always supported open meetings and open records," said Georgia Municipal Association spokeswoman Amy Henderson. "It's one of those things where

we would want to see the legislation before we take a position."

The Georgia Municipal Association has supported recent efforts in the Legislature to water down access to public records related to industrial recruitment and economic development.

Otherwise, most of the groups with an interest have made their desires known. Two Georgia Bureau of Investigation officials attended a meeting Nov. 19 at the state Capitol and told Chambers they were concerned about her proposal to make "willfully and knowingly violating" the Open Records Act a felony subject to a fine of up to \$5,000.

"I understand that government needs to be held accountable, but a lot of times this is a very complex statute," said Mark B. Jackson, the GBI's director of legal services.

Jackson said he feared a GBI employee might make an error in redacting information in response to an Open Records Act request, and then be charged with a felony for making an honest error.

Chambers said she was flexible on discussing whether to make a willful violation a felony.

"No GBI agents are going to jail over this," Chambers said.

Jackson also indicated he would like to create new exemptions for some investigative materials that currently are available under the Open Records Act. An example, he said, are photos of corpses from the GBI's investigation of the Tri-State Crematory in northwest Georgia.

David E. Hudson, attorney for the Georgia Press Association, was quick to jump to the defense of the GBI, calling it a "model" of how a state agency should respond to



Jill Chambers

Open Records Act requests. "There has probably been no other state agency that's been as cooperative and forthcoming with operating in the sunshine as the GBI," said Hudson, a partner with Hull, Towill, Norman, Barrett & Salley in Augusta.

Manheimer noted that the GBI is a co-sponsor, along with the First Amendment Foundation, of the publication Georgia Law Enforcement and the Open Records Act: A Law Enforcement Officer's Guide to Open Records in Georgia.

However, not all government agencies appear so willing to comply with the law. In the Athens Banner-Herald litigation, the Athens-Clarke County Police Department is appealing a decision by the Georgia Court of Appeals that the department failed to respond in a timely manner to the newspaper's request for police records in a homicide case.

The Athens case demonstrates that many government agencies first think about how to skirt the Open Records Act rather than comply with it, said Bill Bozarth, executive director of Common Cause Georgia.

"I hope we can create something where people won't stonewall on Open Records Act requests," Bozarth said. "We see again and again where cities and counties, boards and even state agencies are not as forthcoming in providing open records info as they should be."

The case is *Unified Government of Athens-Clarke County v. Athens Newspapers*, No. S07/G1133. Hudson, the Georgia Press Association attorney, is arguing the case on behalf of Athens Banner-Herald.

The Open Records Act is contained in O.C.G.A. § 50-18-70 through O.C.G.A. § 50-18-76. Additionally, many exemptions to the Open Records Act are scattered throughout the Georgia Code, Hudson said. Chambers has said one of her goals is to organize some, if not all, of the exemptions in one central place within the code. ☐