

The strong public policy of this state is in favor of open government. However, the Immigration Enforcement Review Board (“Defendant” or “IERB”) routinely violates basic requirements of the Georgia Open Meetings Act. The IERB does not provide a schedule of regular meetings as required by O.C.G.A. § 50-14-1(d)(1), opting instead to meet irregularly, often with little notice. After its meetings are completed, the IERB fails to provide written summaries, in violation of O.C.G.A. § 50-14-1(e)(2)(A). The City of Decatur files this suit, asking the Superior Court to order the IERB to comply with these basic requirements of Georgia open government law.

II. PARTIES

1.

Plaintiff the City of Decatur (“the City” or “Plaintiff”) is a municipality created under the laws of the State of Georgia.

2.

The IERB is a state board established by the Georgia General Assembly pursuant to O.C.G.A. § 50-36-3.

3.

The IERB adjudicates complaints filed against public agencies and employees pursuant to O.C.G.A. § 50-36-3. These complaints allege violation of or failure to enforce certain Georgia statutes involving immigration.

4.

Pursuant to § 50-36-3(c), the IERB is “attached” to the Department of Audits and Accounting (“DOAA”) for administrative purposes.

5.

The IERB is an “agency,” as that term is defined by O.C.G.A. § 50-14-1(a)(1), which is therefore subject to the Georgia Open Meetings Act.

6.

The IERB may be served with this Complaint and Summons through the IERB’s Chairperson, Shawn Hanley, at the IERB’s address for legal notices, 270 Washington Street, SW, Room 1-156, Atlanta, Georgia 30334.

7.

The City is currently defending against a complaint filed against it at the IERB on November 6, 2017. As such, the City has a specific interest in knowing when IERB meetings will be conducted and what actions are taken at IERB meetings.

8.

The complaint filed against the City at the IERB is without merit: the Decatur Police Department policy at issue does not violate Georgia law and the complaint filed with the IERB is invalid. While the merits of that action are not an issue in this suit, the City's ability to defend itself before the IERB is compromised by the IERB's ongoing violation of the Georgia Open Meetings Act, as described below.

III. JURISDICTION AND VENUE

9.

This Court has jurisdiction to enforce compliance with the Georgia Open Meetings Act pursuant to O.C.G.A. § 50-14-5.

10.

Venue is proper in this Court.

IV. FACTS

No Regular Schedule of Meetings

11.

The Georgia Open Meetings Act requires that every agency subject to the Act hold meetings "in accordance with a regular schedule." O.C.G.A. § 50-14-1(d)(1).

12.

The agency “shall prescribe the time, place and dates of regular meetings of the agency.” O.C.G.A. § 50-14-1(d)(1). Such information is required to be made available to the general public. O.C.G.A. § 50-14-1(d)(1).

13.

The IERB is required by statute to “meet at a minimum of once every three months.” O.C.G.A. § 50-36-3(f).

14.

The IERB does not have a regular schedule for its meetings and has not made such information available to the public.

15.

Since December 2012, the IERB has held twenty three (23) official meetings. Of these, at least nineteen (19) were special called meetings.

16.

Over this five year period, over 82% of the IERB’s meetings were specially called meetings, as opposed to regular meetings.

17.

For these special called meetings, notice to the public and to the parties in cases pending before the IERB varied, sometimes as little as 48 hours.

18.

The dates for these meetings varied widely. There is no set pattern for IERB meetings, such as the first Monday of the third, sixth, ninth and twelfth month.

19.

On at least five (5) occasions since December 2012, the IERB violated O.C.G.A. § 50-36-3(f) by failing to meet within three months.

20.

It appears the primary factor as to the dates on which IERB meetings are scheduled is the convenience of the Board members.

21.

While the Board members are volunteers who have other obligations, the IERB has significant responsibilities and powers, including holding evidentiary hearings, determining whether Georgia public agencies and employees have violated state law, and imposing sanctions. Those sanctions include monetary fines, revocation of qualified local government status, and loss of state appropriated funds.

22.

The lack of regularity with respect to IERB meetings makes it difficult if not impossible for an interested citizen or party to an IERB proceeding or their attorney to plan their schedule ahead of IERB meetings.

23.

Other state boards with volunteer members adopt regular meeting schedules, in compliance with the Open Meetings Act.

24.

The manner in which the November 15, 2017 IERB meeting was scheduled illustrates how the IERB's approach to meetings defies the spirit of the Open Meetings Act.

25.

Notice of the November 15, 2017 special called meeting was given less than 48 hours prior to the meeting, at around 5:45 p.m. on November 13, 2017.

26.

At the time, fifteen (15) cases were pending before the IERB.

27.

These cases were filed against public agencies from across the State of Georgia: the City of Atlanta; the City of Decatur; Georgia Southern University; the Bibb County Board of Education; the Bulloch County Board of Education; the Cobb County School System; the DeKalb County Board of Education; the Glynn County Board of Education; the Gwinnett County Board of Education; the Hall County Board of Education; the Marietta City Schools; and the Whitfield County Board of Education.

28.

A true and accurate copy of the notice provided to the attorneys for these local governments and public agencies for the meeting scheduled for the morning of November 15, 2017 is attached hereto as Exhibit A.

29.

Attorneys from across the State of Georgia who had cases pending against their clients and wanted to attend the November 15 meeting had to make plans with less than 48 hours' notice. Likewise, representatives of these public agencies who may have been interested in attending, such as school superintendents, council members and administrative staff, had one business day to re-arrange their schedules.

30.

Such irregular scheduling also adversely affects the public's ability to follow the IERB's work.

31.

A member of the public or a journalist interested in meetings of the IERB has to monitor the IERB website to determine when the next meeting will occur.

32.

True and accurate copies of the applicable pages currently on the IERB website are attached hereto as Exhibits B and C.

33.

Notice of the February 28, 2018 special called meeting of the IERB was not posted on the IERB website until Friday afternoon, February 23, 2018, even though the meeting had been scheduled approximately a month earlier.

34.

A member of the public or a journalist interested in meetings of the IERB can ask to be placed on a list of interested parties who wish to receive email notices of upcoming meetings (assuming they know to ask). However, such approach would not be necessary if the IERB would simply comply with the requirements of the Open Meetings Act by adopting a regular schedule of meetings. Moreover, certain individuals and journalists may prefer not to disclose their identity to a state board in order to ensure they receive notice of the board's meetings.

No Written Summaries

35.

The Georgia Open Meetings Act requires that “[a] summary of the subjects acted on and those members present at a meeting of any agency shall be written and made available to the public for inspection within two business days of the adjournment of a meeting. O.C.G.A. § 50-14-1(e)(2)(A).

36.

On information and belief (based on a request made pursuant to the Georgia Open Records Act), the IERB has not made available to the public the written summary for any of the meetings the IERB has conducted since its inception in 2011.

37.

This includes the most recent meetings of the IERB held on November 15, 2017 and February 28, 2018. No written summaries have been made available for these meetings.

38.

A member of the public or a journalist interested in the work of the IERB must typically wait around three (3) months to learn what transpired at a meeting of the IERB.

39.

The reason for this delay is twofold. First, the IERB’s practice is to approve minutes of its meetings at the next meeting, which is usually about three months later. Second, the IERB’s practice is to not provide draft minutes to the public prior to formal approval of the IERB.

40.

For example, the minutes of the November 15, 2017 meeting were not available for almost three and a half months since the IERB did not approve the minutes until the February 28, 2018 meeting.

41.

Similarly, the minutes of the February 28, 2018 meeting will not be available for public review until the IERB meets again and approves the minutes.

42.

At the February 28, 2018 meeting, action was taken on fifteen (15) different cases, which involved local governments from across the State of Georgia. The undersigned counsel knows this because they were present at the meeting.

43.

However, a citizen or journalist from Whitfield County or Glynn County who did not attend but who is interested in what transpired will have to wait until some unknown date to learn what action was taken at the February 28, 2018 meeting.

44.

If a written summary had been made available as required by O.C.G.A. § 50-14-1(e)(2)(A), citizens and journalists across the state would at least know the basic information of what action was taken at the February 28, 2018 meeting.

45.

Other state boards make available to the public written summaries of their meetings within two business days of their meetings.

COUNT ONE -

**VIOLATION OF THE GEORGIA OPEN MEETINGS ACT –
FAILURE TO SCHEDULE REGULAR MEETINGS**

46.

Paragraphs 1 through 45 of this Complaint are re-alleged as if set forth verbatim herein.

47.

By failing to have a regular schedule of meetings and to make this information available to the public, the IERB has violated the Open Meetings Act, specifically O.C.G.A. § 50-14-1(d)(1).

48.

Through its overuse of special called meetings and haphazard scheduling of such meetings -- often with short notice to the parties and the public -- the IERB has violated the spirit of the Open Meetings Act and the public policy of this state in favor of open government.

49.

The Court should enforce compliance with the Georgia Open Meetings Act by ordering the IERB to adopt immediately a regular schedule of meetings for the remainder of 2018 and to make such schedule available to the public, including by posting the schedule on the IERB website.

COUNT TWO -

**VIOLATION OF THE GEORGIA OPEN MEETINGS ACT –
FAILURE TO PROVIDE SUMMARIES OF MEETINGS**

50.

Paragraphs 1 through 49 of this Complaint are re-alleged as if set forth verbatim herein.

51.

By failing to make available to the public a written summary of its meetings, the IERB has violated the Open Meetings Act, specifically O.C.G.A. § 50-14-1(e)(2)(A).

52.

The Court should enforce compliance with the Georgia Open Meetings Act by ordering the IERB to immediately make available to the public a written summary of the February 28, 2018 meeting and to make such written summaries available within the statutory period for all future IERB meetings.

COUNT THREE –

ATTORNEY’S FEES AND LITIGATION COSTS

53.

Paragraphs 1 through 52 of this Complaint are re-alleged as if set forth verbatim herein.

54.

The IERB has acted without substantial justification in failing to comply with the Open Meeting Act’s requirements of a schedule of regular meetings and written summaries following meetings.

55.

No special circumstances exist that would justify the IERB’s failure to comply with these rudimentary requirements of the Open Meetings Act, which are followed as a matter of routine by other State boards, agencies, and authorities, as well as cities, counties, school districts and local authorities across the State.

56.

The IERB has regularly and repeatedly ignored these requirements of the Open Meetings Act.

57.

The IERB's disregard of Open Meetings Act requirements is indicative of a developing pattern of secrecy in the workings of this state board. For example, it appears the IERB is conducting some of its business in the fifteen pending cases by way of email, with decisions being made by email votes of sub-panels, in violation of the IERB's own rules and in disregard of the Georgia Open Meetings Act.

58.

In light of the above facts, pursuant to O.C.G.A. § 50-14-5(b) Plaintiff is entitled to an award of its reasonable attorney's fees and litigation costs incurred in having to bring this enforcement action.

WHEREFORE, Plaintiff prays:

1. That process issue and be served upon Defendant; and
2. That Defendant be ordered to comply with the Georgia Open Meetings Act, pursuant to the Court's authority granted by O.C.G.A. § 50-14-5(a); and
3. That the Court grant such injunction or other equitable relief as may be necessary to enforce Defendant's compliance with the Open Meetings Act, pursuant to the authority granted by O.C.G.A. § 50-14-5(a); and
4. That the Court award Plaintiff its reasonable attorney's fees and litigation costs incurred in having to bring this action; and
5. That Plaintiff be granted such other and further relief as the Court deems just and proper.

This 4th day of April, 2018.

WILSON, MORTON & DOWNS, LLC

By: 

Bryan A. Downs
Georgia Bar No. 228437
Stephen G. Quinn
Georgia Bar No. 153012

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EXHIBIT A

Bryan Downs

From: Carol Schwinne <Schwinne@audits.ga.gov>
Sent: Monday, November 13, 2017 5:45 PM
To: Bryan Downs
Subject: FW: IERB Meeting
Attachments: Agenda - November 15, 2017.docx

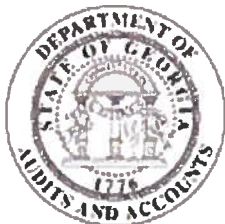
Hi,
Here is the e-mail that I sent out. I didn't receive your response in time to include you on the list.
The agenda is attached.
Carol

From: Carol Schwinne
Sent: Monday, November 13, 2017 5:41 PM
To: 'Glinton Darien (Legal Affairs)' <Glinton_Darien@dekalbschoolsga.org>; 'Rusi Patel' <rpatel@gmanet.com>; 'Munn, Irene' <Irene.Munn@ltgov.ga.gov>; 'mwalker@gregorydoylefirm.com' <mwalker@gregorydoylefirm.com>; 'sdgrant@atlantaga.gov' <sdgrant@atlantaga.gov>; 'Hope Jr., M. Alexander' <MAHope@AtlantaGa.Gov>; 'phartley@hhhlawyers.com' <phartley@hhhlawyers.com>; 'randy.howard@bcsdk12.net' <randy.howard@bcsdk12.net>
Subject: IERB Meeting

Good Evening,

I just wanted to make you aware that the Immigration Enforcement Review Board has scheduled a meeting for Wednesday, November 15, 2017 at 11:00 AM. The meeting will be held in Room 506 of the Coverdell Legislative Office Building. I have attached a copy of the agenda for your review. If you have any questions, please do not hesitate to contact me. I can be reached at 404-463-2670 or schwinne@audits.ga.gov.

Respectfully,
Carol Schwinne



Carol G. Schwinne | Director
Administrative Division
Georgia Department of Audits and Accounts
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Atlanta, GA 30334
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audits.ga.gov

mail.audits.ga.gov made the following annotations on 11/13/17:

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Thank you for your cooperation.

*Shawn Hanley - Chairman
James Balli – Vice Chairman
Boyd Austin
Terry Clark*



*Phil Kent
Amor Kok
Mike Yeager*

Immigration Enforcement Review Board

Meeting Agenda

November 15, 2017

Special Called Meeting

11:00 AM

Meeting Location

*Coverdell Legislative Office Building
Room 506*

1. Call to Order
2. Adoption of Minutes from Prior Meeting – September 27, 2017
3. Discuss and address the need for private sector investigative support
4. Initial Review of Complaint 2017-13 (Complaint filed by Lieutenant Governor's Office against the City of Decatur)
5. Review of Past Complaints Filed by DA King
6. Other Business
7. Adjournment

EXHIBIT B

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About the Illegal Immigration Reform and Enforcement Board

Immigration Enforcement Review Board (O.C.G.A. §50-36-3)

- [Official Board Rules](#)
- [Method and Grounds for Filing Complaint and Complaint Form](#)
- [Meeting Notice for the Immigration Enforcement Review Board](#)

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EXHIBIT C

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Immigration Enforcement Review Board Meeting Notice

The next scheduled meeting of the Immigration Enforcement Review Board is Wednesday, February 28th at 10:00am. The meeting will be held in Room 415 at the Coverdell Legislative Office Building.

[Meeting Agenda for Feb 28, 2018 \(PDF\)](#)

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*Shawn Hanley - Chairman
James Balli – Vice Chairman
Boyd Austin
Terry Clark*



*Phil Kent
Amor Kok
Mike Yeager*

Immigration Enforcement Review Board

Meeting Agenda

February 28, 2018

Special Called Meeting

10:00 AM

Meeting Location

*Coverdell Legislative Office Building
Room 415*

1. Call to Order
2. Adoption of Minutes from Prior Meeting – November 15, 2017
3. Discussion of Proposed Rules Change
4. Hearings on Complaints *
 - a. 2016-02
 - b. 2017-01
 - c. 2017-02
 - d. 2017-03
 - e. 2017-04
 - f. 2017-05
 - g. 2017-06
 - h. 2017-07
 - i. 2017-08
 - j. 2017-09
 - k. 2017-10
 - l. 2017-11
 - m. 2017-12
 - n. 2017-14
5. Other Business
6. Adjournment

**The order in which the complaints are heard is subject to change.*