

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

CITY OF DECATUR,)	
)	
Plaintiff,)	CIVIL ACTION
)	
v.)	FILE NO. 2018CV303251
)	
GEORGIA IMMIGRATION)	
ENFORCEMENT REVIEW BOARD,)	
an official board of the State of Georgia,)	
)	
Defendant.)	
_____)	

**FIRST AMENDED COMPLAINT TO ENFORCE COMPLIANCE
WITH, AND TO CONTEST CERTAIN ACTIONS TAKEN IN VIOLATION OF,
THE GEORGIA OPEN MEETINGS ACT**

COMES NOW the CITY OF DECATUR and, pursuant to O.C.G.A. § 50-14-5, files this Amended Complaint to enforce compliance by the Georgia Immigration Enforcement Review Board with the Georgia Open Meetings Act, and to contest certain actions taken by the Georgia Immigration Enforcement Review Board that violate the Georgia Open Meetings Act, showing the Court the following.

I. SUMMARY OF COMPLAINT

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.

Even after the filing of this suit, the IERB continues to disregard the requirements of Open Meetings Act. In particular, a subcommittee of the IERB has conducted closed meetings in which decisions have been discussed, formulated and made regarding a pending complaint against the City of Decatur. This Amended Complaint contests these unlawful actions pursuant to O.C.G.A. § 50-14-1(b)(2).

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.

34.a.

Over three (3) months has passed since the last meeting of the IERB on February 28, 2018, which was not a regular meeting, but a special called meeting.

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.

37.a.

Upon information and belief, a written summary of the February 28 meeting was created weeks later, in mid-April, after this suit was filed.

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 official 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.

Violations Specific to Proceeding Against the City of Decatur

46.

The IERB has routinely violated the Open Meetings Act with respect to IERB complaint number 2017-13, the complaint pending against the City of Decatur that was filed by the Office of Lieutenant Governor in November 2017 (the “Cagle/Decatur Complaint”).

Surprise Action Taken at February 28 Meeting

47.

The IERB conducted a special called meeting on February 28, 2018.

48.

The agenda for the meeting did not include any mention of the Cagle/Decatur Complaint.

49.

A true and accurate copy of the agenda for the February 28, 2018 meeting is attached hereto as Exhibit C.

50.

The omission of the Cagle/Decatur Complaint from the agenda was consistent with assurances provided to the City of Decatur's counsel by IERB Chair Shawn Hanley that the meeting "will NOT have anything to do with your case."

51.

A true and accurate copy of an email from IERB Chair Hanley to the undersigned Bryan Downs dated January 30, 2018, is attached hereto as Exhibit D.

52.

The day before Chairman Hanley stated that the February 28 meeting would not have anything to do with the Cagle/Decatur Complaint, the IERB's administrative clerk provided the City's counsel with similar assurance: "No, the Board is not planning to discuss Complaint 2017-13 at the February 28th meeting."

53.

A true and accurate copy of an email from Ms. Carol Schwinne to the undersigned Bryan Downs dated January 29, 2018, is attached hereto as Exhibit E.

54.

Contrary to the IERB's assurances and despite the fact that the matter was not included on the agenda, the IERB discussed and took action on the Cagle/Decatur Complaint at the February 28 meeting. This included the appointment of a two-person "review panel" to conduct further proceedings regarding the Cagle/Decatur Complaint.

55.

The IERB Chairman knew before the meeting that he intended to take up the Cagle/Decatur Complaint at the February 28 meeting, yet he did not take steps to have the agenda amended.

56.

Such actions prejudiced the City of Decatur and negatively impacted the City's ability to defend itself against the Cagle/Decatur Complaint.

57.

For example, in reliance on the IERB's representations that the Cagle/Decatur Complaint would not be discussed or addressed at the February 28 meeting, representatives of the City, including its Mayor, a City Commissioner and the City Manager, did not attend the meeting.

58.

In reliance on IERB representations that the Cagle/Decatur Complaint would not be discussed or addressed at the February 28 meeting, at least one local news organization that serves the Decatur community did not attend and report on the meeting.

Cancelled May 9 Telephone Meeting

59.

Pursuant to O.C.G.A. § 50-36-3(g) and the Rules of the Immigration Enforcement Review Board, the entire IERB or two or more individual members of the IERB may serve as a "review panel" to conduct certain reviews and hearings and make findings and issue an "initial decision."

60.

On May 1, 2018, the IERB provided notice to the undersigned of a special called, public meeting of the Review Panel for the Cagle/Decatur Complaint to be held on May 9, 2018.

61.

A true and accurate copy of an email from Ms. Carol Schwinne to the undersigned Bryan Downs dated May 1, 2018, and the attached agenda, are attached hereto respectively as Exhibits F and G.

62.

Even though both members of the Review Panel have offices in metro Atlanta, the meeting was to be held via conference call pursuant to O.C.G.A. § 50-14-1(f).

63.

Upon information and belief, notice of the meeting was provided to the public and at least some, if not all, of the posting and advertising requirements of O.C.G.A. § 50-14-1 were met.

64.

The agenda for the May 9 meeting listed seven specific action items relating to the hearing in the Cagle/Decatur Complaint scheduled for May 15, including decisions on certain pending motions and consideration of procedures for the hearing.

65.

The agenda also included a catch all item: "Other Business Pertaining to Forthcoming Panel Review Hearing Recognized by Panel Members."

66.

Three of the agenda items were cast as "Confirmation of" certain matters, indicating that the Review Panel had already met and decided these matters, outside of a public meeting.

67.

The conference call for the special called May 9 meeting began at or near the scheduled time of 10:00 a.m. However, it quickly became apparent that the “space” for this public meeting was inadequate because only twenty (20) callers could participate on the call.

68.

Numerous individuals who were attempting to call in to this public meeting could not get through. The excluded citizens included the Mayor of the City of Decatur and journalists.

69.

One of the two IERB members on the Review Panel, Vice Chair James Balli, was not on the call.

70.

In light of these difficulties, Chairman Hanley announced that there would be a new start time of 10:20 a.m. and asked that participants call back at that time.

71.

At 10:20 a.m., various individuals began calling in. However, IERB Vice Chair Balli was not on the call.

72.

Chairman Hanley stated that he had received communications that Vice Chair Balli had been pulled away on a serious issue of an urgent nature, and at one point said Mr. Balli had been involved in some kind of accident.

73.

At approximately 10:29 a.m., Chairman Hanley canceled the meeting, stating that because of Mr. Balli’s absence it could not “proceed as an official meeting.”

74.

Shortly after Chair Hanley cancelled the meeting, Mr. Balli came on the line. He reported that he had not been involved in an accident; rather, he was simply not able to get through on the conference call.

75.

The IERB website was updated to indicate that the May 9 special called meeting of the Review Panel had been cancelled.

76.

A true and accurate copy of the website posting is attached hereto as Exhibit H.

Decisions Made in Closed Meeting(s)

77.

Two days later, on May 11, 2018, Chair Hanley forwarded to the undersigned counsel a document which he described as “decisions made regarding pending motions as well procedures for the Hearing next week.”

78.

A true and accurate copy of the email from Chair Hanley to the undersigned Bryan Downs dated May 11, 2018, along with the attached “decisions made” document, is attached hereto as Exhibit I.

79.

The “Decisions Made Document” set forth the Review Panel’s rulings and determinations with respect to item numbers 2, 3, 4, 5, 6, 7 and 8 from the agenda for the May 9 special called meeting.

The Review Panel had met at some undisclosed time and location, without notice to the parties to the Cagle/Decatur Complaint or to the public, and made rulings and determinations on the following issues:

- (1) The Review Panel reported that IERB member Phil Kent had recused himself in response to the City's Motion to Recuse Phil Kent, that Chairman Hanley had declined to recuse himself in response to the City's Motion to Recuse Shawn Hanley, and that Chairman Hanley and Vice Chair Balli had been appointed to serve on the Review Panel (agenda item #'s 2, 7 and 8);
- (2) The Review Panel reported that its "initial review" pursuant to IERB Rule 291-2-.02 had determined that the matter should proceed to an "initial hearing" (agenda item #3);
- (3) The Review Panel reported its findings that Casey Cagle the individual had made the complaint that initiated the Cagle/Decatur Complaint and that Mr. Cagle had the capacity to do so (agenda item #4);
- (4) The Review Panel reported its rulings denying the City's motions for issuance of subpoenas to Casey Cagle and to staff members in the Office of Lieutenant Governor (agenda item #5);
- (5) The Review Panel reported that it had adopted certain rules and procedures for the evidentiary hearing scheduled for May 15, 2018 (agenda item #6).

The Decisions Made Document was e-signed by both members of the Review Panel and physically signed by Chairman Hanley.

82.

In short, the Review Panel scheduled a public meeting to deliberate on and take official action on a number of pending issues, as was required by the Open Meetings Act, but when that teleconferenced meeting failed due to the IERB's own flawed efforts to make the meeting open to the public, the Review Panel chose not to reschedule the public meeting and instead proceeded to conduct a closed meeting.

83.

Although pursuant to O.C.G.A. § 45-15-3(4), the Attorney General has the duty to act as the legal adviser to the IERB, upon information and belief, the Decisions Made Document was drafted by private attorney John Herbert and the legal research provided in the Decisions Made Document was provided by private attorney John Herbert.

84.

At the beginning of the May 15 evidentiary hearing described below, the City asserted an objection to the issuance of the Decisions Made Document because the decisions were made outside of a public meeting in violation of O.C.G.A. § 50-14-1. The Review Panel ignored the City's request that this objection, along with others, be ruled upon.

Executive Session at the Conclusion of the Evidentiary Hearing

85.

The IERB scheduled a public meeting on May 15, 2018 for the purpose of an "IERB Review Panel Hearing" for the Cagle/Decatur Complaint.

86.

A true and accurate copy of the agenda for the May 15, 2018 hearing is attached hereto as Exhibit J.

87.

On Tuesday, May 15, the Review Panel commenced the evidentiary hearing on the Cagle/Decatur Complaint.

88.

After the City had presented evidence and provided a closing argument and after the Review Panel stated that no other evidence would be submitted at the hearing or otherwise considered, the Review Panel voted to go into executive session.

89.

The stated basis for the executive session was “to discuss matters exempt from open meetings pursuant to O.C.G.A. § 50-14-3(b)(4) to receive attorney-client advice.”

90.

The Review Panel then adjourned the meeting and went into executive session in another location.

91.

Upon information and belief, during the Executive Session the members of the Review Panel discussed the evidence submitted and the legal arguments presented during the evidentiary hearing; in other words, the members deliberated in a closed meeting.

92.

When the Review Panel returned from Executive Session, the members of the Review Panel stated that they needed time to review the exhibits submitted at the hearing and the legal arguments made.

93.

The Review Panel then voted to suspend the hearing, stating that the hearing would be reconvened as a public meeting with notice provided to the public.

94.

During the public portions of the hearing, the Review Panel did not discuss the evidence presented or the arguments made or otherwise deliberate on the decision to be made in the case.

Secret Meeting(s) of the Review Panel After the Hearing

95.

Four days later, on the morning of Saturday, May 19, 2018 (three days before Georgia's primary elections), Vice Chair Balli sent an email to all the members of the IERB and to the attorneys for the City of Decatur and Casey Cagle, attaching a notice and agenda to recommence the hearing on June 27, 2018. Mr. Balli stated that he was doing so "per the instruction of Chairman Hanley."

96.

Mr. Balli also stated in the email that, in order "[t]o be fair and provide notice, we have attached the proposed decision which will be voted upon at the hearing."

97.

True and accurate copies of the email from Mr. Balli dated May 19, 2018 and the attachments to the email are attached hereto as Exhibit K.

98.

At some point between Tuesday, May 15 and Saturday, May 19, the two members of the Review Panel met in person, by email and/or by phone and formulated and/or discussed the proposed decision and determined that it would be voted upon at the continued hearing.

99.

The public was not provided with any notice of this meeting or meetings.

100.

The undersigned counsel for the City of Decatur was not provided with any notice of this meeting or meetings.

101.

Also on Saturday, May 19, Chairman Hanley forwarded a copy of the proposed decision to the media.

102.

The proposed decision directs that the City of Decatur immediately rescind the Police Department policy at issue or “be prepared to show cause why sanctions should not be imposed up to and including, the loss of any appropriated State funds and removal of the designation of Decatur as a ‘qualified local government.’”

103.

The IERB has posted notice of the recommencement of the Review Panel hearing on June 27, 2018.

COUNT ONE -

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

104.

Paragraphs 1 through 103 of this Complaint are re-alleged as if set forth verbatim herein.

105.

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).

106.

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.

107.

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**

108.

Paragraphs 1 through 107 of this Complaint are re-alleged as if set forth verbatim herein.

109.

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).

110.

The Court should enforce compliance with the Georgia Open Meetings Act by ordering the IERB to make written summaries available within the statutory period for all future IERB meetings, as well as all meetings of any IERB review panel.

COUNT THREE -

**VIOLATION OF THE GEORGIA OPEN MEETINGS ACT –
DECISIONS MADE IN SECRET MEETING(S) BEFORE THE HEARING**

111.

Paragraphs 1 through 110 of this Complaint are re-alleged as if set forth verbatim herein.

112.

The Review Panel made decisions that are memorialized in the Decisions Made Document at a meeting or meetings that were conducted in private and without any notice to the public.

113.

Such actions violated O.C.G.A. § 50-14-1(b)(1).

114.

The decisions memorialized in the Decisions Made Document are not binding.

115.

The evidentiary hearing commenced on May 15, 2018 is a nullity since it proceeded pursuant to the non-binding decisions memorialized in the Decisions Made Document.

116.

The Court should vacate the Decisions Made Document, nullify the May 15 evidentiary hearing, and enjoin the IERB from further proceedings in the Cagle/Decatur Complaint that do not strictly adhere to the Open Meetings Act.

COUNT FOUR -

**VIOLATION OF THE GEORGIA OPEN MEETINGS ACT –
IMPROPER USE OF EXECUTIVE SESSION**

117.

Paragraphs 1 through 116 of this Complaint are re-alleged as if set forth verbatim herein.

118.

The Review Panel's reliance on O.C.G.A. § 50-14-3(b)(4) as the basis to go into executive session was erroneous; no attempt was made to explain what portion of a record or records was exempt from public inspection or disclosure or whether there were any reasonable means by which the Review Panel could consider the record without closing the meeting. In addition, because the Review Panel had decided that it would only consider the evidence that the City had submitted at the public hearing, there was no need to discuss any purportedly exempt records in executive session.

119.

Receipt of attorney-client advice is not an appropriate basis for an executive session under the Open Meetings Act.

120.

Such actions violated O.C.G.A. § 50-14-3(b).

121.

Any deliberation by the Review Panel regarding the issues presented at the hearing during the Executive Session violated O.C.G.A. § 50-14-3(b).

122.

The Court should nullify the May 15 evidentiary hearing and enjoin the IERB from further proceedings in the Cagle/Decatur Complaint that do not strictly adhere to the Open Meetings Act.

COUNT FIVE -

**VIOLATION OF THE GEORGIA OPEN MEETINGS ACT –
SECRET MEETING(S) AFTER THE HEARING**

123.

Paragraphs 1 through 122 of this Complaint are re-alleged as if set forth verbatim herein.

124.

Following the May 15 hearing, the Review Panel formulated and/or discussed the proposed decision (“Proposed Decision”) and determined that it would be voted upon at the continued hearing.

125.

Such actions were undertaken at a meeting or meetings that were conducted in private, without any notice to the public.

126.

Such actions violated O.C.G.A. § 50-14-1(b)(1).

127.

The Court should vacate the Proposed Decision and enjoin the IERB from further proceedings in the Cagle/Decatur Complaint that do not strictly adhere to the Open Meetings Act.

**COUNT SIX –
ATTORNEY’S FEES AND LITIGATION COSTS**

128.

Paragraphs 1 through 127 of this Complaint are re-alleged as if set forth verbatim herein.

129.

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.

130.

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.

131.

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

132.

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.

133.

Even after the filing of this suit, the IERB continues to disregard the Open Meetings Act, conducting public meetings when it is convenient, but conducting closed meetings when openness and public participation is not desired by the IERB members.

134.

No special circumstances exist that justify the IERB's refusal to comply with the Open Meetings Act in its proceedings against the City of Decatur.

135.

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 and contest action.

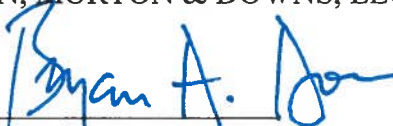
WHEREFORE, Plaintiff prays:

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 as to Counts One and Two, 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 as to Count Three, the Court vacate the Decisions Made Document, nullify the May 15 evidentiary hearing, and enjoin the IERB from further proceedings in the Cagle/Decatur Complaint that do not strictly adhere to the Open Meetings Act; and
5. That as to Count Four, nullify the May 15 evidentiary hearing and enjoin the IERB from further proceedings in the Cagle/Decatur Complaint that do not strictly adhere to the Open Meetings Act; and
6. That as to Count Five, the Court vacate the Proposed Decision and enjoin the IERB from further proceedings in the Cagle/Decatur Complaint that do not strictly adhere to the Open Meetings Act; and

7. That as to Count Six, the Court award Plaintiff its reasonable attorney's fees and litigation costs incurred in having to bring this action; and
8. That Plaintiff be granted such other and further relief as the Court deems just and proper.

This 7th day of June, 2018.

WILSON, MORTON & DOWNS, LLC

By: 

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

Attorneys for Plaintiff

Two Decatur Towncenter, Suite 420
125 Clairemont Avenue
Decatur, Georgia 30030
(404) 377-3638 telephone
bdowns@wmdlegal.com
squinn@wmdlegal.com

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



audits.ga.gov

Carol G. Schwinne | Director
Administrative Division
Georgia Department of Audits and Accounts
270 Washington Street, S.W., Suite 1-156
Atlanta, GA 30334
Office: 404.463-2670 | schwinne@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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Immigration Enforcement Review Board (O.C.G.A. 550-36-3)

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

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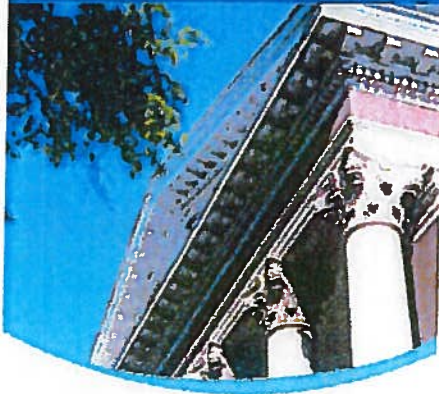
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Immigration Enforcement Review Board Meeting Notice

The next scheduled meeting of the Immigration Enforcement Review Board is Wednesday, February 29th at 10:00am. The meeting will be held in Room 415 at the Coverdell Legislative Office Building.

[Meeting Agenda for Feb 29, 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.*

EXHIBIT D

Bryan Downs

From: Shawn Hanley <shawnhanley@icloud.com>
Sent: Tuesday, January 30, 2018 12:00 PM
To: Bryan Downs
Cc: schwinne@audits.ga.gov
Subject: Follow-up

Bryan,

I am in receipt of your questions. I have just about finished an initial email that was going to be sent out to you and Lt. Gov's office regarding the compliant..... but I'm not quite finished. In order to ensure you don't lose anytime on this case I will tell you now that you do have time to prepare. The February hearing will NOT have anything to do with your case. We will be addressing a number of complaints at that hearing that were filed prior to the case filed by CC. Your case will likely be heard at the end of March.

The board has decided to hire outside support as it relates to over a dozen existing complaints. I would appreciate it if you did meet with him. Although we do have the authority to subpoena witnesses we have never used this tool. We have always had very cordial follow-up meetings with "both sides" of a complaint so we don't have plans to use this tool at this time.

I will get to the rest of your questions ASAP.

Thank you,

Shawn Hanley
202-390-4991

EXHIBIT E

Bryan Downs

From: Carol Schwinne <Schwinne@audits.ga.gov>
Sent: Monday, January 29, 2018 4:29 PM
To: Bryan Downs
Subject: RE: Complaint 2017-13

Good Afternoon Bryan,

No, the Board is not planning to discuss Complaint 2017-13 at the February 28th meeting. They are planning to address all of the complaints submitted by Mr. King that day. It is my understanding that they would like to try and schedule a meeting for March to discuss the City of Decatur complaint. However, no date has been set. I will keep you posted.

Thank you,
Carol

From: Bryan Downs [mailto:bdowns@wmdlegal.com]
Sent: Monday, January 29, 2018 3:47 PM
To: Carol Schwinne <Schwinne@audits.ga.gov>
Subject: RE: Complaint 2017-13

Carol –

I noticed on the DOAA website that the next meeting of the IERB has been scheduled for February 28, 2018.

Will the “initial hearing” on the Office of Lt. Governor’s complaint against the City of Decatur be held at that meeting?

Thanks –

Bryan

Bryan A. Downs
Wilson, Morton & Downs, LLC
Two Decatur TownCenter
125 Clairemont Ave., Suite 420
Decatur, GA 30030
404-377-3638
404-941-3456 (fax)

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From: Carol Schwinne [mailto:Schwinne@audits.ga.gov]
Sent: Friday, December 22, 2017 11:15 AM
To: Bryan Downs <bdowns@wmdlegal.com>
Subject: RE: Complaint 2017-13

Hi Bryan,

No, the date has not been set. Shawn is thinking that the next meeting will probably be closer to or in February. Since the session will be starting in January, it will be more difficult to get meeting room space. Therefore, we will need to book early. You should have sufficient notice in advance of the meeting. As soon as I hear something, I will pass it on. Again, I apologize for all of the e-mails I sent regarding the open records request. Our file transfer will only allow 10 files at a time. Hope you got what you need. If you have any questions, please don't hesitate to contact me.
Hope you have a Merry Christmas.
Carol

From: Bryan Downs [<mailto:bdowns@wmdlegal.com>]
Sent: Friday, December 22, 2017 9:46 AM
To: Carol Schwinne <Schwinne@audits.ga.gov>
Subject: Complaint 2017-13

Hi Carol –

Has a hearing date been set for this matter yet?

Thanks - Bryan

Bryan A. Downs
Wilson, Morton & Downs, LLC
Two Decatur TownCenter
125 Clairemont Ave., Suite 420
Decatur, GA 30030
404-377-3638
404-941-3456 (fax)

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mail.audits.ga.gov made the following annotations on 12/22/17:

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mail.audits.ga.gov made the following annotations on 01/29/18:

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Thank you for your cooperation.

EXHIBIT F

Bryan Downs

From: Carol Schwinne <Schwinne@audits.ga.gov>
Sent: Tuesday, May 01, 2018 4:55 PM
To: Shawn Hanley; James Balli; john (john@herbertlegalgroup.com); Bryan Downs; Munn, Irene
Cc: Russ Willard
Subject: Special Called Meeting of the Review Panel for Complaint 2017-13
Attachments: Agenda - May 9, 2018.pdf

Good Afternoon,

On behalf of Mr. Shawn Hanley (Chairman – Immigration Enforcement Review Board), I respectfully submit to you the attached meeting agenda. This meeting is a “Special Called Meeting of the Review Panel for Complaint 2017-13.” The meeting date has been set for Wednesday, May 9, 2018 at 10:00 AM, and will be held via conference call. Call-in information is noted on the agenda.

If you have any questions regarding this e-mail, please do not hesitate to contact me at 404-463-2670 or at schwinne@audits.ga.gov.

Respectfully,
Carol Schwinne



audits.ga.gov

Carol G. Schwinne | Director
Administrative Division
Georgia Department of Audits and Accounts
270 Washington Street, S.W., Suite 1-156
Atlanta, GA 30334
Office: 404.463-2670 | schwinne@audits.ga.gov

mail.audits.ga.gov made the following annotations on 05/01/18:

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Thank you for your cooperation.

EXHIBIT G

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



*Phil Kent
Amor Kok
Mike Yeager*

Immigration Enforcement Review Board

Meeting Agenda

May 9, 2018

*Special Called Meeting of the Review
Panel for Complaint 2017-13*

10:00 AM

Meeting Location

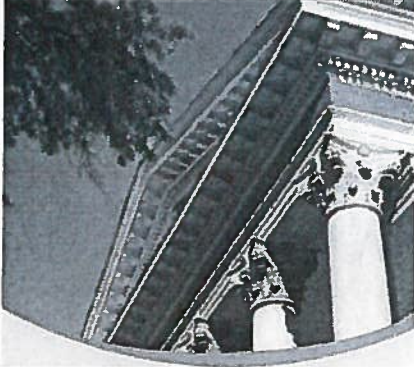
*This meeting will be held via conference call.
The conference call number is: 404-732-0173
The Meeting ID is: 1128*

1. Call To Order
2. Confirmation of the Members of the Review Panel for Complaint 2017-13
3. Confirmation of the Initial Determination
4. Confirmation of the Capacity of the Complainant
5. Pending Motions for Subpoena
6. Consideration of Procedures for the Hearing Scheduled for May 15, 2018
7. Motion on the Recusal of Phil Kent
8. Motion on the Recusal of Shawn Hanley
9. Other Business Pertaining to Forthcoming Panel Review Hearing Recognized by Panel Members
10. Adjournment

The Review Panel will not address any questions unless submitted no later than 24 hours prior to the date and time of this meeting, as noted above. Please send written questions to John Herbert, Investigator, john@herbertlegalgroup.com.

EXHIBIT H

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Immigration Enforcement Review Board Meeting Notice

*****This meeting has been Cancelled*****

The IERB announces a "Speical Called Meeting of the Review Panel for Complaint 2017-13"

The meeting will be held on Wednesday, May 9th at 10:00 via conference call. To participate in the meeting, please call 404-732-0173. The meeting ID is 1128.

The agenda for this meeting can be viewed here. *****This meeting has been Cancelled*****

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There will be review panel hearings on Tuesday, May 15, 2018 beginning at 10:00 AM. The meeting will be held in the Coverdell Legislative Office Building, Room 506.

The agenda for this meeting can be viewed here.

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EXHIBIT I

Bryan Downs

From: Shawn Hanley <shawnhanley@icloud.com>
Sent: Friday, May 11, 2018 7:52 AM
To: Bryan Downs; irene.munn@ltgov.ga.gov
Subject: CC V DEC Procedure and Motion Response.docx
Attachments: CC V DEC Procedure and Motion Response.docx

Bryan, Irene,

Attached are decisions made regarding pending motions as well as procedures for the Hearing next week.

Thank you,

Shawn Hanley
202-390-4991

**IMMIGRATION ENFORCEMENT & REVIEW BOARD
STATE OF GEORGIA**

**RE: CITY OF DECATUR
Public Agency Respondent**

IERB COMPLAINT NO. 2017-13

**CASEY CAGLE
Complainant**

Pursuant to Motions for Subpoena and various other motions and requests for clarification, the Review Panel in the above-styled matter, the Review Panel issues the following:

MEMBERS OF THE REVIEW PANEL IN IERB COMPLAINT 2017-13

The members of the Review Panel in the matter of IERB COMPLAINT 2017-13 are Shawn Hanley, Chairman of the IERB and James Balli, Vice Chairman of the IERB. Phil Kent recused himself from the Review Panel. Shawn Hanley has declined to recuse himself.

INITIAL REVIEW

The Initial Review determined that this matter should proceed to an Initial Hearing.

CAPACITY OF THE COMPLAINANT

The Complaint in this matter was made by Casey Cagle, a natural person on the form promulgated by the IERB. The Complainant affirmed under oath that he was a legally registered voter in the State of Georgia. Therefore, the Review Panel finds that Mr. Cagle has the capacity to bring this matter

RULING ON MOTIONS OF THE CITY OF DECATUR FOR ISSUANCE OF SUBPOENA FOR COMPLAINANT

The City of Decatur (“Respondent”) filed a Motion for Issuance of Subpoena for Casey Cagle. , The Immigration Enforcement Review Board (“IERB”) allows a Respondent to request the applicable Review Panel issue subpoenas “for good cause shown.” See IERB Rule 291-2-.03(3). There is no definition of the term “good cause” in the Rule. Further, the Supreme Court of Georgia has held that “good cause...is not susceptible of rigid definition...[i]t is a factual question which must be judged according to the circumstances of the case.” In re GEC, 269 Ga. 744, 745 (2008). That said, the Rule is clear by using the word “shown” that the burden to demonstrate “good cause” is placed on the Respondent.

Here, the complaint filed by Mr. Cagle alleges that the City of Decatur has enacted a policy which allegedly violates O.C.G.A. § 36-80-23 which prohibits the adoption of “sanctuary policies.” This Complaint is based on a document entitled General Order Chapter 7, Section 03-d (“General Order”) as well as Respondent’s actions in carrying out said General Order. Respondent does not deny the existence of the General Order nor that Decatur police officers are being instructed to comply with the General Order. Instead, Respondent argues the General Order is not a violation of Georgia law. Respondent has failed to demonstrate how any testimony that could be elicited from Mr. Cagle would bear on the applicability of O.C.G.A. § 36-80-23 to the General Order. As such, Respondent has failed to meet the burden to show “good cause” for the issuance of a subpoena for Mr. Cagle, and the Respondent’s Motion for Subpoena of Casey Cagle is DENIED.

Respondent also submitted a second Motion for Subpoenas to issue a subpoena to certain staff members in the Office of the Lieutenant Governor. Respondent claims cross-examination needs to occur on the issue of capacity. Based on the ruling above regarding capacity, that issue is decided, and no further testimony is required nor relevant to the remaining issues pending before the IERB. Therefore, the second Motion for Subpoenas is DENIED.

**HEARING PROCEDURE FOR MAY 15, 2018 IN THE MATTER OF
IERB COMPLAINT 2017-13**

The Respondent will have (2) hours to provide testimony through witnesses and evidence. The Review Panel will be able to question any witness presented and ask questions about any evidence. Questions asked by the Review Panel will not be deducted from Respondent's time. The Review Panel will then be able to call witnesses and consider any evidence supported by those witnesses. The Respondent may also question these witnesses and ask questions about evidence submitted. The Respondent will then be provided twenty (20) minutes to provide closing arguments regarding the law and facts with questions from the Review Panel. The standard of proof in this matter is whether the Respondent is in violation of O.C.G.A. §36-80-23 by a preponderance of the evidence. The Initial Hearing is not subject to the Georgia Civil Practice Act or the Georgia Administrative Practice Act. Evidentiary objections in this matter will be noted on the record so that evidence presented with objections may be given the appropriate probative weight by the Review Panel. Review Panel member and Vice-Chairman of the IERB, James Balli, will address any evidentiary objections in this matter and, if sustained, the evidence or testimony will not be admitted into the record.

This 10th day of May, 2018.

A handwritten signature in black ink, appearing to read 'SHAWN HANLEY', with a long horizontal line extending to the right.

/s/ Shawn Hanley

Shawn Hanley, Chairman, IERB & Member, Review Panel

/s/ James Balli

James Balli, Vice Chairman, IERB Member, Review Panel

EXHIBIT J

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



*Phil Kent
Amor Kok
Mike Yeager*

Immigration Enforcement Review Board

Meeting Agenda (As Amended)

May 15, 2018

IERB Review Panel Hearing

10:00 AM

Meeting Location

*Coverdell Legislative Office Building
Room 506*

1. Call to Order
2. Review Panel Hearing
 - a. 2017-13 – City of Decatur (Review Panel: Shawn Hanley/James Balli)
3. Other Business
4. Adjournment

EXHIBIT K

Bryan Downs

From: James Balli <jballi@slhb-law.com>
Sent: Saturday, May 19, 2018 11:08 AM
To: Shawn Hanley Semper Fi (shawn@semperfigr.com); Carol G. Schwinne (schwinne@audits.ga.gov)
Cc: Bryan Downs; Munn, Irene; Russell D. Willard; Terry Clark; Phil Kent; Amor Kok (amorkok7@gmail.com); boydaustin@dallas-ga.gov; Josiah Heidt; myeager@coweta.ga.us
Subject: Complaint 2017-13
Attachments: AgendaJune2018.pdf

All, per instruction from Chairman Hanley, I am attaching a notice and agenda to recommence the hearing suspended May 15, 2018 tentatively set for June 27, 2018. Carol, please take whatever additional steps are needed to send official notice. At that hearing, the Panel will vote to make a decision. To be fair and provide notice, we have attached the proposed decision which will be voted upon at the hearing. Thank you.



James A. Balli, Partner
Sams, Larkin, Huff & Balli, LLP
376 Powder Springs Street
Suite 100
Marietta, GA 30064
(770) 422-7016 (office)
(770) 425-9512 (fax)
jballi@slhb-law.com

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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

June 27, 2018

IERB Review Panel Hearing

10:00 AM

Meeting Location

*Coverdell Legislative Office Building
Room 506*

1. Call to Order
2. Recommence Review Panel Hearing on Complaint 2017-13 suspended May 15, 2018.
 - Entertain any matters related to the Complaint in the discretion of the Review Panel. Vote on whether to adopt the attached proposed written opinion or otherwise reach a decision on the Complaint.
3. Other Business
4. Adjournment

**IMMIGRATION ENFORCEMENT & REVIEW BOARD
STATE OF GEORGIA**

**RE: CITY OF DECATUR
Public Agency Respondent**

IERB COMPLAINT NO. 2017-13

**CASEY CAGLE
Complainant**

This Complaint was filed by Lieutenant Governor Casey Cagle (“Mr. Cagle”) alleging that the City of Decatur (“Decatur”) has adopted a “Sanctuary Policy” in violation of O.C.G.A. § 36-80-23(a)(6) and also violated O.C.G.A. § 50-36-4 by falsely reporting compliance with Georgia’s immigration laws.¹ Decatur denied both allegations, raised certain constitutional objections² and filed briefs to support its position. On May 15, 2018, the Complaint then came before a Review Panel (“Panel”) of the Immigration Enforcement Review Board (“IERB”). Decatur was allowed to introduce evidence in the form of witness testimony and exhibits. At the conclusion of Decatur introducing all desired evidence and making a closing argument, the hearing was suspended for purposes of the Panel

¹ The IERB has no jurisdiction over violations of O.C.G.A. § 50-36-4 and therefore will issue no ruling on whether Decatur falsely reported compliance and that portion of the Complaint is dismissed.

² The IERB is not a Court of law and will not render any opinion as to constitutionality of this process, of the statutes the IERB is tasked with enforcing or the federal immigration laws regarding administrative detainees as those issues, if any, must be addressed by the Judiciary.

reviewing the voluminous evidence presented at the hearing and to allow the proffer of other submissions no later than Thursday, May 17, 2018. Decatur and Mr. Cagle both timely forwarded additional documentation to the Panel.³ Although the IERB is not required to issue written opinions, the Panel felt it was appropriate to do so for this Complaint as other jurisdictions have similar policies and the issue is one of first impression before the IERB.

STANDARD OF PROOF

As advised by the Attorney General's office, the applicable standard of proof when determining whether Decatur has violated Georgia's immigration laws is the "preponderance of the evidence test." Rule 291-2-.04. "A 'preponderance of the evidence' [standard]...simply requires that the evidence show a rational factfinder that a particular fact is more likely than not." Redmon v. Daniel, 335 Ga. App. 159, 162 (2015). "The standard requires only that the finder of fact be inclined by the evidence toward one side or the other." Zwiren v. Thompson, 276 Ga. 498, 500 (2003). Accordingly, the question before the Panel is whether Decatur has enacted a practice or policy which "more likely than not" "prohibits or restricts" a Decatur police officer from cooperating and communicating

³ Counsel for Decatur objected to any additional documentation being submitted by Mr. Cagle. The objection was initially overruled as Decatur was allowed to submit additional documentation. Decatur has also submitted a letter of written objections and will be allowed to present argument on its objection at the hearing during which a vote will be taken whether to accept this written Ruling by the Panel. However, the issue is moot as the Panel can reach the decision herein based on the information of record and submitted at the hearing.

immigration status information to federal law enforcement. For the reasons set forth below, the Panel concludes the answer to that question is yes.

FINDINGS OF FACT AND RULING

Sometime in September of 2017, what Decatur referred to in testimony as a “loose coalition of groups” met with the Decatur Mayor and City Manager. For background information only, while one group was identified at the May 15 hearing as “Hate Free Decatur”, the identities of the other members were not specified but “Project South⁴”, the “Georgia Latino Alliance for Human Rights”⁵, and the “Georgia Not1More Coalition⁶” are identified by Move-On.org as the groups who presented the written “policy” to Decatur.⁷ Regardless of individual identity, it is clear that the “loose coalition” shared a common vehement opposition to federal immigration laws and a desire to have local jurisdictions pass written policies refusing to cooperate with federal law enforcement. It was after meeting with this “loose coalition” that Decatur, for the first time in its history, determined a need to adopt a written policy prohibiting cooperation with Immigration and Customs Enforcement (“ICE”) detainers/administrative warrants. Indeed, Decatur’s Police Chief testified to being summoned to a meeting to draft such a

⁴ <https://projectsouth.org/legal-advocacy-work/>

⁵ <http://www.glahr.org/get-involved/deportation-defense>

⁶ <http://www.notonemoredeportation.com/2016/02/08/georgia-condemns-ice-raids/>

⁷ <https://petitions.moveon.org/sign/tell-the-city-of-decatur>

policy **only** after the Mayor and City Manager met with the groups who wanted a non-detention policy in writing.⁸ Decatur attempts to reduce the significance of this fact by saying Decatur was simply putting into writing the practice utilized for years. The Panel finds that explanation unconvincing and determines that, more likely than not, Decatur, by and through its' Police Department, enacted General Order, Chapter 7 Section 03-d (the "Policy"), for the purpose of creating a "Sanctuary Culture" by preventing cooperation with ICE requests and/or to otherwise hinder ICE's ability to apprehend persons illegally present in the United States and located within the city limits of Decatur.⁹ More important to this Panel, however, is the fact that the Policy now provided that a Decatur police officer could be terminated for complying with federal law.¹⁰

The Policy enacted reads in pertinent part as follows:

The Decatur Police Department **shall not hold or extend the detention of any person at the request of U.S. Immigration and Customs Enforcement (ICE)** unless the agency first

⁸ The Panel notes that Dekalb County, the City of Atlanta and other jurisdictions in this State that have [as argued by Decatur] enacted such a policy use extremely similar, if not verbatim, language to the policy presented [or drafted] by the "loose coalition." <https://petitions.moveon.org/sign/tell-the-city-of-decatur> Thus, when Decatur argues other Metro-Atlanta local governments have adopted similar policies, the argument is most likely true as the same "loose coalition" is drafting the language and demanding it be implemented in various Georgia jurisdictions to oppose federal immigration law.

⁹ Decatur put into the record an October 12, 2017 story in the Atlanta Journal Constitution which reports Decatur is a city which has "adopted measures in favor of restricting interactions with U.S. Immigration and Customs Enforcement."

¹⁰ This is an important distinction because the groups which oppose enforcement of immigration law want a tool to be able to punish law enforcement officers who disagree with their political view.

presents the Decatur Police Department with a judicially issued warrant authorizing such detention.

In particular, the Decatur Police Department shall not arrest, **hold, extend the detention of, transfer custody of**¹¹, or transport anyone solely on the basis of an immigration detainer or an administrative immigration warrant, including an administrative immigration warrant in the National Crime Information Center (NCIC) database....

Since the Decatur Police Department does not have a facility to house an arrested person, the Decatur Police Department **will not hold a person for additional time beyond when the criminal matter allows release solely to notify ICE** of the person's release **or to facilitate the transfer of the person to ICE**...

Any officer determined to have violated this General Order is **subject to disciplinary action**.

(emphasis added. Decatur admits that the Policy is in place and that a police officer who fails to comply with the Policy can be terminated.

The Georgia law at issue here states that “[n]o local governing body, whether acting through its governing body or by an initiative, referendum, **or any other process**, shall enact, adopt, **implement, or enforce** any sanctuary policy.”

O.C.G.A. § 36-80-23 (emphasis added).¹² “Sanctuary policy” means “any regulation, rule, policy, or practice adopted by a local governing body which

¹¹ Decatur's Policy would prohibit a Decatur police officer from allowing an ICE agent to take into custody a non-citizen illegally in the United States even if the ICE agent was physically present and presented an administrative warrant stating the subject was reasonably believed to have committed a terrorist act.

¹² Decatur argued that, even if the Policy was a “sanctuary policy”, because the City Commission [local governing body] did not officially vote to pass the Policy the Complaint fails as a matter of law. The Panel rejects that defense in that Decatur provided its Police Chief with the authority [other process] to create, “implement and enforce” the Policy and Decatur has clearly “adopted” the Policy by allowing it to be implemented by its Police Department. Moreover, the written Policy was enacted only after meeting with the anti-enforcement groups.

prohibits or restricts¹³ local officials or employees from **communicating or cooperating** with federal officials or law enforcement officers with regard to reporting **immigration status information** while such local official or employee is acting within the scope of his or her official duties.” *Id.* (emphasis added). It is important to note the Legislature used both “prohibit” and “restrict” and when interpreting a statute one should “give meaning and intent to all words” and thus “restrict” means something different than “prohibit.” See *Arby’s Restaurant Group v. McRae*, 292 Ga. 243, 245 (2012). When the statute does not define a word [as here] the word is given its’ ordinary, everyday meaning. An often-used dictionary defines the word “restrict” as “to confine or keep within limits.”¹⁴ Therefore, the Panel reads O.C.G.A. § 36-80-23(a)(6) as a complete bar to any policy which either “prohibits” [does not allow] or “restricts” [confines or limits] a law enforcement officer’s ability to communicate and cooperate with ICE regarding the communication of immigration information.

O.C.G.A. § 36-80-23(a)(3) defines “immigration status information” as “**any information**...including but not limited to **any statement, document**, computer generated data, recording, or **photograph**, which is relevant to immigration status **or the identity or location** of an individual who is reasonably believed to be

¹³ A policy can be an illegal Sanctuary Policy if it prohibits OR restricts. Decatur has argued that the Policy does not “prohibit” communication. However, a complete prohibition on communication is not required to find a policy illegal, a policy can be illegal if it merely “restricts” communication.

¹⁴ <http://www.dictionary.com/browse/restrict>

illegally residing within the United States or who is reasonably believed to be involved in domestic terrorism as that term is defined in Code Section 16-4-10 or a terroristic act as that term is defined by Code Section 35-3-62.” (emphasis added).

The Panel finds that the Policy violates O.C.G.A. § 36-80-23(a)(6) in that it restricts a Decatur police officer from being able to timely, freely and completely communicate to federal officials “the identity or location” [which is immigration status information] of an person believed to be illegally in the United States. This is demonstrated in that the Policy prohibits the “holding, or extending the detention of” a person on the basis of an ICE warrant and Decatur “will not hold a person for additional time beyond when the criminal matter allows release **solely to notify ICE.**” In other words, if a Decatur police officer conducts a traffic stop, completes her interaction with the person and becomes aware that there is an active ICE warrant/detainer, the officer must let the person go without “extending the detention” for additional time in order to communicate the person’s “identity or current **location**” to ICE and may “not hold a person...solely **to notify ICE.**” If a Decatur police officer extends the detention of a person who has an ICE warrant/detainer for **any** length of time so that she may communicate the current location of said person or to copy the person’s driver’s license or other identity card [which is **immigration status information** as identity cards would be

“documents or photographs relevant to immigration status”], she has violated the Policy and **may be terminated.**

Accordingly, the Policy violates O.C.G.A. § 36-80-23(a)(6) and is an illegal “Sanctuary Policy” in that it restricts and places limitations on Decatur police officers’ ability to timely, freely and fully “cooperate or communicate” immigration status information to federal officials. The Policy is not only an illegal Sanctuary Policy under Georgia law, it would punish a Decatur police officer with termination for detaining a person [even one reasonably believed by ICE to have committed domestic terrorism or a terrorist act as defined by O.C.G.A. § 35-3-62] for any amount of time to communicate with ICE unless there was a judicially issued [Non-ICE] warrant.¹⁵ The Panel finds that punitive provision of the Policy especially offensive and somewhat ironic. At the hearing Decatur accused Mr. Cagle of making accusations purportedly critical of police officers when it is, in fact, Decatur who has enacted a rule which would allow for a police officer to be terminated for following federal law and cooperating with federal law enforcement.

As required by the IERB Rules, the identified “remedial action” is that the Policy should immediately be rescinded in writing by Decatur. See Rule 291-2-

¹⁵ Decatur makes no exception for detention of persons identified by ICE warrant/detainer requests as a person reasonably believed to have committed a terrorist act.

.03. If the Policy is not immediately rescinded, Decatur is notified to be prepared to show cause why sanctions should not be imposed up to and including, the loss of any appropriated State funds and removal of the designation of Decatur as a “qualified local government.” See Rule 291-2-.04. The Department of Audit and Accounts is hereby requested to provide the IERB and Decatur with the amount of appropriated State funds for this fiscal year.

This ____ day of _____ 2018.

Shawn Hanley, Chairman, IERB & Member, Review Panel

James Balli, Vice Chairman, IERB Member, Review Panel

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CITY OF DECATUR,)	
)	
Plaintiff,)	CIVIL ACTION FILE NO.
v.)	2018CV303251
)	
GEORGIA IMMIGRATION)	
ENFORCEMENT REVIEW BOARD,)	
)	
Defendant.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served all parties of interest with the within and foregoing **FIRST AMENDED COMPLAINT** via the e-file system and by causing a copy of same to be deposited in the United States mail in a properly addressed envelope with adequate postage thereon to:

Joseph B. Heidt, Esq.
Georgia State Attorney General's Office
40 Capitol Square SW
Atlanta, GA 30334

This 7th day of June, 2018.

WILSON MORTON & DOWNS, LLC

By: /s/Bryan A. Downs

Bryan A. Downs
Georgia Bar No. 228437
Counsel for Plaintiff