IN THE SUPERIOR COURT OF DECATUR COUNTY
STATE OF GEORGIA

JUNE FAIRCLOTH, CHAD DOLLAR, KRISTINA MARTIN, and LISA DASILVA, Plaintiffs, v. CITY OF BAINBRIDGE; DECATUR COUNTY; DECATUR COUNTY SCHOOL DISTRICT; DECATUR BOARD OF EDUCATION; and DECATUR COUNTY BOARD OF TAX ASSESSORS, Defendants.	)	CIVIL ACTION FILE NO.: 24CV00046

MOTION FOR PROTECTIVE ORDER

Pursuant to O.C.G.A. § 9-11-26, O.C.G.A. § 9-11-27, and O.C.G.A. § 9-11-37, and in the interest of efficiency and economy for the Court and parties, Defendant City of Bainbridge ("Defendant City") seeks a protective order to stay all discovery in this action pending resolution of the related Appellate Matter[1], and further objects to Plaintiffs' discovery requests (requests for production of documents and interrogatories), dated June 17, 2024.

Further, Plaintiffs' discovery requests are objectionable as they ask Defendant City to assert legal opinions and/or seeks discovery of privileged material or would put Defendant City to the burden of extensively redacting and/or withholding and providing a privilege log for those matters exempt from disclosure; the project that is the subject of most of Plaintiffs' Discovery requests has already been litigated in the Superior Court and is on appeal and is also being

[1] *State v. Decatur County-Bainbridge Industrial Development Authority, et al.*, Georgia Court of Appeals Case No. A24A1078

litigated in the United States District Court (as Plaintiffs, based on information and belief, are aware, having filed an amicus brief in one action and having filed a motion to intervene in the other); the parties to the litigation having, upon information and belief, replied and Defendant City also having replied to numerous open records requests related to the same information (thus, the information has been made readily available to various sources, including the media, and, apparently, Plaintiffs, as evidenced by the exhibits to Plaintiffs' Complaint); is the classic fishing expedition that is not reasonably calculated to lead to the discovery of admissible evidence but rather appears to be aimed at harassment, embarrassment, and other objectionable purposes; exceeds the permissible scope of discovery (Plaintiffs' Complaint alleges only a violation of open meetings laws); is already in possession, custody, and control of the Plaintiffs; and, where not already in Plaintiffs' possession, many of the requested documents are obtainable from a source that is more convenient, less burdensome, and less expensive, is generally overly broad and unduly burdensome; and the requests are even more so burdensome under these circumstances, for example:

> The City Manager in the position on December 11 subsequently left employment with the City – as such anyone searching for records involving the prior City Manager would be required to search and review ALL communications involving the prior City Manager (essentially, like reviewing communications from a third party) making it an overwhelming task of searching and reviewing tens, if not hundreds, of thousands of emails and documents;
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> The City Clerk in the position on December 11 subsequently left employment with the City – as such anyone searching for records involving the prior City Clerk would be required to search and review ALL communications involving the prior

City Clerk (essentially, like reviewing communications from a third party) making it an overwhelming task of searching and reviewing tens, if not hundreds, of thousands of emails and documents;

The current City Clerk previously served as the Special Events Coordinator for the City, remains in that prior role, and also temporarily serves as the City Clerk; thus, her obligations under these dual roles consumes time that might otherwise be dedicated to searching and reviewing documents. Some of the most recent an ongoing events for which she is responsible include:

Oscar Jackson Outdoor Camp	June 10 – July 19, 2024
Independence Day Celebration	July 4, 2024
City Council Retreat	July 10 – 12, 2024

This Court's Bond Validation Order, entered January 2, 2024, in the case styled *State v. Decatur County-Bainbridge Industrial Development Authority, et al.*, has been appealed to the Georgia Court of Appeals as Case No. A24A1078 ("Appellate Matter"). As argued by Intervenor-Movant Safer Human Medicine, Inc.'s ("SHM") as part of its Motion to Intervene heard by the Court on July 16, 2024, ***as asserted by Plaintiffs as a ground for denying SHM's Motion to Intervene and argued at the July 16 Hearing***,[2] and as contained in Defendant City's Answer, filed March 21, 2024 that were raised during the July 16 hearing, the issues involved in the instant matter arise out of, and relate to, the same set of factual circumstances and the legal efficacy (or not) of the same documents that formed the basis of the bond validation and created the legal

[2] As the Court heard these various arguments only yesterday, Defendant City has not recapitulated them all in this Motion. Defendant City believes it is sufficient to assert that Plaintiffs' entire argument regarding why SHM should not be permitted to intervene in this matter can be fairly encapsulated by asserting Plaintiffs were forced to rely on all, or nearly all, of the documents that were part of the bond validation (now a part of the Appellate Matter) but assert that a resolution of the Appellate Matter has no bearing on the instant case.

relationships by and among all the parties to those documents (which include the four local governments that are the defendants in the instant case), and, thus, the issues in the instant matter may be impacted by the legal conclusions reached by the Georgia Court of Appeals in resolving the Appellate Matter. Oral argument in the Appellate Matter was heard on June 13, 2024. Defendant City anticipates the Appellate Matter will be decided by November 1, 2024.

ARGUMENT

The Court has broad discretion in determining whether a protective order should be granted, and when granted what the terms of that order might include. *See, e.g.*, *Fulton County Bd. of Assessors v. Saks Fifth Ave., Inc.*, 248 Ga. App. 836, 842 (2001). As described above, there is good cause for this Court to grant Defendant City's motion. In order to obtain a protective order, the party seeking such order under OCGA § 9-11-26 (c) must "make a showing of 'good cause'". *Gen. Motors, LLC v. Buchanan*, 313 Ga. 811, 811, 874 S.E.2d 52, 57 (2022). "The rule does not specify or limit the grounds a party may assert as good cause for a protective order". *Id*. at 815, 60. It is within the sound discretion of the Court to postpone or limit discovery, and "a trial court has 'wide discretion in the entering of orders permitting or preventing the use of discovery which is oppressive, unreasonable, unduly burdensome or expensive, harassing, harsh, insulting, annoying, embarrassing, incriminating, or directed to *wholly irrelevant and immaterial* or privileged matters … .'" (emphasis in original). *Smith v. Northside Hosp., Inc.*, 347 Ga. App. 700, 707, 820 S.E.2d 758, 764 (2018). Indeed, such a procedure is an eminently logical means to prevent wasting the time and effort of all concerned, and to make the most efficient use of judicial and party resources.

Stays of discovery have a long history of use based generally on considerations of efficient disposition of litigation as well as scope of proposed discovery, burden on the party subject to

discovery, nature of the information sought as it relates to the party seeking discovery's claims and/or defenses, and other general considerations of embarrassment and harassment. Specifically, the Uniform Rules of the Superior Courts of the State of Georgia contemplate the parties in litigation meeting to agree on a discovery plan ***prior to any discovery being served***. However, in this case, while a potential party's motion to intervene was still pending (thus making it unlikely the potential intervenor would know or be able to object to the nature of discovery), based on information and belief, Plaintiffs served discovery on all parties as well as non-parties.

From Defendant City alone, Plaintiff served 27 interrogatories, not including subparts, and 38 requests for production. Few of the requests seem to relate to the actual allegations contained in Plaintiffs' Complaint.

At their core, Plaintiffs allegations are that Defendant City failed to give proper notice of a December 11 City Council meeting and failed to keep proper minutes of the same meeting. That is all. The rest of Plaintiffs' Complaint is essentially an attempt to make Defendant City's actions appear salacious in light of the nature of the project that was discussed at the meeting, which is wholly irrelevant to whether notice of the meeting was properly given or not. See *Smith v. Northside Hosp., Inc.*, 347 Ga. App. 700, 700, 820 S.E.2d 758, 764 (2018) ("the trial court, in granting the protective order limiting discovery, found, consistent with *Atchison [v. Hosp. Auth. of St. Marys*, 245 Ga. 494, 494, 265 S.E.2d 801, 802 (1980)], that 'the intentions and motivations behind an Open Records Act request are irrelevant[.]'"). Regardless, why discovery would be necessary regarding conversations with the project or the State or other governmental entities, or the nature of incentives offered to a project, or former employees' personnel files is beyond Defendant City's understanding.

As Plaintiffs' Complaint and Defendant City's Answer demonstrate, the parties have irreconcilable understandings as to the technical requirements of the open meetings law. However, the dispute is limited *solely to that single claim*: an alleged violation of the open meetings law.

Further, Plaintiffs appear to already have in its possession, custody, or control Defendant City's notice of the December 11 meeting and the related agenda, the email correspondence from Defendant City to the County Organ regarding the meeting, and the minutes of the meeting. Plaintiffs and Defendant City may disagree on the legal effectiveness of those documents for purposes of complying with the open meetings law, but it strains credibility to understand why anything more than those items are legally sufficient for this Court to make a ruling on whether Defendant City gave proper notice and kept proper minutes.

Finally, the expense of this litigation will ultimately be borne by the taxpayers of Defendant City, oddly, including some of the very Plaintiffs who served their unreasonable discovery requests (and some overly burdensome open records requests) on Defendant City. As a result, it is incumbent on Defendant City to attempt to shield all of its citizens, including Plaintiffs, from paying for Plaintiffs' unnecessary fishing expedition.

CONCLUSION

Defendant City requests this Court grant Defendant City's Motion, stay discovery in this matter until such time as the Court of Appeals issues an order resolving Appellate Matter, grant an order protecting Defendant City from participating in Plaintiffs' Discovery entirely, or compel the parties to participate in a Rule 5.4, Uniform Rules of the Superior Courts of the State of Georgia, conference to determine a discovery plan limiting discovery to matters of reasonable time and scope specifically tailored to the actual matters alleged in Plaintiffs' Complaint.

CERTIFICATION OF CONSULTATION

In accordance with Rule 6.4(B) of the Uniform Rules of the Superior Courts of the State of Georgia, prior to filing the instant motion, counsel for the moving party conferred with counsel for the opposing party in a good faith effort to resolve by agreement the matters involved in the

instant motion. Such effort was unsuccessful.

Respectfully submitted,

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