

## FIGHTING BACK

### YOU HAVE A RIGHT TO INFORMATION

By Theodore P. Hill

**Don't be deterred.** You can use open-records laws to get at the truth.

Academic freedom protects professors from institutional censorship or discipline when they exercise their basic rights as citizens. One of those rights is that to examine official documents to see how public funds are spent and learn how decisions are made. The Freedom of Information Act (FOIA) guarantees this right for federal records; open-records or "sunshine" laws do so for state records.

Ten years ago, in the course of using the Georgia Open Records Act (ORA) to examine documents at the Georgia Institute of Technology, I became concerned about misuse of public funds. I made several state ORA requests to see certain of Georgia Tech's basic financial records, none of which were subject to disclosure under the FOIA. One request asked to see the "source and disbursement of funds to and from" a mathematical research center in the College of Sciences for the previous eight years, during which time the center spent millions of dollars of state and federal support. After many delays, the university lawyers finally replied, saying that there were no such records [[ora01](#), [ora02](#), [ora03](#)].

Financial documents eventually extracted from the university following persistent ORA requests suggested extensive misuse of public funds. When the chair and dean [now provost] refused to act, I filed a grievance against the chair asking for an audit. Three years later, resulting state audits found that financial records for the center "certainly have existed since [1991]" [[aud01](#), p. 13] and, not surprisingly, that the center was running annual shortfalls of hundreds of thousands of dollars [[aud01](#), p. 6]. The audits also found multiple instances of diversion of university funds for personal travel, books, and even a baby shower [[aud01](#), p. 10]. The Georgia attorney general's review of travel expenses in the School of Mathematics labeled the abuse of travel expenses at Georgia Tech "systemic" [[ago01](#), p. 1] and declared that Georgia Tech suffered from "lack of institutional control" over travel and expense accounts [[ago02](#), p. 4]. The chair of the mathematics department was required to step down and to repay thousands of dollars [[ago02](#)].

When I initially asked to review university financial records, however, Georgia Tech administrators and attorneys repeatedly blocked my attempts and retaliated against me for using the ORA. They improperly demanded prepayments [[ora06](#)], withheld documents for more than a year [[ago03](#), p. 9], falsely claimed "attorney-client privilege," [[ora07](#), [fsg05](#), [fsg06](#)] and denied the existence of records in what the grievance committee called "patently false" statements [[fsg01](#), [fsg02](#), p. 1, [fsg03](#), [fsg04](#), p. 1].

Soon-to-be administrators accused me, in widely disseminated e-mail messages and the press, of cowardice, invasion of privacy, and even racism (some of the subjects of my open-records requests were minorities). When the university provost defended the attacks as freedom of speech, I filed a defamation lawsuit against one of the perpetrators [[law02](#)]. Georgia Tech officials then informed the state's Department of Administrative Services that I was "something of an activist," having obtained many records through the ORA [[das01](#)]. The administrative services department provided legal defense funds for the defendant and his \$60,000 payment to me to settle the lawsuit [[law03](#)], even after the judge ruled that the defendant was not acting in the course and scope of his employment [[das02](#)].

My supervisor gave me the rock-bottom annual evaluation among fifty-odd professors (an external committee later placed me in the top ten [[aau01](#)]). When the dean [now provost] supported him, I filed a grievance against both of them. The Georgia Tech faculty grievance committee that investigated reported that my low evaluation resulted from retaliation for my use of the grievance process and the ORA, and it recommended written reprimands for both administrators [[fsg02](#), p. 7]. The president, however, declined to reprimand either [[zzz08](#)].

Are college administrators above the law? In Georgia, intentional violations of the ORA are misdemeanors, reportable to the attorney general's office, so I took my concerns to that office. It turned the investigation over to the board of regents, whose report concluded that "the ORA does not address issues related to retaliating against employees who use it." [[ago03](#), p. 13] When violations of the ORA continued, I again reported them to the attorney general and was this time shuttled to the county district attorney, to the county solicitor, and then back to the attorney general again [[ago05](#)].

Finally, I turned to the AAUP. Raised in an antiunion, rural Republican, agribusiness family, I had never given the AAUP much thought. But staff at the national office referred me to Hugh Hudson, head of the history department at Georgia State University and executive secretary of the Georgia conference of the AAUP. In June 2002, Hudson wrote to the Georgia Tech president about the retaliatory evaluation [aau01]. The president did not even answer his letter, and the next semester, the dean [now provost] placed me on involuntary leave without pay [aau02].

Hudson subsequently appealed to the new chancellor, this time with success. As the AAUP's representative, Hudson helped me negotiate a settlement [tph03] that included a huge increase in my pension resulting from correction of the retaliatory low pay raises, back wages, paid leave, and cash totaling nearly half a million dollars—contingent on my retirement.

But my most significant success came from two WSB-TV Channel 2 *Whistleblower Reports* that focused on my victories with open records requests, and highlighted Hudson's statement that the retaliation against me was "severe." He explained that professors have a *duty* to question the status quo. "If we did not challenge accepted wisdom, if we didn't challenge authority," he said, "we would still be arguing the world is flat." [url01]

The cover of the May–June 2005 issue of *Academe* posed the question "Do We Need Sunshine Laws?" Absolutely! [See rebuttal zzz01.] Sunshine is as vital to academics as it is to photosynthesis.

(Additional resources and other documents related to college activism are available at <http://www.collegeactivists.org>. If you wish to contribute articles, personal stories or other relevant material, please send email to [staff@collegeactivists.org](mailto:staff@collegeactivists.org)).

## References

- [aau01] [AAUP letter to Georgia Tech \(GIT\) President](#)
- [aau02] [AAUP letter to GIT President](#)
- [ago01] [Interoffice AG memo to GA Attorney General](#)
- [ago02] [Letter from GA Attorney General to GA Chancellor](#)
- [ago03] [GA Regents' report of investigation of violations of Open Records Act](#)
- [ago05] [Emails To Assistant Attorney General 2006](#)
- [aud01] [GIT Internal Audit Report](#)
- [das01] [Letter from GA Dept. of Admin. Services to GA Deputy Attorney General](#)
- [das02] [Dept. of Administrative Services Letter](#)
- [dea01] [Dean's Actions Memo](#)
- [fsg01] [Letter from GIT Faculty Grievance Committee to GIT President](#)
- [fsg02] [Report from GIT Faculty Grievance Committee to GIT President](#)
- [fsg03] [Letter from GIT Faculty Grievance Committee to GIT President](#)
- [fsg04] [Report from GIT Faculty Grievance Committee to GIT President](#)
- [fsg05] [GIT Attorney's email to GIT Faculty Grievance Committee](#)
- [fsg06] [GIT Faculty Grievance Committee email to GIT Office of Legal Affairs](#)
- [law02] [Defamation Lawsuit](#)
- [law03] [Defamation Settlement](#)
- [ora01] [GIT Attorney's email response to Open Records Act request](#)
- [ora02] [GIT Attorney's email response to Open Records Act request](#)
- [ora03] [GIT Attorney's letter response to Open Records Act request](#)
- [ora06] [GIT Attorney's demand for prepayment of Open Records Act costs](#)
- [ora07] [GIT Attorney's claim of attorney-client privilege](#)
- [tph03] [GIT Settlement](#)
- [url01] [WSB-TV Whistleblower Reports 02/24/04](#) (last linked 09/08/06)
- [zzz01] [Academe Article Rebuttal](#)
- [zzz08] [Commentary on administrative promotions](#)