

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGIACARRY.ORG, INC.,)	
And)	
CHRISTOPHER RAISSI,)	
)	
Plaintiffs)	
)	
v.)	CIVIL ACTION FILE NO.
)	1:09-CV-0594-TWT
METROPOLITAN ATLANTA)	
RAPID TRANSIT AUTHORITY,)	
et al.)	
)	
Defendants)	

**DEFENDANTS' MEMORANDUM IN SUPPORT OF ITS
PARTIAL MOTION TO DISMISS**

COME NOW Defendants, by and through the undersigned counsel, and hereby file this Memorandum in Support of Defendants' Motion to Dismiss Plaintiffs' state law claims.

Facts As Pled in Complaint¹

In 2008 House Bill 89 ("HB 89") was passed which allowed the carrying of firearms on the MARTA transit system, as well as other places, with a valid Georgia firearms license and provided that it was carried properly. This law went into effect on July 1, 2008. On or about June 20, 2008 Plaintiffs' counsel, John Monroe, met with Defendant Dorsey to discuss the new law. (Plaintiffs'

¹ For purposes of this motion only, Defendants assert the facts as pled in the complaint. Defendants are not admitting these facts, and reserve the right to deny them in later motions and proceedings.

Complaint ¶ 11). John Monroe made an oral Georgia Open Records Act request for a copy of MARTA's policy on HB 89 once it was developed. (Complaint ¶ 12). This Open Records Act request was reiterated in writing on the same day. (Complaint ¶ 13; Exhibit A attached to Complaint). On June 27, 2008 and July 8, 2008, Plaintiffs' counsel again requested the policy from Defendant Dorsey. (Plaintiffs' Complaint ¶¶ 14 & 15; Exhibits B & C attached to Complaint). The Police Department policy was not provided to Plaintiffs' counsel.

On October 14, 2008, long after Plaintiff's counsel's request for a policy, Defendant Raissi used the MARTA transit system while wearing a firearm. Mr. Raissi was surrounded by officers, had his firearm seized, and was detained for approximately 30 minutes. (Plaintiffs' Complaint ¶¶ 17, 18 21 & 22).

According to the Complaint, on October 16, 2008 Defendant Raissi sent an Open Records Act request to Defendant Dunham requesting records pertaining to his detention, and MARTA's policy for detaining people with firearms. Plaintiffs' Complaint ¶ 23; Exhibit D attached to Complaint). It bears noting that Exhibit D, attached to the Complaint does not request a "policy", but only records

relating to the detention of Defendant Raissi. Defendant Dunham did not provide these records to Plaintiff Raissi.

Argument and Citation of Authority

Plaintiffs allege that Defendants Dunham and Dorsey have denied them access to documents which constitute public records under O.C.G.A. § 50-18-70. The Open Records Act vests Georgia superior courts with the discretion in determining whether to allow or prohibit inspection of public records. O.C.G.A. § 50-18-73(a); see Bowers v. Shelton, 265 Ga. 247, 453 S.E.2d 741 (1995). Plaintiffs' claims regarding the Open Records Act requests are clearly based on state law, and thus absent diversity of citizenship of the parties, is not within the original subject matter jurisdiction of this Court. The Complaint does not allege diversity of citizenship.

Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over claims which are so related to other claims within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. See Ford v. City of Oakwood, Georgia, 905 F.Supp.1063 (N.D.Ga., 1995). Although Plaintiffs' claims under section 1983 appear to be clearly within this Court's original jurisdiction, their Open Records Act claims are not so related to the section

1983 claims as to form part of the same case or controversy. Plaintiffs' section 1983 claim is for the alleged illegal search, detention and seizure of Plaintiff Raissi and his property. (Plaintiffs' Complaint ¶ 1). These actions did not occur until October 14, 2008. Plaintiffs' Complaint ¶¶ 17, 18, 21 & 22). The Open Records Act request made in June and July, 2008 are clearly not a part of the same case or controversy as the October event. Furthermore, the October 16, 2008 Open Records Act request made by Plaintiff Raissi do not fall within the elements of same case or controversy because the underlying legal issues determining whether someone violated the Open Records Act and section 1983 are different. The documents at issue in the Open Records Act claim may be relevant to Plaintiffs' federal claim, however that is not the determining factor. This Court has previously held that the determinations which must be made regarding the authenticity of the requests, the documents' status and accessibility under Georgia law are not related to the issues underlying Plaintiffs' section 1983 claims. Ford, 905 F.Supp. at 1066).

Conclusion

Neither of the Plaintiffs' Open Records Act claims are within the subject matter jurisdiction of this Court.

Pursuant to Fed.R.Civ.P. 12(h)(3), these state law claims must be dismissed for lack of jurisdiction.

Respectfully submitted this 21st day of May, 2009.

/s/ Paula Morgan Nash
Paula Morgan Nash
Georgia Bar No. 528884
Attorney for Defendants

Metropolitan Atlanta Rapid Transit Authority
Legal Services Department
2424 Piedmont Road, N.E.
6th Floor
Atlanta, Georgia 30324
(404) 848-5220
(404) 848-5225 facsimile

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGIACARRY.ORG, INC.,)	
And)	
CHRISTOPHER RAISSI,)	
)	
Plaintiffs)	
)	
v.)	CIVIL ACTION FILE NO.
)	1:09-CV-0594-TWT
METROPOLITAN ATLANTA)	
RAPID TRANSIT AUTHORITY,)	
et al.)	
)	
Defendants)	

CERTIFICATE OF FONT TYPE, SIZE AND SERVICE

I hereby certify that on May 21, 2009, I served Plaintiffs' counsel by e-filing "DEFENDANTS' PARTIAL MOTION TO DISMISS AND SUPPORTING MEMORANDUM" in 12-point Courier New for filing and uploading to the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorney of record:

John R. Monroe
Attorney at Law
9640 Coleman Road
Roswell, GA 30075

This 21st day of May, 2009

/s/ Paula Morgan Nash

MARTA
2424 Piedmont Road, NE
Atlanta, Georgia 30324
Phone: 404-848-5220
Fax: 404-848-5225
E-Mail: pmnash@itsmarta.com

Counsel for Defendants
Paula Morgan Nash
Georgia Bar No. 528884