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March 4, 2016

VIA U.S. MAIL and FACSIMILE to 404-657-9932

Ms. Jennifer Colangelo
Georgia Department of Law
40 Capitol Square SW
Atlanta, Georgia 30334-1300

RE: Response to correspondence regarding Open Records Act complaint from Frank Huggins regarding the Forsyth County Sheriff's Office dated February 25, 2016.

Dear Ms. Colangelo,

I am writing on behalf of my client, Forsyth County Sheriff Duane K Piper, in response to your correspondence dated February 25, 2016. I am responding within ten (10) days of your letter, as requested. According to your correspondence, your office received a complaint from Mr. Frank Huggins alleging that an employee of my client has failed to properly respond to an Open Records Act Request from Mr. Huggins wherein Mr. Huggins has requested certain correspondence, including any and all reports, between or received by the Forsyth County Sheriff's Office (FCSO) and the Commission on Accreditation of Law Enforcement Agencies, Inc. (CALEA). Mr. Huggins' complaint seems to revolve specifically around a report that he alleges was produced by CALEA and then submitted to the FCSO via electronic mail but that the FCSO did not provide. As will be discussed herein, my client's response to Mr. Huggins' request was complete and in compliance with the Georgia Open Records Act (the "Act").

I will outline for you the facts and circumstances surrounding this request that show my client is in compliance with the Act. I will be referring to the emails provided to you by Mr. Huggins in his complaint and am therefore not resubmitting the same emails that you already possess. Mr. Huggins did submit an Open Records Act request to the FCSO via email on September 18, 2015 at 3:13 p.m. In this request, Mr. Huggins was seeking "copies of correspondence sent between authorized representatives of FCSO and CALEA following the Assessment Team re-accreditation visit. This includes written and emailed correspondence, including any and ALL reports received from CALEA by FCSO." (Underline in original). On September 21, 2015 at 10:46 a.m. an employee of the FCSO responded to this request via email indicating that no records responsive to this request had been found. Mr. Huggins then followed up via email on that same date at 12:48 p.m. seeking confirmation on the response and indicating that his current request was worded differently from his prior requests and was requesting documents from the

time frame after the assessment team visit.¹ In response to this request for confirmation, an employee of the FCSO informed Mr. Huggins via email at 2:03 p.m. that day that he had already received all correspondence between the FCSO and CALEA.

After further review of the files and in an effort to ensure full compliance with the Open Records Act and Mr. Huggins' request, one additional email was located that was responsive to Mr. Huggins' request. That additional email was provided to Mr. Huggins via email on September 21, 2015 at 3:04 p.m. At this time, the FCSO had provided all communications between the agency and CALEA that were in the possession of the FCSO and had therefore fully complied with the request. However, Mr. Huggins then responded on September 21, 2015 at 5:32 p.m. requesting that the CALEA report be provided as Mr. Huggins was under the impression that the report was in the actual physical custody of the FCSO. This is not the case. The FCSO does not possess the report to which Mr. Huggins refers and therefore cannot provide a copy to him.

The letter sent by my client to CALEA that put CALEA on notice that the FCSO was terminating their services and therefore not renewing those services was dated August 6, 2015. The decision to terminate the services of CALEA was made prior to August 6, 2015. On August 19, 2015 CALEA sent an email to the FCSO entitled "Assessment Report Delivery Notice" indicating that the CALEA report had been sent via email to the chief executive officer of the agency, which is Sheriff Piper. Presumptively, the Assessment Report was delivered via email on the same date (August 19, 2015) that the delivery notice was provided to the FCSO Accreditation Manager. By August 19, 2015 the Sheriff's Office had no business necessity to involve itself with communications from CALEA. As a result, my client did not maintain the email sent directly to Sheriff Piper² that purportedly contained the CALEA report. Therefore, and as of the date of Mr. Huggins open records request, the report is not in the possession of the FCSO and the FCSO simply cannot provide a report that it does not possess.

Mr. Huggins assumes the FCSO actually possesses this report based on two emails. One is the email of August 19, 2015 from CALEA indicating that the report had been sent via email to the chief executive officer that date. The other is an email from CALEA to Mr. Huggins dated September 18, 2015 stating the agency (the FCSO) has received the report. Both of these emails assume the report was actually received by my client. CALEA can only state with certainty that the report was sent via email. CALEA has no actual knowledge of the status of that email and whether it was received, opened or maintained. I have no reason to doubt that the email was sent by CALEA. I do know however, that any such email containing a report emailed on August 19, 2015 was not maintained by my client as my client had no business necessity for any such email as of that date. If my client was in possession of the report on September 18, 2015 it would have been provided to Mr. Huggins. My client cannot provide a report that it does not possess.

¹ Mr. Huggins had submitted two prior requests for correspondence between CALEA and the FCSO. His first request sought information between certain dates and that request was complied with by the FCSO. His second request sought all correspondence between CALEA and FCSO without including a specific date range. This request was also fulfilled by the FCSO.

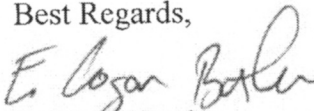
² As a matter of custom and practice, Sheriff Piper himself does not utilize email communications even though he has an email address assigned to him.

It is important to note that this report that has been requested by Mr. Huggins is solely the work product of CALEA. The data presumptively used in preparation of this report was generated by CALEA. The report itself would have been authored by CALEA, or a CALEA representative. The finished report would have then been sent by CALEA to the FCSO via email only and as discussed above. This report is not the work product of the FCSO and is not in the possession of the FCSO.

An agency is not required to produce records that do not exist at the time of the request. O.C.G.A. § 50-18-71(b)(1)(A). As stated above, the report at issue did not exist within the FCSO at the time of the request as the FCSO was not in possession of the report created wholly by CALEA. A public officer has no duty to create a document and any such document sought must “exist in public records before access to it will be ordered.” Schulten, Ward & Turner, LLP v. Fulton-DeKalb Hospital Authority et al., 272 Ga. 725 (2000). Additionally, “[u]nless a writing or information stored on a computer is prepared and maintained or received in the course of an agency’s operations, it is not a public record, and its disclosure would not be governed by the Act” Id.(internal quotes and external cite omitted). At the time the report at issue was purportedly sent via email to the FCSO, CALEA’s services had been terminated and were not being renewed. Any CALEA report or correspondence submitted after such time as the decision to terminate and not renew CALEA services was made was not maintained or received in the course of FCSO operations as the FCSO was no longer conducting business with CALEA. Additionally, a custodian of public records is not required to comb through its files in search of documents sought by a citizen. Id. Likewise, a custodian of public records cannot be required to comb through the records of another separate entity in order to locate records sought by a citizen. Stated differently, where records do not exist in the custody of the agency to which an open records request is made, there can be no violation of the Act for failing to provide records not in existence, *ie.* not in the custody of, the agency to whom a request is made. See Generally, Id.

The FCSO has properly responded to all of Mr. Huggins’ requests and has provided all documents in its possession related to the CALEA assessment conducted in 2015. The report sought by Mr. Huggins is in the possession of CALEA. If the FCSO maintained a copy of that report or otherwise possessed the report, my client would gladly provide a copy of that report to Mr. Huggins. However, my client cannot provide a document that it does not possess. The Act does not require my client to go searching for this document from an outside source.

My client is committed to full compliance with the Open Records Act and in this instance I firmly believe that the FCSO has fully complied with the Act by providing all documents in its possession that are responsive to the request and indicating which document was not in its possession within three (3) days of the request. I hope this correspondence has provided you with the information you need to reach the same determination and close your inquiry. However, I am always willing to discuss this matter with you further if you feel that is necessary. Thank you for your consideration.

Best Regards,

E. Logan Butler

Cc: Sheriff Duane K. Piper