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'Drag This Out as Long as Possible': Former Official Faces Rare Criminal Charges Under Open-Records Law

By **Richard Fausset**

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ATLANTA — When he was mayor of Atlanta, Kasim Reed's relationship with the news media was notoriously contentious.

He was the kind of politician who punched back when he felt punched. He was well known for blocking reporters on Twitter, and his office regularly criticized journalists by name and issued news releases that vigorously pushed back against negative coverage.

Once, at a February 2017 news conference, Mr. Reed responded to reporters' requests for records by simultaneously releasing more than 1.4 million pages of documents on paper, stuffed into more than 400 boxes, some of them filled with blank sheets and minuscule spreadsheet printouts — a gesture interpreted by many in the local press corps as a dramatic act of nose-thumbing.

Mr. Reed left office in January 2018 after two terms, but his tenure, and a federal corruption investigation focused on his administration, still linger over city hall like a hangover. Last week, his administration's relationship with the media was on full display in a downtown Atlanta courtroom, where his former press secretary, Jenna Garland, was facing criminal charges for alleged failure to comply with Georgia's open records law.

It is a rare predicament for an American government official, and the allegations will do little to allay investigative reporters' worst suspicions about the spirit

with which bureaucrats receive their nagging, but legal, records requests.

One of the charges against Ms. Garland accuses her of attempting to frustrate a reporter's 2017 request for billing documents from the city water department by telling a subordinate, in text messages, to "drag this out as long as possible" and "provide information in the most confusing format available."

The two charges she faces are misdemeanors, carrying at most a total fine of \$3,500. But they are milestones, representing the first time in Georgia history that any public official has been criminally charged under the state's open records law. Nationwide, experts say, criminal actions against public officials for open records violations are extremely uncommon.

Ms. Garland, a Democrat, has pleaded not guilty. She declined a plea offer last week from the office of the state attorney general, Chris Carr, a Republican; her case could go to trial as early as the fall.

First Amendment advocates say the charges have already served as a warning to other government officials to take records requests seriously.

"Public records belong to the public," said Cynthia Counts, a lawyer and board member of the Georgia First Amendment Foundation. "Without enforcement there's really no meaning behind any of the provisions."

The case is perhaps the most notable fallout from an epic, extended public battle between Mr. Reed, a forceful personality and one of the most important African-American politicians in the South, and two titans of the Atlanta media scene: The Atlanta Journal-Constitution and WSB-TV, the local ABC affiliate. The paper and TV station are owned by the same parent company and often team up for coverage.

The Journal-Constitution, like many newspapers across the country, has been plagued in recent years with circulation declines and diminished resources. But its coverage of the Reed administration has been vigorous and thorough, generating numerous scoops in the midst of a continuing corruption

investigation.

Federal agents have been scrutinizing construction contracts issued during Mr. Reed's tenure, the use of city-issued credit cards, and concessions at the city's international airport, among other matters. The federal investigation has resulted in numerous indictments.



Kasim Reed, the former mayor of Atlanta, once held a press conference to release more than 1.4 million pages of paper records simultaneously, a move that was taken as thumbing his nose at reporters' requests for records.

Branden Camp/Atlanta Journal-Constitution, via Associated Press

Mr. Reed, who could not be reached for comment last week, has repeatedly declared his innocence.

His handpicked successor, Mayor Keisha Lance Bottoms, has sought to improve relations with the news media. She has a long way to go.

In April 2018, after Mr. Reed left office, lawyers for The Journal-Constitution and WSB-TV wrote to the state attorney general, asking him to initiate a "formal

mediation process” to address the city’s “systemic violations of the Open Records Act.” In their letter, they laid out numerous allegations of noncompliance with records requests, including two filed by a WSB-TV reporter after receiving a tip that some Atlanta city officials had not paid their water bills.

In one text message that later came to light, Ms. Garland advised a water department spokesperson to be “as unhelpful as possible.” In another, she told the spokesperson to “hold all” requested documents pertaining to certain members of the City Council until the reporter “asks for an update.”

The attorney general issued the citations against Ms. Garland in February, saying in a news release that it was a misdemeanor under the state’s Open Records Act to “knowingly and willingly attempt to frustrate access to records that are not subject to exemption by intentionally making such records difficult to obtain or review.”

Open-records or “sunshine” laws in a number of other states include no criminal sanctions for noncompliance, although a number of them call for civil penalties or the payment of attorneys’ fees and court costs if a news organization or a member of the public successfully sues a government agency for documents.

In Colorado, lawmakers removed criminal penalties for violating the state’s open-records law two years ago because almost no one was ever charged.

Georgia, like a number of other states, introduced its sunshine law in the 1970s, around the time of the Watergate scandal, when mistrust of government was running high. The law was significantly strengthened in a 2012 revision backed by Sam Olens, the state’s Republican attorney general at the time, who said the state had been receiving hundreds of complaints every year about potential violations of open-records and open-meetings laws.

Ms. Garland’s supporters and friends privately complain that the charges against her are overkill, and perhaps a partisan ploy by Mr. Carr, who asked the Georgia Bureau of Investigation to look into Ms. Garland’s actions during an

election year for him. His spokeswoman, Katie Byrd, called any allegations of political motivation on Mr. Carr's part "preposterous."

Ms. Garland's lawyer, Jennifer Little, said in an email that an independent investigation last year by a law firm, Holland & Knight, found that the water billing records "were produced in a timely manner and in compliance with the law." And while Ms. Garland "may have spoken out of frustration, she acted in good faith and did not violate any statutes," Ms. Little said.

The Journal-Constitution reported that the Holland & Knight firm had "close ties" to Mr. Reed, and that its investigation was ordered by a former city attorney and delivered to the Georgia Bureau of Investigation as a "defense" of the administration.

The law firm reportedly concluded that Ms. Garland's comments in the text messages were "tongue in cheek."

Scott R. Grubman, an Atlanta-based lawyer experienced in white-collar crime matters who is not involved in the Garland case, read Ms. Garland's text messages the same way. He said he thought the government's case against her was "flimsy" and an overreaction, given that civil penalties could be levied instead.

In Georgia, both state agencies and local governments "regularly engage in delay tactics" in response to open-records requests, Mr. Grubman said in an email. "By bringing a criminal prosecution against Ms. Garland without having ever criminally prosecuted any other violation in the past, the A.G.'s office appears to be unfairly targeting Ms. Garland and opening up a can of worms that will be difficult to close."

Whatever the outcome of Ms. Garland's case, some progress has already been made in the wider fight between city hall in Atlanta and the news organizations: a settlement overhauling the way the city processes open-records requests.

Kevin Riley, editor of The Journal-Constitution, said he had no opinion about

whether the charges against Ms. Garland were the best way to solve the problem. But he said, “I do think it’s important that public officials know that they can’t get away with this.”

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