

To: All GACP Active, Professional and Life Members
From: Frank V. Rotondo, GACP Executive Director
Subject: Important Georgia Supreme Court Ruling regarding Open Records
Date: July 10, 2008

The Georgia Supreme Court recently ruled that the Open Records Act did not require police departments to open their investigative files in cases which, while cold, had not been closed. In a case which attracted the attention of the press establishment throughout Georgia, the Court rebuffed the arguments of the Athens newspapers who had sought the investigative file involving a rape and murder of a University of Georgia co-ed in 1993. They claimed that the case should be considered a closed case because the Athens-Clark County police department was not actively investigating the case. The evidence showed that the Police Department regularly submits DNA sampling, through federal and state crime data bases for comparisons.

Athens-Clark County Police Chief Jack Lumpkin requested that the GACP submit an *amicus curiae* brief supporting the police department's argument seeking to reverse the decision of the Georgia Court of Appeals which found that the files should not be considered part of an open case, since the investigation was not "active." GACP General Counsel Michael Caldwell wrote the brief arguing for reversal of the Appeals Court assisted by GMA Deputy General Counsel, Ted Bagget. They argued that the Court of Appeals incorrectly confused a cold case for a closed case, and reminded the High Court that law enforcement history is replete with murder cases which were solved, and in which convictions were won many years after the exhaustion of available leads had consigned the cases to inactive investigation status.

The ACC Police Department's and the GACP'S position on the investigative file ultimately triumphed; however, the Court held that the Department was incorrect in arguing that the three day period for responding to Open Records Act requests should start on the date the records custodian receives the request. The Supreme Court held that the time begins to run from the date the police department received the request. Failing to comply with the Open Records Act can subject a department to liability for attorney's fees and costs.