

# Mike Jacobs

Your State Representative

DeKalb County's 80th District



## State Rep. Mike Jacobs reports to you...

### PDK Open Records Loophole Now Closed

In August 2005, DeKalb citizens scored a major victory for openness and transparency in our county government. That was the month Superior Court Judge Robert Castellani granted summary judgment in *Feltus v. DeKalb County* to a group of citizens who were seeking records concerning the flights into and out of DeKalb Peachtree Airport (PDK).

That sort of openness and transparency should be guaranteed. It shouldn't require a lawsuit that costs citizens hundreds of thousands of dollars in legal fees in order to obtain the records they are seeking. In fact, Judge Castellani found that DeKalb County had been stubbornly litigious and ordered DeKalb to pay the citizens' legal fees as a result.

DeKalb's legal defense in *Feltus* was based in part on an exception in the Georgia Open Records Act that provides public records may be withheld from disclosure if "specifically required by the federal **government** to be kept confidential." Abusing this exception, DeKalb claimed that a confidentiality clause in a contract the county had negotiated with the Federal Aviation Administration (FAA) was the basis for hiding PDK records from public view. In essence, the county was saying they could sit down behind closed doors and write a contract with the FAA that would negate the Georgia Open Records Act.

That's not the way the "federal government" exception is supposed to work. The exception is only meant to exempt records "specifically required by federal **statute or regulation** to be kept confidential." The exception is intended to codify a basic legal principle known as preemption, i.e., that the provisions of federal law preempt state law.

With help from Senator David Shafer and my colleagues on the House Judiciary Committee, I amended [Senate Bill 26](#) (click for bill text) during this year's legislative session to fix the language of the "federal government" exception once and for all. Now, it will say exactly what it means, thus only allowing public records to be withheld if "specifically required by federal **statute or regulation** to be kept confidential."

By striking two words and adding three -- a minor change in the law -- we have disarmed one weapon in the litigation arsenal that DeKalb County frequently uses to frustrate the will of its citizens. This limited exception to the Open Records Act should never be used to force citizens and taxpayers to spend large sums of money in a legal dispute over public records, related to PDK or otherwise, that should have been disclosed without hesitation.