

**IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA**

KNIGHT NEWS, INC.,
Petitioner,

CASE NO.: 2016-CA-004460-O
DIVISION: 34

vs.

THE UNIVERSITY OF CENTRAL
FLORIDABOARD OF TRUSTEES,
Respondent.

ORDER GRANTING WRIT OF MANDAMUS AND PARTIAL FINAL JUDGMENT

THIS MATTER came before the Court on July 26, 2016, for a case management conference and hearing on Petitioner, KNIGHT NEWS, INC.'s ("KNI"), "Ex Parte Motion for Alternative Writ of Mandamus, In Camera Review and Immediate Hearing," filed on June 28, 2016, and Respondent, THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEE's ("UCF"), Response thereto and request for an award of attorneys' fees under § 57.105(1), Fla. Stat., filed on July 22, 2016. At the hearing, the parties stipulated to the Court's final resolution of counts one and two without an evidentiary hearing, and the Court afforded the parties the opportunity to submit any supplemental materials on or before August 2, 2016. Based on the record, argument of counsel and the Court's in camera inspection of the records at issue under counts one, the Court hereby finds and decides as follows:

1. KNI filed the present action seeking complete copies of Budget Request forms and Activity and Service Fee ("A&S Fee") Database records after UCF failed to produce them upon KNI's public records request. UCF subsequently produced the records, but redacted certain student names contained therein, claiming that the documents, unless redacted to conceal the students' names, were "education records" exempt from disclosure under sections 1002.225 and

1006.52, Florida Statutes (2016). The requested records appear to list student's names next to an amount of money paid to that student for services rendered or for reimbursement of expenses incurred in his/her duties as a student government officer. In response, KNI filed the present petition for alternative writ of mandamus, urging this Court to order UCF to deliver complete and un-redacted copies of the requested financial records and award costs for UCF's failure to timely produce such records. Concluding that the requested records are subject to complete disclosure, this Court grants the ex-parte petition for writ of mandamus.

2. "To be entitled to a writ of mandamus, [KNI] must establish that [it] 'has a clear legal right to the performance of a clear legal duty by a public officer and that [it] has no other legal remedies available. . . .'" *Rhea v. Dist. Bd. of Trustees of Santa Fe College*, 109 So. 3d 851, 855 (Fla. 1st DCA 2013) (quoting *Hatten v. State*, 561 So. 2d 562,563 (Fla. 1990)). Here, this Court is tasked with determining whether KNI has alleged sufficient facts to denote a clear legal right to un-redacted copies of the Budget Request forms and A&S Fee Database records. *Id.* This Court finds that it has.

3. "A citizen's access to public records is a fundamental constitutional right in Florida." *Id.* Section 24(a), Article I, of the Florida Constitution provides every person "the right to inspect or copy any public record made or received in connection with the official business of any public body," and section 119.07, Florida Statutes, requires the custodian of such records to permit their inspection or duplication. Although the right of public access to records is "self-executing," the legislature can enact exemptions to public records disclosure. Art. I, § 24(c), Fla. Const.; *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 875 (Fla. 2d DCA 2004). Any such exemption, however, must "state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law." Art. I, § 24(c),

Fla. Const. The parties stipulate that the requested records are indeed, public records subject to disclosure absent a relevant exemption.

4. One such exemption concerns “education records,” as defined by the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g (2013). Such records are deemed confidential unless the subject student provides written consent to their release. § 1006.52, Fla. Stat. (2016). Such exemption was created to align with federal law and ensure compliance with FERPA such that state universities remained eligible to receive federal funding. *See* H.B. 7119, Florida Staff Analysis (Apr. 1, 2009). *See also* 20 U.S.C. §1232g(b)(1) (“No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records . . . of students without the written consent of their parents to any individual, agency, or organization, . . .”).

5. Subject to several limiting provisions not applicable here, “education records” means “those records, files, documents, and other materials which--(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 U.S.C. § 1239g(a)(4)(A). “The scope of the words ‘directly related’ is . . . quite broad.” *Rhea*, 109 So. 3d at 858. Indeed, “Congress made no content-based judgments with regard to its ‘education records’ definition.” *United States v. Miami Univ.*, 294 F.3d 797, 812 (6th Cir. 2002). However, records directly related to a student must be maintained by the university in order to constitute education records, and the United States Supreme Court has determined that, within the meaning of FERPA, maintained by an educational agency or institution “suggests FERPA records will be kept in a filing cabinet in a records room at a school or on a permanent secure database . . .” *Owasso Indep. Sch. Dist. No. I-011 v. Falvo*, 534 U.S. 426, 433 (2002).

6. In *Owasso*, the Supreme Court was tasked with determining whether the practice of peer-grading and evaluation violated FERPA because it necessarily disseminated students' grades without their consent. *Id.* The Court held that this practice did not violate FERPA because at least until those grades were recorded in a teacher's grade book (and maybe not even until finally reported to the registrar—the Court did not have to decide whether the grade book was an education record), it was not an education record as contemplated by FERPA. *Id.* at 423-33. The Court explained that, the peer-graded assignments were not “maintained” by the school district. *Id.* This is because such assignments are not maintained “in the same way the registrar maintains a student's folder in a permanent file.” *Id.* at 433. The Court reasoned that the statutory language of FERPA, taken as a whole, necessitated the conclusion that Congress intended for education records to be those “kept in one place with a single record of access . . . kept by a single central custodian, such as a registrar, not individual assignments handled by many student graders in their separate classrooms.” *Id.* at 434-35.

7. The conclusion that education records tend to be those packaged in a central location or folder to which a parent or student could easily request is supported by Congress's purpose in enacting FERPA. Congress enacted FERPA “to assure parents of students ... access to their educational records and to protect such individuals' rights to privacy by limiting the transferability of their records without their consent.” *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 67–68 (1st Cir. 2002). In defining “education records,” Congress commented that:

An individual should be able to know, review, and challenge all information—with certain limited exceptions—that an institution keeps on him, particularly when the institution may make important decisions affecting his future, or may transmit such personal information to parties outside the institution. . . . The private notes and other materials, such as a teacher's daily record book, created by individual school personnel . . . as memory aids would not be available to parents or students, . . .

120 Cong. Rec. 39,862 (1974) (joint statement of Sens. Pell and Buckley explaining amendments to FERPA).

8. Here, the requested information—records reflecting the spending habits of the student government—even assuming they directly relate to the students whose names were redacted, are not maintained by the university in the manner contemplated by FERPA of education records. *See id.* *See also Owasso*, 534 U.S. at 433-35. Such records are not kept in a centralized file on that particular student. If a student or parent requested that student’s records as intended by FERPA, it is almost certain that that student or parent would not receive a copy of the requested Budget forms and A&S Fee Database records merely because the subject student’s name appeared somewhere in those documents. Rather, the student or parent would likely receive a copy or be permitted to review a student’s record contained in a centralized file in the registrar. Accordingly, this Court finds that the requested documents are not education records within the meaning of FERPA and sections 1002.225 and 1006.52, Florida Statutes.

9. Notwithstanding the above, even if such records were “education records,” UCF concedes that the redacted names belong solely to elected officers of the student government, and given the nature of student government, those students implicitly consented to the requested dissemination. *See Knight News, Inc. v. Univ. of Cent. Fla.*, 41 Fla. L. Weekly D897 (Fla. 5th DCA 2016). In *Knight News*, the Court held that:

[T]he names of student government officers charged with malfeasance in the performance of student government duties or alleged to have engaged in misconduct with regard to their election or appointment to their position, do not qualify as protected “personally identifiable information” under FERPA because student government officers have implicitly consented to the dissemination of that information given Florida’s statutory scheme concerning university student governments. Section 1004.26, Florida Statutes (2012),¹ provides that a university student government is required to adopt internal procedures governing “[t]he qualifications, elections, and returns, the appointments, and the suspension, removal, and discipline of officers of the student government[.]

. . . Accordingly, under this statutory scheme, student government officers know or reasonably should know (given their voluntary decision to seek election or appointment as a student government officer) that they may be disciplined for misconduct in the performance of their student government duties or alleged misconduct related to their election or appointment, . . .

Id. at *2.

10. Although the *Knight News* case concerned student government officers faced with disciplinary charges, this Court finds the Court of Appeal’s holding in that case instructive, and its reasoning applicable to other instances where student government officers are conducting student government duties. *See id.* Tellingly, in holding that student government officers implicitly consented to the dissemination of identifying information when facing disciplinary charges, the Court referred to the “statutory scheme” of section 1004.26. *Id.* That statute governs student government generally and requires those entities to adopt internal procedures that not only relate to discipline but also to the entities’ operation and administration, such as its financial dealings. §1004.26(3), Fla. Stat. (2016). Like those student government officers in *Knight News*, the student government officers here implicitly consented to the disclosure of their names listed in the requested Budget Request forms and A&S Fee Database records.

* * *

In accordance with the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

1. KNI's Petition for Writ of Mandamus is **GRANTED**.
2. UCF shall disclose to KNI the A & S Fee Databases and student government Budget Request forms without redactions within 48 hours of the entry of this Order.
3. KNI's request for an award of attorney's fees and costs pursuant to section 119.12, Florida Statutes, is **GRANTED**.
4. This Court reserves jurisdiction to award such reasonable fees and costs upon proper motion by KNI.
5. UCF's request for attorney's fees and costs pursuant to section 57.105(1), Florida Statutes, is **DENIED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this

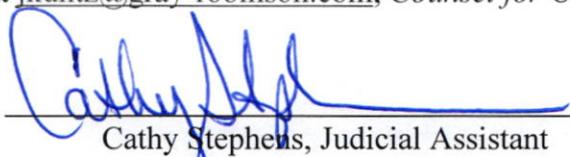
11 day of August, 2016.



JOHN E. JORDAN
Circuit Judge

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 11 day of August, 2016, I electronically filed the foregoing with the Clerk of the Courts by using the Florida Courts E-Filing Portal who will provide a correct copy of the foregoing by e-mail to **Justin S. Hemlepp, Esq.**, *Counsel for Knight News*, at jhemlepp@hemlepplaw.com; **W. Scott Cole, Esq.**, at scott.cole@ucf.edu; **Youndy C. Cook, Esq.**, at youndy.cook@ucf.edu; **Charles T. Wells, Esq.**, at charles.wells@gray-robinson.com; **Richard E. Mitchell, Esq.**, at rick.mitchell@gray-robinson.com and debi.robbyns@gray-mitchell.com; and **Jeffrey T. Kuntz, Esq.**, at jkuntz@gray-robinson.com, *Counsel for UCF*.



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