

(4) an order awarding the plaintiffs their reasonable attorney fees pursuant to G.S. § 132-9(c)(1).

The Parties

1. Plaintiff DTH Media Corporation is a North Carolina not-for-profit corporation that maintains its principal place of business in Chapel Hill, Orange County, North Carolina. Among other things, the company publishes *The Daily Tar Heel*, a daily print and online newspaper that has covered the University of North Carolina at Chapel Hill and its community since 1893.

2. Plaintiff Capitol Broadcasting Company, Incorporated (“Capitol Broadcasting”) is a North Carolina corporation whose principal place of business is located in Raleigh, Wake County, North Carolina. Capitol Broadcasting is a diversified communications company which, among other things, owns and operates three television stations in North Carolina, including WRAL-TV in Raleigh, which covers news in the Research Triangle and surrounding areas of Piedmont and Eastern North Carolina, including Wake, Durham and Orange Counties and their surrounding areas. WRAL-TV also disseminates broadcast news coverage via WRAZ-TV and online coverage at www.wral.com.

3. Plaintiff Charlotte Observer Publishing Company is a Delaware corporation that maintains its principal place of business in Mecklenburg County, North Carolina. Among other things, the company publishes *The Charlotte Observer*, a general interest newspaper that is published in Mecklenburg County and distributed throughout the surrounding areas of North Carolina and South Carolina. The Observer also publishes an online edition at www.charlotteobserver.com.

4. Plaintiff The Durham Herald Company is a North Carolina corporation that maintains its principal place of business in Durham, Durham County, North Carolina. Among other things, the company publishes the Durham Herald-Sun, a daily newspaper that covers the city and county of Durham and the surrounding area, including the University of North Carolina at Chapel Hill. The company also provides news and information online via www.heraldsun.com.

5. Defendant Carol L. Folt is the Chancellor of the University of North Carolina at Chapel Hill ("UNC"), a public agency of North Carolina government as defined by G.S. § 132-1(a). Chancellor Folt is sued in her official public capacity and as the custodian of UNC records that are public pursuant to the Public Records Law.

6. Defendant Gavin Young is sued in his official public capacity as the Senior Director for Public Records at UNC.

The North Carolina Public Records Law

14. The North Carolina Public Records Law ("the Public Records Law") is codified at N.C. Gen. Stat. §§132-1 through 132-10. The public policy underlying the Public Records Law is set out in G.S. § 132-1(b), which provides:

The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, 'minimal cost' shall mean the actual cost of reproducing the public record or public information.

15. The Public Records Law provides, in G.S. §132-1(a), that public records are defined as:

all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, **made or received** pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

16. The Public Records Law further provides that:

Every custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, **as promptly as possible**, furnish copies thereof upon payment of any fees as may be prescribed by law." G.S. §132-6(a).

17. The Public Records Law further provides, in G.S. §132-6(c), that:

(c) No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is

necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation . . .

The Records at Issue

18. Since 2014 UNC has promulgated, and purports to enforce, an extensive and comprehensive "Policy on Prohibited Discrimination, Harassment and Related Misconduct" that includes prohibitions on, and potential punishments for, sexual and gender-based harassment and sexual violence, including sexual assault.

19. On September 30, 2016 the plaintiffs requested, pursuant to the Public Records Law, "copies of all public records made or received by The University of North Carolina at Chapel Hill ("the University") in connection with a person having been found responsible for rape, sexual assault or any related or lesser included sexual misconduct by the UNC Chapel Hill Honor Court, the Committee on Student Conduct, or the Equal Opportunity and Compliance Office." The request was embodied in the letter attached and incorporated by reference as Exhibit A, which was addressed and hand-delivered to appropriate UNC officials, including defendant Young. Copies also were hand-delivered to other UNC officials, including University Counsel Mark Merritt and Vice-Chancellor for Communications Joel Curran.

20. On several occasions since 2013 *The Daily Tar Heel* and other plaintiffs have submitted the same or similar public records requests to UNC. In each such instance UNC has failed or refused, without any legal justification or excuse, to provide the requested records.

21. UNC responded to the plaintiffs' September 30 public records request via a letter dated October 28, 2016 and signed by Joel G. Curran, Vice Chancellor for Communications and Public Affairs. In his letter, Vice Chancellor Curran asserted that the records requested by the plaintiffs are "educational records" as defined by the federal Family Educational Rights and Privacy Act ("FERPA") and thus are "protected from disclosure by FERPA." Vice Chancellor Curran's letter also acknowledged, however, that "FERPA permits, but doesn't compel, universities to disclose the name of a student, the violation committed, and the sanctions

imposed if the student is found to have violated rules or policies for a violent crime or forcible sex offense." By this statement Vice Chancellor Curran apparently intended to cite the following provisions of 20 U.S.C.A. § 1232g:

(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in section 16 of Title 18), or a non-forcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(C) For the purpose of this paragraph, the final results of any disciplinary proceeding--

(i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and

(ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student.

22. Because FERPA permits the disclosure of the information described in 20 U.S.C.A. § 1232g, records containing that information are subject to the Public Records Law, and UNC has no legal justification or excuse for having failed to provide copies of such records as promptly as possible in compliance with the law. Although representatives of the DTH and have personally communicated the foregoing position to Vice Chancellor Curran and other representatives of UNC in writing and in person, UNC notified the plaintiffs on November 11, 2016 that it is maintaining its position that the information at issue is not subject to disclosure.

WHEREFORE, the plaintiffs respectfully pray that the court:

1. Accord this matter priority and set it down for an immediate hearing pursuant to G.S. § 132-9(a);
2. Enter a preliminary order requiring the defendants (a) to bring the requested records before the court for *in camera* review and (b) show cause, if any, why the plaintiffs are not entitled to obtain copies of them;

3. Enter an order declaring that the requested records are public records as defined by the Public Records Law and requiring the defendant to provide the plaintiffs with copies of the same;

4. Enter an order awarding the plaintiffs their reasonable attorney fees pursuant to G.S. § 132-9(c)(1).

5. Provide the plaintiffs with such further and additional relief as the court shall deem to be just, proper and authorized by law, and tax the costs of this action against the defendants.

Respectfully submitted this the 21st day of November, 2016.

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