

IN THE CIRCUIT COURT, EIGHTH
JUDICIAL CIRCUIT, IN AND FOR
ALACHUA COUNTY, FLORIDA

CASE NO.: 01-2017-CA-002426

US RIGHT TO KNOW,

Plaintiff,

vs.

THE UNIVERSITY OF FLORIDA
BOARD OF TRUSTEES,

Defendant.

and

DREW KERSHEN,

Intervener.

**DEFENDANT'S RESPONSE TO PLAINTIFF'S SUPPLEMENTAL
COMPLAINT FOR WRIT OF MANDAMUS**

Defendant, The University of Florida Board of Trustees ("UF"), hereby responds to Plaintiff US Right to Know's Supplemental Complaint seeking a writ of mandamus and to this Court's 10/13/2017 Order Granting Unopposed Motion for Leave to File Supplemental Complaint, and states:

FACTS ON WHICH PLAINTIFF RELIES FOR RELIEF

33. Defendant admits that on July 11, 2017, Plaintiff filed a Complaint for Writ of Mandamus, which seeks a writ of mandamus directing Defendant to produce records requested by the Plaintiff on or about September 3, 2015. Defendant admits that on or about September 3, 2015, Plaintiff made a public records request for documents, which requested emails between Professor Folta and the email address AgBioChatter@yahoogroups.com for that certain time period. Defendant otherwise denies the allegations contained in paragraph 33 of the Supplemental Complaint.

34. Defendant admits that it provided Plaintiff with 81 pages of records in response to the request. Defendant admits that it maintains that the rest of the potentially responsive records are not public records. Defendant otherwise denies the allegations contained in paragraph 34 of the Supplemental Complaint.

35. Defendant admits that on or about June 16, 2017, Plaintiff made a separate public records request, which speaks for itself. Defendant admits it acknowledged receipt of this request, which speaks for itself. Defendant otherwise denies the allegations contained in paragraph 35 of the Supplemental Complaint.

36. Defendant admits that on September 18, 2017, Defendant responded to Plaintiff, and that this response speaks for itself.

37. Defendant denies that paragraph 37 of the Supplemental Complaint contains a complete statement of applicable Florida law.

38. Defendant denies the allegations contained in paragraph 38 of the Supplemental Complaint.

COUNT FOR WRIT OF MANDAMUS

39. Defendant reasserts and re-alleges the responses to paragraphs 33 through 38 of the Supplemental Complaint.

40. Defendant denies the allegations contained in paragraph 40 of the Supplemental Complaint.

41. Defendant denies the allegations contained in paragraph 41 of the Supplemental Complaint.

42. Defendant denies the allegations contained in paragraph 42 of the Supplemental Complaint.

43. Defendant denies the allegations contained in paragraph 43 of the Supplemental Complaint.

ARGUMENT

44. Defendant incorporates by reference as if fully set forth herein the legal argument set forth in paragraphs 24 through 32 of its Response to Plaintiff's Complaint for Writ of Mandamus and Order to Show Cause. Defendant denies specific allegations raised in paragraphs 24 through 32 contained in Plaintiff's Complaint for Writ of Mandamus filed on July 11, 2017.

RELIEF REQUESTED

WHEREFORE, Defendant, The University of Florida Board of Trustees, respectfully requests that this Court discharge the alternative writ, dismiss this action, deny Plaintiff's request for attorneys' fees and other relief, and grant Defendant relief as the Court deems appropriate including its costs.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Defendant, The University of Florida Board of Trustees, has fully and in good faith responded to all public records requests made by Plaintiff completely and in accordance with Chapter 119, Florida Statutes.

Second Affirmative Defense

The documents requested either have been produced, do not exist within the knowledge of Defendant, are not public records, or were withheld as exempt pursuant to section 1004.28(5) or section 119.011(12), Florida Statutes, and therefore there can be no violation of Chapter 119, Florida Statutes.

Third Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted and inasmuch as there is no factual basis contained within the Complaint to support a claim under Chapter 119, Florida Statutes.

Fourth Affirmative Defense

The Complaint fails to state a claim for issuance of writ of mandamus as issuance would be futile because Defendant has produced to Plaintiff all documents subject to the Public Records Act.

Respectfully submitted,

BEDELL, DITTMAR, DeVAULT, PILLANS & COXE
Professional Association

By: s/John A. DeVault, III

John A. DeVault, III
Florida Bar No. 0103979
Primary E-mail: jad@bedellfirm.com
Secondary E-mail: mam@bedellfirm.com
Courtney A. Williams
Florida Bar No. 68119
Primary E-mail: caw@bedellfirm.com
Secondary E-mail: mam@bedellfirm.com
The Bedell Building
101 East Adams Street
Jacksonville, Florida 32202
Telephone: (904) 353-0211
Facsimile: (904) 353-9307

Attorneys for Defendant The University of Florida Board
of Trustees

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2017, a true and correct copy of the foregoing has been electronically filed with the Clerk of the Court by utilizing the Florida Courts E-Filing Portal, which will send a notice of electronic filing to the following:

Lynn C. Hearn
lhearn@meyerbrookslaw.com
daldrich@meyerbrookslaw.com

Ronald G. Meyer
rmeyer@meyerbrookslaw.com
lthomas@meyerbrookslaw.com

Joseph E. Sandler
sandler@sandlerreiff.com

Cindy Laquidara
Cindy.laquidara@akerman.com
Kim.crenier@akerman.com

Allison M. Stocker
Allison.Stocker@akerman.com
Maggie.hearon@akerman.com

Elizabeth M. Hernandez
Elizabeth.hernandez@akerman.com
Merari.motola@akerman.com

s/John A. DeVault, III
Attorney