

IN THE CIRCUIT COURT OF THE 8th JUDICIAL CIRCUIT,
IN AND FOR ALACHUA COUNTY, FLORIDA

US RIGHT TO KNOW,

Case No. 01 2017 CA 002426

Plaintiff,

v.

UNIVERSITY OF FLORIDA
BOARD OF TRUSTEES,

Defendant.

**DEFENDANT-INTERVENER DREW KERSHEN'S FIRST REQUEST
FOR PRODUCTION TO PLAINTIFF, US RIGHT TO KNOW**

Pursuant to Florida Rule of Civil Procedure 1.350, Drew Kershen, (“Kershen” or the “Defendant-Intervener”), individually and as a member of the list-serve AgBioChatter Yahoo Group (“AgBioChatter”), requests that plaintiff, Us Right to Know, within thirty (30) days from service of this request, serve written responses to this request and produce for inspection and copying the documents identified below. The documents should be produced within thirty (30) days at the offices of Akerman LLP, 50 North Laura Street, Suite 3100, Jacksonville, Florida 32202.

DEFINITIONS

1. “And” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this request anything that might otherwise be construed to be outside its scope.

2. If not expressly stated otherwise, “control” means in your possession, custody, or control or under your direction, and includes in the possession, custody or control of those under the direction of you or your employees, subordinates, counsel, accountant, consultant, expert, parent or affiliated entity, and any person purporting to act on your behalf.

3. “Communication” means any oral or written communication or contact between two or more persons or entities, including, without limitation, written contact by such means as a letter, memorandum, telegram, facsimile, e-mail, text, social network (e.g., Facebook) or any other document or documents, and oral contact, heard or overheard, by such means as a face-to-face meeting, radio, telephone conversation, or otherwise, and every other mode of intentionally conveying meaning.

4. “Document” shall mean every original (and every copy of any original or copy which differs in any way from any original), every writing or recording of every kind or description, whether handwritten, typed, drawn, sketched, printed or recorded by any physical, mechanical, electronic or electrical means whatever, including without limitation, computer software, data compilation (including data deleted but not destroyed from computer memory), electronic mail or “e-mail,” books, records, papers, transcripts, recorded communications, pamphlets, brochures, circulars, advertisements, specifications, blueprints, maps, plats, surveys, drawings, sketches, graphs, charts, plans, laboratory or engineering reports, correspondence, communications, telegrams, memoranda, notes, notebooks, worksheets, reports, lists, analyses, summaries, ledgers, accounts, audits, inventories, tax returns, financial statements, profit and loss statements, cash flow statements, balance sheets, annual or other periodic reports, prospectuses, registrations, solicitations, minutes, stock ledgers, stock certificates, licenses, permits, calendars, appointment books, diaries, telephone bills and toll call records, expense reports, commission statements, itineraries, agendas, payroll records, checkbooks, canceled checks, receipts, contracts, agreements, instruments, assignments, applications, offers, acceptances, proposals, financing statements, documents of title, appraisals, purchase orders, invoices, bills of lading,

written memorials of oral communications, forecasts, photographs, photographic slides or negatives, films, filmstrips, tapes and recordings.

5. “Plaintiff,” or “you” or “your” means US Right to Know and all of its agents, employees, representatives, attorneys, attorneys-in-fact, investigators, accountants, predecessors and successors in interest, or other persons or entities acting or purporting to act for or on behalf of Plaintiff, at Plaintiff’s direction or in concert with Plaintiff.

6. “Kershen” means Drew Kershen.

7. “Requested Records” means the records requested (i) on September 3, 2015 by you pertaining to University of Florida Professor Kevin M. Folta, professor of horticulture, specifically seeking “all email to or from Professor Folta that is to, from CC or BCC to the email address AgBioChatter@yahoogroups.com . . . from July 1, 2012 to the present,” and as detailed in paragraph 3 of the Complaint for Writ of Mandamus and attached as Exhibit A thereto; and (ii) on June 16, 2017 by to University of Florida specifically seeking “ all email to or from Professor Folta that is to, from CC or BCC to the email address AgBioChatter@yahoogroups.com . . . from January 1, 2011 to the present,” and as detailed in paragraphs 11 and 35 of the Complaint for Writ of Mandamus and attached as Exhibit F thereto.

8. “Related to” or “relating to” means directly or indirectly mentioning or describing, pertaining to, being connected with, or reflecting upon a stated subject matter.

9. Unless defined above, all other capitalized terms shall have the meaning ascribed to them in the Complaint for Writ of Mandamus filed in this action.

INSTRUCTIONS

Compliance with this request should be made in accordance with the following:

1. If you at any time had possession, custody or control of a document falling within this request and if such document has been lost, destroyed, purged, or is not presently in your possession, custody or control, please describe the document, the date of its loss, destruction, purge, or separation from possession, custody or control and the circumstances surrounding its loss, destruction, purge, or separation from possession, custody or control.

2. If you assert that any document called for by this request is protected against disclosure as “work product” or by any other privilege or immunity of any kind whatsoever, please provide the following information with respect to each such document:

(a) The names and capacities of the persons who prepared the document.

(b) The names and capacities of all addressees or recipients of the original or copies of the document.

(c) The date, if any, reflected on the document, or on which the document was prepared.

(d) A brief description of the document’s subject matter and physical size.

(e) The source of the information from which the document was prepared.

(f) The nature of the privilege claimed.

3. Produce all documents pursuant to this request as they are maintained in the ordinary course of business or by organizing and labeling (without permanently marking the item produced) the documents to correspond with the categories of each individual request to which each document applies.

4. The singular form of a word shall be interpreted in the plural, and vice versa, as may be necessary to bring within the scope of this request all documents that might otherwise be construed to be outside the scope of this request.

DOCUMENTS REQUESTED

1. All documents and communications evidencing the allegations in paragraph 6 of the Complaint for Writ of Mandamus that “Defendant stated that ‘the overestimate included some records that are unrelated to official university business and consequently are not public records.’”

2. All “additional communications to Defendant from Plaintiff’s counsel” referenced in paragraph 7 of the Complaint for Writ of Mandamus.

3. All documents and communications evidencing the basis for Plaintiff’s allegation in paragraph 28 of the Complaint for Writ of Mandamus that “[a]ll emails received by Professor Folta from AgBioChatter@yahoogroups.com are public records, because they are received in connection with the transaction of official business.”

4. All documents and communications evidencing why Plaintiff is seeking the Requested Records from the University of Florida.

5. All documents and communications evidencing the basis for Plaintiff’s right to obtain and view “all email to or from Professor Folta that is to, from, CC, or BCC to the email address AgBioChatter@yahoogroups.com.”

6. All documents and communications evidencing the basis for Plaintiff’s right to obtain and view “any emails Professor Folta received from AgBioChatter@yahoogroups.com through a personal or non-university email address,” as alleged in paragraph 28 of the Complaint for Writ of Mandamus.

7. All documents and communications evidencing the basis for Plaintiff’s allegation in paragraph 28 of the Complaint for Writ of Mandamus that “[d]efendant had a ministerial duty to produce them to Plaintiff.”

8. All documents produced by the University of Florida in response to your September 3, 2015 and your June 16, 2017 requests for the Requested Records.

9. All documents, communications, or other evidence you have to suggest that any University of Florida resources were involved or used in connection with Dr. Folta's membership in the AgBioChatter group.

Dated: January 17, 2018

AKERMAN LLP

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was filed and served by e-mail and facsimile on January 17, 2018, on the following counsel or parties of record:

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