

STATE OF NORTH CAROLINA
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 463

US RIGHT TO KNOW,
Plaintiff,

v.

THE UNIVERSITY OF NORTH
CAROLINA AT CHAPEL HILL,
Defendant.

**ANSWER AND DEFENSES TO
COMPLAINT**

Defendant, The University of North Carolina at Chapel Hill (the “University”), by and through counsel, responds to the Complaint of Plaintiff U.S. Right to Know (“USRTK”) as follows:

FIRST DEFENSE AND MOTION TO DISMISS

USRTK’s Complaint is subject to dismissal under Rules 12(b)(1) and 12(b)(2) for lack of jurisdiction.

SECOND DEFENSE AND MOTION TO DISMISS

USRTK’s Complaint is subject to dismissal under Rule 12(b)(6) for failure to state a claim.

THIRD DEFENSE AND ANSWER

Without waiving any defenses, immunities, or motions to dismiss, the University responds to the specific paragraphs of USRTK’s Complaint as follows:

INTRODUCTION AND PUBLIC INTEREST¹

US Right to Know, an investigative research group that promotes transparency for public health, has been investigating the origins of COVID-19 and the virus that causes it. Its investigation has led them to request public records from the University of North Carolina at Chapel Hill regarding the work of Dr. Ralph Baric and his associations with the Wuhan Institute of Virology. The subject matter of this complaint is of great public interest, given the nearly one million American lives that have been lost because of COVID-19.

ANSWER: USRTK's introductory statement violates Rule 10(b) in that it is an unnumbered allegation or averment, and thus does not warrant a response. To the extent a response is required, the University admits that USRTK submitted public records requests to the University. Except as expressly admitted, the introductory statement is denied.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff US Right to Know is a California nonprofit corporation that has been recognized as an exempt 501(c)(3) organization by the Internal Revenue Service.

¹ For organizational purposes, the University has incorporated the headings from USRTK's Complaint in its Answer. Though the headings are not proper allegations or averments, and violate Rule 10(b), to the extent they warrant a response, the headings are denied.

Gary Ruskin is the Executive Director of US Right to Know. US Right to Know focuses on investigative research and promotes transparency on matters of public health.

ANSWER: The University lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of Paragraph 1, and therefore those allegations are denied.

2. Defendant The University of North Carolina at Chapel Hill (hereinafter "the University") is a state university that is a member institution of the University of North Carolina System.

ANSWER: The University admits that it is a constituent institution of the University of North Carolina established pursuant to Chapter 116 of the North Carolina General Statutes. Except as expressly admitted, the allegations of Paragraph 2 are denied.

3. The action is brought in accordance with N.C. Gen. Stat. § 132-1, *et seq.*

ANSWER: The University admits that USRTK purports to bring this action under Chapter 132 of the North Carolina General Statutes but denies that this is a permissible action under Chapter 132. Except as expressly admitted, the allegations of Paragraph 3 are denied.

4. Subject matter and personal jurisdiction rests in Superior Court, Orange County.

ANSWER: USRTK states a legal conclusion regarding jurisdiction to which no response is required. To the extent a response is required, the University denies the allegations of Paragraph 4.

5. Venue is proper in Superior Court, Orange County.

ANSWER: USRTK states a legal conclusion regarding venue to which no response is required. To the extent a response is required, the University denies the allegations of Paragraph 5.

FACTS AND BACKGROUND

6. The allegations made in paragraphs 1 through 5 are incorporated herein by reference.

ANSWER: The University restates and incorporates its foregoing responses to the Complaint in Paragraphs 1–5 as if the same were fully set forth herein.

7. On July 2, 2020, plaintiff submitted a public records request to the University requesting records regarding Dr. Ralph Baric (hereinafter Dr. Baric) and his work with the Wuhan Institute of Virology, among other matters. This request is attached as Exhibit A.

ANSWER: Exhibit A² is a document that speaks for itself. To the extent the allegations of Paragraph 7 are inconsistent with that document, those allegations are denied. Except as expressly admitted, the allegations of Paragraph 7 are denied.

8. On July 30, 2020, plaintiff submitted an updated public records request, which updated the search terms for the July 2, 2020 request. This request is attached as Exhibit B.

ANSWER: Exhibit B is a document that speaks for itself. To the extent the allegations of Paragraph 8 are inconsistent with that document, those allegations are denied. Except as expressly admitted, the allegations of Paragraph 8 are denied.

9. Initially the search system indicated that there were 3.36 GB of records, which was estimated to be over 336,000 pages of documents. Most of these records were not turned over to US Right to Know.

ANSWER: The University admits that its initial search for records potentially responsive to USRTK's July 30, 2020 request yielded a result of 3.36 GB of emails. The University further admits that based on its standard estimate that 1 GB of data amounts to 100,000 pages of emails (subject to deviation for images, videos, and other

² USRTK's Complaint references Exhibits A–H, but the Complaint was filed and served without any exhibits. In lieu of filing a Rule 12(e) motion, the University asked USRTK to provide the exhibits missing from its Complaint. On June 10, 2022, USRTK filed the missing exhibits. The University incorporates and references those exhibits in its Answer as if the exhibits were filed simultaneously with the Complaint.

potentially large email attachments), there were approximately 336,333 pages of potentially responsive emails to review. The University further admits that it produced records subject to public disclosure under Chapter 132. Except as expressly admitted, the allegations of Paragraph 9 are denied.

10. The University provided only six pages of responsive documents from a critical time period concerning the origins of COVID-19 (March 20, 2019 to January 9, 2020).

ANSWER: The University admits that it produced records subject to public disclosure under Chapter 132. Except as expressly admitted, the allegations of Paragraph 10 are denied.

11. The University indicated that of the 86,934 pages that were finally pulled in response to this request, many of them were not provided as they were subject to the N.C. Gen. Stat. § 116-43.17 (2020) university research exemption.

ANSWER: The University admits that it produced records subject to public disclosure under Chapter 132. The University further admits that it reviewed and withheld records not subject to public disclosure. Except as expressly admitted, the allegations of Paragraph 11 are denied.

12. Upon information and belief, the University may not have provided all attachments to all emails to this request.

ANSWER: The University admits that it produced records subject to public disclosure under Chapter 132. Except as expressly admitted, the allegations of Paragraph 12 are denied.

13. On November 26, 2020, plaintiff submitted a public records request to the University requesting records regarding the work of Dr. Lishan Su. This request is attached as Exhibit C.

ANSWER: Exhibit C is a document that speaks for itself. To the extent the allegations of Paragraph 13 are inconsistent with that document, those allegations are denied. Except as expressly admitted, the allegations of Paragraph 13 are denied.

14. The University indicated that 81 pages were pulled in response to the November 26, 2020 request, that 31 were produced, 3 were duplicates, and 47 pages were exempt as subject to N.C. Gen. Stat. § 116-43.17.

ANSWER: The University admits that it produced records subject to public disclosure under Chapter 132. The University further admits that it reviewed and withheld records not subject to public disclosure. Except as expressly admitted, the allegations of Paragraph 14 are denied.

15. On January 26, 2021, another request was made to the University by plaintiff for records of Dr. Baric's work. This request is attached as Exhibit D.

ANSWER: Exhibit D is a document that speaks for itself. To the extent the allegations of Paragraph 15 are inconsistent with that document, those allegations are denied. Except as expressly admitted, the allegations of Paragraph 15 are denied.

16. The University indicated that 969 pages were responsive to that request, and 453 were produced, while 352 were exempt as subject to N.C. Gen. Stat. § 116-43.17, 7 were duplicate, 7 were confidential education records, and 150 were deemed non-responsive.

ANSWER: The University admits that it produced records subject to public disclosure under Chapter 132. The University further admits that it reviewed and withheld records not subject to public disclosure. Except as expressly admitted, the allegations of Paragraph 16 are denied.

17. On February 17, 2021, a request was made by plaintiff to the University for records regarding Ms. Toni Baric. This request is attached as Exhibit E.

ANSWER: Exhibit E is a document that speaks for itself. To the extent the allegations of Paragraph 17 are inconsistent with that document, those allegations are denied. Except as expressly admitted, the allegations of Paragraph 17 are denied.

18. The University indicated that only 4 pages of documents were responsive to this request.

ANSWER: The University admits that it produced records subject to public disclosure under Chapter 132. Except as expressly admitted, the allegations of Paragraph 18 are denied.

19. On February 19, 2021, a request was made by plaintiff to the University for additional records regarding Dr. Baric. This request is attached as Exhibit F.

ANSWER: Exhibit F is a document that speaks for itself. To the extent the allegations of Paragraph 19 are inconsistent with that document, those allegations are denied. Except as expressly admitted, the allegations of Paragraph 19 are denied.

20. The University indicated that 652 pages were pulled relevant to this request, that 18 were responsive and provided, that 472 were subject to N.C. Gen. Stat. § 116-43.17, that 27 were education records, that 6 were confidential personnel records, and that 129 were deemed non-responsive.

ANSWER: The University admits that it produced records subject to public disclosure under Chapter 132. The University further admits that it reviewed and withheld records not subject to public disclosure. Except as expressly admitted, the allegations of Paragraph 20 are denied.

21. On October 6, 2021, plaintiff requested from the University various documents and records concerning certain NIH grants and programs. This request is attached as Exhibit G.

ANSWER: Exhibit G is a document that speaks for itself. To the extent the allegations of Paragraph 21 are inconsistent with that document, those allegations are denied. Except as expressly admitted, the allegations of Paragraph 21 are denied.

22. The University provided no records for this request to plaintiff.

ANSWER: The University admits that it reviewed and withheld records not subject to public disclosure under Chapter 132.

23. On October 8, 2021, plaintiff requested from the University records relating to Dr. Baric's work. This request is attached as Exhibit H.

ANSWER: Exhibit H is a document that speaks for itself. To the extent the allegations of Paragraph 23 are inconsistent with that document, those allegations are denied. Except as expressly admitted, the allegations of Paragraph 23 are denied.

24. The University provided 24 pages to plaintiff in response to this request.

ANSWER: The University admits that it produced records subject to public disclosure under Chapter 132. Except as expressly admitted, the allegations of Paragraph 24 are denied.

FIRST CLAIM FOR RELIEF
(Public Records Act)

25. The allegations contained in paragraphs 1 through 24 are incorporated herein by reference.

ANSWER: The University restates and incorporates its foregoing responses to the Complaint in Paragraphs 1–24 as if the same were fully set forth herein.

26. N.C. Gen. Stat. § 132-1 (2020) defines public records 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. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government."

ANSWER: The text of N.C. Gen. Stat. § 132-1 and its definition of “public records” speak for itself. To the extent the allegations of Paragraph 26 are inconsistent with the text of the statute, those allegations are denied. Except as expressly admitted, the allegations of Paragraph 26 are denied.

27. The Public Records Act is broad, and encompasses virtually all records of an agency unless otherwise exempted from the Act.

ANSWER: USRTK states a legal conclusion to which no response is required. To the extent a response is required, the text of Chapter 132 speaks for itself..

28. Plaintiff made the above public records requests pursuant to Chapter 132 of the General Statutes (the Public Record Act).

ANSWER: USRTK states a legal conclusion to which no response is required. To the extent a response is required, The University admits that some portions of USRTK's public records requests were in accordance with Chapter 132 but further states that many of the records requested do not meet the definition of a public record under Chapter 132. Except as expressly admitted, the allegations of Paragraph 28 are denied.

29. The University was the custodian of those records.

ANSWER: The University admits that it was the custodian of some, but not all, of the records USRTK requested. The University further states that some of the records USRTK requested are not public records under Chapter 132. Except as expressly admitted, the allegations of Paragraph 29 are denied.

30. A vast number of the records that were requested were withheld by the University by claiming that the records were subject to a research exemption pursuant to N.C. Gen. Stat. § 116-43.17.

ANSWER: The University admits that it did not produce records that are not subject to public disclosure pursuant to N.C. Gen. Stat. § 116-43.17. Except as expressly admitted, the allegations of Paragraph 30 are denied.

31. Furthermore, it seems unlikely that so few relevant records exist in regards to many of the public records request made by US Right to Know, including the sparsity of records identified in Paragraph 10.

ANSWER: The University denies the allegations of Paragraph 31.

32. Uncovering the origins of SARS-CoV-2, the virus that causes COVID-19, is of great interest and importance to the public.

ANSWER: The University admits that COVID-19 is a matter of importance affecting the health, safety, and well-being of the public. Except as expressly admitted, the allegations of Paragraph 32 are denied.

33. Because of the large number of responsive documents that have been withheld pursuant to N.C. Gen. Stat. § 116-43.17, plaintiff believes that the University may be interpreting the exemption in an overly broad manner.

ANSWER: The University denies the allegations of Paragraph 33.

34. There are documents plaintiff is in possession of that were obtained from other agencies that meet the criteria of records requested of the University, but yet were not provided by the University in violation of the Public Records Act.

ANSWER: The University specifically denies that it is in violation of Chapter 132. The University lacks sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations of Paragraph 34, and therefore those allegations are denied.

35. It would be reasonable and in the best interest of justice for the University to submit to this Honorable Court, for in camera review, the documents that the University has deemed to fall under N.C. Gen. Stat. § 116-43.17 or are

otherwise privileged so that the Court may determine whether the documents are subject to disclosure pursuant to the Public Records Act.

ANSWER: The University denies the allegations of Paragraph 35.

36. It would also be reasonable and in the best interest of justice for the University to demonstrate to the Court that its searches have been complete, proper, and thorough and have met the requirements of the Public Records Act, and whether any processing errors may have led to the failure to disclose records to US Right to Know.

ANSWER: The University denies the allegations of Paragraph 36.

PRAYER FOR RELIEF

USRTK alleged no facts in the section of its Complaint entitled “Prayer for Relief,” and thus no response is required. To the extent a response is required, those allegations are denied.

GENERAL DENIAL

Each and every allegation not specifically admitted herein is denied, including all allegations in USRTK’s Prayer for Relief.

ADDITIONAL DEFENSES

The University asserts the following additional defenses to USRTK’s Complaint.

FOURTH DEFENSE

USRTK's Complaint is barred, in whole or in part, by sovereign immunity, qualified immunity, and any other applicable immunity or privilege.

FIFTH DEFENSE

USRTK's Complaint is barred, in whole or in part, because the records requested are not public records in accordance with N.C. Gen. Stat. § 116-43.17, are exempt from public disclosure under Chapter 132, and/or are otherwise protected and confidential.

SIXTH DEFENSE

USRTK's Complaint is barred, in whole or in part, because the records requested are not in the University's possession, custody, or control.

SEVENTH DEFENSE

USRTK's Complaint is barred, in whole or in part, because the University acted in good faith and with clean hands by producing records subject to public disclosure under Chapter 132.

EIGHTH DEFENSE

USRTK's Complaint is barred, in whole or in part, because the relief sought is not available under N.C. Gen. Stat. § 132-1, *et seq.*

NON-WAIVER AND RESERVATION OF RIGHTS

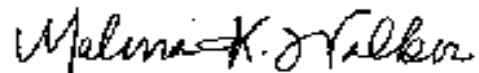
The University does not waive and expressly reserves any and all defenses that may presently be available to it, or that later may become apparent, and further reserves the right to supplement and amend its defenses and answer to assert additional defenses that may later become known to it, including during discovery.

WHEREFORE, having asserted the above-noted defenses and immunities, and having responded to the specifically numbered allegations of USRTK's Complaint, the University prays unto the Court as follows:

1. That USRTK's Complaint be dismissed with prejudice;
2. That USRTK have and recover nothing from the University;
3. That the costs of this action, including reasonable attorneys' fees, be taxed against USRTK as allowed by law; and
4. For such other and further relief as the Court deems just and proper.


This the 9th day of March, 2023.

JOSHUA H. STEIN
ATTORNEY GENERAL



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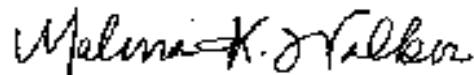
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing ANSWER and DEFENSES was served upon counsel for Plaintiff via electronic mail and by depositing the same in the United States mail, first class postage prepaid, and addressed to:

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This 9th day of March 2023.

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