

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.

**MOTION FOR JUDGMENT
ON THE PLEADINGS**

Defendant, The University of North Carolina at Chapel Hill (the “University”), by and through counsel, respectfully moves the Court pursuant to Rule 12(b) and 12(c) of the North Carolina Rules of Civil Procedure to dismiss the Complaint. In support of this motion, the University states:

1. Plaintiff is a self-described “investigative research group” that took it upon itself to “investigat[e] the origins of COVID-19 and the virus that causes it.” (Compl. Introduction).

2. Plaintiff’s investigation led it to submit numerous public records requests to the University. (Compl. Introduction). In response to these requests, the University produced over 130,000 pages of documents. The University withheld approximately 5,100 documents (not pages) based on several federal and state statutory exemptions to the NC Public Records Act, most notably N.C. Gen. Stat. § 116-43.17 (the “Research Exception”).

3. In response to the University’s assertion of these statutory exemptions, Plaintiff filed its Verified Complaint against the University on or about April 18, 2022.

4. Plaintiff's complaint requests that this Court order the University to "comply with the Public Records Act," and seeks what amounts to an advisory opinion from this Court with respect to the University's compliance with Chapter 132 of the North Carolina General Statutes.

5. Defendant has produced public records responsive to Plaintiff's requests. *See Exhibit A.* Any records withheld by the University are not public records in accordance with the Research Exception or are exempt or not subject to public disclosure under Chapter 132 and related laws.

6. The University responded to Plaintiff's complaint on or about March 23, 2023 admitting all material issues of fact.

7. Accordingly, the Court should dismiss the complaint under Rule 12(c). The purpose of Rule 12(c) is "to dispose of baseless claims or defenses when the formal pleadings reveal their lack of merit." *Ragsdale v. Kennedy*, 286 N.C. 130, 137, 209 S.E.2d 494, 499 (1974); *see* N.C. Gen. Stat. § 1A-1, Rule 12(c) (2023). Judgment on the pleadings is proper when all of the material issues of fact are admitted in the pleadings, and only questions of law remain. *Ragsdale*, 286 N.C. at 137, 209 S.E.2d at 499. In support of the University's Rule 12(c) Motion, the University attaches and incorporates the Affidavit of Gavin Young, the University's Senior Director of Special Projects and Public Records.

8. The Court should also dismiss the complaint under Rule 12(b)(6).

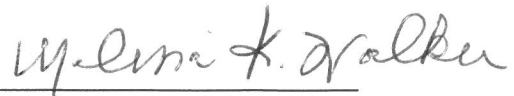
Plaintiff's complaint has not sufficiently alleged the substantive elements of a claim that Plaintiff has been denied access to public records.

WHEREFORE, the University prays unto the Court as follows:

1. That USRTEK's Complaint be dismissed with prejudice under Rule 12(b), or that the Court enter judgment in the University's favor under Rule 12(c);
2. That USRTEK have and recover nothing from the University;
3. That the costs of this action, including reasonable attorneys' fees, be taxed against USRTEK as allowed by law; and
4. For such other and further relief as the Court deems just and proper.

This the 20th day of July, 2023.

JOSHUA H. STEIN
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing MOTION TO DISMISS 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 20th day of July, 2023.

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