

FILED

STATE OF NORTH CAROLINA  
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
2023 NOV 21 A 9 43

ORANGE COUNTY, C.S.C. 22 CVS 463

US RIGHT TO KNOW,  
Plaintiff

BY ) SWB

v.

**ORDER**

THE UNIVERSITY OF NORTH  
CAROLINA AT CHAPEL HILL,  
Defendant.

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THIS MATTER came before the Court during the 6 November 2023 Session of Orange County Superior Court upon the Defendant’s Motion for Judgment on the Pleadings. The Plaintiff was represented by David Steven Walker and Korey Kiger of Walker Kiger, PLLC. The Defendant was represented by David Lambeth and Marla Bowman, and Assistant Attorney General Melissa K. Walker appeared on behalf of the Attorney General of North Carolina. After reviewing the record, briefs of counsel, and relevant authority, and hearing the arguments of counsel, the Court finds and concludes as follows:

1. In 2020 and 2021, Plaintiff, US Right to Know (“USRTK”), submitted a series of public records requests to The Defendant, The University of North Carolina at Chapel Hill (“University”), seeking information about the origins of COVID-19.
2. The University turned over voluminous records to USRTK. However, the University withheld certain documents, described in Paragraph 8 of the Affidavit of Gavin Young (the “Young Affidavit”), Exhibit A to the University’s Motion.

3. USRTK filed suit, seeking judicial review of the University's compliance with the Public Records Act, N.C. Gen. Stat. § 132-1, *et. seq.*

4. The University argues that this Court lacks jurisdiction to hear the complaint because the records requested by USRTK are not public records according to the plain language of N.C. Gen. Stat. § 116-43.17. Alternatively, the University argues that N.C. Gen. Stat. § 116-43.17 operates as an exception to the Public Records Act and that the requested documents fall within this exception.

5. N.C. Gen. Stat. § 116-43.17 protects “[r]esearch data, records, or information of a proprietary nature, produced or collected by... [UNC] in the conduct of commercial, scientific, or technical research where the data, records, or information has not been patented, published, or copyrighted.”

6. USRTK argues that without an *in camera* review of the documents, it would be impossible for the Court to determine the jurisdictional question.

7. USRTK moves the Court to order a reference under Rule 53 of the North Carolina Rules of Civil Procedure to prepare a report on the documents that the University has not disclosed and whether they are subject to disclosure under the Public Records Act.

8. The Court is unable to determine whether it has jurisdiction without reviewing the records described in Paragraph 8 of the Affidavit of Gavin Young (the “Young Affidavit”), Exhibit A to the University’s Motion.

9. Pursuant to Rule 53 of the North Carolina Rules of Civil Procedure, and in the exercise of its inherent discretion, the Court concludes that a reference is

needed to review the documents that the University has not disclosed and to provide a report to the Court and the parties as to whether the documents are subject to disclosure under the Public Records Act or protected by N.C. Gen. Stat. § 116-43.17.

10. The Court is unable to rule on the University's Motion until the referee has completed the report and the Court has reviewed it.

11. The Court further concludes that it would be appropriate to require that the parties, counsel, and the referee keep any information concerning these records confidential and protected from dissemination or other public view until further order of the Court.

THEREFORE, it is ORDERED, ADJUDGED, and DECREED,

1. The parties shall attempt to agree on a proposed referee. In the event the parties agree, they shall submit to the Court all necessary information, on the proposed referee to the Court, including a CV and contact information. In the event the parties do not agree, they shall present no more than three proposed referees to the Court through the Trial Court Manager via email. The proposed referee information shall be submitted no later than 5 p.m. on December 4, 2023.

2. The parties shall attempt to agree on a proposed consent protective order. In the event the parties agree, they shall submit the proposed consent protective order to the Court. In the event the parties do not agree, they shall present their competing proposals to the Court through the Trial Court Manager via email. The proposed consent protective order shall be submitted no later than 5 p.m. 5

business days after appointment of the referee, and the parties and referee shall all be bound by its terms.


3. The University shall, no later than 5 p.m. 5 business days after the appointment of the referee, make all documents described in Paragraph 8 of the Young Affidavit as subject to N.C. Gen. Stat. § 116-43.17 available to the referee for review. The parties shall also make all pleadings available to the referee for review.

4. Parties, counsel, and the referee shall keep any information concerning these records confidential and protected from dissemination or other public view pending further orders of this Court.

5. The University shall re-notice its Motion for hearing after the referee has issued a report.

6. The Court will address payment of the fees of the referee at a later date, taking into account whether the University has substantially complied with N.C. Gen. Stat. § 116-43.17 and N.C. Gen. Stat. § 132-1, *et seq.*

SO ORDERED this the 20 day of November 2023.

  
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ALYSON ADAMS GRINE  
RESIDENT SUPERIOR COURT JUDGE