

STATE OF NORTH CAROLINA BY: C. Perryman IN THE GENERAL COURT OF
ORANGE COUNTY JUSTICE
SUPERIOR COURT DIVISION
22 CVS 463

US RIGHT TO KNOW,)
Plaintiff,)
v.) SUMMARY JUDGMENT ORDER
THE UNIVERSITY OF NORTH)
CAROLINA AT CHAPEL HILL,)
Defendant.)

THIS MATTER came before the Court on 18 October 2024, 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, and the Defendant was represented by David T. Lambeth III of The University of North Carolina at Chapel Hill and Elizabeth B. Jenkins of the North Carolina Department of Justice. The Court, having reviewed the Referee's report, the relevant filings, briefs, authorities, and evidence; and having heard arguments of counsel, hereby concludes as follows:

1. The Court has jurisdiction to hear this matter pursuant to N.C. Gen. Stat. § 132-9(a).
2. The Court's 20 November 2023 Order in this matter concluded that it was appropriate for the Court to appoint a Referee to review the documents the Defendant did not disclose to the Plaintiff and provide a Report to the Court and the Parties as to whether those documents are subject to disclosure under the North Carolina Public Records Act, N.C. Gen. Stat. § 132-1, *et seq.*, and N.C. Gen. Stat. § 116-43.17.
3. The Court's 20 November 2023 Order held open the Defendant's Motion for Judgment on the Pleadings, pending review of the Referee's report. That Motion remains properly before the Court.

4. The Court's 8 December 2023 Order appointed as Referee the Honorable Robert N. Hunter, Jr., former Associate Justice of the North Carolina Supreme Court and former Associate Judge of the North Carolina Court of Appeals.

5. The Referee submitted his Report to the Parties and the Court on 30 July 2024.

6. The Court, in its discretion and pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure, and with the consent of the Parties, converts the Defendant's Motion to one for Summary Judgment under Rule 56 of the North Carolina Rules of Civil Procedure. The Parties agree that there are no genuine issues as to any material facts and that judgment as a matter of law is appropriate.

7. The Court hereby adopts the Referee's 30 July 2024 Report, including the numbering system described in paragraphs 17-19 of that Report.

8. Under the North Carolina Public Records Act, public records are defined as follows:

"Public record" or "public records" shall mean 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.

N.C. Gen. Stat. § 132-1(a)

9. In 2014, the North Carolina legislature enacted a "Research Exemption" to the Public Records Act, which established that:

Research data, records, or information of a proprietary nature, produced or collected by or for state institutions of higher learning in the conduct of commercial, scientific, or technical research where the data, records, or information has not been patented, published, or copyrighted **are not public records** as defined by G.S. 132-1.

N.C. Gen. Stat. § 116-43.17 (emphasis added).

10. The Court reads N.C. Gen. Stat. § 116-43.17 such that “Research” modifies each of “data,” “records,” and “information.”

11. The Court reads N.C. Gen. Stat. § 116-43.17 such that “of a proprietary nature” only modifies “information,” and does not modify either “data” or “records.” This reading is consistent with *Lockhart v. United States*, 577 U.S. 347, 351 (2016), in which the Supreme Court applied the “last antecedent” rule of statutory interpretation, pursuant to which a “limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows.” The statute at issue in *Lockhart* is constructed similarly to N.C. Gen. Stat. § 116-43.17, and the Court’s reasoning is therefore persuasive.

12. Accordingly, the Court concludes that pursuant to N.C. Gen. Stat. § 116-43.17, the following are not public records when they are produced or collected by or for state institutions of higher learning in the conduct of commercial, scientific, or technical research and have not been patented, published, or copyrighted:

- a. Research data
- b. Research records
- c. Research information of a proprietary nature.

13. The phrase “of a proprietary nature” is not defined in N.C. Gen. Stat. § 116-43.17. In the absence of delineation, the Court interprets the phrase broadly to include information in which the owner has a protectable interest. *See Proprietary Information, Black’s Law Dictionary* (11th ed. 2019). This definition includes records to which copyright ownership attaches.

14. “Copyrighted,” in the context of N.C. Gen. Stat. § 116-43.17, refers to works with a registered copyright, and not to all works where statutory copyright protection attaches. This

interpretation is consistent with the placement of “copyrighted” in a list with “patented” and “published.” All three words are written in the past tense verb form and imply the taking of a specific action to achieve a result.

15. The Defendant must disclose additional records to the Plaintiff. Specifically, with respect to the Referee’s report and its categorization of documents, the Defendant must produce to the Plaintiff all documents labeled as “2” and categorized as “required disclosure under UNC’s definition.”

IT IS THEREFORE ORDERED THAT:

1. Pursuant to N.C. R. Civ. P. 56(c), summary judgment is granted in part to the Defendant and in part to the Plaintiff;

2. No later than 1 November 2024, the Defendant shall produce to the Plaintiff those documents labeled as “2” by the Referee in the Referee’s 30 July 2024 report;

3. The Parties shall bear their own costs and fees, except as previously agreed to between the Parties;

4. On joint request of the Parties, the Plaintiff’s prayer for relief in its Complaint is hereby amended to remove any request for fees or costs; and

5. By this Order, this case is fully adjudicated. This Order operates as a final order and the case is hereby disposed.

SO ORDERED, this the 31 day of October 2024.



ALYSON ADAMS GRINE
RESIDENT SUPERIOR COURT JUDGE