

IN THE SUPREME COURT OF OHIO

<p>THE STATE OF OHIO ex rel. LAUREN KESTERSON 6311 Third Avenue Kent, OH 44240</p> <p>Relator,</p> <p>vs.</p> <p>KENT STATE UNIVERSITY 800 Summit Street Kent, OH 44240</p> <p>Respondent.</p>	<p>Original Action in Mandamus</p>
<p>Complaint for Writ of Mandamus with Affidavit in Support</p>	

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Attorneys for Relator Lauren Kesterson

Relator, Lauren Kesterson, respectfully states its Complaint for Writ of Mandamus and alleges as follows:

I. Preliminary Statement

1. This is a mandamus action in which Relator, Lauren Kesterson, asks this Court to order Respondent, Kent State University, to comply with a public-records request outstanding since February 2, 2016. Ms. Kesterson brings this original action under Ohio S. Ct. R. 10.1, R.C. 2731.01 *et seq.*, and R.C. 149.43.
2. Ms. Kesterson is a former Kent State varsity softball player. Tucker Linder is a former Kent State baseball player and the son of former head softball coach Karen Linder. Mr. Linder raped Ms. Kesterson during their freshman year. During her sophomore year, Ms. Kesterson reported the rape to Coach Linder. Coach Linder insisted that Ms. Kesterson tell no one else what her son had done. Coach Linder promised to take care of the situation, but instead she engaged in a cover up and retaliated against Ms. Kesterson for reporting the rape. Ms. Kesterson, scared of losing her scholarship and her opportunity to play the sport she loves, followed her coach's instructions and kept her mouth shut as instructed for more than a year before reporting Coach Linder's cover up to the Title IX office at Kent in the fall of 2015. Coach Linder resigned a few days later. Ms. Kesterson

continued to face retaliation for opposing discrimination and was unable to continue participating in the softball program for her senior season.

3. Respondent is the public office responsible for producing records responsive to Relator's public-records request. In violation of its obligations, Respondent has failed to promptly prepare and make all requested records available notwithstanding repeated requests by counsel on Relator's behalf.

II. Parties

4. Relator, Lauren Kesterson, is a Kent State student who resides at 6311 Third Avenue, Kent, OH 44240 in Portage County.
5. Respondent, Kent State University, is a state university located in Portage County. Respondent is a "public office" within the meaning of the Act and as that term is defined by R.C. 149.011(A).
6. Respondent is required to maintain and preserve public records in its possession, custody, or control, R.C. 149.351, and is therefore the "person responsible for" the records it holds within the meaning of the Act. As the public office and as the person responsible for the public records that it holds, Respondent is obligated under the Act to promptly prepare such records and make them available for inspection and copying upon request. R.C. 149.43(B).

III. Jurisdiction & Venue

7. This Court has jurisdiction based on Section 2 of Article IV, Ohio Constitution, which establishes original jurisdiction for mandamus; Ohio S. Ct. R. 10, which is the rule governing original actions in the Ohio Supreme Court; R.C. 2731.02, *et seq.* which are the code sections controlling mandamus; and R.C. 149.43, which is the statute establishing public rights to public documents.
8. Venue is appropriate in this Court under R.C. 2731.02 and R.C. 149.43(C).

IV. Statement of the Case

9. Relator may properly bring this mandamus action.
 - a. The Ohio Public Records Act provides that, when a public office refuses to promptly comply with a public-records request, the requesting party “may commence a mandamus action” to obtain the records. R.C. 149.43(C).
 - b. This Court has held that mandamus is “the appropriate remedy to compel compliance with Ohio’s Public Records Act.” *State ex rel. Consumer News Services, Inc. v. Worthington City Bd. of Educ.*, 97 Ohio St.3d 58, 63, 2002-Ohio-5311, 7778 N.E.2d 82, 88. Relator need not establish the absence of an alternative remedy to seek a writ of mandamus under the Public Records Act. *State ex rel. Morgan v.*

New Lexington, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208,

¶ 41.

- c. In this case, Respondent and its officials and/or employees failed to comply with Relator's February 2, 2016 public-records request.
 - d. Therefore, Relator may properly bring this mandamus action.
10. Respondent's failure to provide all of the requested documents is not justified by any exception to disclosure under Ohio's Public Records Act and/or any other state or federal law.
11. Respondent, therefore, must produce the documents under R.C. 149.43(B)(1).

V. Violations of the Public Records Act, R.C. 149.43

12. On February 2, 2016, Relator's counsel submitted a written request to Respondent by email and certified mail for three specific categories of records requesting compliance by February 12, 2016. Aff. of Ashlie Case Sletvold at ¶ 2 and public-records request to Kent State University (February 2, 2016) (attached as Ex. 1 to Sletvold Aff.).
13. The February 2 public-records request sought the following categories of records:
- a. Category 1: "All personnel records, including records of training and discipline, for the following individuals: Karen Linder, Eric Oakley, Jessica Toocheck, Erin Barton, and Joel Nielson;"

- b. Category 2: “All records regarding training or information provided to the Kent State varsity softball team regarding Title IX, gender equity, sexual harassment, sexual assault, Sexual and Relationship Violence Support Services, or the University’s policies or procedures for reporting instances of gender-based harassment or sexual assault (from the 2012–13 academic year to the present);” and
 - c. Category 3: “All records regarding student-athlete reviews of Coach Karen Linder from the 2010–11 academic year until her resignation in August 2015.”
14. Relator’s counsel sent the public-records request by email and certified mail and requested that the documents be produced as .pdf files by email. *Id.* at ¶¶ 2, 4 and certified-mail receipt for delivery of February 2, 2016 public-records request (attached as Ex. 2 to Sletvold Aff.).
15. Kent State University Associate Counsel Nichole DeCaprio sent an email to Relator’s counsel on February 3 acknowledging receipt of the public-records request and indicating that responsive records were being identified and gathered. *Id.* at ¶ 5 and email from DeCaprio to Sletvold (2/3/16) (attached as Ex. 3 to Sletvold Aff.).
16. On February 16, having received no further response from Ms. DeCaprio, Ms. Sletvold sent a follow-up letter. *Id.* at ¶ 6 and letter from Sletvold to DeCaprio (2/16/16) (attached as Ex. 4 to Sletvold Aff.).
17. On February 16, Ms. DeCaprio responded promising that the records would be provided “early next week.” *Id.* at ¶ 7 and email from DeCaprio to Sletvold (attached as Ex. 5 to Sletvold Aff.).

18. On February 22, Ms. Sletvold again followed up with Ms. DeCaprio indicating that a three-week delay was unreasonable. *Id.* at ¶ 8 and email from Sletvold to DeCaprio (attached as Ex. 6 to Sletvold Aff.).
19. On February 24, Ms. Sletvold called and spoke to Ms. DeCaprio about the failure to provide records. Ms. DeCaprio promised to send the records later that day. *Id.* at ¶ 9.
20. On February 24, Ms. DeCaprio provided a partial response on Kent State's behalf. In response to the first request, she provided the redacted personnel files of Linder, Toocheck, Oakley, Nielsen, and Barton. In response to the second request, she provided a handbook. *Id.* at ¶ 10 and email from DeCaprio transmitting partial response (attached as Exhibit 7 to Sletvold Aff.).
21. The following day, Ms. DeCaprio provided a second partial response comprised of summaries of the student-athlete reviews of Coach Linder that were compiled by a graduate student, which were responsive to the third category of the request. *Id.* at ¶ 11 and email from DeCaprio transmitting partial response (attached as Exhibit 8 to Sletvold Aff.).
22. That same day, Ms. Sletvold wrote to Ms. DeCaprio addressing some concerns with the partial responses and requesting legal authority for the

extensive redactions. *Id.* at ¶ 12 and letter to DeCaprio from Sletvold (2/25/16) (attached as Ex. 9 to Sletvold Aff.).

23. On March 2, Ms. Sletvold wrote another letter to Ms. DeCaprio addressing additional concerns with the responses provided, including the failure to provide the student-athlete reviews and the failure to provide category 2 records of training on sexual assault, Title IX, etc. *Id.* at ¶ 13 and letter from Sletvold to DeCaprio (3/2/16) (attached as Ex. 10 to Sletvold Aff.).
24. Ms. Sletvold received no response to her February 25 and March 2 letters, and followed up again on March 7 requesting a date by which the complete response would be provided. *Id.* at ¶ 14 and letter from Sletvold to DeCaprio (3/7/16) (attached as Ex. 11 to Sletvold Aff.).
25. On March 14, Ms. DeCaprio responded providing another supplemental response (including Karen Linder's employment contracts that had not been provided previously) and attempting to address the inadequacies Ms. Sletvold had identified in the earlier responses. Regarding the student-athlete reviews requested in category 3, Ms. DeCaprio reported that they were not maintained (i.e., they were destroyed) after the summaries were completed. Regarding the sexual-assault/Title IX training materials requested in category 2, Ms. DeCaprio indicated that they were not "centrally maintained" or kept by the softball team. She also indicated

the Kent State did not view the Public Records Act as “requiring an item-by-item list of the grounds for each redaction absent a specific question.” *Id.* at ¶ 15 and letter from DeCaprio to Sletvold (3/14/16) (attached as Ex. 12 to Sletvold Aff.).

26. On March 29, Ms. Sletvold sent a letter to Ms. DeCaprio asking if the University had completed its response to the public-records request. *Id.* at ¶ 16 and letter from Sletvold to DeCaprio (3/29/16) (attached as Ex. 13 to Sletvold Aff.).
27. On April 1, Ms. DeCaprio indicated that she would “respond shortly.” *Id.* at ¶ 17 and email from DeCaprio to Sletvold (4/1/16) (attached as Ex. 14 to Sletvold Aff.).
28. On April 5, Ms. Sletvold sent another follow up email to Ms. DeCaprio asking when she expected to confirm that the University’s response was complete and indicating that Relator did not wish to initiate mandamus proceedings if further records were forthcoming. *Id.* at ¶ 18 and email from Sletvold to DeCaprio (4/5/16) (attached as Ex. 15 to Sletvold Aff.).
29. On April 12, Ms. Sletvold sent a final follow up email to Ms. DeCaprio asking her to confirm that the University had completed its response and indicating that this would be the final attempt to obtain an answer before

seeking mandamus relief. *Id.* at ¶ 19 and email from Sletvold to DeCaprio (4/12/16) (attached as Ex. 16 to Sletvold Aff.).

30. The University did not respond to Relator's counsel's March 29, April 5, or April 12 requests to confirm that had completed its production in response to the public-records request.
31. As of the filing of this petition, this public-records request has been outstanding for 78 days. *Id.* at ¶ 22.

VI. Attorneys' fees and costs

32. Under the Public Records Act, public records are to be made available for inspection and copying on the request of any person. The obligation of public officers and persons responsible for public records to make the records available does not depend on the importance of the reason for the request.
33. In this action, Relator seeks an award of her attorneys' fees and costs.
34. In a mandamus action, both the propriety and the amount of a discretionary award of attorneys' fees may be affected by a determination of whether a "well-informed" public officer reasonably would believe that its failure to comply was well-founded *and* consistent with the public policy underlying any claimed exemption. R.C. 149.43(C)(2)(b)(i), R.C. 149.43(C)(2)(c)(i), and R.C. 149.43(C)(2)(c)(ii). Further, the availability of a

discretionary award to the Relator may be affected by a determination whether a public benefit has been achieved or the public interest has been served by the mandamus action.

VII. Public benefit

35. A writ of mandamus in this case commanding that the requested records be made available for public inspection and copying will serve the public interest.
36. The records that have not been provided relate to the University's provision (or lack of provision) of training to the softball team regarding gender discrimination and gender-based violence, and the reporting procedures for these types of issues. The University has not suggested that such records to not exist or are exempt from disclosure under the Act.
37. The records that Ms. DeCaprio reported were destroyed include student-athletes' unedited, unfiltered commentary on their coach's treatment of them and their teammates. These reviews document the coach's performance of her duties as a softball coach at a major Division I university.
38. The University has littered the records provided with improper redactions.

39. The University has failed to identify specific legal authority for each of the redactions imposed.
40. These complete records will inform the public—including KSU students and alumni—about their government, and will allow appropriate legal and other action to be taken, which will serve the very purpose of the sunshine laws.

VIII. Oral argument

41. If this Court finds that its decision process would be aided by oral argument, or finds itself hesitant to grant the relief requested, Relator respectfully requests such argument to address any of the Court's concerns.

THUS, Relator prays for the following:

- That this Court issue a peremptory writ of mandamus directing Kent State University to make responsive public records available promptly and without improper redactions;
- That this Court award attorneys' fees and costs to Relator;
- That this Court order any other relief available to the firm under R.C. 149.43 and/or R.C. 2731.01 *et seq.* and any other relief as is appropriate.

Dated: April 21, 2016

Respectfully submitted:

/s/ Subodh Chandra

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I. Statement of Facts

This is an original proceeding in mandamus to enforce the provisions of Ohio's Public Records Act, R.C. 149.43. Relator, Lauren Kesterson, is a current Kent State student and former varsity softball player. On February 2, 2016, she sought records from the University related to her Title IX complaint (Ms. Kesterson's former softball coach, Karen Linder, orchestrated a cover up when Ms. Kesterson reported that Coach Linder's son had raped Ms. Kesterson). Public-records request (2/2/16) (attached as Ex. 1 to Affidavit of Ashlie Case Sletvold, ¶ 2).

The request sought the following records:

1. All personnel records, including records of training and discipline, for the following individuals: Karen Linder, Eric Oakley, Jessica Toocheck, Erin Barton, and Joel Nielson;
2. All records regarding training or information provided to the Kent State varsity softball team regarding Title IX, gender equity, sexual harassment, sexual assault, Sexual and Relationship Violence Support Services, or the University's policies or procedures for reporting instances of gender-based harassment or sexual assault (from the 2012–13 academic year to the present); and
3. All records regarding student-athlete reviews of Coach Karen Linder from the 2010–11 academic year until her resignation in August 2015.

Id.

As detailed in the affidavit of Ashlie Case Sletvold accompanying the complaint, after being prodded repeatedly, Kent State provided several partial responses including personnel files for the named individuals, a student handbook, and summaries of the student-athlete reviews that were compiled by a graduate student. Sletvold Aff. at ¶¶

6–11 (Exs. 4–8). Kent State has littered these responses with redactions without providing specific legal authority for each one, has failed to substantively respond to the second category, and reported that the records sought in category 3 were destroyed. *Id.* at ¶¶ 12–15 (Exs. 9–10). Despite extensive follow up by Relator’s counsel, Kent State has not remedied these failures and, indeed, has refused to respond to Relator’s request to confirm that its response is complete. *Id.* at ¶¶ 16–20 (Exs. 11–16).

Kent State University possesses records responsive to Ms. Kesterson’s request. Despite her best efforts to obtain those records, the University has failed to provide all requested records or provide the records with only appropriate and supported redactions. As of the filing of this action on April 21, 2016, her request has been outstanding for 79 days.

II. Law & Argument

A. Proposition of law

Should the Court order Kent State University to provide complete responsive records to Ms. Kesterson’s February 2, 2016 public-records request?

B. The Public Records Act is liberally construed in favor of broad access to public records.

“The Public Records Act reflects the state’s policy that ‘open government serves the public interest and our democratic system.’” *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 28, quoting *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364, 2006-Ohio-1825, 848 N.E.2d 472, ¶ 20. “Public records are one

portal through which the people observe their government, ensuring its accountability, integrity, and equity while minimizing sovereign mischief and malfeasance." *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961, ¶ 20, quoting *Kish v. Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, 846 N.E.2d 811, ¶ 16. "[O]pen access to government papers is an integral entitlement of the people, to be preserved with vigilance and vigor." *Kish*, 2006-Ohio-1244, ¶ 17 (citing cases).

This Court has repeatedly held that the Public Records Act "is construed liberally in favor of broad access, and any doubt is resolved in favor of disclosure of public records." *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, 821 N.E.2d 564, ¶ 7. "[E]xceptions to disclosure must be strictly construed against the custodian of the public records, and the burden to establish an exception is on the custodian." *State ex rel. Multimedia, inc. v. Snowden* (1995), 72 Ohio St.3d 141, 142, 647 N.E.2d 1374, 1377, citing *State ex rel. James v. Ohio State Univ.*, 70 Ohio St.3d 168, 169, 637 N.E.2d 911, 912 (1994).

R.C. 149.43(B)(1) states that "[i]f a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt." Moreover, "if a request is ultimately denied, in part or in whole, the public office . . . responsible for the requested

public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied.” R.C. 149.43(B)(3).

Under these provisions, the University has the obligation to make the requested records available or provide specific legal authority for failing to do so. The Court should order Kent State to provide the complete responsive records and should award Relator statutory damages, attorneys’ fees, and costs in seeking this relief.

C. Mandamus is the appropriate mechanism to enforce a public office’s failure to promptly respond to a public-records request.

The Public Records Act provides that “[a]ll public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours.” *State ex rel. Wadd v. City of Cleveland*, 81 Ohio St.3d 50, 52-53, 1998-Ohio-444, 689 N.E.2d 25, 28 (emphasis supplied). Mandamus is the appropriate remedy to compel compliance with Ohio’s Public Records Act. *Id.* at 52 (citation omitted). A mandamus action under R.C. 149.43(C) is appropriate “[i]f a person allegedly is aggrieved by the failure of a governmental unit to promptly prepare a public record and make it available to the person for inspection in accordance with [R.C. 149.43(B)].” *Id.* at 52-53. This Court has specifically held that “the requirement of the lack of an adequate legal remedy [in a mandamus action] does not apply to public-records cases.” *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 41 (citations omitted).

D. The records requested are “public records” within the meaning of the statute.

R.C. 149.43(A)(1) defines a “public record” as “records kept by any public office...” R.C. 149.011(G) defines “records” as “any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.”

Kent State University is a “public office” for purposes of the Public Records Act. The records Ms. Kesterson sought in her February 2 public-records request are all “records” within the meaning of the Act. Employee personnel files certainly document the organization of the institution. Records of training provided to student-athletes on gender-based assault and harassment and how to report gender-motivated violence document the policies, procedures, operations, and other activities of the school and its athletic program. And records of student-athlete input on their experience as softball players (including reporting on the performance of their coaches) document the functions, operations, or other activities of the University.

E. The Court should award Relator her costs.

A successful mandamus petitioner is entitled to an award of all court costs. R.C. 149.43(C)(2)(a). The Court should award Ms. Kesterson her costs of filing suit.

F. The Court should award statutory damages.

A public-records requester who submits a request by certified mail is entitled to receive statutory damages if the Court finds that the public office failed to comply with its obligations. R.C. 149.43(C)(1). The statute provides for statutory damages of \$100 for each business day the office fails to comply following the filing of a mandamus petition, up to \$1,000. *Id.* The Court may decline to award damages if it finds *both* that a “well-informed” public office would “reasonably believe” that its failure was not a violation of the Act *and* that a “well-informed” office would “reasonably believe” that its conduct “did not constitute a failure to comply with an obligation under [R.C. 149.43(B)].” R.C. 149.43(C)(1).

Ohio law is clear that a “public office must notify the requester of any redactions, and a redaction is treated as a denial of the public-records request. If all or part of a request is denied, the public office shall provide an explanation for the denial with citations to legal authority.” *State ex rel. Ohio Republican Party v. Fitzgerald*, 145 Ohio St. 3d 92, 2015-Ohio-5056; 47 N.E.3d 124, ¶ 34 (citing R.C. 149.43(B)(1) and (B)(3)). Kent State’s position as articulated in Assistant Counsel Nicole DeCaprio’s March 14 letter to Relator’s counsel takes a different view: “We do not view R.C. 149.43 as requiring an item-by-item list of the grounds for each redaction absent a specific question.” *See Sletvold Aff.* at ¶ 15 and letter from DeCaprio to Sletvold (3/14/16) (Ex. 12).

Kent State has taken the unsupportable position that Ms. Kesterson must inquire as to each specific redaction to be entitled to receive legal authority for the denial of her request. No “well-informed” public office could have “reasonably believed” that it was required to provide legal authority for a denial or redaction only in response to a specific question when this Court’s precedent holds to the contrary. *State ex rel. Ohio Republican Party*, 2015-Ohio-5056, at ¶ 34.

And Kent State not explained why is will not provide Ms. Kesterson with the category 2 records (regarding sexual-assault/reporting training the softball team received) other than indicating they are not “centrally maintained.” A “well-informed” public office could not reasonably believe that it was abiding by its obligations under R.C. 149.43 in failing to collect and make available the category 2 records requested. The Court should award statutory damages.

G. The Court should award her attorneys’ fees.

The Act provides for a discretionary award of attorneys’ fees in any case in which a public office fails to carry out its obligation to make records promptly available for inspection and copying upon request. R.C.149.43(C).

This Court has held that its “public-benefit” jurisprudence under prior versions of the Act provides the standards for a discretionary award of attorneys’ fees under the current Act. *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, 914 N.E.2d 159, ¶ 18-36 (addressing amendments to the Public Records Act). Under this Court’s

jurisprudence, courts consider the reasonableness of the office's conduct and "the degree to which the public will benefit from release of the records in question." *Wadd*, 81 Ohio St.3d 50, 54. This public-records request warrants an award of fees.

Relator made repeated requests for the records in question. Despite extensive follow up, the University has not been forthcoming with a complete response and has placed the onus on Ms. Kesterson to inquire as to the specific basis for each redaction/denial. The February 2 request relates to matters of great concern to the general public including the competence of University officials charged with handling gender-based violence on campus, including specifically how the University (1) handled complaints regarding a coach who orchestrated a cover up of her player's rape to protect the coach's son and (2) articulated its expectations, policies, and procedures to student-athletes who were or might become victims of sexual assault.

In the absence of the prospect of a fee award, public offices have an obvious incentive to refuse any disclosure of records for any reason or no reason. Accordingly, the Court should award the firm its reasonable attorneys' fees expending pursuing this mandamus petition.

II. Conclusion

Kent State University has failed to respond fully to Ms. Kesterson's February 2, 2016 public-records request. The Court should order the school to produce the

requested public records and award Ms. Kesterson her court costs, statutory damages,
and reasonable attorneys' fees.

Dated: April 21, 2016

Respectfully submitted:

/s/ Subodh Chandra

THE CHANDRA LAW FIRM, LLC

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<p>Affidavit of Ashlie Case Sletvold in Support of Complaint for Writ of Mandamus</p>	

I, Ashlie Case Sletvold, having been duly sworn, have personal knowledge of, and am competent to testify about, the following matters of fact, and testify as follows:

1. I am a partner with the Chandra Law Firm LLC and I represent Lauren Kesterson.
2. Attached as Exhibit 1 is a true and accurate copy of a public-records request I submitted by email and certified mail on Lauren Kesterson's behalf to Kent State University on February 2, 2016. We requested compliance by February 12. We asked that the documents be produced as .pdf files by email to me and my paralegal. The request sought three categories of records:

- a. "All personnel records, including records of training and discipline, for the following individuals: Karen Linder, Eric Oakely, Jessica Toocheck, Erin Barton, and Joel Nielson;
 - b. All records regarding training or information provided to the Kent State varsity softball team regarding Title IX, gender equity, sexual harassment, sexual assault, Sexual and Relationship Violence Support Services, or the University's policies or procedures for reporting instances of gender-based harassment or sexual assault (from the 2012–13 academic year to the present; and
 - c. All records regarding student-athlete reviews of Coach Karen Linder from the 2010–11 academic year until her resignation in August 2015."
3. The third category of records requested are completed anonymously, so no concerns about student privacy are implicated.
4. Attached as Exhibit 2 is a true and correct copy of the certified-mail receipt for delivery of our February 2, 2016 public-record request to Kent State University.
5. On February 3, 2016, I received an email from Associate Counsel Nichole DeCaprio acknowledging receipt of the request and indicating that the University was identifying and gathering responsive records. Attached as Exhibit 3 is a true and accurate copy of Ms. DeCaprio's email.

6. On February 16, 2016, I sent a letter to Ms. DeCaprio following up on the public-records request, which at that point had been outstanding for two weeks.
Attached as Exhibit 4 is a true and accurate copy of my letter to Ms. DeCaprio.
7. That same day, Ms. DeCaprio responded indicating that her office anticipated providing the requested records “early next week.” Attached as Exhibit 5 is a true and accurate copy of Ms. DeCaprio’s email.
8. On February 22, 2016, I responded to Ms. DeCaprio’s email indicating that the three-week delay in providing the limited records requested was unreasonable. But I acquiesced to her representation that more time was needed. Attached as Exhibit 6 is a true and accurate copy of my email to Ms. DeCaprio.
9. On February 24, 2016, I called Ms. DeCaprio to follow up on the failure to provide the requested records. She promised that records would be sent later that day.
10. On February 24, 2016, Ms. DeCaprio provided a partial response on Kent State’s behalf. In response to the first request, she provided the redacted personnel files of Linder, Toocheck, Oakley, Nielsen, and Barton. In response to the second request, she provided a handbook. Attached as Exhibit 7 is a true and accurate copy of Ms. DeCaprio’s email transmitting the partial response.
11. On February 25, 2016, Ms. DeCaprio provided a second partial response to Kent State’s behalf. This partial response—to the third category of requested records—

was comprised of summaries of the student-athlete reviews of Coach Linder that were apparently compiled by a graduate student. Attached as Exhibit 8 is a true and accurate copy of Ms. DeCaprio's email transmitting the partial response.

12. On February 25, 2016, I wrote to Ms. DeCaprio addressing some concerns I had identified during my review of the partial response and requesting the required specific legal authority for the plethora of redactions. Attached as Exhibit 9 is a true and accurate copy of my letter to Ms. DeCaprio.
13. On March 2, 2016, following completion of my review of the partial response, I again wrote to Ms. DeCaprio to address additional concerns including the fact that, in response to the third request (student-athlete reviews of Linder), the University had provided only summary forms and not the actual, handwritten reviews the student-athletes complete. My letter also addressed the failure to provide category 2 records (training on sexual assault/Title IX/etc.). Attached as Exhibit 10 is a true and accurate copy of my letter to Ms. DeCaprio.
14. Having received no response to my February 25 and March 2 letters, on March 7, 2016, I requested a date by which we could expect to receive the complete response. Attached as Exhibit 11 is a true and accurate copy of my letter to Ms. DeCaprio.
15. On March 14, 2016, Mr. DeCaprio provided another supplemental response that included the complete employment contracts with Karen Linder that had not

been provided with her personnel file. Attached as Exhibit 12 is a true and accurate copy of Ms. DeCaprio's email and letter transmitting the partial response. The accompanying letter was intended to address the inadequacies in the partial responses that I had identified in my previous letters. Regarding the student-athlete reviews we requested in category 3, Ms. DeCaprio reported that they were not maintained (i.e. destroyed) after the summaries were completed (see Ex. 12 at unnumbered page 5). Regarding the sexual-assault/Title IX training materials requested in category 2, Ms. DeCaprio indicated that they were not "centrally maintained" or kept by the softball team. (see Ex. 12 at unnumbered page 6). She also indicated: "[w]e do not view R.C. 149.43 as requiring an item-by-item list of the grounds for each redaction absent a specific question." (*Id.*)

16. On March 29, 2016, I sent a follow up letter requesting that Ms. DeCaprio confirm whether the University had completed its response to our public-records request. Attached as Exhibit 13 is a true and accurate copy of my letter to Ms. DeCaprio.
17. On April 1, 2016, Ms. DeCaprio responded by email indicating that she would "respond shortly." Attached as Exhibit 14 is a true and accurate copy of Ms. DeCaprio's email.
18. On April 5, 2016, I sent another follow up email to Ms. DeCaprio asking when she expected to provide an answer to our request to confirm that the University's

response was complete and indicating that we did not want to initiate mandamus proceedings yet if further responses were forthcoming. Attached as Exhibit 15 is a true and accurate copy of my email to Ms. DeCaprio.

19. On April 12, 2016, I sent a final follow-up email to Ms. DeCaprio asking her to confirm that the University had completed its response and indicating this would be my final attempt to obtain an answer before seeking mandamus relief. Attached as Exhibit 16 is a true and accurate copy of my email to Ms. DeCaprio.
20. For more than three weeks, the University has not responded to my request to confirm that its production was complete.
21. Kent State University has not complied with its obligations under R.C. 149.43.
22. As of today, Ms. Kesterson's public-records request has been pending for 79 days.

I declare the above to be true and accurate to the best of my knowledge under penalty of perjury under the laws of the United States of America.

Dated: April 21, 2016




Signature of Affiant

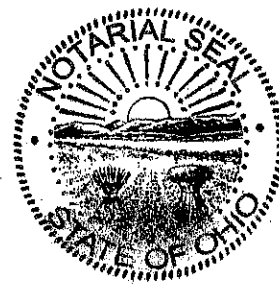
STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared Ashlie Case Sletvold who acknowledged that she did sign the foregoing instrument and that the same is her own free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 21st day of April, 2016.



Notary Public, State of Ohio
My commission expires: 3/2/2021



SUZANNE ZARANKO
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Cuyahoga County
My Comm. Exp. 3/2/2021

February 2, 2016

Via email at hr-records@kent.edu and U.S. certified mail

Tia Laughlin, Manager
Kent State University
Human Resources - Records
350 S. Lincoln Street
Kent, OH 44242

Re: Public-records request

Dear Ms. Laughlin:

This is a public-records request under R.C. 149.43 to inspect the following records:

1. All personnel records, including records of training and discipline, for the following individuals: Karen Linder, Eric Oakley, Jessica Toocheck, Erin Barton, and Joel Nielson;
2. All records regarding training or information provided to the Kent State varsity softball team regarding Title IX, gender equity, sexual harassment, sexual assault, Sexual and Relationship Violence Support Services, or the University's policies or procedures for reporting instances of gender-based harassment or sexual assault (from the 2012–13 academic year to the present); and
3. All records regarding student-athlete reviews of Coach Karen Linder from the 2010–11 academic year until her resignation in August 2015.

Please note that we are *not* asking for any student-identifying information that might implicate privacy considerations. We are asking only for records regarding any training provided to student-athletes on the listed subjects.

Ohio's public-records law requires that a public office, upon receiving a public-records request, *promptly* make its records available for inspection.¹ We expect to receive your complete response by **February 12, 2016**.

Further, the statute gives the requester the right to choose the medium in which the records are received for inspection.² Please provide .pdf files of the records by email to me at ashlie.sletvold@chandraLaw.com and suzanne.zaranko@chandraLaw.com.

¹ R.C. 149.43(B)(1). *See State ex rel. Wadd v. City of Cleveland*, 81 Ohio St.3d 50, 54, 689 N.E.2d 25 (1998) (requiring public office to produce records within eight days of request).

Please contact me at the number above if you have any questions regarding this request.

Sincerely,



Ashlie Case Sletvold

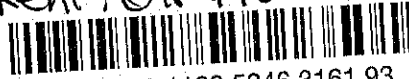
² R.C. 149.43(B)(6).

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Tia Laughlin Mgr
Kent State Univ.
Human Resources-Records
350 S. LINCOLN ST
Kent, OH 44242



9590 9402 1193 5246 3161 93

2. 7015 3010 0001 6915 8733

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

2-8-16

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No


3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

PS Form 3811, July 2015 PSN 7530-02-000-9053

From: Decaprio, Nichole ndecapri@kent.edu 
Subject: Re: Public-records request
Date: February 3, 2016 at 4:54 PM
To: ashlie.sletvold@chandalaw.com
Cc: suzanne.zaranko@chandalaw.com, Mansfield, Eric emansfie@kent.edu

DN

Ms. Sletvold,

The Office of General Counsel is in receipt of your public records request, attached. We are currently in the process of identifying and gathering records responsive to your request and will provide you with an update shortly. Please contact our office with any questions regarding this request.

Thank you,

Nichole DeCaprio
Associate Counsel
Office of General Counsel
Kent State University
330-672-2982

From: "TERLECKYJ, MARIA" <mterleck@kent.edu>
Date: Tuesday, February 2, 2016 at 3:50 PM
To: Nichole Decaprio <ndecapri@kent.edu>
Subject: FW: Public-records request

Hello Nichole,
See attached.
Thanks,

Maria Terleckyj
Assistant Manager, HR Records
Kent State University
Division of Human Resources
310A Heer Hall
Phone: 330-672-8081
Fax: 330-672-3047
Email: mterleck@kent.edu

From: Suzanne Zaranko [<mailto:suzanne.zaranko@chandalaw.com>]
Sent: Tuesday, February 02, 2016 2:12 PM
To: hr-records <hr-records@kent.edu>
Cc: Ashlie Case Sletvold <ashlie.sletvold@chandalaw.com>; Peter Pattakos <peter.pattakos@chandalaw.com>; Subodh Chandra <Subodh.Chandra@chandalaw.com>; Donna Taylor-Kolis <Donna@andersonlawoffices.net>
Subject: Public-records request



2016-02-02 PRR to
Kent State ...niversity.pdf

EXHIBIT 3

February 16, 2016

Via email to ndecapri@kent.edu

Nichole DeCaprio
Associate Counsel
Kent State University
800 E. Summit Street
Kent, OH 44240

Re: Follow up on February 2, 2016 public-records request

Dear Ms. DeCaprio:

On February 2, we sent a public-records request to Kent State seeking several personnel files, records of certain training provided to the softball team, and the student-athlete reviews contained in the anonymous compliance forms the softball team fills out each year.

You acknowledged receipt of our request the following day. We asked for the records by February 12, but that date came and went. The University has provided nothing.

It has been two weeks since we submitted our request. The Public Records Act requires public offices to promptly make their records available for inspection. A two-week timeframe is more than reasonable to provide the modest categories of records we requested.

Absent compliance by the end of this week, we will initiate mandamus proceedings to secure the University's compliance.

Again, please provide .pdf files of the records by email to me at ashlie.sletvold@chandralaw.com and suzanne.zaranko@chandralaw.com.

Kind regards,



Ashlie Case Sletvold

From: Decaprio, Nichole ndecapri@kent.edu
Subject: Re: Follow up on February 2, 2016 public-records request
Date: February 16, 2016 at 4:33 PM
To: Ashlie Case Sletvold ashlie.sletvold@chandrafirm.com
Cc: WALKER, WILLIS wwalker@kent.edu

Ms. Sletvold,

I am in receipt of your letter, attached. Our office continues to work on gathering and reviewing records responsive to your public record request. Due to the volume of records requested, as well as the extent of redactions necessary, we anticipate providing you with the requested records early next week.

Thank you,

Nichole DeCaprio
Associate Counsel
Office of General Counsel
Kent State University
330-672-2982

From: Suzanne Zaranko <suzanne.zaranko@chandrafirm.com>
Date: Tuesday, February 16, 2016 at 2:31 PM
To: Nichole Decaprio <ndecapri@kent.edu>
Cc: Ashlie Case Sletvold <ashlie.sletvold@chandrafirm.com>, Peter Pattakos <peter.pattakos@chandrafirm.com>, Subodh Chandra <Subodh.Chandra@chandrafirm.com>
Subject: Follow up on February 2, 2016 public-records request



THE CHANDRA LAW FIRM, LLC
1265 W. 6th Street, Suite 400
Cleveland, Ohio 44113.1326
216.578.1700 office
216.578.1800 fax

February 16, 2016

Via email to ndecapri@kent.edu

Nichole DeCaprio
Associate Counsel
Kent State University
800 E. Summit Street
Kent, OH 44240

Re: Follow up on February 2, 2016 public-records request

Dear Ms. DeCaprio:

On February 2, we sent a public-records request to Kent State seeking several personnel files, records of certain training provided to the softball team, and the student-athlete reviews contained in the anonymous compliance forms the softball team fills out each year.

You acknowledged receipt of our request the following day. We asked for the records by February 19 but that date came and went. The University has provided nothing

EXHIBIT 5

~~February 12, 2014. We have since and here, the University has provided nothing.~~

It has been two weeks since we submitted our request. The Public Records Act requires public offices to promptly make their records available for inspection. A two-week timeframe is more than reasonable to provide the modest categories of records we requested.

Absent compliance by the end of this week, we will initiate mandamus proceedings to secure the University's compliance.

Again, please provide .pdf files of the records by email to me at ashlie.sletvold@chandraLaw.com and suzanne.zaranko@chandraLaw.com.

Kind regards,



Ashlie Case Sletvold

From: Ashlie Case Sletvold ashlie.sletvold@chandraLaw.com
Subject: Re: Follow up on February 2, 2016 public-records request
Date: February 22, 2016 at 10:49 AM
To: Decaprio, Nichole ndecapri@kent.edu
Cc: WALKER, WILLIS wwalker@kent.edu, Subodh Chandra Subodh.Chandra@ChandraLaw.com, Peter Pattakos peter.pattakos@chandraLaw.com

Ms. DeCaprio,

We requested three discrete categories of public records. We are perplexed at how it could take more than three weeks to comply with such a limited request. But given your representation that you will provide the records early this week, we will refrain from filing for mandamus relief until Thursday (2/25).

We hope that Kent will properly comply with its obligations under the Public Records Act and such filing will not be necessary.

We look forward to receiving the requested records along with, as the statute mandates, the specific supporting authority for each of the redactions mentioned below.

Kind regards,

--
Ashlie Case Sletvold
The Chandra Law Firm, LLC
1265 W. 6th Street, Suite 400
Cleveland, OH 44113.1326
216.578.1700 office
216.578.1800 fax
Ashlie.Sletvold@ChandraLaw.com
www.ChandraLaw.com
www.ChandraLawBlog.com

This email may contain privileged or confidential information. If you have received this email in error, please reply or call 216.578.1700, so we may correct our records. Please also delete the email from your system.

EXHIBIT 6

From: ndecapri@kent.edu
Subject: Public Record Request, Sletvold
Date: February 24, 2016 at 6:22 PM
To: ashlie.sletvold@chandalaw.com, rmurph20@kent.edu

You have received 6 secure files from ndecapri@kent.edu.

Use the secure links below to download.

Ms. Sletvold,

At the links below, please find records responsive to your request dated February 2, 2016.

- In response to Part 1, please find the personnel files requested. Please note that personal information, such as social security number, Banner (University) ID, home address, birth date, names and information of family members, bank account numbers, retirement account information, and benefits information have been redacted. This information does not serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the university, and is therefore not a public record in accordance with R.C. 149.011(G).

-Regarding Request #2, please see the attached Student-Athlete Handbook. We are continuing to gather records responsive to this portion of the request.

-Regarding Request #3, I will provide you with these records tomorrow.

Thank you,
Nichole DeCaprio
Associate Counsel
Office of General Counsel
Kent State University
330.672.2982

Secure File Downloads:

Available until: **25 March 2016**

Click links to download:

[Handbook.pdf](#)

1.30 MB, Fingerprint: efc7b7350add4628929d74c7ab763a69 ([What is this?](#))

[Nielsen Redacted.pdf](#)

12.49 MB, Fingerprint: bb8b2e3f0fdec211782836ff32736c52 ([What is this?](#))

[Toocheck Redacted.pdf](#)

1.17 MB, Fingerprint: 05afa902d2b5fbef689bcb9b4c4f3079 ([What is this?](#))

[Oakley Redacted.pdf](#)

3.78 MB, Fingerprint: 1ae201b80e6d681b94e8dd425a76e3d4 ([What is this?](#))

[Barton Redacted.pdf](#)

1.99 MB, Fingerprint: 2bed11370477de2a891284e3d49628d1 ([What is this?](#))

[Linder Personnel File Redacted.pdf](#)

56.96 MB, Fingerprint: 62a0c923addaae82b7cac6b8d6217a6e ([What is this?](#))

You have received attachment link(s) within this email sent via [Kent State University Secure File Sharing](#). To download the attachment(s), please click on the link(s) above.

From: ndecapri@kent.edu
Subject: PRR, Sletvold
Date: February 25, 2016 at 5:15 PM
To: ashlie.sletvold@chandraLaw.com, rmurph20@kent.edu

You have received 1 secure file from ndecapri@kent.edu.

Use the secure link below to download.

Ms. Sletvold,
At the link below, please see the student athlete evaluations responsive to part 3 of your request. Note that redactions were made for personally identifiable information of students in accordance with FERPA regulations, 20 USC §1232g.

Thank you,

Nichole DeCaprio
Associate Counsel
Office of General Counsel
Kent State University
330-672-2982

Secure File Downloads:

Available until: **26 March 2016**

Click link to download:

[Student Athlete Evaluations Redacted.pdf](#)

10.73 MB, Fingerprint: d7ff70f4378cca1a2aea0f588b7017d9 ([What is this?](#))

You have received attachment link(s) within this email sent via [Kent State University Secure File Sharing](#). To download the attachment(s), please click on the link(s) above.

Secured by [Accellion](#)

EXHIBIT 8

February 25, 2016

Via email to ndecapri@kent.edu and U.S. Mail (with disk)

Nichole DeCaprio
Associate Counsel
Kent State University
800 E. Summit Street
Kent, OH 44240

Re: Follow up on partial response to February 2, 2016 public-records request

Dear Ms. DeCaprio:

Thank you for providing a partial response to our February 2 public-records request to Kent State University. We have begun our review of the partial response and write to address some initial concerns regarding the version of Karen Linder's personnel file that we received. We were dismayed to find that—despite KSU's delay in providing the requested records—the documents made available are replete with redactions that seem to be improper for which KSU did not provide specific legal authority.

Under the Public Records Act, a redaction constitutes a denial of a request.¹ And “[i]f a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing.”²

Though KSU did not provide this authority, we acknowledge that it is appropriate to redact state-employee home addresses and social security numbers under *State ex rel. Dispatch Printing Co. v. Johnson*³ and *State ex rel. Beacon Journal Publishing Co. v. Akron*⁴ respectively. But your February 24 email transmitting the records offered no legal authority supporting the remaining redactions. For example, employee birth dates,

¹ R.C. 149.43(B)(1).

² R.C. 149.43(B)(3).

³ 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274, ¶¶ 34.

⁴ 70 Ohio St.3d 605, 606, 1994-Ohio-6, 640 N.E.2d 164.

residence city, and zip code are not protected.⁵ Nor is familial information or email addresses for state-university employees.⁶

The assertion that the redactions removed information that was not public record under R.C. 149.011(G) is insufficient to comply with the requirement that a public office state the basis for each denial.

The following documents from Karen Linder's personnel file illustrate some of the issues we have identified:

- KSU000013⁷ (Employee Personal Data Form): not only are the social-security number and home address redacted, so are her marital status, sex, ethnic origin, date of birth, handicap, veteran status, emergency contact, and all familial information. As described above, these additional categories of information are not exempted under the Act and should not be redacted.
- KSU000028–29 (PERS Personal History Record): information under “Service Information” and “Employment Information” is redacted. How could “Employment Information” be exempt from disclosure? And even the subject heading for § V is redacted, so we cannot determine whether it was appropriate for KSU to redact the entire contents of that section. Likewise KSU000297 (Administrative Service Record): this record contains redactions for hiring and service dates: how could the dates of someone's employment be exempt from disclosure?
- KSU000054 (part of 2011 Annual Evaluation): appears to redact names of student-athletes listed as earning certain Mid-American Conference awards that season. This information is not protected by any exemption or by federal student-privacy laws. Indeed, KSU issued press releases on May 12, 2011 when Alex Marcantonio was named to the MAC All-Freshman team and on May 15, 2011 when Abbey Ledford was named to the MAC All-Tournament team. This information is currently available on KSU's website in the story archives. Also available on KSU's website is its Softball Record book, which indicates that in 2011, Ms. Marcantonio was named to the MAC All-Freshman team. Information that KSU has endeavored to publicize

⁵ See e.g., *State ex rel. Bardwell v. City of Rocky River*, 8th Dist. Cuyahoga No. 91022, 2009-Ohio-727, ¶ 46 (granting mandamus relief and statutory damages to requesting party for public office's improper redaction of residence cities and zip codes, birth dates, and checking-account information).

⁶ See 149.43(A)(1)(p) (exempting familial information for peace officers, prosecutors, firefighters, investigators, and other law-enforcement personnel).

⁷ We have taken the liberty of Bates numbering KSU's partial production for ease of reference. Accompanying the hard-copy transmission of this letter is a disk containing the entirety of KSU's February 24 response with Bates numbers. We would be happy to Bates stamp the completed production once it is provided. Or you are welcome to pick up where we left off: KSU000728 would be the next number in order. **Please note** that we will number records in the order received, so any unredacted records that you provide will be marked as next in sequence and will not replace the ones originally provided.

and still maintains on its website is not appropriately redacted from a public-records response.

- KSU000030 (2004 Annual Election Form): the document is almost entirely redacted, including information below the box that appears to be part of the form itself (as opposed to something the employee would complete). Information on a standard form that KSU asks its employees to complete cannot be exempt.
- KSU000314 (email from K. Linder to J. Weir and C. Miller 7/7/14): there is a redaction of what appears to be a request to pay someone other than Linder for working softball camps earlier that year. What is KSU's legal authority for the redaction? Likewise with KSU000315–16.
- KSU000321–354: these records appear to be printouts from a database, but contain so many redactions it is impossible to discern what they are. Likewise with KSU000355–358. The legal authority for the redactions is not apparent.
- KSU000032 (Letter from L. Salasek to K. Linder 11/10/03): nearly half of this letter from KSU's Division of Human Resources is redacted. Certainly Mr. Salasek was not communicating with Ms. Linder about a SEAL Team 6 raid on a suspected terrorist camp: we cannot fathom why such extensive redactions could be appropriate.

More importantly, under the statute we don't bear the burden of guessing why KSU has redacted substantial chunks of the records. Please provide specific legal authority for each of the redactions in KSU's February 24 partial response to our February 2 public-records request.

These referenced documents provide only a small sampling of the problem. These same issues repeat time and again throughout KSU's response. We expect that all instances of improper redactions will be addressed. Per the Act, KSU must adequately identify the legal authority for all proper redactions or provide unredacted records. If KSU has specific authority for each of the redactions, please provide it. Otherwise, please provide the unredacted records.

We regularly request and receive public records from all types of public offices throughout the state. We have never before seen such extensive redactions to a personnel file—including for the many law-enforcement officers whose files we have received who receive special exemptions under the Act given the sensitivity of their positions. While we can appreciate the desire to be thorough, Ms. Linder's personnel file documents the employment of a softball coach at a state university. National security is not at stake: the records should not look like unclassified documents about the CIA's program of enhanced-interrogation techniques. Absent clear authority to redact, it is improper to do so.

Finally, we did not receive complete, executed versions of Karen Linder's employment contracts for 2008 and 2011. The first page of the 2008 version is provided at KSU000208 (and KSU000210, and KSU000213). The first page of the 2011 version is provided at KSU000172 (and KSU000175, KSU000180, KSU000186, KSU000190, and KSU000193). Each document indicates that it is "1 of 3" pages. But the second and third pages are missing from each contract. Please provide the complete, executed versions of these records.

We look forward to receiving KSU's completed response and any additional legal authority applicable to the redactions.

Please contact me at the number above with any questions.

Kind regards,



Ashlie Case Sletvold

Disk enclosed with U.S. Mail version

March 2, 2016

Via email to ndecapri@kent.edu

Nichole DeCaprio
Associate Counsel
Kent State University
800 E. Summit Street
Kent, OH 44240

Re: Additional follow up on partial response to February 2, 2016 public-records request

Dear Ms. DeCaprio:

Following up on my February 25 letter, I write to address additional concerns with KSU's partial response. It has been a month since we submitted the request and were hoping that we would have received the university's completed responses much sooner. I understand that you continue to work to provide KSU's responses and appreciate your efforts to that end.

In addition to the general concerns detailed in my letter last week, below are some further issues we have identified:

- Is it possible to provide a legible copy of KSU000234?
- KSU000410 references a memo from Loretta Shields to Erin Barton dated 1/9/15 regarding excessive use of sick/vacation leave. But that document was not provided with Ms. Barton's personnel records. Please provide it.
- KSU000466 and 496: Why is the "deferred compensation" section redacted?
- KSU000509, KSU000519-31, KSU000533-34: Please state the legal authority for each redaction.
- KSU000573, 575 (redacting "Cellular Phone # Obtained by Employee for Business Use"): What is KSU's legal authority for redacting a phone number obtained "for business use" by a university employee?
- KSU000697, KSU000641-42: What is KSU's authority for redacting phone numbers or email addresses for references provided by an employee or prospective employee? KSU requires applicants to authorize the institution to contact the references provided. And KSU notifies applicants that "**Documents submitted to Kent State University for employment opportunities are public record and subject to**

disclosure under the Ohio Public Records Act.” See e.g. KSU000644 (emphasis in original). Thus, such contact information is used by the university in carrying out its functions and is provided voluntarily by applicants who know it will become public record. If KSU has authority for redacting reference phone numbers or email addresses provided by employees, please provide it.

We appreciate KSU providing the summary forms that appear to have been complied by the Compliance department from the softball team’s annual reviews of their coaches and other athletic-department staff each season. We have marked KSU’s production of those records KSU000728–757 and attached the Bates-numbered records to the transmitting email message for this correspondence.

But we asked for *all records* of such reviews, not just the summary reports complied by Compliance. KSU has not provided the actual forms completed by the athletes. We understand that these are handwritten forms that are completed anonymously, so there are no student-privacy issues. Please provide these records.

Regarding the records provided, please address the following concerns:

- KSU000746 contains an entire line of redaction. Is KSU asserting that FERPA justifies the redaction of that entire line? Is there another legal basis for the redaction?
- KSU000752 appears that certain redactions are of the names of universities. What is the basis for that?
- KSU000754–56 include several lines of redactions. Are the redactions all student names? Or is the university asserting another basis for the redactions?
- KSU000757 redacts approximately half of the page including columns for “sport” and “date.” Why would the sport and the date be exempt from disclosure under the Public Records Act?

Finally, we still have not received any of the category 2 records (regarding training provided to the softball team about Title IX/sexual assault/etc.) from our February 2 request. Our investigation thus far suggests that there has been a dearth of such training, so it is hard to imagine why providing responsive records would take more than a month.

Please contact me at the number above with any questions.

Kind regards,



Ashlie Case Sletvold

Enclosure (KSU000728–57)

March 7, 2016

Via email to ndecapri@kent.edu

Nichole DeCaprio
Associate Counsel
Kent State University
800 E. Summit Street
Kent, OH 44240

Re: Further follow up on February 2, 2016 public-records request

Dear Ms. DeCaprio:

Following up on my February 25 and March 2 letters, we have not received a response to either message. Nor have we received any of the category 2 records from our February 2 request.

Please provide a date certain by which we can expect to receive the requested records—in their entirety—with only those redactions for which KSU can provide specific legal authority.


As may have become clear by now, we anticipate submitting public-records requests to KSU with some regularity in the coming months. We hope that the University will timely comply with its obligations and that mandamus relief will not be necessary to clarify KSU's duties under the sunshine laws. If KSU's course of partial compliance continues, however, we will not hesitate to seek the extraordinary writ.

Please contact me at the number above with any questions.

Kind regards,



Ashlie Case Sletvold

From: Decaprio, Nichole ndecapri@kent.edu 
Subject: Public Record Request, Sletvold
Date: March 14, 2016 at 4:22 PM
To: Ashlie Case Sletvold ashlie.sletvold@chandraLaw.com
Cc: Suzanne Zaranko suzanne.zaranko@chandraLaw.com

Ms. Sletvold:

Please see the attached correspondence and records, in response to your letters of 2.25.16 and 3.2.16.

Nichole DeCaprio
Associate Counsel
Office of General Counsel
Kent State University
330-672-2982



Letter to Sletvold
3.14.16.pdf



Ashlie Case Sletvold
The Chandra Law Firm, LLC
1265 W. 6th Street, Suite 400
Cleveland, OH 44113.1326
Via Email to ashlie.sletvold@chandralaw.com

March 14, 2016

RE: Response to 2/25 and 3/2 letters.

Ms. Sletvold:

Let this letter serve as a response to your letters dated February 25th, 2016 and March 2, 2016 concerning our responses thus far to your February 2, 2016 public records request. You note that redactions constitute denials under R.C. §149.43, but please be aware that R.C. §149.43(B)(1) notes that redactions do not constitute denials if state or federal law authorizes the redaction.

We have reviewed our responses in light your specific concerns. After that review, we believe that the redactions were appropriate and authorized or required by federal and state law. We have noted your additional record requests, however, and for those, we are providing documents. An item by item response to the specific issues raised in your two letters is included below.

Questioned Redactions

1. KSU000013 (Employee Personal Data Form): not only are the social-security number and home address redacted, so are her marital status, sex, ethnic origin, date of birth, handicap, veteran status, emergency contact, and all familial information. As described above, these additional categories of information are not exempted under the Act and should not be redacted.
 - Response: Redaction of social security numbers is authorized under *State ex rel. Beacon Journal Publishing Co. v. Akron*, 70 Ohio St. 3d 605, 610-11 (1994). Other redacted materials are not public records because they do not “document the organization, functions, policies, decisions, procedures, operations, or other activities” of the University. R.C. 149.011(G); *Dispatch Printing Co. v. Johnson*, 2005-Ohio-4384, ¶ 22, 106 Ohio St. 3d 160, 164. We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.
2. KSU000028–29 (PERS Personal History Record): information under “Service Information” and “Employment Information” is redacted. How could “Employment Information” be exempt from disclosure? And even the subject heading for § V is redacted, so we cannot determine whether it was appropriate for KSU to redact the entire contents of that section. Likewise KSU000297 (Administrative Service Record): this record contains redactions for hiring and service dates: how could the dates of someone’s employment be exempt from disclosure?

- Response: The personal history record and other information of a state retirement contributor is protected under R.C. 145.27(A), R.C. 3305.20, R.C. 3307.20(B) and Ohio Adm. Code 3307-1-03. We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.
3. KSU000054 (part of 2011 Annual Evaluation): appears to redact names of student athletes listed as earning certain Mid-American Conference awards that season. This information is not protected by any exemption or by federal student-privacy laws. Indeed, KSU issued press releases on May 12, 2011 when Alex Marcantonio was named to the MAC All-Freshman team and on May 15, 2011 when Abbey Ledford was named to the MAC All-Tournament team. This information is currently available on KSU's website in the story archives. Also available on KSU's website is its Softball Record book, which indicates that in 2011, Ms. Marcantonio was named to the MAC All-Freshman team. Information that KSU has endeavored to publicize and still maintains on its website is not appropriately redacted from a public-records response.
 - Response: Within the context of this particular record, the redacted information meets the definition of an education record not subject to disclosure under the Federal Education Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g, *et seq.* and Kent State University Policy 5-08.101. See also 34 C.F.R. 99.3; *State ex rel. ESPN v. Ohio State Univ.*, 132 Ohio St.3d 212, 219, 2012-Ohio-2690, 970 N.E.2d 939, 947, (2012). We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.
 4. KSU000030 (2004 Annual Election Form): the document is almost entirely redacted, including information below the box that appears to be part of the form itself (as opposed to something the employee would complete). Information on a standard form that KSU asks its employees to complete cannot be exempt.
 - Response: The personal history record and other information of a state retirement contributor is protected under R.C. 145.27(A), R.C. 3305.20, R.C. 3307.20(B) and Ohio Adm. Code 3307-1-03. We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.
 5. KSU000314 (email from K. Linder to J. Weir and C. Miller 7/7/14): there is a redaction of what appears to be a request to pay someone other than Linder for working softball camps earlier that year. What is KSU's legal authority for the redaction? Likewise with KSU000315–16.
 - Response: The redacted information was not responsive to your records request.
 6. KSU000321–354: these records appear to be printouts from a database, but contain so many redactions it is impossible to discern what they are. Likewise with KSU000355–358. The legal authority for the redactions is not apparent.
 - Response: The personal history record and other information of a state retirement contributor is protected under R.C. 145.27(A), R.C. 3305.20, R.C. 3307.20(B) and Ohio

Adm. Code 3307-1-03. Charitable deductions and employment benefit deductions are not public records. R.C. 149.011(G). Other redacted materials are not public records because they do not “document the organization, functions, policies, decisions, procedures, operations, or other activities” of the University. R.C. 149.011(G); *Dispatch Printing Co. v. Johnson*, 2005-Ohio-4384, ¶ 22, 106 Ohio St. 3d 160, 164. We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.

7. KSU000032 (Letter from L. Salasek to K. Linder 11/10/03): nearly half of this letter from KSU’s Division of Human Resources is redacted. Certainly Mr. Salasek was not communicating with Ms. Linder about a SEAL Team 6 raid on a suspected terrorist camp: we cannot fathom why such extensive redactions could be appropriate.
 - Response: This is correspondence concerning state retirement or alternative retirement plans and thus properly redacted. R.C. 3305.20, R.C. 3307.20(B); Ohio Adm. Code 3307-1-03. We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.
8. Finally, we did not receive complete, executed versions of Karen Linder’s employment contracts for 2008 and 2011. The first page of the 2008 version is provided at KSU000208 (and KSU000210, and KSU000213). The first page of the 2011 version is provided at KSU000172 (and KSU000175, KSU000180, KSU000186, KSU000190, and KSU000193). Each document indicates that it is “1 of 3” pages. But the second and third pages are missing from each contract. Please provide the complete, executed versions of these records.
 - Response: You received the contents of the file you requested. The indicated pages were not redacted; they do not exist in the file. We have treated your follow-up letters as new requests for documents, and those are attached as KSU000758-763.
9. Is it possible to provide a legible copy of KSU000234?
 - Response: The indicated page is as legible as it exists in the file. We have attached a rescan at KSU 000764 in the event that the rescan helps legibility.
10. KSU000410 references a memo from Loretta Shields to Erin Barton dated 1/9/15 regarding excessive use of sick/vacation leave. But that document was not provided with Ms. Barton’s personnel records. Please provide it.
 - Response: You received the contents of the file you requested. We have treated your follow-up letter as a new request for additional documents. The newly requested document is attached as KSU000765-766. Redactions were made for health and family information of an employee. These materials are not public records because they do not “document the organization, functions, policies, decisions, procedures, operations, or other activities” of the University. R.C. 149.011(G); *Dispatch Printing Co. v. Johnson*, 2005-Ohio-4384, ¶ 22, 106 Ohio St. 3d 160, 164. We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.

11. KSU000466 and 496: Why is the “deferred compensation” section redacted?

- Response: The personal history record and other information of a state retirement contributor is protected under R.C. 145.27(A), R.C. 3305.20, R.C. 3307.20(B) and Ohio Adm. Code 3307-1-03. We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.

12. KSU000509, KSU000519–31, KSU000533–34: Please state the legal authority for each redaction.

- KSU000509
 - Response: The personal history record and other information of a state retirement contributor is protected under R.C. 145.27(A), R.C. 3305.20, R.C. 3307.20(B) and Ohio Adm. Code 3307-1-03. We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.
- KSU000519-531
 - Response: The personal history record and other information of a state retirement contributor is protected under R.C. 145.27(A), R.C. 3305.20, R.C. 3307.20(B) and Ohio Adm. Code 3307-1-03. We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.
- KSU000533-34
 - Response: The personal history record and other information of a state retirement contributor is protected under R.C. 145.27(A), R.C. 3305.20, R.C. 3307.20(B) and Ohio Adm. Code 3307-1-03. We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.

13. KSU000573, 575 (redacting “Cellular Phone # Obtained by Employee for Business Use”): What is KSU’s legal authority for redacting a phone number obtained “for business use” by a university employee?

- Response: The phone numbers themselves are not public records because they do not “document the organization, functions, policies, decisions, procedures, operations, or other activities” of the University. R.C. 149.011(G); *Dispatch Printing Co. v. Johnson*, 2005-Ohio-4384, ¶ 22, 106 Ohio St. 3d 160, 164. We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.

14. KSU000697, KSU000641–42: What is KSU’s authority for redacting phone numbers or email addresses for references provided by an employee or prospective employee? KSU requires applicants to authorize the institution to contact the references provided. And KSU notifies applicants that “**Documents submitted to Kent State University for employment opportunities are public record and subject to 2 of 2 disclosure under the Ohio Public Records Act.**” See e.g. KSU000644 (emphasis in original). Thus, such contact information is used by the university in carrying out its functions and is provided voluntarily by applicants who know it will become public record. If KSU has authority for redacting reference phone numbers or email addresses provided by employees, please provide it.

- KSU000697
 - Response: There are no redactions on this document.
- KSU000641-642
 - Response: The phone numbers themselves are not public records because they do not “document the organization, functions, policies, decisions, procedures, operations, or other activities” of the University. R.C. 149.011(G); *Dispatch Printing Co. v. Johnson*, 2005-Ohio-4384, ¶ 22, 106 Ohio St. 3d 160, 164. We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.

15. But we asked for all records of such reviews, not just the summary reports compiled by Compliance. KSU has not provided the actual forms completed by the athletes. We understand that these are handwritten forms that are completed anonymously, so there are no student-privacy issues. Please provide these records.

- Response: The handwritten responses were treated as transient records and not maintained after the contents were type-written, which is consistent with Kent State University’s record retention policy. R.C. 149.011(G); Kent State University Policy 5 – 15; Inter-University Council Record Retention Manual (2009 ed.).

16. KSU000746 contains an entire line of redaction. Is KSU asserting that FERPA justifies the redaction of that entire line? Is there another legal basis for the redaction?

- Information is redacted under the Federal Education Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g, *et seq.* and Kent State University Policy 5-08.101. See also 34 C.F.R. 99.3; *State ex rel. ESPN v. Ohio State Univ.*, 132 Ohio St.3d 212, 219, 2012-Ohio-2690, 970 N.E.2d 939, 947, (2012). We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.

17. KSU000752 appears that certain redactions are of the names of universities. What is the basis for that?

- Information is redacted under the Federal Education Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g, *et seq.* and Kent State University Policy 5-08.101, as “personally identifiable information” linkable to a specific student that would allow a reasonable person to identify the student with reasonable certainty. 34 C.F.R. 99.3; *State ex rel. ESPN v. Ohio State Univ.*, 132 Ohio St.3d 212, 219, 2012-Ohio-2690, 970 N.E.2d 939, 947, (2012). We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.

18. KSU000754–56 include several lines of redactions. Are the redactions all student names? Or is the university asserting another basis for the redactions?

- Information is redacted under the Federal Education Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g, *et seq.* and Kent State University Policy 5-08.101. See also 34 C.F.R. 99.3; *State ex rel. ESPN v. Ohio State Univ.*, 132 Ohio St.3d 212, 219, 2012-Ohio-2690, 970 N.E.2d 939, 947, (2012). We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.

19. KSU000757 redacts approximately half of the page including columns for “sport” and “date.” Why would the sport and the date be exempt from disclosure under the Public Records Act?

- Disclosure would lead to identification of the student. Information is redacted under the Federal Education Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g, *et seq.* and Kent State University Policy 5-08.101. See also 34 C.F.R. 99.3; *State ex rel. ESPN v. Ohio State Univ.*, 132 Ohio St.3d 212, 219, 2012-Ohio-2690, 970 N.E.2d 939, 947, (2012). We reserve the right to rely upon additional reasons or legal authority in defense of these redactions.

20. Finally, we still have not received any of the category 2 records (regarding training provided to the softball team about Title IX/sexual assault/etc.) from our February 2 request. Our investigation thus far suggests that there has been a dearth of such training, so it is hard to imagine why providing responsive records would take more than a month.

- You were provided with the student handbook, which is responsive to this request. Training provided to the softball team, specifically and separately from training provided to student-athletes, or even the general student body, about Title IX and sexual assault issues, is not centrally maintained. Training materials on these issues are kept by the sponsoring departments and organizations, not the softball team. If you would like to revise your request to seek training materials or records from sponsoring departments or organizations, you are free to revise your request. See *State ex rel. ESPN v. Ohio State Univ.*, 132 Ohio St.3d 212, 214, 2012-Ohio-2690, 970 N.E.2d 939, 943, (2012).

Finally, with respect to your request that we set forth the basis of all other redactions, the basis of the other redactions included, without limitation, the Federal Privacy Act, 5 USC §552a, FERPA, 20 U.S.C. § 1232g, medical records under to RC §149.43(A)(1)(a) and (A)(3), PERS "personal history information" under to RC §3307.20(8)(2), and materials that qualify as non-records under R.C. 149.011(G). We do not view R.C. 149.43 as requiring an item-by-item list of the grounds for each redaction absent a specific question.

Please feel free to contact us with any additional questions of concerns you have concerning this matter.



Nichole DeCaprio
Associate Counsel

March 29, 2016

Via email to ndecapri@kent.edu

Nichole DeCaprio
Associate Counsel
Kent State University
800 E. Summit Street
Kent, OH 44240

Re: Follow up on February 2, 2016 and February 24, 2016 public-records requests

Dear Ms. DeCaprio:

Please confirm that Kent State University has completed its responses to the public-records requests our office submitted on February 2 and February 24.

If Kent State intends to provide additional records, please provide a firm date by which we should expect them.

Kind regards,



Ashlie Case Sletvold

From: Decaprio, Nichole <ndecapri@kent.edu>
Subject: Re: Correspondence re public-records requests
Date: April 1, 2016 at 5:14 PM
To: Ashlie Case Sletvold <ashlie.sletvold@chandraLaw.com>

Ms. Sletvold,
Our office is in receipt of your email below. We are reviewing the letter and noted requests, and will respond shortly.

Nichole DeCaprio
Associate Counsel
Office of General Counsel
Kent State University
330-672-2982

From: Ashlie Case Sletvold <ashlie.sletvold@chandraLaw.com>
Date: Tuesday, March 29, 2016 at 10:07 AM
To: Nichole Decaprio <ndecapri@kent.edu>
Subject: Correspondence re public-records requests

Please see attached.

--
Ashlie Case Sletvold
The Chandra Law Firm, LLC
1265 W. 6th Street, Suite 400
Cleveland, OH 44113.1326
216.578.1700 office
216.578.1800 fax
Ashlie.Sletvold@ChandraLaw.com
www.ChandraLaw.com

This email may contain privileged or confidential information. If you have received this email in error, please reply or call 216.578.1700, so we may correct our records. Please also delete the email from your system.

From: Ashlie Case Sletvold ashlie.sletvold@chandraLaw.com
Subject: Re: Correspondence re public-records requests
Date: April 5, 2016 at 3:20 PM
To: Decaprio, Nichole ndecapri@kent.edu

A week ago, I asked whether the University's response to our February 2 and February 24 public-records requests was complete. When do you expect to provide a response to that question? Obviously, we do not wish to initiate mandamus proceedings if further records will be forthcoming. Please respond.

--
Ashlie Case Sletvold
The Chandra Law Firm, LLC
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Nichole DeCaprio
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Office of General Counsel
Kent State University
330-672-2982

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Date: Tuesday, March 29, 2016 at 10:07 AM
To: Nichole Decaprio <ndecapri@kent.edu>
Subject: Correspondence re public-records requests

Please see attached.

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Ashlie Case Sletvold
The Chandra Law Firm, LLC
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EXHIBIT 15

This email may contain privileged or confidential information. If you have received this email in error, please

reply or call 216.578.1700, so we may correct our records. Please also delete the email from your system.

From: Ashlie Case Sletvold ashlie.sletvold@chandraLaw.com
Subject: Re: Correspondence re public-records requests
Date: April 12, 2016 at 12:35 PM
To: Decaprio, Nichole ndecapri@kent.edu

Another week has passed without a response to my request to confirm that the University has completed its response. This is my final attempt to confer regarding our February 2 and February 24 public-records requests. Please respond by 5:00 tomorrow indicating whether any additional records will be provided. Thank you.

--
Ashlie Case Sletvold
The Chandra Law Firm, LLC
1265 W. 6th Street, Suite 400
Cleveland, OH 44113.1326
216.578.1700 office
216.578.1800 fax
Ashlie.Sletvold@ChandraLaw.com
www.ChandraLaw.com

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Ashlie Case Sletvold
The Chandra Law Firm, LLC
1265 W. 6th Street, Suite 400
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Ms. Sletvold,
Our office is in receipt of your email below. We are reviewing the letter and noted requests, and will respond shortly.

Nichole DeCaprio
Associate Counsel
Office of General Counsel
Kent State University
330-672-2982

From: Ashlie Case Sletvold <ashlie.sletvold@chandraLaw.com>
Date: Tuesday, March 29, 2016 at 10:07 AM
To: Nichole Decaprio <ndecapri@kent.edu>
Subject: Correspondence re public-records requests

Please see attached.

--

Ashlie Case Sletvold
The Chandra Law Firm, LLC
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please reply or call 216.578.1700, so we may correct our records. Please also delete the email from your
system.

IN THE SUPREME COURT OF OHIO

<p>THE STATE OF OHIO ex rel. LAUREN KESTERSON 6311 Third Avenue Kent, OH 44240</p> <p>Relator,</p> <p>vs.</p> <p>KENT STATE UNIVERSITY 800 Summit Street Kent, OH 44240</p> <p>Respondent.</p>	<p>Original Action in Mandamus</p>
<p>Praeipce</p>	

TO THE CLERK:

Please serve a copy of the following documents upon Respondent, c/o Willis Walker, Vice President and General Counsel, via certified U.S. Mail service, return receipt requested, at the above address:

1. Complaint For A Writ Of Mandamus With Affidavit in Support; and
2. Memorandum In Support Of Complaint For A Writ Of Mandamus.

Dated: April 21, 2016

Respectfully submitted,

/s/ Subodh Chandra

THE CHANDRA LAW FIRM, LLC

Subodh Chandra (0069233)

Counsel of Record

Ashlie Case Sletvold (0079477)

Peter Pattakos (0082884)

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Subodh.Chandra@ChandraLaw.com

Ashlie.Sletvold@ChandraLaw.com

Peter.Pattakos@ChandraLaw.com

Attorneys for Relator Lauren Kesterson