

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

2014 OCT -6 PM 4: 29

SUPERIOR COURT DIVISION

COUNTY OF WATAUGA

WATAUGA COUNTY, C.S.C.

14-CVS-541

ANNE-MARIE YATES,
Plaintiff,

BY



Vs.

COMPLAINT

APPALACHIAN STATE UNIVERSITY,
an Agency of the State of North Carolina,
Defendant.

NOW COMES the Plaintiff, Anne-Marie Yates, by and through her undersigned counsel who complains of the Defendant, Appalachian State University, as follows:

PARTIES

1. Plaintiff, Anne-Marie Yates, is a citizen and resident of Watauga County, North Carolina.
2. Defendant, Appalachian State University, is an agency of the State of North Carolina based in Watauga County, North Carolina and whose process agent is Dayton Cole, University Attorney and whose address is P.O. Box 32126, Boone, NC 28607.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to N.C.G.S. § 1-75.4.
4. Venue is proper in Watauga County, North Carolina.

FACTUAL ALLEGATIONS

5. Defendant is an agency of the State of North Carolina and is a Public University.
6. On or about November 6, 2013, the Plaintiff delivered a public records request to the Defendant by way of its General Counsel and Process Agent, Dayton Cole.
7. The public records request asked for all emails of Stella Anderson, who is employed by the Defendant, that were in the Defendant's custody and control from January 2012 until present. A copy of this public records request is attached as Exhibit A and is incorporated by reference herein as if set out in full.
8. Plaintiff asked for the public records to be provided by November 11, 2013 as these records are purely electronic and could be easily copied and transferred.
9. Defendant failed to respond to the public records request when requested.

10. On January 10, 2014, Plaintiff sent a follow up letter to Defendant, by way of their General Counsel and Process Agent detailing that Plaintiff's request had still not been answered and agreeing to reduce the amount of information requested. This reduction was for Stella Anderson's emails from August 1, 2012 until January 6, 2014 and this reduction was requested by the Defendant. This letter is attached hereto as Exhibit B and incorporated by reference herein as if set out in full.
11. Sometime prior to this lawsuit the Defendant did deliver a small number of the public records to Plaintiff but many were in a format that were unreadable with any common computer program.
12. Defendant acknowledged at the time of the delivery of the small amount of public records that there were substantially more and that they would be shortly forthcoming.
13. Defendant has failed to produce any more public records pursuant to the original or amended request and approximately 11 months has passed.
14. 11 months is an unreasonable amount of time to delay a public records request.
15. Upon information and belief, the Defendant is delaying the production of the public records request because the records will show that the Defendant's employee, Stella Anderson, utilized state owned computers, state owned computer systems, and state owned email systems to further Stella Anderson's choice of political candidates and opinions in direct violation of N.C.G.S. § 126-13.
16. Upon review of the small amount of emails produced pursuant to the Plaintiff's public records request it is clear that Stella Anderson did utilize the state email system and possibly did utilize other state property to further her political positions.
17. Upon information and belief these actions were done while Stella Anderson was on state time meaning she was supposed to be performing services to the state and not engaging in partisan political advocacy.
18. Plaintiff made said public records request pursuant to N.C.G.S. § 132-1.
19. Plaintiff gave a reasonable amount of time for Defendant to comply with the public records request.
20. Defendant has failed to respond to the public records request in a complete manner and acknowledged to Plaintiff that the request is not complete.
21. The Defendant is the custodian of their email system and is the custodian of all records asked for in the public records request.

CAUSE OF ACTION

22. Plaintiff realleges and incorporates by reference paragraphs 1 through 21 of this Complaint herein as if set out in full.
23. Defendant is a public agency pursuant to the definition of N.C.G.S. § 132-1.

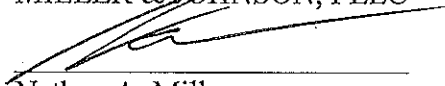
24. Defendant's refusal to produce the documents requested in the public records request attached as Exhibit A and as amended in Exhibit B is unlawful as every document requested is a public record as defined in N.C.G.S. § 132-1 and subject to disclosure.
25. Plaintiff seeks a judicial order compelling the Defendant to produce all records requested in the public records request.

WHEREFORE, the Plaintiff respectfully prays unto the Court for the following relief:

1. That the Court finds that the Defendant is a public agency as defined by N.C.G.S. § 132-1 and their documents are subject to a public records request pursuant to said statute.
2. That the Court orders the Defendant to produce all documents requested in the public records request immediately to Plaintiff.
3. That should the Defendant state said documents do not exist that the Court either review the Defendant's email system accounts *in camera* or order a forensic review of the Defendant's email system by a qualified information technologies specialist at the expense of the Defendant.
4. That the costs of this action, including the Plaintiff's reasonable attorney's fees, be taxed against the Defendant pursuant to N.C.G.S. § 132-9(c).
5. For such other and further relief that this court deems just and proper.

This the 6 day of October, 2014.

MILLER & JOHNSON, PLLC



Nathan A. Miller
Attorney for Plaintiff
P.O. Box 49
Boone, NC 28607
828-264-1125
N.C. State Bar # 35451

EXHIBIT A

WATAUGA COUNTY
REPUBLICANS



November 6, 2013

Dayton Cole
General Counsel for Appalachian State University
Dougherty Admin Bldg, 3rd Floor
Boone, NC 28608

RE: Public Records Request

Dear Mr. Cole,

This letter is intended to serve as a Public Records Request pursuant to N.C.G.S. § 13-318.10(e). In my request the term Document means all public records as defined in N.C.G.S. § 132-1 including but not limited to notes, charts, emails, graphics, letters or any other form of written communication that may pertain to my request. I respectfully request the following:

I. All email of Ms Stella Anderson from January 2012 to the present.

I request that these documents be in electronic format and delivered to me by Monday 11 NOV 2013 emailed to wataugagop@gmail.com.

Thank you for your swift attention to this matter.

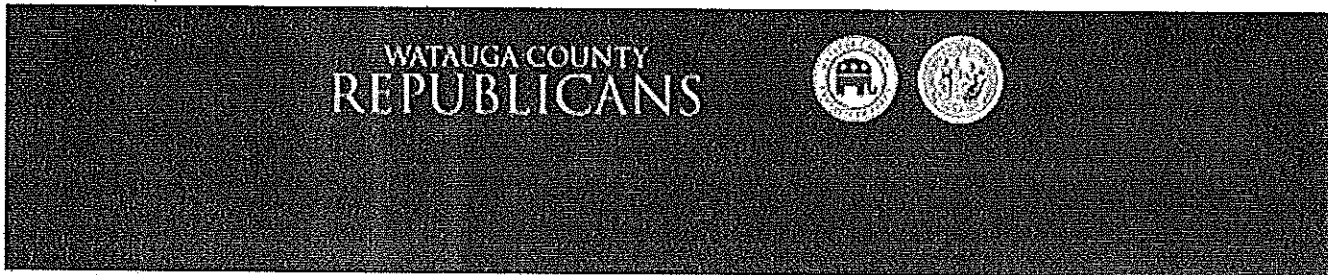
Sincerely,

Anne-Marie Yates

2013-2015 Chairperson Watauga County Republicans

828-265-6092

EXHIBIT B



January 10, 2014

Dayton Cole
General Counsel for Appalachian State University
Dougherty Admin Bldg, 3rd Floor
Boone, NC 28608

RE: Public Records Request

Dear Mr. Cole,

I am writing you this letter as a follow-up to my earlier public records request for Stella Anderson's emails on her state email account. I am requesting all of her emails from August 1, 2012 until the date of this letter. You have indicated that this request is large. I have requested this information to be placed on compact discs. I do not know the exact size of the request or the capacity of your compact discs but I am willing to pay for the compact discs at your cost as required by state statute. In addition, you mentioned that you would be charging a fee for ASU's IT Department's increased burden. I would direct you to N.C.G.S. § 132-6.2(b) which allows you to charge a reasonable fee which is computed as your costs to gather this information. However, since you are using internal staff and not using outside staff to fulfill this request the costs should be minimal. In addition, it seems to be a simple task to transfer her emails from your servers to a compact disc which would not require many man hours. I do ask that these documents be prepared as requested. I also request that you provide me with a cost estimate to wataugagop@gmail.com.

You also mentioned that much of the information is privileged. I disagree with that assertion. Student records such as grades and disciplinary actions would be privileged however, all other records concerning student communications with Ms. Anderson would not be privileged and are subject to the public records law. In addition, I cannot imagine that Ms. Anderson would have a large amount of attorney/client communications on her email unless she is bombarding your office with requests for legal opinions.

I am still waiting on my public records request for Mr. John Welch's petition to the Chancellor dated November 6, 2013.

Thank you for your swift attention to these matters.

Sincerely,

Anne-Marie Yates

2013-2015 Chairperson Watauga County Republicans