

ROBERT KYLE ALAGOOD : 19TH JUDICIAL DISTRICT COURT
VS. : PARISH OF EAST BATON ROUGE
FIELDON KING ALEXANDER in his : STATE OF LOUISIANA
capacity as President and Chancellor of :
Louisiana State University and Agricultural : NUMBER _____
and Mechanical College, and JACK M.
WEISS in his capacity as Dean and Chancellor
of the Louisiana State University Law Center.

PETITION FOR WRIT OF MANDAMUS

NOW INTO COURT, through undersigned counsel, comes Robert Kyle Alagood, plaintiff, and files this petition to enforce his rights under the Louisiana Public Records Act, La. R.S. § 44:1, *et. seq.*, and La. Const. Art. 12 § 3 (“No person shall be denied the right to . . . examine public documents, except in cases established by law.”) as follows:

1.

Petitioner ROBERT KYLE ALAGOOD is a Louisiana resident of the age of majority.

2.

Made Defendant/Respondent herein is LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE (“LSU”), a public institution of postsecondary education located in Baton Rouge, Louisiana.

3.

Made Defendant/Respondent herein is LOUISIANA STATE UNIVERSITY LAW CENTER (“the Law Center”), a public institution of postsecondary education located in Baton Rouge, Louisiana. Until April 1, 2015, LSU Law was a separate campus of the Louisiana State University System.

4.

Made Defendant/Respondent herein is FIELDON KING ALEXANDER, President and Chancellor of LSU.

5.

Made Defendant/Respondent herein is JACK M. WEISS, Chancellor and Dean of the Law Center. Until April 1, 2015, he was Chancellor of the Law Center.

6.

LSU and the Law Center are each a “public body” as that term is defined by the Louisiana Public Records Act, La. R.S. § 44:35(A)(1) (“public body means any branch, department, office, agency, board, commission, district, governing authority, political

subdivision, or any committee, subcommittee, advisory board . . . designated as an entity to perform a governmental or proprietary function.”). Accordingly, LSU and the Law Center are subject to the Louisiana Public Records Act.

7.

Defendant Alexander, in his capacity as President and Chancellor of LSU, is LSU’s “custodian” of records as that term is defined by the Louisiana Public Records Act at La. R.S. § 44:1(A)(3) (“the word ‘custodian’ means the public official or head of any public body having custody or control of a public record, or a representative specifically authorized by him to respond to requests to inspect any such public records.”).

8.

Defendant Weiss, in his capacity as Chancellor of the Law Center, was the Law Center’s “custodian” of records until April 1, 2015.

9.

Upon information and belief, Weiss, in his capacity as Dean and Chancellor of the Law Center remains custodian of records. *See* “Public Records Requests,” LA. ST. U. SYSTEM, <http://www.lsusystem.edu/index.php/news-media/public-records-requests/> (last visited June 17, 2015) (“[P]lease address requests to the Chancellor of that particular campus, as the Chancellor is the custodian of the records for each campus. Requests can be submitted to: LSU . . . LSU Paul M. Hebert Law Center . . .”).

10.

This is a proceeding brought by plaintiff pursuant to La. R.S. § 44:35 for a writ of mandamus ordering defendants to produce certain public records and for attorneys’ fees and costs. Defendants’ principal offices are located in the City of Baton Rouge, East Baton Rouge Parish, Louisiana, and venue is proper in this Court under La. R.S. 44:35(A).

11.

On May 19, 2015, plaintiff submitted a written public records request (the “May 19 request”) by e-mail to defendant LSU, through its custodian of records, defendant Alexander, with copies to his agents Debbie Richards (Assistant to the Chancellor), Patrick H. Martin (Director, Project Coordination and Policy Review, LSU), Thomas Skinner (General Counsel, LSU), and Stephanie Tomlinson (Coordinator, Finance and Administration, LSU).

The May 19 request sought production of public records as follows:

- “1. Any and all records generated by and/or for LSU President and Chancellor F. King Alexander between October 19 and December 5, 2014, relating to diversity at the LSU Law Center.
 - a. Responsive records include but are not limited to e-mail messages, other electronic messages, telephone call logs, handwritten notes, digital and/or typewritten notes, and/or memoranda relating to diversity at the LSU Law Center.
 - b. Likely keywords contained in responsive documents include but are not limited to “diversity,” “task force,” “Diversity Task Force,” “Ethics Committee,” “ethics” “discrimination,” and/or “Alagood.”

2. Any and all records generated by and/or for LSU Law Center Chancellor Jack M. Weiss between October 19 and December 5, 2014, relating to diversity at the LSU Law Center.
 - a. Responsive records include but are not limited to e-mail messages, other electronic messages, telephone call logs, handwritten notes, digital and/or typewritten notes, and/or memoranda relating to diversity at the LSU Law Center.
 - b. Likely keywords contained in responsive documents include but are not limited to “diversity,” “race,” “task force,” “Diversity Task Force,” “Alagood” “Apprenticeship Week,” “Huffington Post,” “Breaking the Code of Silence on Race in Law School,” and/or “October 20 letter.”

3. Any and all records generated by any of the following people between October 26 and December 5, 2014, relating to the *Daily Reveille*’s coverage of diversity at the LSU Law Center.
 - i. LSU President and Chancellor F. King Alexander,
 - ii. LSU Vice Provost for Diversity Dereck Rovaris,
 - iii. LSU Law Center Chancellor Jack M. Weiss,
 - iv. LSU Law Center Vice Chancellor Cheney C. Joseph,
 - v. LSU Law Center Vice Chancellor N. Gregory Smith,
 - vi. LSU Law Center Vice Chancellor Raymond T. Diamond,
 - vii. Manship School of Mass Communication Dean Jerry Ceppos,
 - viii. Former Manship School of Mass Communication Director of Student Media Robert “Bob” Ritter,
 - ix. Manship School of Mass Communication Student Media Advisor Alex Cook,
 - x. Manship School of Mass Communication Professional-in-Residence and Content Adviser Tim Schreiner,
 - xi. former LSU *Daily Reveille* Editor-in-Chief Chandler Rome,
 - xii. and/or former LSU Law Center *Civilian* Editor-in-Chief Julie Faulk.
 - b. Responsive records include but are not limited to contents of e-mail messages, other electronic messages, telephone call logs,

handwritten notes, digital and/or typewritten notes, and/or memoranda relating to the *Daily Revielle*'s coverage of diversity at the LSU Law Center.

- c. Likely keywords contained in responsive documents include but are not limited to “diversity,” “task force,” “Diversity Task Force,” “Ethics Committee,” “ethics” “discrimination,” “Halloween party,” “racial slur,” “slur,” “derogatory,” “letter to the editor,” “Alagood,” and/or “race.”

13.

Defendants responded through their lawyer, Megan Bice, in an e-mail dated May 22, 2015. According to Ms. Bice, her law firm, Taylor, Porter, Brooks & Phillips, was “assist[ing] in preparing a reply to” the May 19 request. Ms. Bice noted that “[g]iven the expansive nature of [the May 19] request, responding to [the May 19] request is going to require some additional time Should you have any questions or concerns do not hesitate to contact me.”

14.

On May 22, 2015, plaintiff responded to Ms. Bice and asked if he could amend the May 19 request to add two additional LSU Law Center staff members to section 3 of the May 19 request.

15.

At 9:27 a.m. on May 26, 2015, Ms. Bice responded to plaintiff's request, in pertinent part stating, “You can submit the supplemental request directly to me, and I will work with the Law Center in processing your supplemental request and gathering responsive documents.”

16.

At 10:23 a.m. on May 26, 2015, plaintiff submitted by e-mail to defendants by and through their counsel the following amendments to the May 19 request:

“Following Number 2, add Section 2A:

- 2A. Any and all records generated by (i) **Karen Soniat**, LSU Law Center Director of Communications and External Relations, and/or (ii) **Christina Hood**, Executive Assistant, between October 19 and December 5, 2014, relating to diversity at the LSU Law Center.
 - a. Responsive records include but are not limited to e-mail messages, other electronic messages, telephone call logs, handwritten notes, digital and/or typewritten notes, and/or memoranda relating to diversity at the LSU Law Center.
 - b. Likely keywords contained in responsive documents include but are not limited to “diversity,” “race,” “task force,” “Diversity Task Force,” “Alagood” “Apprenticeship Week,” “Huffington Post,” “Breaking the Code of Silence on Race in Law School,” and/or “October 20 letter.”

Following Subsection xii of Number 3, add Subsections xiii and xiv:

3. Any and all records generated by any of the following people between October 26 and December 5, 2014, relating to the *Daily Reveille's* coverage of diversity at the LSU Law Center.”

. . . .

xiii. and/or Karen Soniat, LSU Law Center Director of Communications and External Relations;

xiv. and/or Christina Hood, Executive Assistant, LSU Law Center Chancellor's Office.”

17.

At 3:57 p.m. on May 26, 2015, Ms. Bice notified plaintiff, in pertinent part, that Ms. Bice had “notified LSU and the Law Center of your amended request, and the Law Center is working on compiling any responsive records.”

18.

In an e-mail dated June 15, 2015 (“the June 15 e-mail”), defendants by and through their counsel, produced what Ms. Bice referred to as “approximately 95% of the planned production,” noting the remainder would “be completed in the morning and sent to you.”

19.

Ms. Bice advised plaintiff in pertinent part of the June 15 e-mail,

“A limited number of responsive documents have been excluded from production for the following reasons. First, some documents are education records that contain personally identifiable information of students enrolled at LSU or the Law Center, and such information is confidential and protected from disclosure under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. This is also the reason for redaction of names from some of the documents that are being produced.

Second, internal newsroom email correspondence between Jerry Ceppos, Bob Ritter, Alex Cook, Tim Schreiner, and Chandler Rome regarding the *Daily Reveille's* coverage of diversity at the Law Center is protected by the First Amendment news gathering privilege. This privilege prevents disclosure of documents related to news gathering, reporting and editorial decision-making when disclosure would have a chilling effect on such activities. Therefore, documents related to these activities have been withheld from disclosure.

Third, a few incidental documents are purely personal in nature and not related to official business of either the Law Center or LSU. They simply happened to have been captured in the course of a broad computer search. These documents do not fit the definition of a “public record” as contemplated by the Louisiana Public Records Act and were therefore not disclosed.”

20.

As public bodies and custodians of the public records at issue herein, defendants had and continue to have affirmative and mandatory constitutional and statutory duties to (a) provide

plaintiff with a written response to plaintiff's public records request, identifying (i) each public record or portion thereof which defendants believe is excepted or exempted from production by a specific provision or provisions of the Louisiana Constitution of 1974 or the Louisiana Public Records Act and (ii) each provision of the Louisiana Constitution of 1974 and/or the Louisiana Public Records Act the custodians and/or the public body have determined excepts or exempts that public record or portion thereof from production; and (b) provide plaintiff with full and complete copies of all public records in the possession, custody, or control of defendants or any of its officers, agents, representatives, or employees, which are covered by and responsive to plaintiff's May 19 request, as amended, unless some or all of those public records are excepted or exempted from production by a special provision or provisions of the Louisiana Constitution of 1974 or the Louisiana Public Records Act. *See* La. R.S. §§ 44:4.1, 31-35.

21.

Under Louisiana law, the "burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian." La. R.S. § 44:31(B)(3). The Louisiana Supreme Court has further held public records laws are to be "construed liberally in favor of free and unrestricted access to the records, and that access can be denied only when a law, specifically and unequivocally, provides otherwise. Whenever there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public's right to see." *Title Research Corp. v. Rausch*, 450 So. 2d 933, 936 (La. 1984) (internal citation omitted).

22.

Ms. Bice did not identify specific records or portions thereof believed to be excepted or exempted, as required by the Louisiana Public Records Act, La. R.S. §§ 44:4.1 and 44:31-35. Neither did Ms. Bice cite specific exemptions or exceptions as required by the Louisiana Public Records Act, La. R.S. §§ 44:4.1 and 44:31-35.

23.

In an e-mail dated June 16, 2015 ("the June 16 e-mail"), defendants by and through their counsel produced additional documents not provided in the June 15 e-mail. According to Ms. Bice in the June 16 e-mail, documents provided therein "conclude[ed] LSU's response" to the May 19 request as amended.

24.

In the June 16 e-mail, Ms. Bice stated, in pertinent part, “There were very few responsive documents for Vice Chancellors Joseph and Smith, and all such documents contained individually identifiable information of law students and were therefore protected from disclosure under FERPA.” Ms. Bice did not cite specific exemptions or exceptions as required by the Louisiana Public Records Act at La. R.S. §§ 44:4.1 and 44:31-35.

25.

Defendants have failed to produce the entirety of public records requested by plaintiff on May 19, 2015, as amended by his May 26, 2015, e-mail to defendants by and through their counsel, Ms. Bice.

26.

“Public records” as defined by the Louisiana Public Records Law, La. R.S. § 44:1(A)(2)(a), include “[a]ll books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body.”

27.

The entirety of documents produced by defendants consists of e-mail messages and attachments thereto. Defendants provided no other “records” as defined under Louisiana law.

28.

Upon information and belief, defendants possess, retain, and/or control public records responsive to plaintiff’s request, including but not limited to telephone logs, text messages, physical documents, electronic documents, and/or calendar entries.

29.

In the June 16 e-mail, Ms. Bice acknowledged some documents responsive to the May 19 request were withheld in their entirety for reasons stated in the June 15 e-mail. Ms. Bice did not

identify the specific records, nor did she cite a specific exemption as required by the Louisiana Public Records Act.

30.

Upon information and belief, on November 14, 2015, LSU Law Professor Elizabeth Carter sent defendant Weiss an e-mail with the subject heading “Letter to the Editor: LSU Reveille” and including an attached letter from Carter discussing diversity, the Diversity Task Force, and the *Reveille*’s news coverage. Despite its responsive nature, that e-mail was not included in defendants’ response to the May 19 request, as amended.

31.

In the June 16 e-mail, Ms. Bice stated, in pertinent part, “There were very few responsive documents for Vice Chancellors Joseph and Smith, and all such documents contained individually identifiable information of law students and were therefore protected from disclosure under FERPA,” even though documents provided by defendants in the June 15 e-mail include e-mail records sent to or received from Vice Chancellor Cheney C. Joseph. Specifically, in an October 23, 2014, 1:53 p.m., e-mail from defendant Weiss to Christina Hood, carbon copied to Joseph, Weiss requested Joseph’s input on a draft letter announcing appointment of a diversity task force. In an October 23, 2015, 3:35 p.m., e-mail from Weiss to Hood, carbon copied to Joseph, Weiss stated, “Cheney, incorporated your suggestions” Additionally, responsive documents include at least two e-mails directly from Joseph to Weiss. One, dated October 23, 2014, discusses an appointment to the diversity task force. Another, dated October 27, 2014, contains the subject line “RE: Law Center Diversity: Student Concerns” and references LSU’s response to student concerns with diversity. Despite the existence of these documents, defendants maintain there are no responsive and producible documents pertaining to Vice Chancellor Cheney C. Joseph.

32.

Responsive records provided by defendants include an e-mail from Jake Henry, LSU Law Center Director of Admissions, to defendant Weiss, in which Henry states, “Chancellor, just sent you a text[.]” The e-mail is part of a string of e-mail messages discussing diversity and an article in *The Huffington Post*, which are responsive to the May 19 request, as amended. Defendants’ produced records contain no text message, despite the reference to such text message being sent in the course and scope of Henry’s and Weiss’s respective duties as public

administrators. *See* 44:1(A)(2)(a) (stating records are subject to the Louisiana Public Records Act “regardless of physical form or characteristics, including information contained in electronic data processing equipment”); Jack M. Weiss & Mary Ellen Roy, *Access to Public Records and Meetings in Louisiana*, in OPEN GOVERNMENT GUIDE 11 (6th ed., 2011) (“[T]ext messages or instant messages should be produced to a requester”), *available at* <https://www.rcfp.org/rcfp/orders/docs/ogg/LA.pdf>.

33.

Defendants have willfully and knowingly failed or refused to comply with their constitutional and statutory duties to provide plaintiff full and complete copies of the public records sought without redaction, alteration or modification and have substantially defeated plaintiff’s constitutional and statutory right to access public records. *See, e.g.*, La. Const., Art. 12, § 3 (“No person shall be denied the right to . . . examine public documents, except in cases established by law.”); La. R.S. § 44:4.1(A); § 44:31(A), (B)(2)-(3); § 44:32(C)(2); § 44:32(D).

34.

As the custodians of the public records at issue in this proceeding and the public body in possession, custody, or control of those public records, defendants knew or should have known (a) the public’s right to inspect and obtain copies of those public records was and is a fundamental right guaranteed by the Louisiana Constitution of 1974; (b) the public’s right to inspect and obtain copies of those public records can only be denied when the Louisiana Constitution of 1974 or the Louisiana Public Records Act (La. R.S. § 44:1, *et seq.*) specifically and unequivocally so provide; and (c) any exceptions to, exemptions from, or limitations upon the public’s right to inspect and obtain copies of public records contained in the Louisiana Public Records Act (La. R.S. § 44:1, *et seq.*) are in derogation of the public’s right to be reasonably informed and will be strictly and narrowly construed. *See, e.g.*, La. Const., Art. 12, § 3; *City of Baton Rouge/Parish of East Baton Rouge v. Capital City Press, L.L.C.*, No. 2007-1088, pp. 13-15 (La. App. 1st Cir. 10/10/08), 4 So.3d 807, 816-817.

35.

Defendants acted arbitrarily, capriciously and unreasonably by redacting, altering, Modifying, and withholding documents responsive to plaintiff’s May 19 public records request, as amended, and by failing to produce true and correct copies of these documents without redaction, alteration, or modification.

36.

Plaintiff is entitled to recover all attorneys' fees and all costs and expenses of litigation which plaintiff has incurred and will incur in connection with this proceeding from defendants, pursuant to and in accordance with the provisions of La. R.S. §§ 44:35(D) & (E)(1).

37.

Plaintiff is entitled to have this proceeding to enforce the provisions of the Louisiana Public Records Act against defendants tried by preference and in a summary manner, pursuant to and in accordance with the provisions of La. R.S. § 44:35(C).

WHEREFORE, ROBERT KYLE ALAGOOD, plaintiff herein, prays, that a writ of mandamus be issued to defendants, LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE, CHANCELLOR AND PRESIDENT FIELDON KING ALEXANDER, LOUISIANA STATE UNIVERSITY LAW CENTER, AND DEAN AND CHANCELLOR JACK M. WEISS, directing defendants to produce all public records requested, without modification, alteration, or restriction, or to show cause on a date and at a time to be fixed by the Court, not less than two (2) nor more than ten (10) days after service of the writ of mandamus on defendants, why the writ of mandamus should not be made peremptory and why defendants should not be ordered to pay plaintiff's reasonable attorneys' fees and all costs incurred by plaintiff. Plaintiff further prays for full general and equitable relief and for all orders and decrees which are necessary or proper in the premises.

Respectfully submitted by,

Donald C. Hodge, Jr.
Bar Roll Number 29251
4148 Palm Street
Baton Rouge, LA 70808
(337) 794-8873
donaldhodge@gmail.com

SERVICE INSTRUCTIONS ON FOLLOWING PAGE

PLEASE SERVE:

LOUISIANA STATE UNIVERSITY
AND AGRICULTURAL AND MECHANICAL COLLEGE
3810 West Lakeshore Drive
Baton Rouge, Louisiana 70808

LSU PRESIDENT AND CHANCELLOR FIELDON KING ALEXANDER
3810 West Lakeshore Drive
Baton Rouge, Louisiana 70808

LOUISIANA STATE UNIVERSITY LAW CENTER
1 East Campus Drive
Baton Rouge, Louisiana 70803

LSU LAW CENTER DEAN AND CHANCELLOR JACK M. WEISS
1 East Campus Drive
Baton Rouge, Louisiana 70803

ROBERT KYLE ALAGOOD : 19TH JUDICIAL DISTRICT COURT
VS. : PARISH OF EAST BATON ROUGE
FIELDON KING ALEXANDER in his : STATE OF LOUISIANA
capacity as President and Chancellor of :
Louisiana State University and Agricultural : NUMBER _____
and Mechanical College, and JACK M.
WEISS in his capacity as Dean and Chancellor
of the Louisiana State University Law Center

ORDER

Considering the foregoing pleadings, it is ordered that defendants LOUISIANA STATE UNIVERSITY AGRICULTURAL AND MECHANICAL COLLEGE, FIELDON KING ALEXANDER in his capacity as President and Chancellor of Louisiana State University and Agricultural and Mechanical College, LOUISIANA STATE UNIVERSITY LAW CENTER, and JACK M. WEISS in his capacity as Dean and Chancellor of the Louisiana State University Law Center, show cause, if they can, on _____ day of _____, 2015, at _____ .m. at the 19th Judicial District Court located at 300 North Boulevard, Baton Rouge, Louisiana 70801, Room _____ why a writ of mandamus should not be issued herein directed to defendants, LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE, FIELDON KING ALEXANDER, LOUISIANA STATE UNIVERSITY LAW CENTER, and JACK M. WEISS, requiring defendants to produce all public records requested, without modification, alteration, or restriction, or to show cause on a date and at a time to be fixed by the Court, why the writ of mandamus should not be made peremptory and why defendants should not be ordered to pay plaintiffs' reasonable attorneys' fees and all costs incurred by plaintiff.

Read and signed this _____ day of June, 2015 at Baton Rouge, Louisiana.

JUDGE