

Public Records Office
University of North Carolina at Chapel Hill
Campus Box #6205
Chapel Hill, NC 27599-9050

November 12, 2021

Dear Public Records Office,

I write to follow up on several outstanding matters regarding public records requests filed with the University of North Carolina at Chapel Hill during the past five months. The Public Records Office has substantially complied with some of our requests. However, several requests remain unfulfilled or production incomplete or insufficient under the North Carolina Public Records Act. Below you will find a list of nine requests filed by the North Carolina Open Government Coalition and a coalition of partners from journalism, education, and the public interest sector from June 2021 to present. Each request is accompanied by a status update and/or follow-up, many of which require the attention of the Public Records Office or University counsel.

1. Request #21-328 (UNC-Chapel Hill Board of Trustees Calendars). The Public Records Office responded to this request on October 13, 2021 and produced two documents: 1) a series of screenshots from the Apple iPhone of an unidentified member of the Board of Trustees, and 2) copies of Clayton Somers' calendar, presumably from a service such as Microsoft Outlook. This production is incomplete. We would like the Public Records Office to produce the calendars for each of the accounts requested in our initial public records request. Further, we request clarification regarding whose calendar is shown in the screenshots produced. Keep in mind that the nature of a public record is governed by the substance of the record and not the device on which it resides. Calendars showing a public official's activities related to their service on the Board of Trustees are public records regardless of whether the calendars are on their personal devices or a device paid for by the University (*See UNC School of Government, Text Messages as Public Records, <https://canons.sog.unc.edu/text-messages-as-public-records/>*).
2. Request #21-329 (UNC-Chapel Hill Board of Trustee Phone Logs). The Public Records Office responded to this request on October 13, 2021 claiming that there are no responsive records. We take this response to mean that the Public Records Office is claiming that there are no phone records that document phone calls made by any publicly funded phone line for any member of the Board of Trustees. This would include Clayton Somers, who is a University employee with an office in South Building and who has a direct line at (919) 962-6331. Please confirm whether this is your position regarding the phone records.

3. Request #21-330 (UNC Agreements With NextRequest). The Public Records Office produce three purchase orders covering years 2017-2021. The Public Records Office did not produce any other contracts or related documents and did not produce any training materials related to UNC's procurement of the NextRequest platform. Please confirm your position that UNC is not in possession or control of any training materials related to its initial purchase order in November 2016 and its training session provided by NextRequest.
4. Request #21-332 (UNC-Chapel Hill Instructions for Submitting Requests to Name Facilities and Units). This request was completed and documents produced on July 8, 2021.
5. Request #21-333 (Request for Responsive Documents to Prior Requests). This request was completed and documents produced on August 2, 2021.
6. Request #21-334 (Logs of UNC-Chapel Hill Public Records Requests). No documents were produced in response to this request. Our understanding of your position is that the Public Records Office maintains that all requests are processed through NextRequest and that there are no responsive records related to this request except those that you assert the Public Records Office would have to create or compile. We are asking for a copy of the underlying database upon which the NextRequest platform rests, which is a public record under N.C.G.S. 132-6.1. This does not necessitate the creation or compilation of a record. It merely necessitates the Public Records Office copying the database or making it open to public inspection as required by the Public Records Act. If you deny this request, please state so explicitly.
7. Request #21-335 (Hussman Gift and Pledge Payment Agreements). The Public Records Office has failed to respond to a substantive question regarding the basis of the denial of this request. Despite repeated request for clarification, the Public Records Office has responded that "there are no University records subject to disclosure under the North Carolina Public Records Act." We sent a response on August 13, 2021 asking for the basis for your denial. The University continues to maintain that the records are not subject to disclosure, but will not cite a reason as required by the Public Records Act. Please cite some statute, case law or other substantive legal argument that permits the University to withhold these documents from production under a public records request. The public deserves to understand the University's basis for its denial of these records.
8. Request #21-336 (Emails Between UNC Employees and UNC Public Records Office). This request was completed and documents produced on August 2, 2021.

9. Request #21-436 (Approval Documents for Monitoring of Hussman Faculty/Staff E-mail). We filed this request on August 12, 2021 requesting documents related to University approval to monitor faculty email after news organizations reported that University officials were indeed monitoring faculty email. The Public Records Office responded on November 11, 2021 that, “We are working to identify public records responsive to your request, but are unable to provide you with a specific time-frame for providing documents.” The Public Records Office has not fulfilled this request within a reasonable time as required by the Public Records Act. If the University has approved a request to monitor faculty email, records documenting that approval should be readily available and should take little effort to locate and produce. If the University did not document such approvals, please have a representative from the University or University counsel confirm so.

As a courtesy, we have filed this follow-up communication on the NextRequest platform via MuckRock. However, we would appreciate a direct response via e-mail at ncopengov@elon.edu especially where the University has declined to produce records, has produced incomplete records, or has failed to respond to a request within a reasonable period of time.

Respectfully,



Brooks Fuller

Director, North Carolina Open Government Coalition