

August 3, 2012

99 CVS 03497

Superior Court
County of Buncombe
State of North Carolina

Peter Dawes, James D. Yelton, And Michael Morgan, d/b/a/ C&T News Service,
Plaintiffs

vs.

Buncombe County Board of Commissioners and Wanda S. Greene, in her capacity as Buncombe County
Manager,
Defendants

The following file has been pulled from archives from the Buncombe County Courthouse. It is a 1999 court case.

The sequential order of the contents of this file are exactly in order as they appear in the actual file folder, i.e., latest material is on the top, so this documentation starts off with the Judgement, then working backwards through the case.

Monroe A. Miller Jr.
19 Big Spruce Lane
Waynesville, NC 28786
Haywood County Taxpayer

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
99 SEP -1 AM 9:58 FILE NO. 99 CVS 03497

PETER DAWES, JAMES D. YELTON
And MIKE MORGAN,
d/b/a/ C&T News Service,
Plaintiffs,
vs.
BUNCOMBE COUNTY BOARD OF
COMMISSIONERS AND WANDA S.
GREENE, in her capacity as
Buncombe County Manager,
Defendants.

BY _____

JUDGMENT

AUG 2 2012

THIS CAUSE came before the undersigned Judge on August 18, 1999 on the plaintiff's Petition for Declaratory Judgment and Other Relief; and after reviewing the pleadings, hearing the testimony of witnesses appearing this day in open court, and considering the arguments of counsel, the Court hereby makes the following finding of fact:

1. This case involves a dispute over the defendant's implementation of a Multiple Information Requests Policy which as of July 9, 1999 was enforced against the Plaintiffs so as to require them to make written request to the Buncombe County Manager in order to obtain public records of the County.

BASED UPON THE FOREGOING FINDING OF FACT THE COURT CONCLUDES AS MATTER OF LAW AS FOLLOWS:

1. The North Carolina Public Records Law, General Statute 132-1 et seq., provides that "[e]very custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law." General Statute 132-6(a).
2. The law provides that "[t]he public official in charge of an office having public records shall be the custodian thereof." General Statute 132-2.

3. The law by its own express terms does not permit for the interposition of a "gatehouse" or "overseer" between members of the public who desire access to public records and the custodians of public records.
4. Custodians of public records (but not a "gatekeeper") are entitled to develop reasonable rules, applicable to all citizens equally, governing their production of public records; for example, it would be reasonable for a custodian to require citizens having voluminous request for copies (1) to make a written request specifying with particularity the items to be copied, and (2) to make advance payment for such voluminous items to be retrieved.
5. That the term "custodian of public records" as contained in North Carolina General Statutes Section 132-6(a) refers to the individual who in fact has possession of records, and not to the County Manager other than as to those records which she does in fact have personal possession of, and the Defendant Greene cannot therefore legally make herself in effect a "Gatehouse" for access to public records as she has attempted to in the implementation of the County's policy as to these Plaintiffs.
6. That the Defendants are legally entitled to impose reasonable procedures for obtaining copies of public records, including a requirement that such requests be made in writing to the "custodian" of the records, but not to the Defendant Greene other than for records of which she is in fact the "custodian."
7. That custodians of public records in Buncombe County, as elsewhere throughout this State, are entitled to reasonable time in which to assemble records necessary to comply with a request for inspection and/or coping.
8. That the Defendants are entitled to impose reasonable procedures to assure that the actual cost of coping records are paid by those who receive them.
9. That Defendants are entitled within the purview of the statute to impose reasonable measures to protect the County and its employees from disruptive and abusive action.


BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That Defendants "Multiple Information Request" policy as applied to these Plaintiffs, to the extent that it requires Plaintiffs to submit requests for access to public information through the County Manager, is hereby declared null and void.
2. That other than as heretofore ordered in the foregoing paragraph 1, the policy of the Defendants is affirmed by this Court as valid and reasonable procedures for

affording access to public records while simultaneously protecting other legitimate interests of the County.

3. It is specifically adjudged and decreed that Defendants may require these Plaintiffs to submit requests for voluminous information in writing to the appropriate custodians of public records.
4. It is further adjudged and decreed that as to any requests made by these Plaintiffs for information, the custodians of Defendants public records shall have reasonable time to comply with the request.
5. That each party shall pay their own cost of this action.

This the 1 day of September, 1999.


HONORABLE LOTO CAVINESS
Judge Presiding

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

99 AUG 17 PM 3:12

SUPERIOR COURT DIVISION

COUNTY OF BUNCOMBE

BUNCOMBE COUNTY, N.C.

FILE NO. 99 CVS 03497

PETER DAWES, JAMES D. YELTON _____)
 And MIKE MORGAN,)
 d/b/a/ C&T News Service,)
)
 Plaintiffs,)
)
 vs.)
)
 BUNCOMBE COUNTY BOARD OF)
 COMMISSIONERS AND WANDA S.)
 GREENE, in her capacity as)
 Buncombe County Manager,)
)
 Defendants.)
)
)

ANSWER AND MOTION TO DISMISS

Come now the Defendants and answer the complaint of Plaintiffs as follows:

1. With regard to the allegations of Plaintiffs' paragraph 1, it is admitted that the Plaintiffs are residents and citizens of Buncombe County, North Carolina. The Defendants are without sufficient information to admit or deny the remaining allegations of paragraph 1, which are irrelevant anyway, and the same are therefore denied for lack of information and knowledge.

2. With regard to the allegations of Plaintiffs' paragraph 2, it is admitted that Defendant Buncombe County Board of Commissioners is the duly elected governing body of Buncombe County, North Carolina. The remaining allegations of paragraph 2 are matters of law for the Court to determine and require no response from the defendants.

3. With regard to the allegations of Plaintiffs' paragraph 3, it is admitted that the Defendant Wanda S. Greene is the duly appointed County Manager of Buncombe County and an employee of Buncombe County. The remaining allegations of Plaintiffs' paragraph 3 are matters of law for the Court to determine and require no response from the defendants.

4. The allegations of Plaintiffs' paragraph 4 are matters of law for the Court to determine and require no response from these defendants, although it is denied that the plaintiffs are entitled to any of the relief they contend they are seeking.
5. With regard to the allegations of Plaintiffs' paragraph 5, it is admitted that on or about July 9, 1999 the Defendant Greene wrote letters to each Plaintiff, copies of which are attached hereto as Exhibits 1 through 3. The documents speak for themselves as to what they "purport".
6. With regard to the allegations of Plaintiffs' paragraph 6, it is admitted that on or about July 15, 1999 the Defendant Greene distributed to certain other County employees a memorandum, a copy of which is attached hereto as Exhibit 4. The document speaks for itself as to its content.
7. The allegations of Plaintiffs' paragraph 7 are denied.
8. The allegations of Plaintiffs' paragraph 8 are denied.
9. The allegations of Plaintiffs' paragraph 9 are denied.
10. With regard to the allegations of Plaintiffs' paragraph 10, it is admitted that there is an apparent controversy between these parties concerning Buncombe County's "Multiple Information Request" policy. Except as heretofore admitted the allegations of Plaintiffs' paragraph 10 are denied. It is specifically denied that the defendants are in any way in violation of North Carolina General Statute Section 132-6.
11. It is further pleaded that for a period of several months prior to Defendant Greene sending Plaintiffs the attached letters, the Plaintiffs as shown by the Affidavits attached as Exhibits 5 - 12 have engaged in a pattern of conduct which includes threats and attempts at intimidation of County employees such as the statement of Plaintiff Yelton about shooting General Services Director Robinson Hunter (Exhibit 5), disruption of County operations by demands for immediate production of voluminous material (Exhibit 6), unauthorized entry into County workspaces that are not generally public access areas (Exhibits 7 - 9), unauthorized use of County equipment (Exhibit 10), and similar actions which have no apparent purpose other than to disrupt the normal operations of

the County (Exhibits 7, 10 , 11 & 12); and the Defendant Greene was therefore fully justified in imposing reasonable regulations intended to allow Plaintiffs to obtain copies of any materials to which they are entitled in a manner that is not disruptive of ordinary County business.

12. It is further pleaded that this action is frivolous and has been brought in bad faith and that Defendants should therefore be entitled to recover from Plaintiffs the cost of defending this action including reasonable attorney fees pursuant to the provisions of General Statute Section 132-9(d).

13. It is further pleaded that on August 5, 1999 the Defendants noticed depositions of Plaintiffs' Dawes and Yelton to be held on August 18, 1999, that on August 6, 1999 Plaintiffs noticed a hearing on the merits of this action for August 10, 1999, that although Plaintiffs' notice for hearing did not comply with Rule 6 of the North Carolina Rules of Civil Procedure the parties reached a compromise agreement whereby a hearing was scheduled for August 18, 1999 and Plaintiffs' Dawes and Yelton were to make themselves available for depositions on August 13, 1999, that said depositions could not be taken because Plaintiffs counsel was engaged in the trial of another case on said date, and that in response to defense counsel's request to take the depositions on Monday, August 16, 1999 the Plaintiffs; counsel replied with a facsimile message indicating that Plaintiffs Dawes and Yelton were totally refusing to be deposed at any time (Exhibits 13 & 14); and by such actions the Plaintiffs have failed to comply with the applicable discovery rules of the North Carolina Rules of Civil Procedure.

WHEREFORE having fully answered the Complaint of Plaintiffs, the Defendants respectfully pray the Court for relief as follows:

1. That the relief prayed for by Plaintiffs be denied.

2. That this action be dismissed with prejudice.

3. That costs of this action, including reasonable attorney fees pursuant to North Carolina General Statute Section 132-9(d), be taxed to Plaintiffs.

4. Such other and further relief that the Court may deem just and proper.

This the 17th day of August, 1999.

Joe A. Connolly

Joe A. Connolly
County Attorney
Westall Gray and Connolly
Attorney for Defendants
81 Central Avenue
Asheville, NC 28801
(828) 254-6315

Stanford K. Clontz

Stanford K. Clontz
Associate County Attorney
County of Buncombe
Attorney for Defendants
One Oak Plaza, Suite 105
Asheville, NC 28801
(828) 250-4116

CERTIFICATE OF SERVICE

This is to Certify that the undersigned has served a copy of the foregoing pleading in the above-entitled action upon all other parties to this cause by ~~depositing same in a properly addressed envelope with adequate postage thereon in a post office or official depository under the exclusive care and custody of the United States Post Office Department, properly addressed to the attorney or attorney for said parties.~~

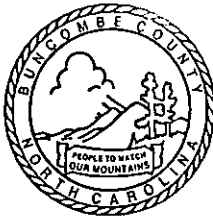
*hand
delivery*

This the 17th day of August 1999

Stanford K. Clontz

Attorney at Law
One Oak Plaza, Suite 105
Asheville, NC 28801
828-250-4115

County of Buncombe



OFFICE OF THE COUNTY MANAGER
One Oak Plaza, Suite 105
Asheville, NC 28801

Telephone 828-250-4100
FAX 828-255-5461

www.buncombecounty.org

Wanda S. Greene, CPA
County Manager

Jon E. Creighton
Assistant County Manager/
Planning Director

e-mail bunco.manager@mindspring.com

July 9, 1999

Mr. Peter Dawes
245 Webb Creek Road
Fairview, NC 28730

Dear Mr. Dawes:

Over the past few months, many employees in departments throughout the County have worked with you to provide the information you have requested. Most often, when you have walked in and asked for the information, staff have dropped what they were doing and provided the data you were seeking or answered the questions you had.

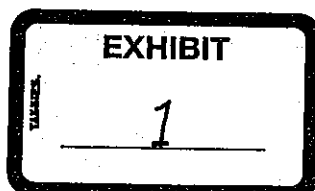
The volume of information you need now puts us in the position to enforce our "Multiple Information Requests" policy. This policy authorizes us to require that all requests for information on records, other than your personal records, be made in writing to the County Manager's Office. This enables me to prioritize information requests and insure that daily work flow is not interrupted.

Effective upon receipt of this letter, please submit all future requests for information, other than your personnel records, to me in writing. I will make sure you receive a timely, written response to your requests. This applies to information needed from any and all County departments and reporting entities.

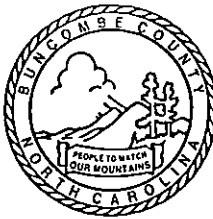
Thank you for your cooperation.

Sincerely,

Wanda S. Greene, CPA
County Manager



County of Buncombe



OFFICE OF THE COUNTY MANAGER
One Oak Plaza, Suite 105
Asheville, NC 28801

Telephone 828-250-4100
FAX 828-255-5461

www.buncombecounty.org

Wanda S. Greene, CPA
County Manager

Jon E. Creighton
Assistant County Manager/
Planning Director

e-mail bunco.manager@mindspring.com

July 9, 1999

Mr. Don Yelton
221 Jupiter Road
Weaverville, NC 28787

Dear Mr. Yelton:

Over the past few months, many employees in departments throughout the County have worked with you to provide the information you have requested. Most often, when you have walked in and asked for the information, staff have dropped what they were doing and provided the data you were seeking or answered the questions you had.

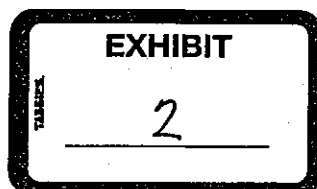
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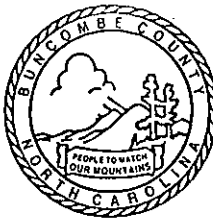
Thank you for your cooperation.

Sincerely,

Wanda S. Greene, CPA
County Manager



County of Buncombe



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Asheville, NC 28801

Telephone 828-250-4100
FAX 828-255-5461

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Wanda S. Greene, CPA
County Manager

Jon E. Creighton
Assistant County Manager/
Planning Director

e-mail bunco.manager@mindspring.com
July 9, 1999

Mr. Mike Morgan
P.O. Box 2621
Asheville, NC 28802

Dear Mr. Morgan:

Over the past few months, many employees in departments throughout the County have worked with you to provide the information you have requested. Most often, when you have walked in and asked for the information, staff have dropped what they were doing and provided the data you were seeking or answered the questions you had.

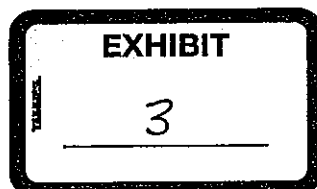
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Effective upon receipt of this letter, please submit all future requests for information, other than your personnel records, to me in writing. I will make sure you receive a timely, written response to your requests. This applies to information needed from any and all County departments and reporting entities.

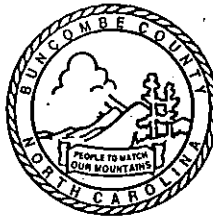
Thank you for your cooperation.

Sincerely,

Wanda S. Greene, CPA
County Manager



County of Buncombe



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Wanda S. Greene, CPA
County Manager

Jon E. Creighton
Assistant County Manager/
Planning Director

e-mail bunco.manager@mindspring.com

MEMORANDUM

To: Management Team Members

From: Wanda Greene *Wanda*

Subject: Attached Letter

Date: July 15, 1999

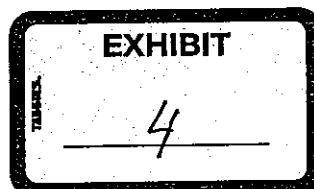
.....

Attached is a letter I sent to Peter Dawes, Don Yelton and Mike Morgan regarding request of information. Because of the volume of information they have requested in the past, we are now enforcing our "Multiple Information Requests" policy. All requests are to be submitted in writing to the County Manager's Office. If your office receives any requests, please forward them to my office. Should they visit your office requesting information, please tell them they will need to submit those requests in writing to my office.

If you have any questions, please give me a call.

jgr

Attachment



STATE OF NORTH CAROLINA

IN THE GENERAL COURT
OF JUSTICE

COUNTY OF BUNCOMBE

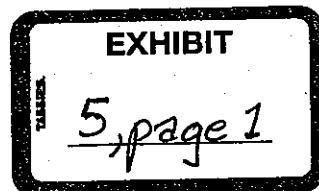
SUPERIOR COURT DIVISION
FILE NO. 99 CVS 03497

PETER DAWES, JAMES D. YELTON)
And MIKE MORGAN,)
d/b/a/ C&T News Service,)
)
Plaintiffs,)
)
vs.)
)
BUNCOMBE COUNTY BOARD OF)
COMMISSIONERS AND WANDA S.)
GREENE, in her capacity as)
Buncombe County Manager,)
)
Defendants.)

AFFIDAVIT OF
ROBINSON HUNTER

ROBINSON HUNTER, being first duly sworn deposes and says:

1. I am a citizen and resident of Buncombe County, North Carolina and I am employed by the County of Buncombe as the General Services Director and was so employed on the 20th day of May, 1998.
2. That I am familiar with the Plaintiff James D. Yelton because he was a former Buncombe County employee working under my supervision
3. That Mr. James D. Yelton left the employment with the County of Buncombe in April of 1998 and on May 20, 1998 came to our department to copy materials from files.
4. While in my office on May 20, 1998, Mr. Yelton asked me to allow him to take certain items from his office which belonged to the County, and I refused this request.
5. While Mr. Yelton was in my office on May 20, 1998, he made the following statement to me: When this first happened to me I was frightened of the thoughts that I had for the first few days. I actually thought of coming back in here and shooting your ass.



6. On May 20, 1998 after making the foregoing statement Mr. Yelton also said he was still going to get even with me.

FURTHER, Affiant sayeth not, this the 17 day of August, 1999.

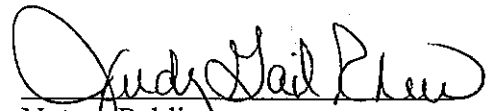

ROBINSON HUNTER

NORTH CAROLINA
BUNCOMBE COUNTY

VERIFICATION

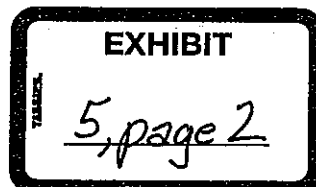
ROBINSON HUNTER, being first duly sworn, does state that he has read the foregoing Affidavit and knows the contents thereof, and that the same is true as his own knowledge, except as to matters therein stated upon information and belief, and as to those she believes them to be true.

This the 17th day of August, 1999.


Notary Public

My Commission Expires:

1/30/2000



STATE OF NORTH CAROLINA

IN THE GENERAL COURT
OF JUSTICE

COUNTY OF BUNCOMBE

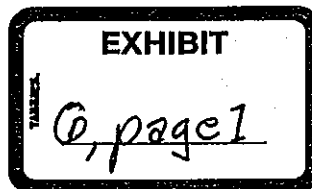
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 GREENE, in her capacity as)
 Buncombe County Manager,)
)
 Defendants.)
)
)

AFFIDAVIT OF
TRENA PARKER

TRENA PARKER, being first duly sworn deposes and says:

1. I am a citizen and resident of Buncombe County, North Carolina, and am employed by Buncombe County as Elections Director.
2. That in my employment as Elections Director, I have become well acquainted with the Plaintiffs Dawes and Yelton as a result of their frequent requests to obtain election information, registration forms and copies of documents maintained by my office such as campaign reports and election statistics, and particularly their recent efforts to obtain a recall election for members of the Asheville City Council.
3. That on one occasion the Plaintiffs Dawes and Yelton demanded that my office staff make an immediate telephone call to the State Board of Elections to obtain for them information which is not maintained in my office.
4. That during their attempt to recall members of the Asheville City Council, the Plaintiffs Dawes and Yelton requested copies of information on a previous effort by another group to obtain a recall of the Asheville City Council in 1995. This information had been consigned to storage and was not readily available in my office, and I therefore was required to spend one and one-half (1 1/2) days of my time retrieving such information for the Plaintiffs.



Although I notified the Plaintiffs that the information they had requested had been compiled and was available for them, they never came to the office to obtain it.

FURTHER, Affiant sayeth not, this the 17th day of August, 1999.

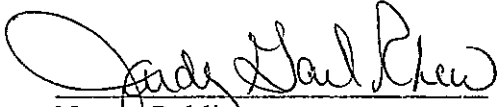

TRENA PARKER

NORTH CAROLINA
BUNCOMBE COUNTY

VERIFICATION

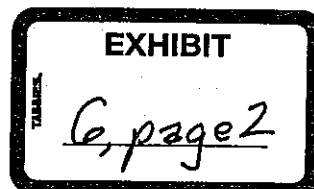
TRENA PARKER, being first duly sworn, does state that she has read the foregoing Affidavit and knows the contents thereof, and that the same is true as her own knowledge, except as to matters therein stated upon information and belief, and as to those she believes them to be true.

This the 17th day of August, 1999.


Notary Public

My Commission Expires:

1/30/2000



STATE OF NORTH CAROLINA

IN THE GENERAL COURT
OF JUSTICE

COUNTY OF BUNCOMBE

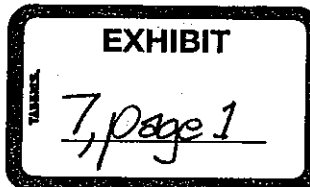
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 GREENE, in her capacity as)
 Buncombe County Manager,)
)
 Defendants.)
)
)
)

AFFIDAVIT OF
PATRICIA PADGETT

PATRICIA PADGETT, being first duly sworn deposes and says:

1. I am a citizen and resident of Buncombe County, North Carolina, and I am employed by the County of Buncombe. In April or May of 1999 at all times relevant to the information contained in this affidavit I was employed with the County of Buncombe working in Central Records.
2. That as part of my employment with Central Records in April or May of 1999 I had the responsibility of carrying documents and other materials to and from the Buncombe County Courthouse and other Buncombe County Departments.
3. That as part of my former duties in addition to carrying various records to the Courthouse, etc., I was also involved in the recycling program that the various Buncombe County departments have in place and I am familiar with Mr. James D. Yelton, who was a former employee of the County of Buncombe.
4. That in April or May of 1999 I was working inside the loading dock area when Mr. Yelton came into the loading dock area through a door which is not available for use by the general public. On this occasion, after I spoke briefly with Mr. Yelton, he then proceeded through the loading dock area into the area where the central files are maintained for the County of Buncombe.



5. I did not see Mr. Yelton attempt to look at any of the files maintained in the central files storage area, I do not know where Mr. Yelton went or what he did after he entered the central files storage area and he did not exit through the loading dock area while I was present.
6. On this occasion when Mr. Yelton entered the loading dock area and proceeded from the loading dock area into the central file storage area I did not give Mr. Yelton permission to enter into the area where the files are stored for the County of Buncombe and Mr. Yelton did not ask my permission to enter into the area from the loading dock where the files are stored for the County of Buncombe.

FURTHER Affiant sayeth not, this the 17th day of August, 1999.

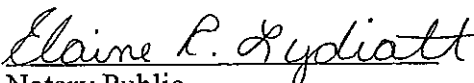

PATRICIA PADGETT

NORTH CAROLINA
BUNCOMBE COUNTY

VERIFICATION

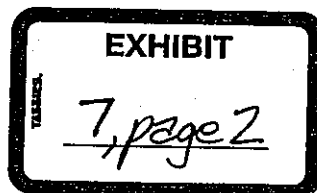
PATRICIA PADGETT, being first duly sworn, does state that she has read the foregoing Affidavit and knows the contents thereof, and that the same is true as her own knowledge, except as to matters therein stated upon information and belief, and as to those she believes them to be true.

This the 17th day of August, 1999.


Notary Public

My Commission Expires:

8-15-2004



STATE OF NORTH CAROLINA

IN THE GENERAL COURT
OF JUSTICE

COUNTY OF BUNCOMBE

SUPERIOR COURT DIVISION
FILE NO. 99 CVS 03497

PETER DAWES, JAMES D. YELTON)
And MIKE MORGAN,)
d/b/a/ C&T News Service,)
)
Plaintiffs,)

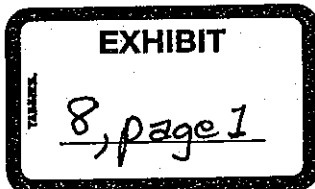
AFFIDAVIT OF
VERNA HARRIS THOMAS

vs.)

BUNCOMBE COUNTY BOARD OF)
COMMISSIONERS AND WANDA S.)
GREENE, in her capacity as)
Buncombe County Manager,)
)
Defendants.)

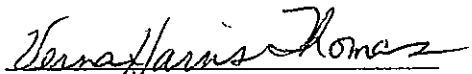
VERNA HARRIS THOMAS, being first duly sworn deposes and says:

1. I am a citizen and resident of Buncombe County, North Carolina and an employee of Buncombe County working in the General Services Department and as part of my responsibilities I am the supervisor for Central Records and I was the supervisor of Central Records during the months of April and May 1999.
2. That Central Records maintains many files for the various Buncombe County departments including the following files: Buncombe County Health Department records, Buncombe County Department of Social Services records, Criminal and Civil files for the General Courts of Buncombe County including juvenile records, adoption records, and identification bureau records containing such things as finger prints, etc.
3. That some of the records listed above are not all available to the public for inspection because some files such as the Health Department contain confidential medical information, the Department of Social Services files contain information that is not public information and other departments as listed above contain information that is not public information.



- 4: That all times during the months of April and May of 1999 and for the period starting in 1991 the Central Records Department of Buncombe County has maintained one general entrance for the public.
5. That a loading dock is to the left of the general entrance for the public at Central Records and an employee door is to the left of the loading dock. The loading dock entrance and employee door entrance are not available for use by the general public. These two entrances were not in existence for the months of April and May 1999 and at all times prior thereto beginning in 1991.
6. That in April and May 1999 when an individual comes into the loading dock area from outside the building, either by entering through the actual loading dock door or the employee door immediately adjacent thereto, if that individual leaves the loading dock area and proceeds into the central area of the building, that individual will immediately have unsupervised access to the central files storage area which contains the files listed above.

FURTHER, Affiant sayeth not, this the 17th day of August, 1999.



VERNA HARRIS THOMAS

NORTH CAROLINA
BUNCOMBE COUNTY

VERIFICATION

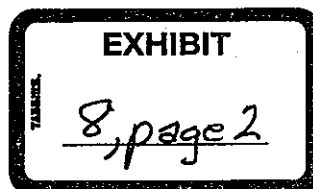
VERNA HARRIS THOMAS, being first duly sworn, does state that she has read the foregoing Affidavit and knows the contents thereof, and that the same is true as her own knowledge, except as to matters therein stated upon information and belief, and as to those she believes them to be true.

This the 17th day of August, 1999.


Notary Public

My Commission Expires:

1/30/2000



STATE OF NORTH CAROLINA

IN THE GENERAL COURT
OF JUSTICE

COUNTY OF BUNCOMBE

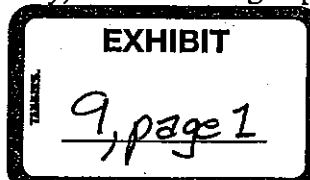
SUPERIOR COURT DIVISION
FILE NO. 99 CVS 03497

PETER DAWES, JAMES D. YELTON)
 And MIKE MORGAN,)
 d/b/a/ C&T News Service,)
)
 Plaintiffs,)
)
 vs.)
)
 BUNCOMBE COUNTY BOARD OF)
 COMMISSIONERS AND WANDA S.)
 GREENE, in her capacity as)
 Buncombe County Manager,)
)
 Defendants.)
)
)
)

AFFIDAVIT OF
SANDRA MURPHY

SANDRA MURPHY, being first duly sworn deposes and says:

1. I am a citizen and resident of Buncombe County, North Carolina, and am employed as a receptionist in the offices of the Buncombe County Commissioners.
2. That our office maintains copies of minutes from meetings of various County Boards and Commissions, which are contained in hard bound loose leaf notebooks kept on shelves in the southeast corner of the office.
3. That in late May or early June of 1999, the plaintiffs in this action, Peter Dawes, James D. Yelton, and Mike Morgan, came into the office and proceeded to look through some of these notebooks.
4. Without asking or receiving my permission, one of the plaintiffs, Mr. Morgan, removed some of the written material from my sight by carrying it through a door that enters a hallway which accesses several other rooms including a large room where a photocopier belonging to the County is located.
5. Although I could not personally see him, it is my understanding from talking with another County employee whose office is located within view of the copy machine, Debbie Hay, that Mr. Morgan proceeded to use the copy



machine to make copies of the materials which he had removed from my presence without permission.

6. The other plaintiffs, Mr. Dawes and Mr. Yelton, remained near the bookshelf viewing other documents after Mr. Morgan left the room.

FURTHER, Affiant sayeth not, this the 13 day of August, 1999.

Sandra Murphy
SANDRA MURPHY

NORTH CAROLINA
BUNCOMBE COUNTY

VERIFICATION

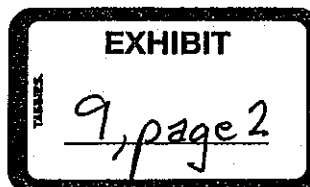
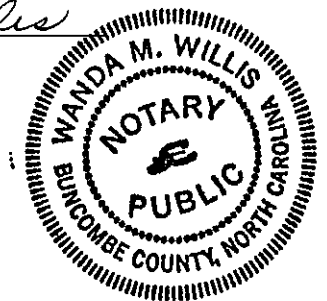
SANDRA MURPHY, being first duly sworn, does state that she has read the foregoing Affidavit and knows the contents thereof, and that the same is true as her own knowledge, except as to the matters therein stated upon information and belief, and as to those she believes them to be true.

This the 13 day of August, 1999.

Wanda M. Willis
Notary Public

My Commission Expires:

7-7-2003



STATE OF NORTH CAROLINA

IN THE GENERAL COURT
OF JUSTICE

COUNTY OF BUNCOMBE

SUPERIOR COURT DIVISION
FILE NO. 99 CVS 03497

PETER DAWES, JAMES D. YELTON)
And MIKE MORGAN,)
d/b/a/ C&T News Service,)

Plaintiffs,)

vs.)

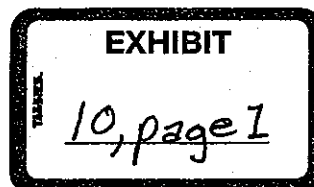
BUNCOMBE COUNTY BOARD OF)
COMMISSIONERS AND WANDA S.)
GREENE, in her capacity as)
Buncombe County Manager,)

Defendants.)

AFFADAVIT OF
DEBBIE HAY

DEBBIE HAY, being first duly sworn deposes and says:

1. I am a citizen and resident of Buncombe County, North Carolina, and am employed by Buncombe County in the position of Community Liaison.
2. My office is located in the Commissioners suites on the second floor of the Buncombe County Courthouse, and I have a close and direct view from my desk of a copy machine which belongs to the County and is used by our office.
3. In late May or early June of 1999 I had an occasion to look up from my desk and observe one of the plaintiffs in this action, Mike Morgan, copying materials on the County's copy machine.
4. I had not given Mr. Morgan permission to use this copy machine.
5. On this occasion, Mr. Morgan jammed the machine by attempting to run through the automatic feeder a document with a staple in it, and I had to assist him by pulling out this paper in order to unjam the machine.



6. After having unjammed the machine, I instructed Mr. Morgan not to attempt using the machine himself but that if he needed materials copied to obtain the assistance of County employees.

FURTHER, Affiant sayeth not, this the 13 day of August, 1999.

Debbie W. Hay
DEBBIE HAY (Seal)

NORTH CAROLINA
BUNCOMBE COUNTY

VERIFICATION

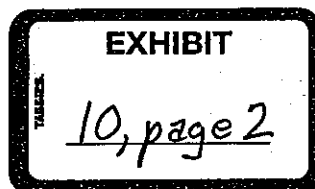
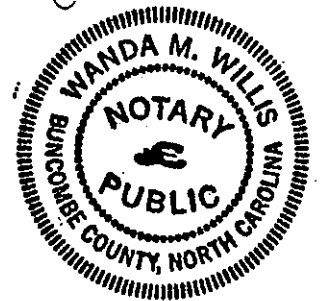
DEBBIE HAY, being first duly sworn, does state that she has read the foregoing Affidavit and knows the contents thereof, and that the same is true as her own knowledge, except as to matters therein stated upon information and belief, and as to those she believes them to be true.

This the 13 day of August, 1999.

Wanda M. Willis
Notary Public

My Commission Expires:

7-7-2003



STATE OF NORTH CAROLINA

IN THE GENERAL COURT
OF JUSTICE

COUNTY OF BUNCOMBE

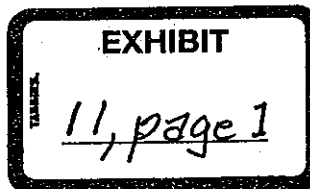
SUPERIOR COURT DIVISION
FILE NO. 99 CVS 03497

PETER DAWES, JAMES D. YELTON)
 And MIKE MORGAN,)
 d/b/a/ C&T News Service,)
)
 Plaintiffs,)
)
 vs.)
)
 BUNCOMBE COUNTY BOARD OF)
 COMMISSIONERS AND WANDA S.)
 GREENE, in her capacity as)
 Buncombe County Manager,)
)
 Defendants.)
)
)
)

AFFIDAVIT OF
NANCY BROOKS

NANCY BROOKS, being first duly sworn deposes and says:

1. I am a citizen and resident of Buncombe County, North Carolina, and I am employed by Buncombe County as Director of Finance.
2. In my position as Director of Finance I have become well acquainted with the Plaintiffs in this action due to their numerous requests for copies of documents maintained by my office, and in some instances for copies of documents which are not maintained by my office but which the Plaintiffs apparently thought were or should have been maintained by my office.
3. Examples of items requested by Plaintiffs and provided to Plaintiffs by my office include information on the compensation paid to the County Attorney and the Associate County Attorney, invoices from the Chamber of Commerce for the Economic Development Commission, fixed asset inventory records on the Biltmore School property, audit reports and other documents pertaining to Friends for Animals (non-profit organization which the County contracts for animal control), and source of funding for improvements to the County's baseball stadium (McCormick Field)
4. My office obtained especially for the Plaintiffs copies of audit reports for two non-profit organizations, Handmade In America and RiverLink, which were



not maintained in our office; even though General Statute Section 132-6.2(e) provides that we are not required to create or compile records that do not exist.

5. As a result of a demand made by Plaintiff Yelton at a County Commissioners meeting, the County's Internal Auditor, who works under my supervision, spent 3 ½ days at the County Landfill researching financial irregularities alleged by Plaintiff Yelton which proved to be without merit.

FURTHER, Affiant sayeth not, this the 17th day of August, 1999.



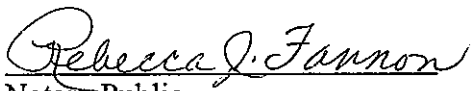
NANCY BROOKS

NORTH CAROLINA
BUNCOMBE COUNTY

VERIFICATION

NANCY BROOKS, being first duly sworn, does state that she has read the foregoing Affidavit and knows the contents thereof, and that the same is true as her own knowledge, except as to matters therein stated upon information and belief, and as to those she believes them to be true.

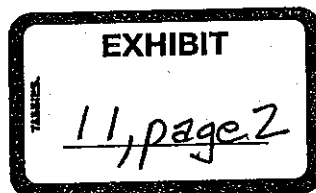
This the 17 day of August, 1999.



Notary Public

My Commission Expires:

MY COMMISSION EXPIRES 8/24/2003



STATE OF NORTH CAROLINA

IN THE GENERAL COURT
OF JUSTICE

COUNTY OF BUNCOMBE

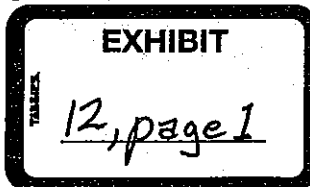
SUPERIOR COURT DIVISION
FILE NO. 99 CVS 03497

PETER DAWES, JAMES D. YELTON)
 And MIKE MORGAN,)
 d/b/a/ C&T News Service,)
)
 Plaintiffs,)
)
 vs.)
)
 BUNCOMBE COUNTY BOARD OF)
 COMMISSIONERS AND WANDA S.)
 GREENE, in her capacity as)
 Buncombe County Manager,)
)
 Defendants.)
)
)
)
)
)

AFFIDAVIT OF
JILL THOMPSON

JILL THOMPSON, being first duly sworn deposes and says:

1. I am a citizen and resident of Buncombe County, North Carolina, and am employed by Buncombe County as Public Relations Coordinator.
2. My office is located in the back of the County Manager's suite at One Oak Plaza, Suite 105, Asheville, North Carolina.
3. One of my responsibilities as Public Relations Coordinator is the taping of Commissioners meetings and community meetings in order to provide tapes to local cable television franchisees in order to enable citizens to watch these proceedings on cable television, and I also make copies of such tapes for individuals upon request.
4. On one occasion the Plaintiff Peter Dawes requested a tape but subsequently denied requesting it and refused to pay for it.
5. On an occasion shortly after discussion was had at a Commissioners meeting concerning a firing range in the Emma Community, I listened to a local radio



show in which the Plaintiffs Dawes and Yelton were guests and were making commentary about the issue. Statements were made to the effect that the Commissioners should be placed in the range and made targets.

FURTHER, Affiant sayeth not, this the 17th day of August, 1999.

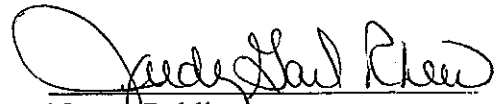

JILL THOMPSON

NORTH CAROLINA
BUNCOMBE COUNTY

VERIFICATION

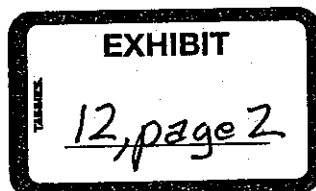
JILL THOMPSON, being first duly sworn, does state that she has read the foregoing Affidavit and knows the contents thereof, and that the same is true as her own knowledge, except as to matters therein stated upon information and belief, and as to those she believes them to be true.

This the 17th day of August, 1999.


Notary Public

My Commission Expires:

1/30/2000



WESTALL, GRAY, CONNOLLY & DAVIS, P.A.
ATTORNEYS AT LAW
81 CENTRAL AVENUE
ASHEVILLE, NORTH CAROLINA 28801

JACK W. WESTALL, JR.
DAVID G. GRAY, JR.*
JOSEPH A. CONNOLLY
SARA H. DAVIS*

(828) 254-6315
FAX: (828) 255-0305

*BOARD CERTIFIED SPECIALISTS
BANKRUPTCY LAW

August 16, 1999

To: Mr. Thomas D. Roberts

Re: 99 CvS 3497

Dawes, Yelton & Morgan

v.

Buncombe County Board of Commissioners and Wanda S. Greene

I appreciate you talking with me this morning. I am sorry to hear that your clients apparently are not willing to participate in depositions. I believe that the Rules of Civil Procedure certainly apply to this matter and we are certainly entitled to take their depositions and we have previously noticed the deposition of Mr. Yelton at 9:00 a.m. on August 18, 1999 and Mr. Dawes later that morning.

On Friday, August 13, 1999, we left several messages prior to your returning to Court and in fact I spoke with you Friday morning in Court on the seventh floor indicating that we would have these depositions at 10:30 and 11:30 this morning starting with Mr. Yelton.

To accommodate your schedule, I will agree to change the time for Mr. Yelton's deposition to 2:00 p.m. today and Mr. Dawes' deposition to 3:00 p.m. today again at the County Attorney's office at One Oak Plaza.

To confirm our earlier conversations, I intend to have Mrs. Greene available this afternoon. Per our conversation on Friday, I asked her to clear her schedule for this afternoon and I have spoken with Mr. Sobol and he will be available, however, he needs to attend a meeting in Black Mountain at 4:30 p.m. today. I will also make Cathy Hughes, Clerk to the Board, available for the taking of her deposition.

EXHIBIT

13, page 1

Mr. Thomas D. Roberts
August 16, 1999
Page 2

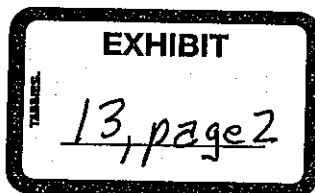
I look forward to hearing back from you, per our conversation this morning, by 9:30 a.m. today.

Sincerely



Joseph A. Connolly

JAC/el



THOMAS DUBOSE ROBERTS
ATTORNEY AT LAW
FLAT IRON BUILDING, SUITE 305
20 BATTERY PARK AVENUE
ASHEVILLE NORTH CAROLINA 28801
828-252-0002

fax 828-252-7722
TomRoberts@aol.com

August 16, 1999

Joe A. Connolly, Esq.
Stanford K. Clontz, Esq.
Office of the County Attorney
One Oak Plaza, Suite 105
Asheville NC 28801

by facsimile
at 10:45 am 8/16/99

Re: Dawes et al. vs County Commissioners et al.,
99-CvS-3497

Gentlemen:

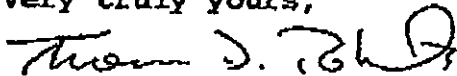
As you and I discussed by telephone a few minutes ago, upon further assessment and consultation with my clients we are unable to consent to the discovery depositions of Messrs. Velton and Dawes, believing that to require investigative reporters to explain the circumstances behind their public record requests would be inherently irrelevant to the application of the Public Records Law and burdensome of their privilege to develop information and potential news stories without government oversight.

If, as I explained, you would relate to me those facts which you seek to develop through the requested depositions, we may well be able to stipulate to them prior to hearing on Wednesday morning.

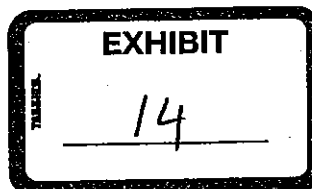
You asked me, for example, to stipulate that Messrs. Velton and Dawes have made multiple requests for public records, and we will so stipulate. Let us know what else you may need.

Thank you for your continuing assistance and cooperation in this matter.

Very truly yours,



Thomas D. Roberts



STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 99 CvS 3497

PETER DAWES, JAMES D. YELTON,
and MIKE MORGAN
d/b/a C&T NEWS SERVICE
Plaintiffs
v.
BUNCOMBE COUNTY BOARD OF
COMMISSIONERS and WANDA S. GREENE,
in her capacity as Buncombe County Manager
Defendants

MEMORANDUM OF ARGUMENT

Issue: Does NCGS 132-6 prohibit a government agency from imposing any regulations on inspection and examination of records?

Answer: No.

ARGUMENT

1. NCGS 132-6(a) provides that "Every custodian of public records shall permit any record in the custodians custody to be inspected and examined at reasonable times and under reasonable supervision by any person."

2. Prior to the Defendant, County Manager Greene, implementing the "multiple information requests" policy she had knowledge of the following facts:

(A) Plaintiff Yelton had made a direct threat of shooting a County employee, Robinson Hunter, who was Plaintiff Yelton's former supervisor.

(B) Plaintiff Dawes had made statements on a radio show about placing the Buncombe County Commissioners in a shooting range and using the Commissioners as targets.

(C) There had been several requests by Plaintiffs Yelton and Dawes for copies of public records which were produced after considerable County employee time but said records were not picked up by Plaintiffs Yelton and Dawes and the cost of producing these records was not paid by Plaintiffs Yelton and Dawes.

(D) There had been numerous requests for public information and copies of public records from Plaintiffs Yelton and Dawes.

(E) That on numerous occasions the Plaintiffs or some of them have been disruptive of County departments when the Plaintiffs have visited said County departments.

3. The custodian not only must allow access to public records, he or she must also protect the integrity of those records while they are being inspected or copied.

4. The custodian should be allowed to require that any requests be particular in nature, so that specific records can be identified and made available to the requestor.

5. No North Carolina case has specifically dealt with what regulations are reasonable for the custodian of records to adopt but the Defendants argue that common sense requires that custodians of records be allowed to set rules dealing with the hours during which inspection is allowed, the form that requests must take, how records are removed from files, spaces in the office available to persons inspecting records, whether inspections must be supervised, how copies are to be made, and at what price.

6. The Defendants understand and agree with the right and privilege of everyone to have access to public records and these Plaintiffs have not been denied that right and privilege.

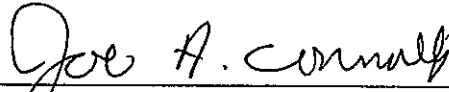
7. With every right and privilege there is usually some corresponding duty and in this case, the Plaintiffs have a duty not to make threats and also the duty to respect the obligation of the custodian of the public records to maintain those records for other members of the general public.

8. These Plaintiffs also have a duty to not substantially disrupt the regular operation of County government.

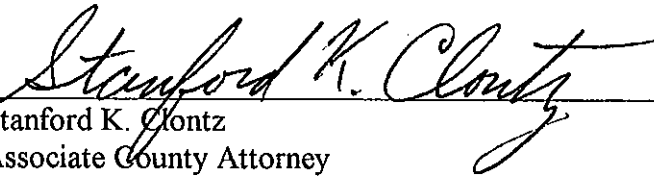
9. What would the citizens and residents of Buncombe County and North Carolina say if the custodian of public records did not take affirmative steps to prevent the destruction or loss of public records?

10. What would the citizens and residents of Buncombe County and North Carolina say if Buncombe County did not respond to threats of violence against public employees and public officials?

Respectfully submitted this the 18th day of August, 1999.



Joseph A. Connolly
County Attorney
WESTALL, GRAY, CONNOLLY & DAVIS, P.A.
81 Central Ave.
Asheville, NC 28801
828/254-6315



Stanford K. Clontz
Associate County Attorney
County of Buncombe
Attorney for Defendants
One Oak Plaza, Suite 105
Asheville, NC 28801
882/250-4116

99CV 03497

PETER DAWES, JAMES D. YELTON,
and MIKE MORGAN,
d/b/a C&T News Service,

Plaintiffs,

vs.

BUNCOMBE COUNTY BOARD OF
COMMISSIONERS and WANDA S.
GREENE, in her capacity as
Buncombe County Manager,

Defendants.

PETITION FOR
DECLARATORY JUDGMENT
AND OTHER RELIEF

The plaintiffs, Peter Dawes, James D. Yelton, and Mike Morgan, for their claims for relief against the defendants state:

1. The plaintiffs are each residents and citizens of Buncombe County, North Carolina, and journalists who produce various written media for distribution and a weekly television and radio show for broadcast within Buncombe County, North Carolina.

2. The defendant Buncombe County Board of Commissioners ("the Board"), is a body politic and the duly elected governing body of Buncombe County, North Carolina. The Board is an agency of North Carolina government within the meaning of North Carolina's Public Records Law, N.C. Gen. Stat. §§ 132-1, et seq., and is being sued in its capacity as a body corporate.

3. The defendant Wanda S. Greene is the duly appointed County Manager of Buncombe County, is an employee of Buncombe County, and is an agent of North Carolina government within the meaning of the Public Records Law.

4. This is an action brought pursuant to the Public Records Law, seeking (i) a judicial determination that certain actions taken by the defendant County Manager on behalf of the defendant Buncombe County Board of Commissioners violated the Public Records Law, and declaring such actions null and void; (ii) an order enjoining the defendants from repeating such

violations in the future; and (iii) an award of attorneys' fees and court costs.

5. On or about July 9, 1999 the defendant County Manager wrote each plaintiff to inform him that a County "Multiple Information Requests" policy would henceforth be enforced against him. The said policy, as described, purports to require each plaintiff to make all subsequent requests for the inspection, examination and copying of public county records in writing, in advance, to the County Manager's Office, and to then await "a timely, written response."

6. On or about July 15, 1999 the defendant County Manager prepared and forwarded a memorandum addressed to custodians of public county records, directing them to henceforth require the plaintiffs to submit all requests for the inspection, examination and copying of public county records in writing, in advance, to the County Manager's Office.

7. One or more custodians of public county records, in reliance upon the defendant County Manager's said July 15, 1999 memorandum, have subsequently denied the plaintiffs access to public county records.

8. The plaintiffs have also subsequently made written request to the defendant County Manager for the inspection, examination and copying of public county records, but have not received any timely written response to date.

9. The defendant County Manager's said actions have significantly and unreasonably impaired the plaintiffs in their ability to investigate and report to the public on matters of public interest.

10. A genuine controversy exists as to whether the defendant County Manager's enforcement of the said County "Multiple Information Requests" policy against the plaintiffs constitutes an ongoing violation of N.C.G.S. § 132-6.

WHEREFORE, the plaintiffs pray for relief against the defendants:

- a. That this action be set down for immediate hearing pursuant to N.C.G.S. §132-9;

- b. For a declaration that the actions of the defendant County Manager on July 9, 1999 and thereafter in prohibiting the plaintiffs' inspection and examination of public records constitutes a violation of the Public Records Law, and are null and void;
- c. For an Order enjoining and restraining the defendants from taking similar unlawful actions towards the plaintiffs or others in the future;
- d. For the recovery of the costs of this action, and for related expert witness fees and attorney fees; and
- e. For such other and further relief as the Court may deem just and proper.

Respectfully submitted this 30th day of July, 1999.



Thomas D. Roberts
20 Battery Park Avenue #305
Asheville NC 28801-2734
(828) 252-0602

Attorney for the plaintiffs

STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE
 COUNTY OF BUNCOMBE 99 JUL 30 PM 3:52 SUPERIOR COURT DIVISION
 FILE NO.

99CV 03497

BUNCOMBE COUNTY, C.S.C.
 PETER DAWES, JAMES D. YELTON)
 and MIKE MORGAN, BY _____)
 d/b/a C&T News Service,)
)
 Plaintiffs,)
 vs.)
 BUNCOMBE COUNTY BOARD OF)
 COMMISSIONERS and WANDA S.)
 GREENE, in her capacity as)
 Buncombe County Manager,)
)
 Defendants.)

PETITION FOR
 DECLARATORY JUDGMENT
 AND OTHER RELIEF

The plaintiffs, Peter Dawes, James D. Yelton, and Mike Morgan, for their claims for relief against the defendants state:

1. The plaintiffs are each residents and citizens of Buncombe County, North Carolina, and journalists who produce various written media for distribution and a weekly television and radio show for broadcast within Buncombe County, North Carolina.

2. The defendant Buncombe County Board of Commissioners ("the Board"), is a body politic and the duly elected governing body of Buncombe County, North Carolina. The Board is an agency of North Carolina government within the meaning of North Carolina's Public Records Law, N.C. Gen. Stat. §§ 132-1, et seq., and is being sued in its capacity as a body corporate.

3. The defendant Wanda S. Greene is the duly appointed County Manager of Buncombe County, is an employee of Buncombe County, and is an agent of North Carolina government within the meaning of the Public Records Law.

4. This is an action brought pursuant to the Public Records Law, seeking (i) a judicial determination that certain actions taken by the defendant County Manager on behalf of the defendant Buncombe County Board of Commissioners violated the Public Records Law, and declaring such actions null and void; (ii) an order enjoining the defendants from repeating such

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8. The plaintiffs have also subsequently made written request to the defendant County Manager for the inspection, examination and copying of public county records, but have not received any timely written response to date.

9. The defendant County Manager's said actions have significantly and unreasonably impaired the plaintiffs in their ability to investigate and report to the public on matters of public interest.

10. A genuine controversy exists as to whether the defendant County Manager's enforcement of the said County "Multiple Information Requests" policy against the plaintiffs constitutes an ongoing violation of N.C.G.S. § 132-6.

WHEREFORE, the plaintiffs pray for relief against the defendants:

- a. That this action be set down for immediate hearing pursuant to N.C.G.S. §132-9;

- b. For a declaration that the actions of the defendant County Manager on July 9, 1999 and thereafter in prohibiting the plaintiffs' inspection and examination of public records constitutes a violation of the Public Records Law, and are null and void;
- c. For an Order enjoining and restraining the defendants from taking similar unlawful actions towards the plaintiffs or others in the future;
- d. For the recovery of the costs of this action, and for related expert witness fees and attorney fees; and
- e. For such other and further relief as the Court may deem just and proper.

Respectfully submitted this 30th day of July, 1999.



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and to the protection of the rights and interests of persons, and, within the limitations of funds available for the purpose, shall make or cause to be made preservation duplicates or designate as preservation duplicates existing copies of such essential public records. Preservation duplicates shall be durable, accurate, complete and clear, and such duplicates made by a photographic, photostatic, microfilm, micro card, miniature photographic, or other process which accurately reproduces and forms a durable medium for so reproducing the original shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification, or certified copy of the original record. Such preservation duplicates shall be preserved in the place and manner of safekeeping prescribed by the Department of Cultural Resources. (1961, c. 1041; 1973, c. 476, s. 48.)

§ 132-9. Access to records.

(a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such orders. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.*

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court may, in its discretion, allow the prevailing party to recover reasonable attorneys' fees if:

- (1) The court finds that the agency acted without substantial justification in denying access to the public records; and
- (2) The court finds that there are no special circumstances that would make the award of attorneys' fees unjust.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court may, in its discretion, assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as

part of the costs. (1935, c. 22; 1995, c. 388, s. 4.)

Local Modification. — Durham: 1993, c. 227, s. 9; New Hanover: 1993, c. 227, s. 9; Orange: 1993, c. 358, s. 14; 1939, s. 2; city of Durham: 1993, c. 339, s. 2; city of Gastonia: 1985 (Reg. 1986), c. 902, s. 8; 1991, c. 557, s. 9.

Effect of Amendments. — The amendment, effective October 1, 1995, added the subsection (a) designating the former first sentence as subsection (a), in the sentence substituted "inspection, examination, or who is denied copies of public records" for "inspection, examination or copying", and added "or ce

"Any Person" Includes Corporation. — The General Assembly intended to exclude corporate entities from the scope of the phrase "any person" in this section. Advance Publications, Inc. v. City of Elizabeth City, 53 N.C. App. 281 S.E.2d 69 (1981).

The Public Records Act does not give a governmental agency discretionary authority to decline to comply with an order for release of records to the public until a time

§ 132-10. Qualified geographical information.

Geographical information developed and operated by county or city shall be made available to the public upon request at a reasonable cost. As a condition of providing the copy, the county or city shall agree in writing to the terms of this section, publication or otherwise used for trade or commercial purposes and use of information shall not constitute use for a

Editor's Note. — Session Laws 1995, c. 388, s. 8, made this section effective October 1, 1995.

Session Laws 1995, c. 151 which

Chapters
 132 through 134A

ALEXANDER CHARNS, Petitioner,
vs.
CECIL BROWN, in his official capacity as acting city
manager, City of Durham, N.C.; JACKIE McNEIL, in his
official capacity as chief of police, City of Durham, N.C.;
LAURA HENDERSON, in her official capacity as risk manager,
City of Durham, N.C.; and SYLVIA KERCKHOFF, in her official
capacity as mayor, City of Durham, N.C.; Respondents.

NO. COA97-973
 COURT OF APPEALS OF NORTH CAROLINA
 129 N.C. App. 635, 502 S.E.2d 7, 1998 N.C. App. LEXIS 668
 June 2, 1998, Filed

Appeal by petitioner from order and judgment entered 4 April 1997 by Judge James C. Spencer, Jr. in
 Durham County Superior Court.

HEADNOTE

1. Records of Instruments, Documents, or Things § 14 (NCI4th)-- public records -- suit to compel disclosure -- civil action -- summonses

A suit brought to compel the disclosure of public records under N.C.G.S. § 132-9 is a civil action, not a special proceeding; the Rules of Civil Procedure apply to such an action, and the respondents must be served with summonses.

2. Records of Instruments, Documents, or Things § 14 (NCI4th)-- public records -- suit to compel disclosure -- action not properly commenced

Service on respondents of petitioner's application for disclosure of public records and a copy of a judge's *ex parte* order to show cause was insufficient to commence an action to compel disclosure of public records.

3. Courts § 87 (NCI4th)-- lack of jurisdiction -- dismissal of action -- not overruling of *ex parte* order

The trial court's dismissal of an action against city officials to compel disclosure of public records for lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process did not impermissibly overrule another judge's *ex parte* order to show cause since the jurisdictional challenges were not before the judge who issued the order to show cause.

4. Records of Instruments, Documents, or Things § 14 (NCI4th)-- public records -- suit to compel disclosure -- *ex parte* show cause order -- voidness

An *ex parte* order to show cause in an action against city officials to compel disclosure of public records was void where no summonses had been served on respondents, and respondents would have been entitled to Rule 60(b) relief from the order. N.C.G.S. § 1A-1, Rule 60(b).

COUNSEL

Loflin & Loflin, by Thomas F. Loflin, III and Ann F. Loflin; Law Office of William G. Goldston, by William G. Goldston; and Alexander Charns, pro se; for petitioner-appellant.

Faison & Gillespie, by Reginald B. Gillespie, Jr., and The Banks Law Firm, P.A., by Sheena Jones Boyd, for respondents-appellees.

JUDGES

LEWIS, Judge. Judges MARTIN, John C., and MARTIN, Mark D. concur.

AUTHOR: LEWIS

OPINION

{*636} LEWIS, Judge.

Petitioner requested access to certain public records by letter dated 5 December 1996. He received two letters from the City of Durham advising him that his request would be addressed. Having received no further response from the City of Durham five weeks {*637} after sending his request, petitioner filed an action in Durham County Superior Court alleging that he had been denied access to copies of public records and seeking an order compelling their disclosure and enjoining respondents from denying him access to such records.

On 13 January 1997, the same day that petitioner filed this action, Judge Orlando F. Hudson, Jr. ordered, *ex parte*, that respondents release to petitioner the documents sought in his application or appear at a hearing scheduled for 14 February 1997 to show cause why they should not be compelled to allow petitioner to inspect the documents sought. Respondents were served with copies of petitioner's application and copies of Judge Hudson's *ex parte* order. None of the respondents received a summons.

On 5 February 1997, respondents filed motions to dismiss the action under N.C. Gen. Stat. § 1A-1, Rules 12(b)(1), 12(b)(2), 12(b)(4), 12(b)(5), and 12(b)(6). Respondents also filed a motion for relief under N.C. Gen. Stat. § 1A-1, Rule 60. A hearing on the respondents' motions was held on 13 February 1997 in Durham County Superior Court.

In an order entered 4 April 1997, Judge Spencer granted respondents' 12(b)(4), 12(b)(5), and 12(b)(2) motions to dismiss for insufficiency of process, insufficiency of service of process, and lack of personal jurisdiction, respectively, because respondents were not served with summonses. Petitioner appeals.

Petitioner's first argument is that an action to compel disclosure of public records under N.C. Gen. Stat. § 132-9 is not a civil action but a special proceeding to which the Rules of Civil Procedure do not apply. Therefore, petitioner argues, summonses were not required in this case. The argument is incorrect.

Our statutes define an action as "an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment or prevention of a public offense." N.C. Gen. Stat. § 1-2 (1996). A

suit under G.S. 132-9 fits squarely within this definition.

Furthermore, G.S. 132-9 authorizes "actions" to compel disclosure of public records. It does not provide for special proceedings. The fact that an action "brought pursuant to this section shall be set down for immediate hearing," see N.C. Gen. Stat. § 132-9 (1995), does {*638} not transform the civil action into a special proceeding. We hold that a suit brought to compel the disclosure of public records under G.S. 132-9 is a civil action, not a special proceeding.

Our determination that suits under G.S. 132-9 are civil actions makes the rest of Petitioner's first argument irrelevant. However, we believe it desirable to point out that the Rules of Civil Procedure do apply to special proceedings, as to civil actions, except where a different procedure is set out in the statute. See N.C. Gen. Stat. § 1A-1, Rule 1; N.C. Gen. Stat. § 1-393 (1996). Therefore, unless a statute states that a summons is not required or sets out a different procedure for serving a summons, Rule 4 applies. Furthermore, we note that a summons is required for all contested special proceedings. See N.C. Gen. Stat. § 1-394 (1996).

Having determined that actions under G.S. 132-9 are civil actions, we move to petitioner's second argument. Petitioner takes the position that a summons is merely a "piece of paper" that would have been superfluous considering the other materials served on respondents. It is true that the respondents were served with petitioner's application for disclosure and a copy of Judge Hudson's *ex parte* Order to Show Cause which, together, provided respondents with most of the information required for a summons. However, a summons has independent legal significance. *Collins v. Edwards*, 54 N.C. App. 180, 182, 282 S.E.2d 559, 560 (1981) (stating that where proper summons was not issued, the action was never commenced). We are not aware of any case in which actual notice has been found to be sufficient to commence a lawsuit in which no summons was served. Summonses were never served in this case and, therefore, this action is deemed never to have commenced.

Petitioner's final argument is that Judge Spencer exceeded his authority by overruling Judge Hudson's *ex parte* Show Cause Order when he dismissed the action for lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process. Petitioner's argument is without merit.

A superior court judge may not overrule the order of another superior court judge. *Wall v. England*, 243 N.C. 36, 39, 89 S.E.2d 785, 787 (1955). Here, Judge Spencer heard respondents' motions under N.C. Gen. Stat. § 1A-1, Rules 12(b)(1), 12(b)(2), 12(b)(4), 12(b)(5), 12(b)(6) and 60(b) seeking dismissal of the case and relief from Judge Hudson's *ex parte* Show Cause Order.

{*639} Respondents' jurisdictional challenges had not been before Judge Hudson when the *ex parte* order was entered. In fact, the *ex parte* Show Cause Order was entered before petitioner's application was sent to respondents. Respondents asserted their personal jurisdiction and process challenges as soon as possible. Nonetheless, petitioner contends that Judge Spencer erred by considering respondents' jurisdictional claims and dismissing the action for lack of jurisdiction.

We find it unfathomable that a superior court judge would be powerless to dismiss an action for lack of personal jurisdiction and insufficiency of process simply because another superior court

judge had entered an *ex parte* order prior to the commencement of the action. Such an absurd result would be contrary to statutory and constitutional jurisdictional requirements.

Petitioner further asserts that, although the trial court did not specifically address the 60(b) motion in its order, it implicitly granted the motion. The courts of our State do not enter implicit orders. If Petitioner means that the dismissal of the action had the effect of relieving the respondents from the *ex parte* order, he is correct.

Petitioner suggests that if Judge Spencer had granted respondents' 60(b) motion, he would have overruled another superior court judge. Although this case is fully decided on the reasoning set forth above, we will address this issue so that this opinion will not be misinterpreted for what it does not say.

To adopt petitioner's reasoning would render Rule 60(b) meaningless. A 60(b) order does not overrule a prior order but, consistent with statutory authority, relieves parties from the effect of an order. N.C. Gen. Stat. § 1A-1, Rule 60(b) (1990).

In this case, Judge Spencer certainly would have had grounds to grant respondents' 60(b) motion because Judge Hudson's order was void as a matter of law. It is clear from the record that Judge Hudson's *ex parte* Show Cause Order was entered before any papers were served on respondents. There is nothing in the record to indicate that a certificate of service was attached to petitioner's application. It was not Judge Hudson's responsibility to effect the issuance or service of summons. Because petitioner failed to do so, personal jurisdiction was not obtained over any of the respondents. The superior court had no jurisdiction to enter such an order.

{*640} A summons is required in every case unless otherwise provided by statute. N.C. Gen. Stat. § 1A-1, Rules 1, 4 (1990). Nothing in G.S. 1-132 relieved petitioner of the obligation to serve summonses on respondents in order to obtain personal jurisdiction over them. We affirm Judge Spencer's judgment dismissing petitioner's action for lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process.

Affirmed.

Judges MARTIN, John C., and MARTIN, Mark D. concur.

DISPOSITION

Affirmed.