

The Parties

1. Plaintiff News and Observer Publishing Company ("the plaintiff" or "the N&O") is a North Carolina corporation that maintains its principal place of business in Raleigh, Wake County, North Carolina. Among other things, the company publishes *The News & Observer*, a general interest newspaper that is published in Wake County and distributed throughout the surrounding area of North Carolina. *The News & Observer* also publishes an online edition at www.newsobserver.com.

2. Defendant Carol L. Folt is the Chancellor of the University of North Carolina at Chapel Hill "UNC"), a public agency of North Carolina government as defined by G.S. § 132-1(a). Chancellor Folt is sued in her public capacity and as the custodian of UNC records that are public pursuant to the Public Records Law.

The North Carolina Public Records Law

3. The North Carolina Public Records Law ("the Public Records Law") is codified at N.C. Gen. Stat. §§132-1 through 132-10. The public policy underlying the Public Records Law is set out in G.S. § 132-1(b), which provides:

The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, 'minimal cost' shall mean the actual cost of reproducing the public record or public information.

4. The Public Records Law provides, in G.S. §132-1(a), that public records are defined as:

all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, *made or received* pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

5. The Public Records Law further provides that "Every 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." G.S. §132-6(a).

6. The Public Records Law further provides, in G.S. §132-6(c), that

(c) No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation . . .

History and Background Concerning the Records at Issue

7. According to news reports and information and documents released by UNC, an investigation conducted by the University during 2010 and 2011 identified "serious anomalies" related to the course offerings and methods of instruction with the Department of African and Afro-American Studies ("the Department"). The investigation triggered a comprehensive review of all courses offered within the Department from the first summer session of 2007 through the final summer session of 2011. The review was conducted by Dr. Jonathan Hartlyn, Distinguished Professor and Senior Associate Dean of the Department of Political Science, and Dr. William Andrews, Distinguished Professor and Senior Associate Dean of the Department of English and Comparative Literature. Their report, which was dated May 2, 2012, identified "anomalies" in 54 courses that enrolled a collective total of 686 students during the period of their review. Among other things, Drs. Hartlyn and Andrews determined that the 54 courses either were offered without faculty supervision or were instructed with limited or no classroom contact or other formal interaction with faculty; that grade rolls and grade change forms for some of the 54 courses were submitted to the Office of the University Registrar with forged faculty signatures; and that some independent study courses were not properly structured or supervised. Their report recommended steps to address the following issues:

- Courses where students completed work and received grades without the course being supervised or graded by an approved instructor of record;
- Courses that were designed to include regular classroom time and instructor contact but were offered with limited to no classroom or other instructional contact;
- Irregular submission of grade rolls and/or change of grade forms; and
- Independent study courses without appropriate plans of study.

8. Subsequently, UNC commissioned several other studies or reviews of academic offerings and procedures, including an Independent Study Task Force that reviewed policies and practices on independent study and directed reading courses across the entire College of Arts and Sciences; a study by the management firm of Baker Tilly Beers & Cutler, PLLC ("Baker Tilly") that assessed UNC's plans to implement various enhancements to academic policies, processes, procedures and systems; and an investigation of the "anomalies" within the Department led by former North Carolina Governor Jim Martin.

9. Both the Baker Tilly study and the report rendered by Governor Martin were released on December 19, 2012. In January, 2013 Governor Martin submitted an Addendum to his original report that contained additional information. Among other things, Governor Martin's original report and addendum disclosed that the "anomalies" in Department courses extended at least as far back as 1997; identified numerous "suspect" lecture and independent study course sections offered by the Department; and reported that student-athletes comprised 44.9% of the enrollment in 172 "suspect" courses in the Department between 2001 and 2012. In some course sections, student-athletes comprised a majority of the students enrolled. For example, in the spring semester of 2009 36 students enrolled in AFAM 428 001; of these, 26 were student-athletes. The student-athletes in the class attained an average GPA of 3.65, whereas the non-athlete students averaged 3.04.

10. Governor Martin's report identified 39 course sections offered by the Department between the 1997 Fall academic term and the 2009 Summer II term as reflecting the most

serious instances of academic misconduct, such as a lecture course section in which the faculty member listed as instructor denied teaching the course section and signing the grade roll, or one in which the Department chair stated that the course section had not been taught. The report denominated these courses as "Type 1" courses and reported that 384 students enrolled in them. Of these, 48 students took two courses, nine students took three courses, and three students took four courses.

11. UNC is a founding member of the Southern Association of Colleges and Schools ("SACS"), whose Commission on Colleges serves as the regional body for the accreditation of degree-granting higher education institutions in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas and Virginia that award associate, baccalaureate, master's, or doctoral degrees. The mission of the SACS Commission on Colleges is to assure the educational quality and improve the effectiveness of its member institutions. To those ends, the Commission promotes six core values: Integrity; Peer Review/Self-Regulation; Student Learning; Continuous Quality Improvement; Accountability; and Transparency.

12. In 2012 UNC voluntarily sent the SACS Commission on Colleges unsolicited copies of the Hartlyn-Andrews report and the report of the Independent Study Task Force. Upon becoming aware of this and other information – including media reports and the NCAA's March 12, 2012 report entitled "University of North Carolina, Chapel Hill Public Infractions Report" – the Commission sent UNC a letter dated July 2, 2012 in which it questioned whether UNC was in compliance with SACS' *Principles of Accreditation* and whether the institution was able to monitor and maintain its academic integrity. In light of these concerns, the Commission requested that UNC provide it with an array of data and information. Over the ensuing months UNC complied with these requests via several exchanges of correspondence and via a lengthy response dated March 8, 2013 entitled "Response to the January 15, 2013 Request from the

Southern Association of Colleges and Schools Commission on Colleges (the SACS Response).”

13. Among other things, the SACS Response reported that “173 of the 384 (45%) individual students who took a Type 1 course were student-athletes. The student-athletes were members of various teams, as follows: baseball (15), football (88), field hockey (2), junior varsity basketball (1), men’s basketball (21), men’s cross country (1), men’s golf (4), men’s lacrosse (3), men’s swimming (1), men’s tennis (8), men’s track (2), softball (2), women’s basketball (12), women’s golf (2), women’s lacrosse (2), women’s soccer (3), women’s track (3), women’s volleyball (1) and wrestling (2). The SACS Response also embodied this information in the following table, which is referenced at page 144 of the Response:

Number of Student-Athletes by Sport

Sport	Count	With degrees	Without degrees
Baseball	15	11	4
Football	88	51	37
Field hockey	2	2	0
Junior varsity basketball	1	1	0
Men’s basketball	21	15	6
Men’s cross country	1	1	0
Men’s golf	4	4	0
Men’s lacrosse	3	3	0
Men’s swimming	1	1	0
Men’s tennis	8	8	0
Men’s track	2	1	1
Softball	2	2	0
Women’s basketball	12	9	3
Women’s golf	2	2	0
Women’s lacrosse	2	2	0
Women’s soccer	3	1	2
Women’s track	3	3	0
Women’s volleyball	1	0	1
Wrestling	2	1	1
Totals:	173	118	55

14. Since late June, 2013 the N&O, through its undersigned counsel, repeatedly has requested that UNC provide it with access to and/or copies of the record or records from which UNC extracted the information described above that was provided to SACS in both summary and table form. Through its counsel, UNC has informed the N&O that the record in question consists of an Excel database or spread sheet that was compiled by UNC. On August 2, 2013 UNC's counsel informed the undersigned that the spread sheet includes 13 data fields, the headings of which are as follows:

- Personal Identification Number
- Name of Student
- Sport
- Course Title
- Semester
- Degree Date
- Major 1
- Major 2
- Minor
- Hours
- Cumulative GPA
- # Courses
- Folder

15. In recognition of the fact that some of the data fields in the spread sheet contain information that is confidential as a matter of law, the N&O requested, pursuant to G.S. § 132-6(c), that it be provided with a redacted copy of the spread sheet with the contents of all of the fields redacted except those entitled "Sport," "Course Title," and "Semester." That is, the N&O requested only that portion of the record that would show, without identifying any student-athlete, how many participants in a particular sport were enrolled in a particular "Type 1" course during a particular semester.

16. Despite protracted attempts on the part of the plaintiff to negotiate with UNC, including face-to-face meetings with UNC officials, UNC has steadfastly refused, without just or proper cause, to provide the N&O with the redacted spreadsheet.

WHEREFORE, the plaintiffs respectfully pray that the court:

1. Accord this matter priority and set it down for an immediate hearing pursuant to G.S. § 132-9(a);

2. Enter a preliminary order requiring the defendant (a) to bring the redacted spread sheet before the court for *in camera* review and (b) show cause, if any, why the plaintiff is not entitled to obtain a copy;

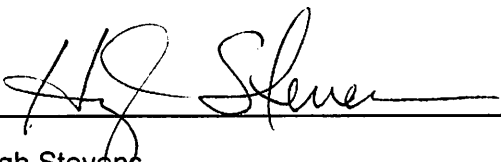
3. Enter an order declaring that the redacted spreadsheet is a public record pursuant to the Public Records Law and requiring the defendant to provide the plaintiff with a copy of same;

4. Enter an order awarding the plaintiff its reasonable attorney fees pursuant to G.S. § 132-9(c)(1).

5. Provide the plaintiff with such further and additional relief as the court shall deem to be just, proper and authorized by law, and that the costs of this action be taxed against the defendant.

Respectfully submitted this the 23^d day of January, 2014.

STEVENS MARTIN VAUGHN & TADYCH, PLLC

By:  _____

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Verification

The undersigned hereby verifies that as counsel to the plaintiff News and Observer Publishing Company he has acted as the principal representative of the plaintiff with respect to the matters and things alleged in the foregoing Complaint; and that he either has personal knowledge as to the truth of the allegations therein or sincerely believes them to be true on the basis of information that is publicly available and verifiable.

This the 23^d day of January, 2014.

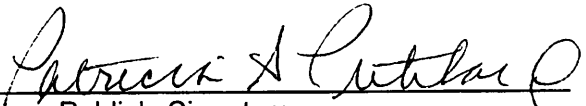


Hugh Stevens

State of North Carolina)
County of Wake)

Signed and sworn to (or affirmed) before this day by

Hugh Stevens

Date: 1/23/14 

Notary Public's Signature
Patricia A. Pritchard

(Notary's printed or typed name, Notary Public)

(Official Seal) My commission expires: 9/5/16

