NO. 23-CI-00052

CALLOWAY CIRCUIT COURT
DIVISION 1
SPECIAL JUDGE JOHN ATKINS

ELECTRONICALLY FILED

WPSD-TV, LLC PLAINTIFF

v.

MURRAY STATE UNIVERSITY DEFENDANT

DEFENDANT MURRAY STATE UNIVERSITY'S RESPONSE TO PLAINTIFF WPSD-TV, LLC'S MOTION FOR ATTORNEY'S FEES AND STATUTORY PENALTIES

The Court should reject plaintiff WPSD-TV, LLC's ("WPSD") egregious request for attorney fees and statutory penalties because the facts of this case do not support an award of sanctions under the Open Records Act ("ORA"). In fact, nothing about the actions taken by defendant Murray State University ("MSU") as it relates to its obligations under the ORA supports a finding of willfulness. Moreover, the unreasonable sum WPSD requests is extremely disproportionate to the claims and findings at issue. As such, the Court should deny WPSD's Motion for attorney's fees and statutory penalties.

I. THE COURT SHOULD REJECT WPSD'S REQUEST FOR COSTS, FEES, AND PENALTIES BECAUSE MSU DID NOT WILLFULLY VIOLATE THE ORA.

The Court should deny WPSD's motion for costs, fees, and penalties because the Court has not made the prerequisite finding of willfulness. In order for WPSD "[t]o be entitled to attorney's fees, costs, and penalties, the circuit court must find that the agency 'willfully' denied access to records in violation of the ORA." *Cabinet v. Todd Cnty. Std.*, 488 S.W.3d 1, 9 (Ky. App. 2015). Under this standard, "[a] public agency's mere refusal to furnish records based on a good faith claim of statutory exemption, which is later determined to be incorrect, is insufficient to establish

a willful violation of the Act." *Bowling v. Lexington-Fayette Urban County Gov't*, 172 S.W.3d 333, 343 (Ky. 2005) (citing *Blair v. Hendricks*, 30 S.W.3d 802, 808 (Ky. App. 2000)).

In support of its summary judgment motion, WPSD directed the Court's attention to the redactions on about 2% of the pages of records it received from MSU in response to its Open Records requests. *See* (Exh. 10 to WPSD's Mot. for Summ. Judg.). After the Court conducted an *in camera* review of those two dozen pages of records—which were handpicked by WPSD from the over 1,000 pages it received from MSU in response to its requests—the Court held that MSU "misused or misapplied the attorney client privilege, the personal privacy privilege, the preliminary records exemption and a near categorical redaction scheme 'at odds with existing law'" but did not make any findings of willfulness. (February 16, 2024 Order). The Court should decline to find that MSU willfully withheld records in violation of the Act because the facts of this case and the Court's previous findings do not support such a conclusion.

Even though the Court ultimately disagreed with MSU's application of the attorney client privilege, the personal privacy exemption, and the preliminary records exemption to the Open Records Act, as a matter of law, MSU's citation to those exemptions cannot support a finding of willfulness. "Our Supreme Court has emphasized that a public agency's . . . good faith claim of a statutory exemption, which is later determined to be incorrect, is insufficient to establish a willful violation of the Act." *Cabinet for Health & Family Servs. v. Courier-Journal, Inc.*, 493 S.W.3d 375, 384 (Ky. App. 2016) (quoting *Bowling*, 172 S.W.3d at 343) (cleaned up). Thus, the Court's rejection of MSU's attorney-client, privacy, and preliminary exemption citations is insufficient as a matter of law to justify a finding that MSU willfully withheld records in violation of the Open Records Act. *See id.* The Court should decline to find "willfulness" in this case on the basis of MSU's claimed exemptions, all of which were made in good faith.

The Court has also categorized MSU's actions herein as a "near categorical redaction scheme" (February 16, 2024 Order); however, MSU's use of categories to explain its redactions does not amount to a willful violation of the Open Records Act. As the Supreme Court of Kentucky has instructed, "with respect to discrete types of information routinely included in an agency's records and routinely implicating similar grounds for exemption, the agency need not undertake an ad hoc analysis of the exemption's application to such information in each instance, but may apply a categorical rule." *Ky. New Era v. City of Hopkinsville*, 415 S.W.3d 76, 89 (Ky. 2013) (citing *The Nation Magazine, Washington Bureau v. United States Customs Service*, 71 F.3d 885 (D.C. Cir. 1995)). There is a stark contrast between "*blanket* denials of ORA requests, *i.e.*, the nondisclosure of an entire record or file on the ground that some part of the record or file is exempt[,]" and an agency having made "available for examination the requested records after having separated, in its view, the excepted private information from the nonexcepted public information." *Id.* at 88 (citing KRS 61.878) (quotation marks omitted; emphasis in original). That distinction is critical in this case because MSU produced the requested records to WPSD "after having separated, in its view, the excepted private information" from the public records. *Id.*

It is well settled that an agency's "mere refusal to furnish records based on a good faith claim of statutory exemption[] . . . is insufficient to establish a willful violation of the Act[,]" so "**[m]ore is required to trigger this sanction under KRS 61.882(5) than the erroneous denial of an ORA request**." *City of Taylorsville Ethics Comm'n v. Trageser*, 604 S.W.3d 305, 313 (Ky. App. 2020) (quoting *City of Fort Thomas*, 406 S.W.3d at 854) (cleaned up; quotation marks omitted; emphasis added). Here, the Court simply disagreed with the exemptions MSU invoked, in good faith, in its responses to WPSD's Open Records requests. Much more is required under the Act to support an award of costs, fees, and penalties.

There is no evidence of willfulness in this case. Instead, as the extensive briefing in this litigation recounts, MSU undertook efforts at every juncture of WPSD's requests and this resulting dispute to provide WPSD with nonexempt records responsive to its requests.[1] While WPSD quizzically argues that MSU "had a years' [sic] worth of opportunity to voluntarily remedy" (what WPSD terms to be) MSU's "over-redaction of these records" (WPSD Motion, p. 3), this argument blatantly ignores the fact that MSU has been expending effort for that entire year in an express effort to provide WPSD with the records to which it believed it was entitled.

Apart from MSU's good faith redactions—which, as a matter of law, are insufficient to support a finding of willfulness—there is simply no evidence that MSU willfully violated the Open Records Act in connection with its responses to WPSD's requests. Rather, MSU's repeated and ongoing attempts to work with WPSD and provide it with the records it requested showcase the opposite. The Court must decline to find that MSU willfully violated the Act in this case.

II. THE COURT SHOULD DENY WPSD'S GLUTTONOUS COST, FEE, AND PENALTY REQUEST.

Even if the Court concludes that MSU willfully violated the Open Records Act, which would be plainly contrary to the facts and evidence in this case, and which the Court should *not* do, it should nevertheless deny an award of costs, fees, and penalties to WPSD. "Where 'willfulness' is found, the statute still leaves the imposition of fees, costs, and/or penalties to the trial court's discretion." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 854 (Ky.

[1] For instance, as noted throughout the summary judgment briefing and confirmed in WPSD's Report of Services Rendered (Exhibit A to WPSD's Affidavit of Counsel, filed February 26, 2024), even before this litigation commenced, MSU's in house counsel worked directly with counsel for WPSD in an effort to ascertain what, in particular, WPSD believed it needed so MSU could identify and produce it. After MSU's general counsel conferred with WPSD's counsel, litigation commenced, and counsel for MSU exchanged numerous emails, logs, and calls with counsel for WPSD to supplement MSU's productions and identify, again, what, in particular, WPSD believes it did not receive. It is also undisputed that MSU promptly worked to supplement its productions both after the Attorney General's ruling and this Court's recent Order in accordance with both of those decisions.

2013). "The factors bearing on that determination are apt to include the extent of the agency's wrongful withholding of records; the withholding's egregiousness; harm to the requester as a result of the wrongful withholding, including the expense of litigating the matter; and the extent to which the request could be thought to serve an important public purpose." *Id.* (citing *Davy v. Central Intelligence Agency*, 550 F.3d 1155 (D.C. Cir. 2008)).

Here, none of these factors weigh in favor of the issuance of costs, fees, and penalties in this case. To start, with respect to the "extent of the agency's wrongful withholding of records" and "the withholdings' egregiousness," MSU's minor withholdings were not egregious. Specifically, in response to WPSD's Open Records requests, MSU produced over 1,000 pages of records but, in this litigation, WPSD merely contested the redactions on about 20 of those pages. (WPSD Mot. for Summ. Judg., pp. 10-11) (WPSD listed "all remaining contested redactions" in its Exhibit 10); (Exh. 10 to WPSD's Mot. for Summ. Judg.) (listing at-issue redactions). In other words, the contested redactions amount only to about *two percent* of the total pages MSU produced. The Court should reject any characterization of MSU's minor at-issue redactions as "egregious" and, instead, focus on the volume of records that MSU produced.

Further, WPSD has *not* been harmed by MSU's redactions; such a suggestion is ludicrous and disingenuous.[2] From the outset of the litigation, WPSD acknowledged that it possessed unredacted versions of some of the records at issue "from another source[.]" *See* (Complaint, ¶ 19). Thus, WPSD cannot claim that it was harmed by virtue of MSU's redactions to emails which WPSD already possessed in an unredacted format. Moreover, pursuant to the Court's February 16, 2024 Order, MSU produced WPSD with unredacted versions of the at-issue records, and WPSD now expressly categorizes at least some of the previously redacted material as "benign."

[2] The expense of litigating this matter is addressed below, *infra* Section III.A.

(WPSD Motion, p. 5). Thus, it is clear from the record and from WPSD's own characterizations of the at-issue materials that MSU's redactions and withholdings did not cause harm to WPSD. WPSD has never identified any particular piece of information that it requested but did not receive, and WPSD advances no argument that it was harmed as a result of MSU's redaction of any particular material. The Court should decline to award costs, fees, and penalties in this matter because WPSD has not sustained harm as a result of MSU's responses to WPSD's requests.

In weighing the factors bearing on the Court's decision, the Court should decline to award costs, fees, and penalties in this case because the facts do not support it. There are no facts in this case suggesting that MSU engaged in "egregious" behavior, much less that MSU disregarded WPSD's rights under the Open Records Act, consciously or otherwise. WPSD's own positions in this case highlight WPSD's lack of harm stemming from MSU's redactions, and cement the conclusion that MSU made a handful of benign redactions in the over 1,000 pages of records MSU produced to WPSD. The Court should simply decline to use its discretion to award costs, fees, and penalties in this case.

III. IF THE COURT ERRONEOUSLY GRANTS WPSD'S MOTION, IT SHOULD SIGNIFICANTLY REDUCE THE REQUESTED AMOUNT.

Even if the Court ultimately decides to award costs, fees, and penalties to WPSD, which it should *not* do, the Court should do so in an amount well below the egregious sum WPSD requests.

A. Any award of attorney's fees must be reasonable.

First, if the Court decides to award WPSD its attorney's fees, which it should not do, the Court should reduce the amount sought to a more reasonable total. WPSD requests attorney's fees calculated at $425 and $290 per hour for a total of over $40,000 in attorney's fees. *See* (WPSD's Report of Services Rendered, Exhibit A to WPSD's Affidavit of Counsel, filed February 26, 2024). Both the rates for WPSD's counsel's time, as well as the amounts of time billed, are unreasonably

high and should be reduced in the event the Court elects to award WPSD costs and fees. WPSD's counsel claims that the rates they charged in this case "represent[] a discount off [their] normal billing rates" because they rendered their services in this case "on behalf of the public interest." (WPSD's Affidavit of Counsel, filed February 26, 2024). While respective rates of $425 and $290 per hour may represent top market rates in Kentucky's largest cities, they certainly do not reflect discounted rates in a dispute between a local media publication and a public agency. Regardless, the Open Records Act permits the Court to award "**reasonable** attorney's fees," KRS 61.882(5) (emphasis added), not *top market* fees.

Moreover, the Court should not award WPSD attorney's fees for every single activity claimed in WPSD's motion. For instance, WPSD has a line item entry in its attorney's fees report for time spent researching "Title IX Due Process Bill and Vote History;" however, WPSD's motion and accompanying documents provide no insight whatsoever as to how this entry is relevant to this matter, much less as to why MSU should be required to foot WPSD's bill for it.

As another example, in addition to the countless hours *MSU* expended in assembling numerous initial and revised productions and accompanying redaction logs, WPSD seeks compensation for the time its counsel spent reviewing the same. This cyclically *increased* WPSD's attorney's fees each time MSU sought to further comply with the Open Records Act, since every effort MSU made to supplement its production obviously resulted in more attorney's fees to both parties. It would not serve the commands of the Open Records Act to require a public agency to pay *increased* attorney's fees merely because the public agency worked diligently through the life of the case to provide the requester with supplemental records in response to their requests. Such a bizarre cyclical framework would subject public agencies to face increased exposure in litigation where they work to resolve the case and provide the requestor with records

at every juncture. To the extent the Court entertains WPSD's request for attorney's fees, the Court should award an amount of fees far below that sought by WPSD.

B. Penalties are not appropriate here and, even if awarded, should be well below the excessive payout WPSD requests.

In the event the Court decides to issue monetary penalties against MSU, which it should not do, the Court should reject the shockingly high figure suggested by WPSD and should calculate a more reasonable penalty in line with the facts and realities of this case. While WPSD attempts to paint its penalty suggestion as being "consistent with previous sanctions imposed for similar violations of the Act" (WPSD Motion, p. 3), the cases cited by WPSD command a far more conservative penalty amount than WPSD seeks.

1. The Court should decline to award penalties on a per-record basis.

WPSD cites the Court of Appeals' decision in *Cabinet for Health & Family Servs. v. Courier-Journal, Inc.* to support WPSD's contention that the Court should award penalties to WPSD on a per-record basis. (WPSD Motion, p. 3). The facts of that case, which ultimately supported a penalty award on a per-record basis, are starkly distinguishable from this litigation.

The *Cabinet for Health & Family Servs.* is a hallmark Open Records case involving one of the highest, if not the actual highest, penalty amounts awarded under the Open Records Act in Kentucky. *Cabinet for Health & Family Servs. v. Courier-Journal, Inc.*, 493 S.W.3d 375 (Ky. app. 2016). The circuit court's award of penalties in the *Cabinet for Health & Family Servs.* was expressly supported by numerous facts supporting a finding of willfulness, including:

- The Cabinet's continued, intentional "wholesale blanket approach to withholding public records, despite such approach being prohibited by the Open Records Act a*nd contrary to this Court's repeated Orders* to support any and all redactions by case by case analysis[;]" *id.* at 384-85 (emphasis added);
- The "Cabinet's failure to provide any meaningful case specific reasoning for redactions, [and] also the Cabinet's failure to produce witnesses with personal knowledge of the basis for the Cabinet's numerous redactions[;]" *id.* at 385;

- The Cabinet's "further attempt[s] to delay and obstruct access to the records by adopting 'emergency' regulations, and [by] refusing to follow the statutory procedure of KRS 61.880 requiring the assertion of a specific exemption, and making an explanation of how the exemption applies[;]" *id.*;

- The Cabinet's "intentional[] adopt[ion of] a legal strategy designed to delay, obstruct, and circumvent the Court's ruling[;]" *id.*;

- The Cabinet's continued refusal "to conduct a meaningful case by case review of the requested files, relying instead on a protocol that calls for wholesale redactions without any balancing of competing interests of privacy and the public's need to know[.]" *Id.* at 386.

After reviewing the above facts in support of a finding of willfulness, the *Cabinet for Health & Family Servs.* court was very careful to "note[] that **it [was] not imposing penalties for the unsuccessful assertion of privileges**, but [rather] for the Cabinet's refusal to comply with the plain requirements of the statute to *assert* the privileges it claimed, and to provide an explanation of why the privilege applies." *Id.* (citing KRS 61.880) (emphasis added).

In justifying the substantial penalty it awarded in the *Cabinet for Health & Family Servs.* case, the trial court summarized the pertinent circumstances supporting the high award:

> If the Cabinet had asserted its arguments properly at the time it denied the request, and at the outset of this lawsuit, those claims of privilege could have been adjudicated in a timely and orderly fashion. Instead, the Cabinet obstructed and delayed resolution of this case by a legal strategy based on the refusal to specify and support its claims of privilege. Only after a trip through the appellate courts and remand, followed by very specific orders from this Court, did the Cabinet comply with its legal obligation to compile a privilege log that should have been provided at the time it initially denied the request in 2010. Once the privilege log was compiled, it was totally devoid of specific factual information to support its claims of privilege. The Court finds that the Cabinet's unjustified legal tactics (including adoption of the emergency regulations, and continued use of its protocol for wholesale redactions after the Court had specifically rejected it), constitute a willful obstruction of its duty of compliance with the Act. In context of the large volume of public documents at issue in this case, and the overall budget of the Cabinet, the Court finds that this is an appropriate penalty under KRS 61.882(5).

Id. at 386-87.

The Court should squarely reject WPSD's categorization of the *Cabinet for Health & Family Servs.* case as involving "similar violations of the Act." (WPSD Motion, p. 3). In glaring contrast to that case, MSU provided WPSD with the basis for every single redaction it made starting from the first batch of responsive records it produced to WPSD. *See*, *e.g.*, (Exhs. 4, 5, 6, and 8 to WPSD's Mot. for Summ. Judg.). MSU also worked directly with WPSD's counsel (prior to the commencement of this suit) as part of its continuous attempts to satisfy WPSD's requests. *See* (Exhibit A to WPSD's Affidavit of Counsel, filed February 26, 2024) (referencing WPSD's counsel's call with MSU General Counsel Rob Miller). As soon as MSU received the Attorney General's decision in 23-ORD-024, MSU supplemented its production to WPSD in accordance with that ruling. *See* (Exhs. 12 and 13 to WPSD's Mot. for Summ. Judg.).

Then, throughout the course of this litigation, MSU's counsel worked extensively with counsel for WPSD to provide supplemental productions of records, revised and updated redaction logs, a *Vaughn* index, an attorney-client privilege log, and a proffer of the substance of MSU's remaining good faith redactions of benign material. *See* (*id.*); (MSU's Response to WPSD's Mot. for Summ. Judg., pp. 6-7). Finally, the categorical opposite of the Cabinet's egregious behavior in *Cabinet for Health & Family Servs.*, here, as soon as this Court rejected MSU's redactions, MSU provided WPSD with unredacted records pursuant to the Court's Order. *Cf. Cabinet for Health & Family Servs.*, 493 S.W.3d at 386-87.

There is *nothing* "similar" between the Cabinet's behavior in the *Cabinet for Health & Family Servs.* and MSU's behavior in this case. Thus, the Court should not utilize that case—with a historically high sanction under the Open Records Act—as supportive of the issuance of penalties in this case. None of the reasons that supported a high penalty award in *Cabinet for Health & Family Servs.* are present here. Instead, the record demonstrates MSU's continued attempts to

comply in good faith with WPSD's Open Records requests at every turn. The Court should reject WPSD's suggestion that *Cabinet for Health & Family Servs.* supports the issuance of a per-record penalty in this case.

2. The Court should reduce the amount of records used to calculate any potential penalty it awards.

The Court should also summarily reject WPSD's confusing calculation that MSU improperly withheld "and/or" redacted 105 records. (WPSD Motion, p. 3). During the summary judgment briefing and hearing in this matter, WPSD represented that the only records and redactions which remained "at issue" in this case are those listed in Exhibit 10 to WPSD's Motion for Summary Judgment. In response to WPSD's representations, the records listed in WPSD's Exhibit 10 were provided to the Court for its *in camera* review, and those records served as the basis for the Court's February 16, 2024 Order. The Court has not determined—nor has WPSD argued—that each and every single redaction MSU made across its voluminous productions to WPSD was improper. Thus, the Court should reject WPSD's contention that MSU should be sanctioned for every single record it redacted, as such a penalty would be far in excess of the arguments and findings in this case.

More critically, WPSD appears to count each listed redaction as covering a distinct "record" for purposes of a penalty calculation. First, in *Cabinet for Health & Family Servs.*, the penalties were calculated on the basis of each discrete *file* that the public agency withheld from the requester. The public agency specifically withheld *140 case files* from production, so the agency was sanctioned at a penalty of $10 per day *per case file* withheld. 493 S.W.3d at 386. Naturally, each case *file* likely contained more than one discrete record, and certainly more than one page of contents. The court deciding *Cabinet for Health & Family Servs.*, however, did not issue sanctions on the basis of every single page withheld, nor even on the basis of every discrete

record contained within the files sought. *Id.* Instead, the court determined that a per-record penalty award was appropriate and calculated the same on the basis of each *file* that had been withheld. Here, the Court should decline to issue a penalty on the basis of each of page bearing one of MSU's discrete redactions as well.

WPSD's Exhibit 10 listed about twenty redactions or withholdings with which WPSD took issue. The records produced to the Court for its *in camera* review, comprised of each of the contested redactions listed in WPSD's Exhibit 10, specifically contain thirteen discrete email threads. Even if the Court believes that every single email thread therein was improperly redacted, a penalty award calculated on the basis of *thirteen records* would be the maximum appropriate award. There is simply no basis to support WPSD's request for penalties calculated on a per-record basis for over one hundred records. Thus, if the Court decides to issue penalties in this case, which it should *not* do, the penalty award should be calculated for a vastly lower number of records than WPSD contends.

3. The Court should also reduce the timeframe of any penalty.

If the Court elects to award penalties to WPSD, which it should *not* do, the Court should also reasonably adjust the time frame for which WPSD requests penalties in order to recognize the realities of this case. Without elaboration, WPSD calculates penalties for a period of "357 days—the number of days elapsed between the filing of WPSD's Complaint and the filing of [WPSD's fee] motion." (WPSD Motion, p. 3). Yet, it is undisputed that MSU provided WPSD with unredacted versions of the at issue records following entry of the Court's Order and before WPSD filed the present motion. *See* (*id.* at 5) (referencing "the public records produced by MSU since the Court issued its Judgment"). MSU specifically provided those records to WPSD on February

20, 2024, so any penalty imposed against MSU should cease accruing on that date as a matter of law.

Notably, the duration of this litigation was extended due to circumstances beyond MSU's control for which MSU should not be penalized. For example, WPSD's counsel had personal obligations over the course of the last summer which resulted in weeks-long delays in this litigation. *See* (Litigation Scheduling Emails, attached as **Exhibit 1**). Of course, MSU does not take issue with adjustments to a litigation schedule in the spirit of cooperation. It would, however, be unjust for MSU to face monetary penalties for periods of time during which MSU was prepared to work—and was working—in good faith to resolve this litigation with WPSD.

Early in the litigation, the parties tentatively agreed to a briefing schedule that would have concluded summary judgment briefing in August 2023. Ultimately, WPSD did not file its motion for summary judgment until *November* 2023, presumably because during the initially agreed upon briefing schedule timeframe, the parties were engaged in negotiations wherein MSU continuously supplemented its record production to WPSD. MSU should not be penalized for the three months during which dispositive briefing could have been—but was not yet—underway through no fault of MSU. The protracted duration of this litigation is not the fault of MSU, and the Court should not penalize MSU as a result.

At most, the Court should issue penalties for the durations of time between the Attorney General's decision and MSU's supplemental production in response (fourteen days, *see* MSU's Response to WPSD's MSJ, pp. 3-4), and between this Court's Order and MSU's final production in response (four days). It would defy logic to penalize MSU for a period of nearly one year where, during the entirety of that year, MSU has repeatedly provided WPSD with the records it has requested (in response to both the Open Records requests at issue in this suit as well as to WPSD's

unrelated Open Records requests that are not part of this litigation). If the Court ultimately decides to impose penalties in this case, which it should *not* do, the Court should measure such penalties in a manner that accounts for the realities of this case and takes into consideration MSU's good faith efforts to comply with WPSD's requests at every juncture.

CONCLUSION

The Court should reject WPSD's astronomical request for attorney fees and statutory penalties. The facts of this case do not support an award of sanctions under the ORA, and the sum WPSD requests is extremely disproportionate to the claims and findings at issue. The Court should deny summarily WPSD's Motion for attorney's fees and statutory penalties.

Respectfully submitted,

/s/ *Suzanne Marino*

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Counsel for Defendant Murray State University

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2024, I filed Defendant Murray State University's Response to Plaintiff WPSD-TV, LLC's Motion for Attorney's Fees and Statutory Penalties using the Court's electronic filing system, which caused a copy to be served on all counsel of record.

/s/ *Suzanne Marino*
Counsel for Defendant Murray State University

EXHIBIT 1

Hart, Tammi

From: Michael Abate <mabate@kaplanjohnsonlaw.com>
Sent: Tuesday, June 27, 2023 8:54 AM
To: Marino, Suzanne; Rick Adams
Cc: Klimkina, Alina; Montfort, Theresa A.
Subject: RE: WPSD v. MSU

Thanks for following up. Rick is traveling this week for his honeymoon so we will need to find a time after his return. July 10 should work, other than 1-2 pm.

From: Marino, Suzanne <Suzanne.Marino@Dinsmore.com>
Sent: Tuesday, June 27, 2023 8:48 AM
To: Rick Adams <radams@kaplanjohnsonlaw.com>; Michael Abate <mabate@kaplanjohnsonlaw.com>
Cc: Klimkina, Alina <Alina.Klimkina@DINSMORE.COM>; Montfort, Theresa A. <theresa.montfort@dinsmore.com>
Subject: RE: WPSD v. MSU

[External email]

Hi Mike and Rick,

We wanted to provide notice that MSU is working to supplement its production of records responsive to your client's November 16, 2022 Open Records request regarding MSU's ACEJMC accreditation. As you know, the records responsive to that request were initially withheld as preliminary; however, these records are now final. As such, we will be in touch in the near future with the responsive documents that are no longer preliminary. Additionally, please let us know if you have availability for a call during the dates identified in my email below to discuss the status of this litigation.

Thank you,
Suzy

Dinsmore
Suzanne M. Marino
Associate
Dinsmore & Shohl LLP • Legal Counsel
101 South Fifth Street, Suite 2500, Louisville, KY 40202
T (502) 540-2510 • **F** (502) 585-2207
Pronouns: she/hers

From: Marino, Suzanne
Sent: Wednesday, June 21, 2023 1:08 PM
To: 'Rick Adams' <radams@kaplanjohnsonlaw.com>; 'Michael Abate' <mabate@kaplanjohnsonlaw.com>
Cc: Klimkina, Alina <alina.klimkina@dinsmore.com>; Montfort, Theresa A. <theresa.montfort@dinsmore.com>
Subject: RE: WPSD v. MSU

Hi Rick and Mike,

Thank you for providing this information. We believe it would be helpful to schedule another call to discuss next steps in this litigation. Do you have availability to schedule a call with us on June 26, 28, or 29, or on July 10 or 12?

Thank you,
Suzy

Dinsmore

Suzanne M. Marino
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From: Rick Adams <radams@kaplanjohnsonlaw.com>
Sent: Thursday, June 15, 2023 3:39 PM
To: Marino, Suzanne <Suzanne.Marino@Dinsmore.com>; Montfort, Theresa A. <theresa.montfort@dinsmore.com>; Klimkina, Alina <Alina.Klimkina@DINSMORE.COM>
Subject: WPSD v. MSU

Suzanne,

Thanks for your patience as we reviewed these documents. I've gone through your logs, the logs produced by MSU, and the documents produced by MSU. At the link below you'll find three logs (one for each part of the October ORR and one for the November ORR) with my notes addressing the redactions that we either 1) need more information to corroborate or 2) disagree with. I've also included MSU's productions themselves so we're all working off the same documents. Several of these productions were made in batches, making it difficult to track the redactions. Hopefully, this will clear up any confusion moving forward.

This is my last day in the office for a couple of weeks. I'm getting married this weekend and heading out on my honeymoon and won't return until July 1. I'll defer to Mike and you as to how best to proceed after you've had a chance to review these documents.

Shared Folder: https://kaplanjohnsonlaw.sharefile.com/share/view/s79dad52a0ec842c3a6e19fc60e657fd8

Rick Adams

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