

**COMMONWEALTH OF KENTUCKY
CALLOWAY CIRCUIT COURT
NO. 23-CI-_____**

WPSD-TV, LLC

PLAINTIFF

v.

MURRAY STATE UNIVERSITY

DEFENDANT

COMPLAINT

Plaintiff, WPSD-TV, LLC (“WPSD”), brings this lawsuit under the Open Records Act (the “Act”) against Murray State University (“MSU”) to compel disclosure of public documents related to MSU’s attempts to interfere with reporting by WKMS—a National Public Radio-affiliated station operated by MSU.

PARTIES, JURISDICTION, AND VENUE

1. WPSD-TV LLC is a Kentucky limited liability company with its principal office address at 210 South 4th Street, Paducah, KY.

2. Murray State University is a “[p]ublic agency” within the meaning of KRS 61.870(1) and is located at 1375 Chestnut Street, Murray, KY 42071.

3. This action is brought pursuant to KRS 61.882 to challenge MSU’s partial denial of an open records request in violation of the Open Records Act submitted by WSPD news director Perry Boxx and to obtain injunctive relief requiring MSU to disclose public records as required by the Open Records Act.

4. Jurisdiction and venue are proper in this Court because MSU’s principal place of business is in Calloway County, Kentucky and because the public records at issue in this action are located here in Calloway County, Kentucky.

FACTS

5. Circuit Court Judge Jamie Jameson was recently removed from the bench by the Judicial Conduct Commission (“JCC”). JCC Order, Ex. 1. The JCC found Judge Jameson guilty of all seven charges brought against him. *Id.* at 35. One of those charges (Count VII) concerned Judge Jameson’s efforts to “use the power and prestige of [his] office” to pressure Chad Lampe—the former station manager of public radio station WKMS—to stop investigating an unflattering story about Judge Jameson walking around the Marshall County Courthouse in his underwear. *Id.* at 34.

6. The JCC unanimously found by clear and convincing evidence that after Judge Jameson learned Mr. Lampe filed an open records request seeking security footage of the Marshall County Courthouse, Judge Jameson called Mr. Lampe to inform him that he had spoken to MSU’s president—Dr. Robert Jackson—who “was not happy” about Mr. Lampe’s reporting. *Id.* Judge Jameson asked Mr. Lampe to confirm that the news station was not going to run a story about the requested footage. *Id.* Within days of that conversation, MSU leadership also contacted Mr. Lampe “requesting information about the Open Records Act request.” *Id.* Judge Jameson’s pressuring Mr. Lampe, according to the JCC, violated several Supreme Court Rules and Canons of the Code of Judicial Conduct, including Canon 1, Rule 1.1 “which requires a judge to comply with the law.” *Id.* at 35.

I. October 20, 2022 Open Records Request

7. On October 20, 2022 WPSD Station Manager Perry Boxx submitted an open records request to MSU seeking the following public records:

- A. Correspondence, including but not limited to emails and attachments, responses and threads, letters and other forms of communications from and/or to Dr. Robert Jackson, President, Tim Todd, Provost and Vice President for Academic Affairs, David Eaton Dean of the Arthur J. Bauernfeind College of Business, Circuit Court Judge Jamie Jameson, and former WKMS Station Manager Chad Lampe in any combination, the content of which regards a Kentucky Open Records Request filed by the news department of WKMS Radio News seeking courthouse security video showing Circuit Court Judge Jamie Jameson walking around the courthouse security video showing Circuit Court Judge Jamie Jameson walking in the Marshall County Courthouse in his underwear.
- B. Correspondence, including but not limited to emails and attachments, responses, and threads, letters and other forms of communications regarding WKMS News, both prior to and subsequent to the open records request described above in item “A” from and/or to Dr. Allen White, former Chair, Department of Journalism and Mass Communications, former WKMS News Director Rachel Collins, WKMS News Director Derek Operle, Kevine Qualls, Chair, Department of Journalism and Mass Communications, Asia Burnett, WKMS interim Station Manager, WKMS reporter Liam Niemeyer, Jordan Smith, Executive Director Governmental and Institutional Relations, Jill Hunt, Senior Executive Coordinator for the President and Coordinator for Board Relations, and Shawn Touney, Executive Director, Marketing and Communications.

The time period for the request is March 1, 2022 to the present date.

8. 10/20/2022 ORR, Ex. 2. In short, Mr. Boxx’s request sought the only public records that confirm if MSU officials joined in Judge Jameson’s efforts to use his position to kill an unflattering story.

9. MSU responded by denying the vast majority of the request. Regarding part A, MSU claimed that the requested records are not “readily available” and

informed Mr. Boxx that it would “complete its review and provide responsive records regarding item ‘A’ by November 4, 2022.” MSU 10/20/2022 ORR Response, Ex. 3.

10. MSU refused to search its records for any emails regarding WKMS because, according to MSU, they were absolutely protected from disclosure by the First Amendment. *Id.*

11. MSU also refused to provide any documents responsive to part B. In doing so, MSU repeated its incorrect assertion that records “regarding WKMS news are protected from disclosure by the First Amendment.” *Id.* at 3. MSU also claimed that Mr. Boxx did not “precisely describe” the records he is requesting because the request “does not identify a specific date” or a “record of correspondence between a specific sender and a recipient.” *Id.* at 2. But MSU directly contradicted that reasoning in the very next paragraph when it complained that complying with the request will be unduly burdensome because the date range and number of individuals identified in the request “potentially result in thousands of individual emails and attachments.” *Id.* In other words, MSU simultaneously claimed that Mr. Boxx has not identified a specific date range and individuals in his request, and that producing records responsive to the specific date and individuals identified in the request is unduly burdensome.

12. On November 3, MSU produced only 31 heavily redacted emails responsive to part A of the request. Accompanying the documents was a letter reiterating that MSU was not providing any communications regarding WKMS and a log of MSU’s redactions identifying the exemption claimed for each redaction. The

claimed exemptions were: 1) The First Amendment, which is incorporated into the Open Records Act by KRS 61.878(1)(k); 2) the Act's preliminary records exemption, KRS 61.878(1)(j); 3) Attorney-Client Privilege, which is incorporated into the Open Records Act by KRS 61.878(1)(k); and 4) the Act's personal privacy exemption, KRS 61.878(1)(a).

II. Attorney General Appeal

13. WSPD appealed MSU's denial of the October 20, 2022 Open Records Request on November 17, 2022. The Office of the Attorney General ("OAG") determined that MSU violated the Act when it invoked the preliminary records exemption to deny production of non-preliminary emails and refused to search for records responsive to part B of the request claiming it was unreasonably burdensome. 23-ORD-024, p. 1, Ex. 4. The OAG also summarily rejected MSU's contention that the First Amendment somehow protected its administrator's emails merely because they may be related to WKMS. *Id.* at 5.

14. Subject to the OAG's order, MSU produced records responsive to part A of the request on February 6, 2023 with some redactions under the Act's personal privacy exemption, KRS 61.878(1)(a). MSU produced 162 pages of records responsive to part B of the request on February 20, 2023. Those records are heavily redacted supposedly pursuant to the Act's personal privacy and preliminary records exemptions.

III. November 16, 2022 Open Records Request

15. On November 16, 2022 Mr. Boxx submitted a second open records request to MSU seeking:

- A. Records to and from Dr. Robert Jackson, President, Tim Todd, Provost and Vice President for Academic Affairs, and former WKMS Station Manager Chad Lampe, relating to a "Zoom" conference call and the subjects discussed between the three on or about November 23, 2020. This request includes the "invitation" sent to the parties. It is specifically inclusive of records prior to or subsequent to the meeting relevant to the purpose of the meeting (matter(s) pertaining to public radio station WKMS) that raise, memorialize, summarize, or discuss topics covered during the meeting. These records may include, but are not limited to content about, complaints received by President Jackson about WKMS, the mission and purpose of WKMS, whether investigative reporting is or should be part of the mission of WKMS, policy for managing the filing of open records requests by WKMS staff, responsibility for the WKMS approach to news, content issues, Calloway County Covid numbers and complaints from politicians. The time period for this request is October 1, 2020 to July 1, 2022
- B. Records to and from David Eaton, Dean of the Arthur J. Bauernfeind College of Business, Chad Lampe, former Station Manager WKMS, Tim Todd, Provost and Vice President for Academic Affairs relating to grants, budgeting, budget reductions, the Ohio Valley Resource, the Corporation for Public Broadcasting (CPB), Louisville Public Media, Public Media Code of Integrity, and NPR (National Public Radio). The time period for this request is December 2020 to July 1, 2022.
- C. Records to and from Dr. Robert Jackson, President, Tim Todd, Provost and Vice President for Academic Affairs, Eric Crigler, then Chair, Murray State Board of Trustees, each and every member of the Murray State Board of Regents in 2021 and the current membership relating to a meeting or conversation between Jackson and Crigler in January 2021 (believed to be during the week of January 23, 2021) during which was discussed a reexamination of the mission and purpose of WKMS. The request is specifically inclusive of records prior to or subsequent to the meeting or conversation described that raise, memorialize, summarize, or discuss the meeting or conversation, and/or the mission and purpose of WKMS, political perception of WKMS, investigative reporting at WKMS, the role of WKMS in student education, donor and political feedback about WKMS, policy on Open Records requests made by WKMS and accreditation from the Accrediting Council on Education in Journalism and Mass Communication. The time period for this request is August 1, 2020 to the present date.

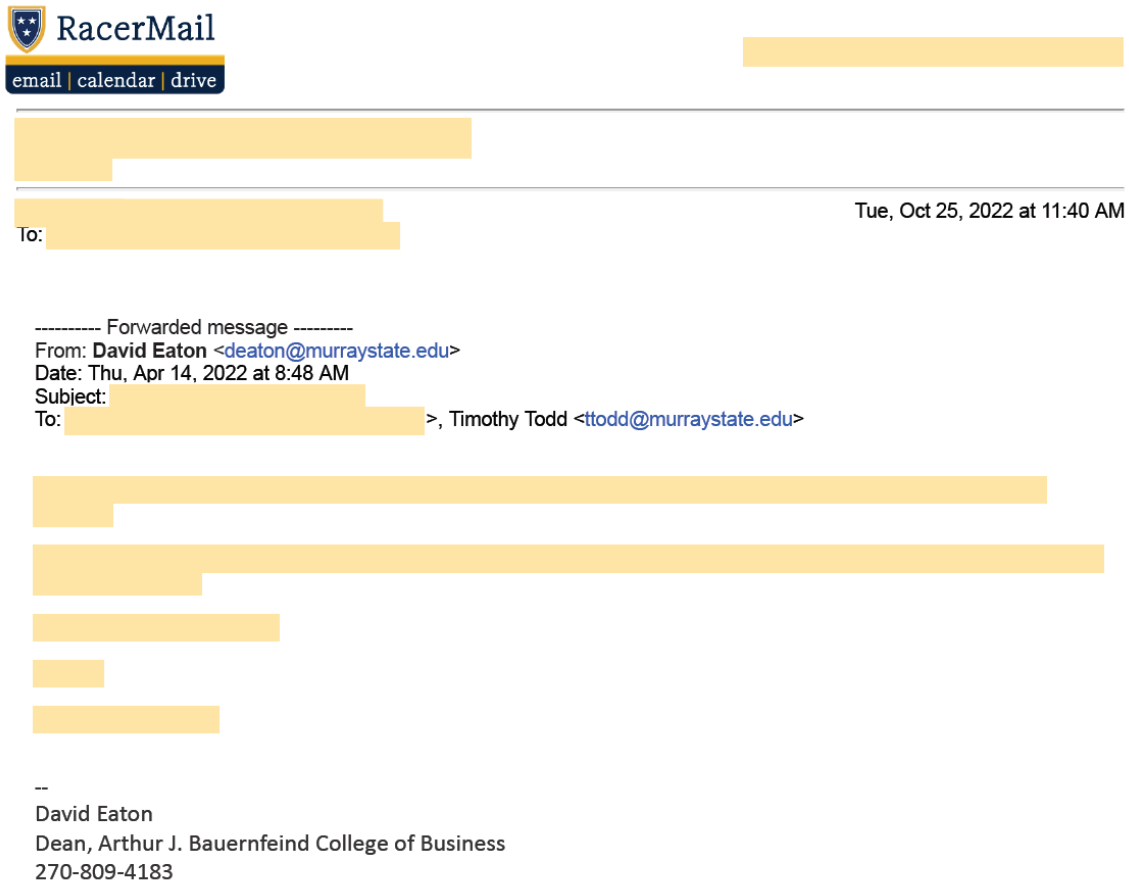
- D. Records to and from Dr. Robert Jackson, President, David Eaton, Dean of the Arthur J. Bauernfeind College of Business Jacklyn Dudley, Vice-President Finance and Administrative Services and Chad Lampe, former Station Manager WKMS relating to WKMS budgeting. The request is inclusive of but not limited to records related to a \$150,000 loan for transmitter needs at WKMS. The time period for this request is January 1, 2021 to the present date.
- E. The "Self-Study" report required by the Accrediting Council on Education in Journalism and Mass Communication for presentation to the site visit team of the ACEJMC earlier this fall (2022). The time period for the request is January 1, 2021 to the present date.
- F. Records to and from Dr. Kevin Qualls, Chair, Department of Journalism and Mass Communications, Asia Burnett, Interim Station Manager WKMS, Dr. Robert Jackson, President, Tim Todd, Provost and Vice President for Academic Affairs, and David Eaton, Dean of the Arthur J. Bauernfeind College of Business relating to the Accrediting Council on Education in Journalism and Mass Communication current accreditation renewal process for Murray State University. The time period for the request is January 1, 2021 to the present date.

November 16, 2022 Open Records Request. Ex. 5.

16. MSU responded on November 29, 2022 by requesting until December 19, 2022 to respond to Parts A-D and F. MSU produced the self-study report requested in Part E, but inappropriately redacted portions of the report pursuant to the preliminary records exemption.

17. MSU produced 849 heavily redacted records on December 19, 2022. It withheld four responsive documents in their entirety—three were withheld citing attorney-client privilege and one citing the preliminary records exemption. MSU redacted at least 73 additional records. MSU's justifications for those reactions are: 1) Attorney-Client privilege; 2) the Act's personal privacy exemption, KRS 61.878(1)(a); and 3) the Act's preliminary records exemption, KRS 61.878(1)(j).

18. A cursory review of MSU’s redactions makes plain that MSU is willfully mis-applying the Act’s exemptions to withhold records it would rather not see the light of day. For example, MSU redacted an entire email from David Eaton (Dean of MSU’s Business School) to Chad Lampe as “preliminary.”



19. However, WPSD reporters obtained the same email from another source and it is clear that there is nothing at all “preliminary” discussed in the email. Rather, it is a directive from David Eaton and Timothy Todd for Lampe to keep them apprised of any communications (including open records requests) related to “the circuit judge situation.”

"From: David Eaton <deaton@murraystate.edu>
Date: Thu, Apr 14, 2022 at 8:48 AM
Subject: Circuit judge records request
To: Chad Lampe <clampe@murraystate.edu>, Timothy Todd <ttodd@murraystate.edu>

Tim's request is for any communication (emails, letters, etc) pertaining to open records requests on the circuit judge situation.

I imagine that would include copies of any open records requests submitted, any another other emails related to decisions on how to proceed.

Copy me on what you send.

Thanks."

20. MSU also improperly used the preliminary records exemption to redact the names of some (but not all) recipients of a memorandum written by Lampe apparently requested by certain MSU administrators explaining WKMS' reporting on former Judge Jameson. That selective redaction is particularly inappropriate because the redacted names are necessary to determine if the Act's exemptions have been properly invoked.

21. In yet another example, MSU withheld as preliminary its completed report to the Accreditation and Mass Communications program in plain violation of well-established precedent. *See Univ. of Kentucky v. Courier-Journal & Louisville Times Co.*, 830 S.W.2d 373 (Ky. 1992) ("The fact that the Response was submitted prior to final action by the NCAA is irrelevant. The only agency subject to the provisions of the Act is the University.").

22. This is not an exhaustive list of MSU's improper redactions. These examples are representative of MSU's willful violations of the Act and conscious disregard of WPSD's rights warranting statutory sanction. *See* KRS 61.882(5).

COUNT 1 – VIOLATION OF OPEN RECORDS ACT (Oct. 10, 2022 ORR)

23. WPSD hereby incorporates and restates the allegations set forth in all preceding paragraphs of the Complaint.

24. Under the Open Records Act, WPSD is entitled to the release of all records in MSU's possession responsive to the October 10, 2022 open records request.

25. MSU willfully violated the Open Records Act when it refused to even search for most of the requested records until ordered by the OAG.

26. MSU willfully violated the Open Records Act when it improperly redacted public records it was ordered to produce by the OAG. For the sake of clarity, WPSD does not challenge the Attorney General's decision that certain documents could be withheld; rather, it challenges MSU's violations of the Open Records Act by improperly redacting the documents it was required to disclose by the OAG opinion.

27. Pursuant to KRS 61.882(2), WPSD is entitled to seek injunctive relief from MSU's actions with respect to its open records request directly from this Court without first seeking relief from the Attorney General under KRS 61.880.

28. Pursuant to KRS 61.882(4), this action should take precedence on this Court's docket over all other actions and should be assigned for hearing or trial at the earliest practicable date.

29. Pursuant to KRS 61.882(5), WPSD is entitled to recover its costs, reasonable attorneys' fees from this lawsuit, and statutory penalties because MSU has willfully withheld the requested records in violation of the Open Records Act.

COUNT II – VIOLATION OF OPEN RECORDS ACT (Nov. 16, 2022 ORR)

30. WPSD hereby incorporates and restates the allegations set forth in all preceding paragraphs of the Complaint.

31. Under the Open Records Act, WPSD is entitled to the release of all records in MSU's possession responsive to the November 16, 2022 Open Records Request.

32. MSU willfully violated the Open Records Act when it improperly redacted public records responsive to Mr. Boxx's open records request.

33. Pursuant to KRS 61.882(2) WPSD is entitled to seek injunctive relief from MSU's actions with respect to its open records request directly from this Court without first seeking relief from the Attorney General under KRS 61.880.

34. Pursuant to KRS 61.882(4), this action should take precedence on this Court's docket over all other actions and should be assigned for hearing or trial at the earliest practicable date.

35. Pursuant to KRS 61.882(5), the WPSD is entitled to recover its costs, reasonable attorneys' fees from this lawsuit, and statutory penalties because MSU has willfully withheld the requested records in violation of the Open Records Act.

WHEREFORE, WPSD respectfully requests the following relief:

1. An expedited briefing schedule and hearing on this matter at the earliest practicable date;
2. An injunction ordering MSU to immediately disclose the requested records in their entirety;

3. An award to WPSD of its costs, including reasonable attorneys' fees, in connection with this matter pursuant to KRS 61.882(5);
4. An award to WPSD of statutory penalties pursuant to KRS 61.882(5);
and
5. All other relief to which WPSD may be entitled.

Respectfully submitted,

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