

STATE OF NORTH CAROLINA
COUNTY OF ALAMANCE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

CASE NO. _____

CIVITAS INSTITUTE)
Plaintiff,)
)
v.)
)
ALAMANCE COUNTY BOARD OF)
ELECTIONS, CLYDE ALBRIGHT, in his official)
capacity as Alamance County Attorney,)
DOUGLAS P. FINCANNON, in his official)
capacity as Chair of the Alamance County Board)
of Elections)
Defendants.)

COMPLAINT

INTRODUCTION

1. This action is brought pursuant to the Uniform Declaratory Judgment Act, N.C. Gen. Stat. § 1-253, to challenge the legality of certain actions and policies of the Alamance County Board of Elections, the Chair of the Alamance County Board of Elections, and the Alamance County Attorney.
2. This action arises from the plaintiff Civitas Institute’s (the “Institute”) public records request dated December 12, 2014 and the subsequent communications between the parties.
3. Defendants have not issued an official denial of Plaintiff’s public records request.
4. Plaintiff brings this action under N.C. Gen. Stat. § 1-253 seeking declarations (1) that Defendants may not designate the Alamance County Attorney as custodian of public

records held by the Alamance County Board of Elections, (2) that Defendants may not require requestors of public records to physically visit Alamance County and inspect records before being provided copies thereof, (3) that Defendants are required to enact and maintain a public records management program in compliance with North Carolina public records law, (4) that Defendants do not have the authority to singularly decide whether their actions amount to a denial of a public records request, (5) that the actions of Defendants amount to a denial of Plaintiff's public records request irrespective of Defendants' unilateral claims to the contrary, and (6) that Defendants are required to provide any and all public records in electronic format whenever possible.

PARTIES

5. Plaintiff Civitas Institute (the "Institute") is a nonprofit corporation that has at all relevant times been located in Wake County. Pursuant to North Carolina Rule of Civil Procedure 9, the Institute avers that it legally exists and has the capacity and authority to sue on its own behalf.
6. Angela Hight made the relevant request for records in her capacity as an agent of the Institute. Therefore, the Institute is the real party in interest pursuant to North Carolina Rule of Civil Procedure 17(a) and N.C. Gen. Stat. § 1-57.
7. Defendant Alamance County Board of Elections (the "Board") is an agency of the State of North Carolina or its subdivisions for the purposes of North Carolina public records law. It is located in Alamance County.
8. Defendant Douglas P. Fincannon is the Chair of the Alamance County Board of Elections (the "Chair"), an agency of the State of North Carolina or its subdivisions for the

purposes of North Carolina public records law. He is located in Alamance County and is being sued in his official capacity.

9. Defendant Clyde Albright is the Alamance County Attorney (“the County Attorney”), an Agency of the State of North Carolina or its subdivisions for the purposes of North Carolina public records law. He is located in Alamance County and is being sued in his official capacity.

VENUE AND JURISDICTION

10. This action is brought pursuant to N.C. Gen. Stat. § 1-253, the Uniform Declaratory Judgment Act. This Court has jurisdiction over the subject matter of this action pursuant to N.C. Gen. Stat. § 1-253, the Uniform Declaratory Judgment Act.
11. This Court has jurisdiction over the parties pursuant to N.C. Gen. Stat. § 1-75.4.
12. Venue is proper in this Court pursuant to N.C. Gen. Stat. § 1-77(2), as Defendants are official actors in Alamance County.

FACTUAL ALLEGATIONS

13. Defendants are all subject to North Carolina’s public records laws, N.C. Gen. Stat. §§ 132.
14. Defendants have held out the County Attorney as the custodian of public records for the Board.
15. Upon information and belief, the County Attorney is not an officer or employee of the Board subject to the direct authority or control of the Chair.
16. On December 12, 2014, Angela Hight of the Civitas Institute submitted an official public records request (the “Request”) pursuant to N.C. Gen. Stat. §§ 132 to the Board. (Attached Exhibit A).

17. Ms. Hight made the Request in her capacity as an agent of the Institute.

18. In the Request, Ms. Hight asked for the following information from the November 2014 elections:

- General Complaints by voters, candidates, political groups and or non-profit organizations or any other individual or group
- County Board of Elections Non voting Systems Incident Reports
- Elections Systems Security Incident Forms
- Any other form provided by the State Board of Elections for reporting purposes
- Any communication between the county board of elections and the State Board of Elections or individuals or groups concerning problems reported to the county or state board of elections.
- Election protests
- Election challenges

19. All records meeting the descriptions listed in Paragraph 19 are public records as defined in N.C. Gen. Stat. § 132-1.

20. Upon information and belief, the Board possesses records that meet the description listed in Paragraph 19.

21. Plaintiff routinely requests similar records from all 100 North Carolina county boards of elections and typically has its requests fulfilled.

22. The Board has fulfilled similar requests for Plaintiff as recently as July 29, 2014.

23. On December 15, 2014, the County Attorney responded to Ms. Hight's records request with a written letter inviting Ms. Hight to visit Alamance County. (Attached Exhibit B).

24. From February 23 to March 9, 2015, the County Attorney and an attorney for Plaintiff exchanged correspondence regarding N.C. Gen. Stat. §§ 132 and its application to Alamance County's public records policy. (Attached Exhibits C through F).
25. Upon information and belief, Defendants have enacted a policy requiring requestors of public records to physically visit and inspect records before copies thereof are provided.
26. This policy is outlined by the County Attorney in a letter dated March 9, 2015, attached hereto as Exhibit F. In the letter, the County Attorney stated:
- “We have found that making records available for review before copying is the most efficient use of taxpayer money because we avoid making copies of documents that requestors often do not want. I believe that this is specifically contemplated by the statute and our policy complies with the law. We permit inspection and examination. We offer to make copies at 10 cents per page... We have not denied your public records request. We have offered to make the records available at a mutually convenient time and will furnish any copies upon payment of copying fees.”
27. Defendants' policy further operates under the assumption that “The law does not require the records custodian to create lists or compile records,” as stated in the County Attorney's letter dated December 15, 2014 attached hereto as Exhibit B.
28. Plaintiff requested that Defendants “send any and all of the information requested above in electronic format,” and then provided an email address in the original Request attached hereto as Exhibit A.

29. Defendants' policy requires requestors of public records to pay 10 cents per page for copies of public records, as stated in the County Attorney's letters dated December 15, 2014 and March 9, 2015, attached hereto as Exhibits B and F.
30. The parties fundamentally disagree as to the nature of several provisions of N.C. Gen. Stat. §§ 132 and their application to multiple aspects of Alamance County's public records policy.
31. The parties further fundamentally disagree as to whether the actions of Defendants constitute a denial of the plaintiff's public records request.

FIRST CLAIM FOR RELIEF
DECLARATORY JUDGMENT (COMPLIANCE WITH N.C. GEN. STAT. § 132-2)

32. The allegations contained in Paragraphs 1-31 are incorporated herein by reference.
33. N.C. Gen. Stat. § 132-2 provides that "The public official in charge of an office having public records shall be the custodian thereof."
34. The statute does not provide for the delegation of this duty to any other public official.
35. The Chair is the rightful custodian of public records in the possession of the Board.
36. However, Defendants have held out the County Attorney as the officer responsible for "providing access" to public records.
37. This Court should declare that Defendants' policy of routing public records requests to a public official other than the statutorily designated custodian, or an officer or employee subject to the control of the statutorily designated custodian, is in violation of N.C. Gen. Stat. § 132-2.

SECOND CLAIM FOR RELIEF
DECLARATORY JUDGMENT (COMPLIANCE WITH N.C. GEN. STAT. § 132-6)

38. The allegations contained in paragraphs 1-37 are incorporated herein by reference.

39. Defendants' policy of requiring a public records requestor to physically visit and review records prior to receiving copies of public records does not comply with the duties of state agencies to provide access to records under N.C. Gen. Stat. § 132-6(a).
40. N.C. Gen. Stat. § 132-6(a) establishes two independent duties for a custodian of public records. First, it requires a custodian to "permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person." Second, it requires a custodian to "as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law."
41. N.C. Gen. Stat. § 132-6(a) separates these two distinct duties with the word "and." The word "and" is a conjunction that does not denote that the second duty is conditioned upon the first, but rather allows two independent ideas to share the same sentence. If the legislature intended that the duty to provide copies was conditioned upon a prior physical inspection by a requestor of records, it could have used language such as "and then" or "and after such inspection." It did not.
42. In the absence of such clarifying language, the statute should be construed in light of its purpose to ensure that "the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law." N.C. Gen. Stat. § 132-1.
43. This Court should declare that N.C. Gen. Stat. § 132-6(a) establishes two independent duties for state agencies, one requiring that records be made available for inspection and one requiring it to provide copies of records. Therefore, Defendants failed to comply with the law.

THIRD CLAIM FOR RELIEF
DECLARATORY JUDGMENT (COMPLIANCE WITH N.C. GEN. STAT. § 132-8.1)

44. The allegations contained in Paragraphs 1-43 are incorporated herein.
45. N.C. Gen. Stat. § 132-8.1 provides that “It shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government...to establish and maintain an active, continuing program for the economical and efficient management of the records of said agency, county, municipality, or other subdivision of government.”
46. In response to Plaintiff’s records request, the County Attorney has stated that “The law does not require the records custodian to create lists or compile records,” and then invites the plaintiff to physically visit Alamance County to inspect “any records that may exist.” (Attached Exhibit B).
47. The County Attorney’s statement and Defendants’ stated public records policy are both in direct conflict with N.C. Gen. Stat. § 132-8.1. Not only does the statute provide that state agencies must “establish and maintain an active, continuing program” for the management of their records, but the presence of this mandate within N.C. Gen. Stat. §§ 132 suggests that the entire point of this legislatively mandated program is to facilitate access to government records by the public at large.
48. The County Attorney’s statement and Defendants’ alleged public records policy are both in direct conflict with the underlying purpose of North Carolina’s public records laws, which is to ensure that “the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law.” N.C. Gen. Stat. § 132-1.
49. This Court should declare that Defendants’ refusal to “create lists or compile records” is not in compliance with N.C. Gen. Stat. § 132-8.1.

FOURTH AND FIFTH CLAIMS FOR RELIEF

50. The allegations contained in paragraphs 1-49 are incorporated herein.
51. The County Attorney has repeatedly stated in correspondence that Defendants have not denied Plaintiff's public records request. (Attached Exhibits D and F).
52. However, the actions of Defendants constitute a denial of Plaintiff's public records request.
53. This disagreement presents two fundamental issues: (1) whether Defendants have the authority to decide when their actions amount to a denial of a public records request and (2) whether the actions of Defendants constitute a denial of Plaintiff's public records request.

FOURTH CLAIM FOR RELIEF
DECLARATORY JUDGMENT (AUTHORITY TO DECIDE WHAT CONSTITUTES DENIAL OF PUBLIC RECORDS REQUEST)

54. The allegations contained in paragraphs 1-53 are incorporated herein by reference.
55. Before a plaintiff can technically bring an action to compel production of public records pursuant to N.C. Gen. Stat. § 132-9, a government entity must deny an official public records request.
56. Whether a public records request has been denied is a question of fact.
57. If a state agency is allowed to decide for itself whether its conduct amounts to a denial of a records request, this essentially allows the state agency to indefinitely, if not permanently, refrain from providing access to public records by continually withholding an official denial of a request. This would allow the state agency to unreasonably delay, as such a denial is a required element of a public records lawsuit under N.C. Gen. Stat. § 132-9.

58. This Court should declare that the question of whether a public records request has been denied is a question of fact to be determined by a Court of competent jurisdiction. While a state agency's opinion as to whether it has denied a request certainly could be a factor in such a determination, a state agency should not be able to decide for itself whether its actions amount to a denial of a public records request.

FIFTH CLAIM FOR RELIEF
DECLARATORY JUDGMENT (DENIAL OF PUBLIC RECORDS REQUEST)

59. The allegations contained in paragraphs 1-58 are incorporated herein by reference.

60. N.C. Gen. Stat. § 132-6(a) requires "every custodian of public records" to "as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law."

61. Defendants have refused to provide copies of public records to Plaintiff, and instead insist that Plaintiff physically visit Defendants' offices prior to provision of copies.

62. Defendants insist that this course of conduct does not constitute a denial of Plaintiff's public records request. Plaintiff insists that this course of conduct does constitute a denial of Plaintiff's public records request.

63. This Court should declare that Defendants' actions constitute a denial of Plaintiff's public records request, despite the fact that Defendants claim they have not denied Plaintiff's public records request, because Defendants have not provided the requisite access mandated under N.C. Gen. Stat. § 132-6(a).

FIFTH CLAIM FOR RELIEF
DECLARATORY JUDGMENT (COMPLIANCE WITH N.C. GEN. STAT. § 132-6.2)

64. The allegations contained in paragraphs 1-63 are incorporated herein by reference.

65. N.C. Gen. Stat. § 132-6.2(a) provides that “No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium.”
66. Plaintiff has requested records in electronic format and provided a valid recipient email address.
67. Defendants state that their public records policy requires the payment of 10 cents per page for copies of public records.
68. This Court should declare that, to the extent that Plaintiff has requested public records in electronic format, Defendants’ policy of requiring requestors of public records to pay 10 cents per page for copies of such records is not in compliance with N.C. Gen. Stat. § 132-6.2(a).

PRAYER FOR RELIEF

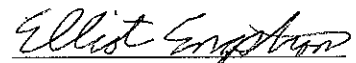
WHEREFORE, the Civitas Institute respectfully requests the following relief:

69. That judgment be entered declaring that Defendants’ designation of the County Attorney as the custodian of public records for the Board is in violation of N.C. Gen. Stat. § 132-2.
70. That judgment be entered declaring that Defendants’ policy of requiring requestors of public records to physically visit and review records prior to receiving copies is not in compliance with the duties of Defendants under N.C. Gen. Stat. § 132-6(a).
71. That judgment be entered declaring that Defendants’ refusal to “create lists or compile records” is in violation of their duties pursuant to N.C. Gen. Stat. § 132-8.1.
72. That judgment be entered declaring that the question of whether Plaintiff’s public records request has been “denied” pursuant to N.C. Gen. Stat. § 132-9 is not a determination that can be made solely by Defendants.

73. That judgment be entered declaring that through their actions, Defendants have denied Plaintiff's public records request, despite Defendants' repeated statements that they have not denied said records request.
74. That Defendants be permanently enjoined from demanding that Plaintiff physically visit Alamance County and review records before being provided copies thereof in violation of N.C. Gen. Stat. § 132-6(a).
75. That a permanent injunction be entered requiring Defendants to "establish and maintain an active, continuing program for the economical and efficient management" of their records in compliance with N.C. Gen. Stat. § 132-8.1.
76. That Defendants be permanently enjoined from charging Plaintiff 10 cents per page for paper copies to the extent that Plaintiff has requested records in electronic format, in violation of N.C. Gen. Stat. § 132-6.2.
77. That Plaintiff be granted such other and further relief as the Court deems just and proper.

This the 25th day of March, 2015.

For the Civitas Institute:



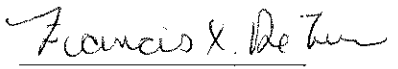
Elliot Engstrom
North Carolina Bar # 46003
100 S. Harrington Street
Raleigh, NC 27603
elliott.engstrom@nccivitas.org

ATTORNEY FOR THE CIVITAS INSTITUTE

VERIFICATION

Francis X. DeLuca, being first duly sworn, on behalf of the Civitas Institute, the plaintiff in the above-entitled action deposes and says:

That he is currently president of the Civitas Institute, and as such has authorized this action on the Institute's behalf. That he authorized the relevant public records request on December 12, 2014 on behalf of the Civitas Institute. That Angela Hight has authority to act as an agent of the Civitas Institute.


Francis X. DeLuca

SWORN TO AND SUBSCRIBED

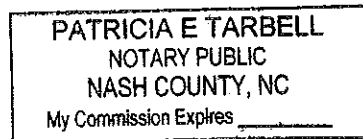
Before me this 20th day of March, 2015

Signature: Patricia E. Tarbell

Printed name: Patricia E. Tarbell

Notary Public

My Commission Expires: 8-5-2017



VERIFICATION

Angela Hight, being first duly sworn, on behalf of the Civitas Institute, the plaintiff in the above-entitled action deposes and says:

That she is currently a policy analyst with the Civitas Institute, and as such is authorized to act as an agent on the Institute's behalf for the purpose of making public records request. That she made the relevant public records request on December 12, 2014 on behalf of the Civitas Institute and in her capacity as an agent of the Civitas Institute.

Angela Hight
Angela Hight

SWORN TO AND SUBSCRIBED

Before me this 25th day of March, 2015

Signature: Patricia E. Tarbell

Printed name: Patricia E. Tarbell

Notary Public

My Commission Expires: 8-5-2017



From: Angela Hight <Angela.Hight@nccivitas.org>
Sent: Friday, December 12, 2014 10:25 AM
To: kathy.holland@alamance-nc.com
Subject: Public Records Request November 2014

Dear Director,

Please consider this email a request for public records pursuant to §132 of the North Carolina General Statutes.

Please provide the any of the following written or electronic documents (including voice mails) that your office received or created during the November 2014 Election (this means the entire election period – during absentee by-mail voting, one-stop voting, Election Day, and Second Primary voting periods):

- General Complaints by voters, candidates, political groups and or non-profit organizations or any other individual or group
- County Board of Elections Non Voting Systems Incident Reports
- Elections Systems Security Incident Forms
- Any other Form Provided by the State Board of Elections for Reporting Purposes
- Any communication between the county board of elections and the State Board of Elections or individuals or groups concerning problems reported to the county or state board of elections
- Election Protests
- Official Challenges

To expedite the information retrieval process, I request that you send any and all of the information requested above in electronic format to my email at angela.hight@nccivitas.org. Please include all documents, written and electronic (include voice mails and other audios). Please let me know and provide me with an estimate if there will be any costs before you proceed with the request. You may reach me at 919-834-2099.

I thank you in advance for your assistance. Please let me know if you have any questions.

Sincerely,

Angela Hight
Policy Analyst
John W. Pope Civitas Institute
100 S. Harrington St, Raleigh, NC 27603
(919)834-2099
(919)834-2350 (fax)

Exhibit A

Alamance County

OFFICE OF THE COUNTY ATTORNEY
124 West Elm Street
Graham, North Carolina 27253
Tel. (336) 228-1312
FAX (336) 570-6788

Clyde B. Albright
County Attorney

Robin R. Smith
Tax Foreclosure Paralegal
Assistant County Clerk

Benjamin C. Pierce
Deputy County Attorney

December 15, 2014

Angela Hight
Policy Analyst
John W. Pope Civitas Institute
100 S. Harrington St, Raleigh, NC 27603

Re: Public Records Request

Dear Ms. Hight,

Your email dated December 12, 2014 requesting public records from the Alamance County Board of Elections has been referred to me for response.

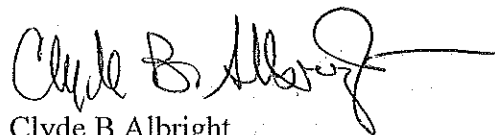
Due to the large volume of records, I invite you to come to Alamance County on an agreed date and time to have access to and inspect any records we may have that are public records not falling under any exception such as records that constitute a record of criminal investigation, a personnel record, or a record of training, plans or tactics used to respond to terrorist activity. We will allow you to have access to such records in accordance with N.C. Gen. Stat. §132 – 6(a), to the extent that: (1) we actually have any such public records in writing; (2) any such public records are already compiled; and (3) any such public records are not otherwise protected from disclosure pursuant to applicable state or federal law.

The law does not require the records custodian to create lists or compile records.

After you have inspected any records that may exist at the Board of Elections office, and upon your request, we will be glad to provide copies of any public records that you are permitted by law to copy at the cost of 10 cents per page subject to the provisions set forth herein above.

Please contact me if you wish to schedule a date to review those records responsive to your request.

Sincerely,



Clyde B Albright
Alamance County Attorney

Cc: Elections Director

Exhibit B



CIVITAS
INSTITUTE

100 S. Harrington St.
Raleigh, NC 27603

web: nccivitas.org
phone: 919.834.2099
fax: 919.834.2350

Feb. 23, 2015

Clyde B. Albright
County Attorney
Office of the County Attorney
Alamance County
124 West Elm Street
Graham, North Carolina 27253

Re: Public Records Request

Dear Mr. Albright,

On December 12, 2014, Angela Hight of the Civitas Institute submitted an official public records request to the Director of the Alamance County Board of Elections ("the Board") seeking a number of written and electronic documents that the Board received or created during the November 2014 election. This request is typical of those that the Civitas Institute sends to all 100 North Carolina counties following each election. I write regarding your letter dated December 15, 2014, responding to Ms. Hight's request.

In your letter, you invite Ms. Hight to visit Alamance County to inspect records, and then state that "The law does not require the records custodian to create lists or compile records."

You are correct that the records custodian is not responsible for the compilation of records. Rather, it is the duty of the public records custodian to "provide access to public records." See Cline v. Hoke, (N.C. App. 2014, NO. COA14-28 at p. 8 (discussing the distinction between the custodian's duty to provide access to records and the state employee's duty to preserve records).¹ But this fact does not absolve state employees of their duty to preserve records, nor does it reduce the right of inspection to a required physical visit to a state agency's office by a requester of public records.

N.C.G.S. Chapter 132, North Carolina's public records law, applies to every agency of state or local government in North Carolina, including Alamance County, its Board of Elections, and the Office of the County Attorney. N.C.G.S. § 132-8.1 then states as follows:

"It shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government...to establish and maintain an active, continuing program for the economical

¹ <http://appellate.nccourts.org/opinions/?c=2&pdf=32048>

and efficient management of the records of said agency, county, municipality, or other subdivision of government.”

Note that this statute is not referring to the records custodian who provides access, but rather to the head of the agency, a state employee, whose duty it is to manage public records.

The right of access to records contains four key components. First, it opens records relating to public business to any member of the public. G.S. 132-1. Second, it prohibits destruction of public records except under certain circumstances. G.S. 132-3(a) Third, it requires “custodians” to provide access as follows – “Each 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) Fourth, the law provides a civil suit as a remedy for denial of a public records request.² G.S. 132-9.

N.C.G.S. Chapter 132, North Carolina’s public records law, applies to every agency of state or local government in North Carolina, including Alamance County, its Board of Elections, and the Office of the County Attorney. N.C.G.S. § 132-8.1 then states as follows:

“It shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government...to establish and maintain an active, continuing program for the economical and efficient management of the records of said agency, county, municipality, or other subdivision of government.”

Note that this statute is not referring to the records custodian who provides access, but rather to the head of the agency, a state employee, whose duty it is to manage public records.

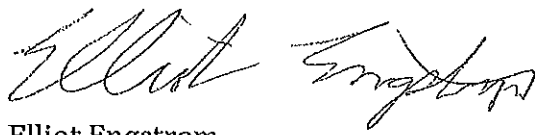
Therefore, the Alamance County Board of Elections has both the responsibility to maintain records of election complaints and the legal duty to provide access to those records by providing copies “as promptly as possible.”

Finally, I would note that we historically have no trouble receiving these types of records electronically from counties throughout North Carolina, even including similar records from Alamance County as recently as the May 2014 election.

I look forward to resolving this issue as efficiently and amicably as possible.

Sincerely,

² Synopsis adapted from <http://canons.sog.unc.edu/?p=7945>



Elliot Engstrom
Attorney
Civitas Institute

Exhibit C

Alamance County

OFFICE OF THE COUNTY ATTORNEY
124 West Elm Street
Graham, North Carolina 27253
Tel. (336) 228-1312
FAX (336) 570-6788

Clyde B. Albright
County Attorney

Robin R. Smith
Tax Foreclosure Paralegal
Assistant County Clerk

Benjamin C. Pierce
Deputy County Attorney

February 27, 2015

Elliot Engstrom, Esq.
100 South Harrington Street
Raleigh, NC 27603

Re: Your Letter dated February 23, 2015

Dear Mr. Engstrom:

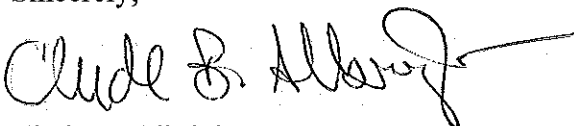
Your letter regarding public records has been received and in response let me begin by saying that we have offered to make the records available for inspection and examination in full compliance with the law a portion of which is set forth as follows:

§ 132-6. Inspection and examination of records.

- (a) 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.

We have not denied your public records request. We have offered to make the records available at a mutually convenient time and will furnish any copies upon payment of copying fees. We have found this to be the most efficient and economical way to manage records requests and avoid the expense of making copies of records that the requestor ultimately does not want.

Sincerely,



Clyde B. Albright
Alamance County Attorney

Exhibit D



CIVITAS
INSTITUTE

100 S. Harrington St.
Raleigh, NC 27603

web: nccivitas.org
phone: 919.834.2099
fax: 919.834.2350

March 3, 2015

Clyde B. Albright
County Attorney
Office of the County Attorney
Alamance County
124 West Elm Street
Graham, North Carolina 27253

Re: Your letter dated February 27, 2015

Dear Mr. Albright,

Thank you for your response to my letter dated February 23 of this year. In your Feb. 27th letter, you state that you have not denied our public records request, but have instead "offered to make the records available at a mutually convenient time and will furnish any copies upon payment of copying fees." Unfortunately, I must insist that this course of conduct does not fulfill your duties under North Carolina public records law, and will be taken as a denial if not remedied.

N.C. Gen. Stat. § 132-6 does indeed provide that records can be inspected and examined at reasonable times and under reasonable supervision. But this is separate and distinct from the duty of a state agency to "as promptly as possible...furnish copies thereof upon payment of any fees as may be prescribed by law." The statute does not require a requesting party to physically review records before requesting copies.

Further, N.C. Gen. Stat. § 132-6.2 provides that "No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium."

Finally, N.C. Gen. Stat. § 132-9 states that "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 [court] for an order compelling disclosure or copying."

For your convenience, I have attached a copy of Ms. Hight's original public records request to this letter. Should there be a need for additional correspondence prior to the fulfillment of our request, please feel free to contact me by mail or by email at Elliot.engstrom@nccivitas.org.

Respectfully,

North Carolina's Conservative Voice

Exhibit E

Elliot Engstrom

Elliot Engstrom
Attorney
Civitas Institute

Enclosures

Exhibit E

From: Angela Hight [<mailto:Angela.Hight@nccivitas.org>]
Sent: Thursday, February 19, 2015 1:31 PM
To: Kathy Holland
Subject: 2nd Attempt: Public Records Request November 2014

Exhibit E

This is a 2nd attempt to contact you about Public Records request. Please let me know if you have any questions.
Please find original email below.

Dear Director,

Please consider this email a request for public records pursuant to §132 of the North Carolina General Statutes.

Please provide the any of the following written or electronic documents (including voice mails) that your office received or created during the November 2014 Election (this means the entire election period – during absentee by-mail voting, one-stop voting, Election Day, and Second Primary voting periods):

- General Complaints by voters, candidates, political groups and or non-profit organizations or any other individual or group
- County Board of Elections Non Voting Systems Incident Reports
- Elections Systems Security Incident Forms
- Any other Form Provided by the State Board of Elections for Reporting Purposes
- Any communication between the county board of elections and the State Board of Elections or individuals or groups concerning problems reported to the county or state board of elections
- Election Protests
- Official Challenges

To expedite the information retrieval process, I request that you send any and all of the information requested above in electronic format to my email at angela.hight@nccivitas.org. Please include all documents, written and electronic (include voice mails and other audios). Please let me know and provide me with an estimate if there will be any costs before you proceed with the request. You may reach me at 919-834-2099.

I thank you in advance for your assistance. Please let me know if you have any questions.

Sincerely,

Angela Hight
Policy Analyst
John W. Pope Civitas Institute
100 S. Harrington St, Raleigh, NC 27603
(919)834-2099
(919)834-2350 (fax)

Exhibit E

Alamance County

OFFICE OF THE COUNTY ATTORNEY
124 West Elm Street
Graham, North Carolina 27253
Tel. (336) 228-1312
FAX (336) 570-6788

Clyde B. Albright
County Attorney

Robin R. Smith
Tax Foreclosure Paralegal
Assistant County Clerk

Benjamin C. Pierce
Deputy County Attorney

March 9, 2015

Elliot Engstrom, Esq.
100 South Harrington Street
Raleigh, NC 27603

Re: Your Letter dated March 3, 2015

Dear Mr. Engstrom:

Your March 3, 2015 letter regarding public records has been received and in response let me again say that we have not denied your request. We have offered to make the records available for inspection and examination in full compliance with the law as set forth in our initial December 15, 2014 response to Ms. Hight's December 12, 2014 letter requesting records.

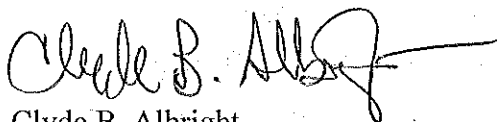
We have found that making records available for review before copying is the most efficient use of taxpayer money because we avoid making copies of documents that requestors often do not want. I believe that this is specifically contemplated by the statute and our policy complies with the law. We permit inspection and examination. We offer to make copies at 10 cents per page.

§ 132-6. Inspection and examination of records.

- (a) 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. (emphasis added)**

We have not denied your public records request. We have offered to make the records available at a mutually convenient time and will furnish any copies upon payment of copying fees.

Sincerely,



Clyde B. Albright
Alamance County Attorney

Exhibit F