

STATE OF NORTH CAROLINA  
COUNTY OF GASTON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
15-CVS-3203

DAN DEITZ, ELLEN DEITZ TUCKER )  
)  
Plaintiffs, )  
)  
v. )  
)  
CITY OF BELMONT, BARRY WEBB, in )  
his official capacity as City Manager for )  
the City of Belmont )  
)  
Defendants. )

**ANSWER**

NOW COME the Defendants, City of Belmont and Barry Webb, in his official capacity as City Manager for the City of Belmont (hereinafter "Defendants"), by and through the undersigned attorneys, and hereby Answer the Plaintiffs' Complaint as follows:

**FIRST DEFENSE**

Defendants plead lack of subject matter jurisdiction pursuant to the provisions of Rule 12(b)(1) of the North Carolina Rules of Civil Procedure.

**SECOND DEFENSE**

Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief may be granted, pursuant to Rule 12(b)(6) of the North Rules of Civil Procedure.

**THIRD DEFENSE**

Defendants plead all applicable immunities to which they are entitled to by operation of law and in bar of Plaintiff's claims herein, including, but not limited to, governmental immunity, qualified immunity, public officials immunity, and the public duty doctrine.

## FOURTH DEFENSE

With respect to the specifically enumerated paragraphs of Plaintiff's Complaint, Defendants plead as follows:

### INTRODUCTION

1. It is admitted that Plaintiff's Complaint purports to state a claim under the Uniform Declaratory Judgment Act, N.C.G.S §1-253, and North Carolina's Public Records Act, N.C.G.S. §132, to challenge the Defendants' denial of the Plaintiffs' public records request. It is specifically denied that Defendants are liable to Plaintiffs under any statute, law, constitutional amendment, or theory. Except as herein admitted, denied.

2. It is admitted that Plaintiff's Complaint purports to state that the cause of action arises from Plaintiffs' public records request dated July 8, 2015 and the subsequent communications between the parties. It is specifically denied that Defendants are liable to Plaintiffs under any statute, law, constitutional amendment, or theory. Except as herein admitted, denied.

3. It is admitted that Plaintiffs have sought documents from the City of Belmont. The remaining allegations contained in Paragraph 3 are denied as stated.

4. It is admitted that the correspondence issued by the Defendants on July 15, 2015 is a written document, and that said document is the best evidence of its contents. To the extent the allegations in Paragraph 4 contradict the contents of the document, they are denied. Except as herein admitted, denied.

5. It is admitted that the written contents of N.C.G.S § 160A-168 speak for themselves and are of the best evidence of the statute's contents. To the extent the allegations in Paragraph 5 contradict the contents of the statute, they are denied. Except as herein admitted, denied.

6. It is admitted that the written contents of N.C.G.S § 160A-168 speak for themselves and are of the best evidence of the statute's contents. To the extent the allegations in Paragraph 5 contradict the contents of the statute, they are denied. It is further admitted that Plaintiffs allege in their Complaint

that the documents requested are not a city personnel record but are instead a public record subject to disclosure under N.C.G.S. §132-6, which Defendants deny. It is specifically denied that Defendants are liable to Plaintiffs under any statute, law, constitutional amendment, or theory. Except as herein admitted, denied.

7. It is admitted that Plaintiffs, in their Complaint, are asking the Court for declarations that the documents requested were not “gathered by the city” for purposes of N.C.G.S. § 160A-168, and that said documents are therefore a public record subject to disclosure, and that the documents requested are not in their entirety a document with respect to individual employees of the City of Belmont, and therefore any portions not commenting on individual employees are subject to disclosure. These constitute conclusory statements for which no response is required by Defendants. To the extent a response is required, denied.

8. It is admitted that Plaintiffs, in their Complaint, are asking the Court to compel production of the documents requested pursuant to N.C.G.S. § 132-9. This constitutes a conclusory statement for which no response is required by Defendants. To the extent a response is required, denied.

9. It is admitted that Plaintiffs, in their Complaint, are asking the Court to order Defendants to pay Plaintiffs’ reasonable attorneys’ fees in accordance with N.C.G.S. § 132-9(c). This constitutes a conclusory statement for which no response is required by Defendants. To the extent a response is required, denied.

### **PARTIES**

10. The responses contained in Paragraphs 1 through 9 of Defendants’ Answer are restated and incorporated herein by reference.

11. It is admitted, upon information and belief, that Plaintiff Dan Deitz is a natural person residing in North Carolina. It is further admitted that the correspondence issued by Plaintiffs’ counsel dated July 8, 2015 is a written document, and that said document is the best evidence of its contents. To the extent the allegations contained in Paragraph 11 contradict the contents of the documents, they are denied. It is further admitted that the correspondence issued by the Defendants on July 15, 2015 is a

written document, and that said document is the best evidence of its contents. To the extent the allegations contained in Paragraph 11 contradict the contents of the document, they are denied. Except as herein admitted, denied.

12. It is admitted, upon information and belief, that Plaintiff Ellen Deitz Tucker is a natural person residing in North Carolina. It is further admitted that the correspondence issued by Plaintiffs' counsel dated July 8, 2015 is a written document, and that said document is the best evidence of its contents. To the extent the allegations contained in Paragraph 12 contradict the contents of the documents, they are denied. It is further admitted that the correspondence issued by the Defendants on July 15, 2015 is a written document, and that said document is the best evidence of its contents. To the extent the allegations contained in Paragraph 12 contradict the contents of the document, they are denied.

13. It is admitted that Defendant Barry Webb is the City Manager of the City of Belmont. The second sentence of Paragraph 13 seeks a legal conclusion to which no response is required. To the extent a response is required, denied. As to the third sentence of Paragraph 13, it is admitted that Plaintiff's Complaint names Barry Webb as Defendant in his official capacity only. Except as herein admitted, denied.

14. As to the first sentence of Paragraph 14, it is admitted that Defendant City of Belmont is a municipal corporation located in North Carolina that has in its possession documents of which Plaintiffs have requested copies. Except as herein admitted, denied. As to the second sentence of Paragraph 14, it is further admitted that the correspondence issued by the Defendants on July 15, 2015 is a written document, and that said document is the best evidence of its contents. To the extent the allegations contained in Paragraph 12 contradict the contents of the document, they are denied. Except as herein admitted, denied.

15. The responses contained in Paragraphs 1 through 14 of Defendants' Answer are restated and incorporated herein by reference.

16. The allegations continued in Paragraph 16 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

17. The allegations continued in Paragraph 17 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

18. The allegations continued in Paragraph 18 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

**FACTUAL ALLEGATIONS**

19. The responses contained in Paragraphs 1 through 18 of Defendants' Answer are restated and incorporated herein by reference.

20. It is admitted, upon information and belief, that in February 2012, Donna Deitz was killed in a motor vehicle accident. The remaining allegations contained in Paragraph 20 are denied as stated.

21. Denied for lack of information or knowledge sufficient to form a belief.

22. Denied for lack of information or knowledge sufficient to form a belief.

23. Denied for lack of information or knowledge sufficient to form a belief.

24. Denied as stated.

25. It is admitted that *Exhibit B* to Plaintiff's Complaint is a written document, and that said document is the best evidence of its contents. To the extent the allegations contained in Paragraph 25 contradict the contents of the document, they are denied. Except as herein admitted, denied.

26. It is admitted that *Exhibit B* to Plaintiff's Complaint is a written document, and that said document is the best evidence of its contents. To the extent the allegations contained in Paragraph 26 contradict the contents of the document, they are denied. Except as herein admitted, denied.

27. Denied.

28. It is admitted that from October of 2014 through February of 2015, an internal personnel investigation of specific employees of the Belmont Police Department was conducted. Except as herein admitted, denied as stated.

29. It is admitted that *Exhibit B* to Plaintiff's Complaint is a written document, and that said document is the best evidence of its contents. To the extent the allegations contained in Paragraph 29

contradict the contents of the document, they are denied. All remaining allegations contained in Paragraph 29 are denied as stated.

30. Denied as stated.

31. It is admitted that Defendants have not disclosed the contents of the documents Plaintiffs have sought and have cited the provisions of § 160A-168 in support of their decision not to disclose. Except as herein admitted, denied.

32. Denied as stated.

33. As to the allegations contained in Paragraph 33, it is admitted that Defendants have cited the provisions of § 160A-168 as preventing them from disclosing the contents of the documents Plaintiffs have sought, including the identification of specific individuals. Except as herein admitted, denied.

34. It is admitted that Charlie Franklin was provided with a Notice of Termination by Defendant Barry Webb on April 17, 2015. It is further admitted that *Exhibit C* to Plaintiff's Complaint is a written document, and that said document is the best evidence of its contents. To the extent the allegations contained in Paragraph 34 contradict the contents of the document, they are denied. All remaining allegations contained in Paragraph 34 are denied as stated.

35. It is admitted that the correspondence labeled as *Exhibit D* to Plaintiff's Complaint are written documents, and that said documents are the best evidence of their contents. To the extent the allegations contained in Paragraph 35 contradict the contents of the document, they are denied. All remaining allegations contained in Paragraph 35 are denied as stated.

36. It is admitted that *Exhibit E* to Plaintiff's Complaint is a written document, and that said document is the best evidence of its contents. To the extent the allegations contained in Paragraph 36 contradict the contents of the document, they are denied. All remaining allegations contained in Paragraph 36 are denied as stated.

37. It is admitted that *Exhibit F* to Plaintiff's Complaint is a written document, and that said document is the best evidence of its contents. To the extent the allegations contained in Paragraph 37 contradict the contents of the document, they are denied. All remaining allegations contained in

Paragraph 37 are denied.

38. It is admitted that *Exhibit B* to Plaintiff's Complaint is a written document, and that said document is the best evidence of its contents. To the extent the allegations contained in Paragraph 38 contradict the contents of the document, they are denied. All remaining allegations contained in Paragraph 38 are denied as stated.

39. Denied as stated.

40. As to the allegations contained in Paragraph 40, it is admitted that Defendants have cited the provisions of § 160A-168 as preventing them from disclosing the contents of the documents Plaintiffs have sought, including the identification of specific individuals. It is further admitted upon information and belief that Plaintiffs disagree with Defendants' position. Except as herein admitted, denied as stated.

**FIRST CLAIM FOR RELIEF (DECLARATORY JUDGMENT)**

41. The responses contained in Paragraphs 1 through 40 of Defendants' Answer are restated and incorporated herein by reference.

42. The allegations contained in Paragraph 42 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

43. The allegations contained in Paragraph 43 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

44. The allegations contained in Paragraph 44 constitute a legal conclusion to which no response is required. To the extent a response is required, denied. In addition, N.C.G.S. § 160A-20.1 speaks for itself and is the best evidence of its own contents. To the extent the allegations contained in Paragraph 44 contradict the contents of the statute, they are denied.

45. The allegations contained in Paragraph 45 constitute a legal conclusion to which no response is required. To the extent a response is required, denied. In addition, N.C.G.S. § 160A-4 speaks for itself and is the best evidence of its own contents. To the extent the allegations contained in Paragraph 45 contradict the contents of the statute, they are denied.

46. The allegations contained in Paragraph 46 constitute a legal conclusion to which no response is required. To the extent a response is required, denied. In addition, N.C.G.S. § 160A-168 speaks for itself and is the best evidence of its own contents. To the extent the allegations contained in Paragraph 46 contradict the contents of the statute, they are denied.

47. The allegations contained in Paragraph 47 constitute a legal conclusion to which no response is required. To the extent a response is required, denied. In addition, Employees Ass'n of N. Carolina, Inc. v. N. Carolina Dep't of State Treasurer, 364 N.C. 205, 214 (2010) speaks for itself and is the best evidence of its own contents. To the extent the allegations contained in Paragraph 47 contradict the contents of the case cite, they are denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

**SECOND CLAIM FOR RELIEF (DECLARATORY JUDGMENT)**

52. The responses contained in Paragraphs 1 through 51 of Defendants' Answer are restated and incorporated herein by reference.

53. As to the allegations contained in Paragraph 53, it is admitted that Defendants have cited the provisions of § 160A-168 as preventing them from disclosing the contents of the documents Plaintiffs have sought, including the identification of specific individuals. Except as herein admitted, denied.

54. As to the allegations contained in Paragraph 54, it is admitted that Defendants have cited the provisions of § 160A-168 as preventing them from disclosing the contents of the documents Plaintiffs have sought, including the identification of specific individuals. In addition, N.C.G.S. § 160A-168 speaks for itself and is the best evidence of its own contents. To the extent the allegations contained in Paragraph 54 contradict the contents of the statute, they are denied. Except as herein admitted, denied.

55. As to the allegations contained in Paragraph 55, it is admitted that Defendants have cited the provisions of § 160A-168 as preventing them from disclosing the contents of the documents Plaintiffs

have sought, including the identification of specific individuals. Except as herein admitted, denied.

56. As to the allegations contained in Paragraph 56, it is admitted that Defendants have cited the provisions of § 160A-168 as preventing them from disclosing the contents of the documents Plaintiffs have sought, including the identification of specific individuals. Except as herein admitted, denied.

57. It is admitted that *Exhibit C* to Plaintiff's Complaint is a written document, and that said document is the best evidence of its contents. To the extent the allegations contained in Paragraph 57 contradict the contents of the document, they are denied. All remaining allegations contained in Paragraph 57 are denied.

58. Denied.

59. As to the allegations contained in Paragraph 59, N.C.G.S. § 132-6(c) speaks for itself and is the best evidence of its own contents. To the extent the allegations contained in Paragraph 59 contradict the contents of the statute, they are denied. All other allegations contained in Paragraph 59 are denied.

60. It is admitted that *Exhibit H* to Plaintiff's Complaint is a written document, and that said document is the best evidence of its contents. To the extent the allegations contained in Paragraph 60 contradict the contents of the document, they are denied. All remaining allegations contained in Paragraph 60 are denied.

61. As to the allegations contained in Paragraph 61, it is admitted that Defendants have cited the provisions of § 160A-168 as preventing them from disclosing the contents of the documents Plaintiffs have sought, including the identification of specific individuals. Except as herein admitted, denied.

62. Denied.

### **THIRD CLAIM FOR RELIEF (COMPEL DISCLOSURE OF PUBLIC RECORDS)**

63. The responses contained in Paragraphs 1 through 63 of Defendants' Answer are restated and incorporated herein by reference.

64. It is admitted that Plaintiffs, in their Complaint, have requested that the Court issue a declaration that the documents they have requested are a public record. It is further admitted that

Defendants have cited the provisions of § 160A-168 as preventing them from disclosing the contents of the documents Plaintiffs have sought, including the identification of specific individuals. Except as herein admitted, denied.

65. Denied.

**FOURTH CLAIM FOR RELIEF (ATTORNEYS' FEES)**

66. The responses contained in Paragraphs 1 through 65 of Defendants' Answer are restated and incorporated herein by reference.

67. Denied.

**PRAYER FOR RELIEF**

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. It is admitted that Plaintiff has requested a jury for any such matters that might be tried by a jury. Except as herein admitted, denied.

ALL INDIVIDUAL ALLEGATIONS NOT SPECIFICALLY ADMITTED HEREIN ARE DENIED.

**FIFTH DEFENSE**

Defendants allege that at all times relevant to this action, they were acting without malice and with a good faith belief that their duties were carried out in accordance with the law and the Constitution of the United States and the State of North Carolina, and as such, they are protected by the doctrine of public officers or public officials immunity as well as qualified immunity.

**SIXTH DEFENSE**

The policies of the City of Belmont are now, and have been during the period of time referred to in the Complaint, conducted in all respects in accordance with State and Federal laws, and in good faith.

**ADDITIONAL DEFENSES**

Defendants reserve the right to amend their Answer and to assert any additional affirmative defenses allowed by the North Rules of Civil Procedure, depending on any evidence discovered in pursuit of this litigation.


**PRAYER FOR RELIEF**

WHEREFORE, having fully answered each and every allegation contained in the Plaintiff's Complaint, Defendants prays the Court as follows:

1. That the Plaintiffs have and recover nothing of these Defendants;
2. For a dismissal of Plaintiff's action, with prejudice;
3. For the costs of defending this action, including reasonable attorneys' fees;
4. For a trial by jury of all issues so triable herein;
5. For such other and further relief as the Court may deem just and proper

This the 30<sup>th</sup> day of October, 2015.

CRANFILL SUMNER & HARTZOG LLP

BY:   
Bradley P. Kline (State Bar #34045)  
Post Office Box 30787  
Charlotte, North Carolina 28230  
Telephone (704) 332-8300  
Facsimile (704) 332-9994

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served the attached *Answer* on all parties to this cause by:

\_\_\_\_\_ Hand delivering a copy hereof to the attorney for each said party addressed as follows:

  X   Depositing a copy hereof, postage prepaid, in the United States Mail, addressed to the attorney for each said party as follows:

\_\_\_\_\_ Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to the attorney for each said party as follows:


\_\_\_\_\_ Telecopying a copy hereof to the attorney for each said party as follows:

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This the 30<sup>th</sup> day of October, 2015.

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