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**IN THE DISTRICT COURT FOR TULSA COUNTY
STATE OF OKLAHOMA**

(1) CHRISTOPHER BARNETT,

Plaintiff,

v.

Case No.: CV-2017-832

(2) TULSA COMMUNITY
COLLEGE, & LAUREN
BROOKEY IN HER OFFICIAL
CAPACITY OF CUSTODIAN
OF RECORDS FOR TULSA COMMUNITY COLLEGE

Defendant.

**DISTRICT COURT
FILED**

OCT - 5 2017

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

**AMENDED PETITION FOR DECLARATORY
AND INJUNCTIVE RELIEF FOR
VIOLATION OF THE OKLAHOMA OPEN RECORDS ACT
AND FOR INJUNCTIVE RELIEF AGAINST DESTRUCTION OF RECORDS**

The plaintiff, Christopher Barnett, pursuant to OKLA. STAT. tit. 51, §24A.17(B), hereby petitions this Court to temporarily and permanently enjoin the defendant, Tulsa Community College (TCC), , as well as its agents "Lauren Brookey, Custodian of Records", from continuing to deny access to specific requested public records in violation of the Oklahoma Open Records Act, OKLA. STAT. tit. 51, §§24A.1, et

P

seq. ("ORA"). The plaintiff further petitions this Court to restrain and enjoin TCC and its agents from destroying any documents relevant to the plaintiff's ORA requests until such time as the issues herein are fully resolved.

In support of its petition, the plaintiff alleges and states the following:

PARTIES

Plaintiff, Christopher Barnett, ("Barnett") for his cause of action against the above-named Defendant Tulsa Community College ("TCC"), would state as follows:

1. Barnett is a resident and citizen of the State of Oklahoma. Tulsa Community College (TCC) is a public entity providing educational services in Tulsa County and are paid for by public dollars.

2. The events giving rise to this lawsuit occurred in Tulsa County making jurisdiction and venue proper.

3. Upon information and belief, the TCC email server and its supporting infrastructure are funded or paid for with public dollars.

4. On July 20, 2015, Barnett served TCC with a request under the OORA for emails from a professor's TCC account. The pertinent language reads as follows:

Please provide any communications between William Carter to Susan Barrett that was sent via e-mail by William Carter or receive(sic) by William Carter via TCC email.

5. TCC responded by invoicing Barnett \$720.00 as a search fee. Barnett paid the fee, but TCC withheld approximately 100 emails because it determined

those emails were “purely personal and of a private nature” and therefore not a “record” under the OORA.

6. TCC interpreted the OORA definition of “record” to exempt any email on a publicly funded server that does not substantively address “the transaction of public business, the expenditure of public funds or the administering of public property.”

7. TCC’s definition of “record” is too narrow, it is inconsistent with the purpose of the OORA, and contrary to the plain language of the statute. The decision to withhold non-privileged emails maintained on a public email server violated the OORA.

8. On February 18, 2016, Barnett submitted a new OORA to TCC based upon its practice of assessing fees to search for records that TCC would not produce. The request reads as follows:

Date of Record (Approximate): July 01, 2015 to current

Request/Nature of Record: Please provide all amounts that TCC has paid to Attorney Tom Vought or his law firm in relation to my request for records, specifically in regards to the 100 e-mails TCC withheld from me, in which I paid TCC for, to and from Susan Barrett and Bill Carter. I understand that privileged information cannot be disclosed, however the amount TCC pays this attorney and Law Firm should qualify as a record. Please also provide a copy of any contract or agreements between TCC and the Law Firm of Tom Vought or with Attorney Tom Vaught.

Investigation into how tax dollars are spent at TCC, and for the interest of the public and I am a tax paying citizen.

9. TCC responded by assessing another search fee despite the lack of any apparent connection between Barnett's request and the pursuit of any private interest.

10. On February 23, 2016, Barnett paid \$674.00 in additional search fees to TCC. See Exhibit A (Copy of Cashiers Check # 109395 payable to Tulsa Community College in Re: OORA). Other parts of Exhibit A include letters sent to Diane Hainey at Tulsa Community College from the law firm of Bryan and Terrill, which Plaintiff paid to assist him in obtaining records, a copy of the check where Plaintiff was refunded the first payment paid to TCC for his first records request in which TCC withheld some records and to date has not provided those records. E-mails that were circulated and eventually sent to Susan Barrett, a non TCC employee at The University of Tulsa.

11. That same day, Barnett sent an OORA for all emails from one TCC email account since May 1, 2015.

12. On March 31, 2016, TCC responded by assessing another search fee and withholding 457 emails based on "personal privilege" and 447 emails based on "under review due to FERPA"

13. On April 1, 2016, Barnett served a second OORA for emails from this account since July 27, 2015. TCC did not respond to this request.

14. On May 18, 2016, Barnett sent an OORA to TCC requesting emails on the TCC server that include any of the following terms:

“Nigger”, “Terrorist”, “Queer”, “Fag”, and “Fagot”

(See Ex. ____).

15. TCC did not respond to this request.

16. The fees charged by TCC did not appear associated with any work actually performed by TCC, but instead appeared designed to discourage future requests in direct violation of the Oklahoma Open Records Act.

17. On July 13, 2016, TCC served Barnett with a letter stating that he had “incurred search fees totaling \$2,053.00. Of this amount, \$674.00 has been paid by Barnett . . . leaving a balance of \$1,379.” In the letter, TCC did not associate any search fee amount with any particular request.

18. TCC then notified Barnett that it would not respond to any future OORA requests that required a search fee until he satisfied TCC’s prior invoices totaling \$1,379.00.

19. TCC did respond to one request Barnett submitted seeking to find out how much TCC had paid it’s law firm to respond to his open records request. TCC Custodian of Records and Vice President of TCC responded without charging Barnett and told Barnett that TCC had spent \$5,000.00 to determine “What a record is”.

20. TCC's practice of requiring prepayment of prior search fees before filling future OORA requests violates the OORA's prohibition against using search fees to discourage citizens from making requests.

21. The Oklahoma Open Records Act clearly states "Section 24A.5(3) of the Act authorizes a search fee, but cautions: In no case shall a search fee be charged when the release of said documents is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants"

22. Barnett's request is in the interest of the public. The term "In no case shall" is unequivocal. There is no way around it. It means a search fee shall not be charged to a tax payer if the request is in the interest of the public.

23. Through some of the records obtained that Barnett paid for to TCC, Barnett has already found wrong doing on the part of TCC and possible corruption, but cannot complete his investigation until TCC follows the law and provides all records requested. Example: Barnett sought to lease space

from Tulsa Community College for his theatre production company. When the meeting with TCC employee Kelly Clark was canceled at the last minute and he was told all the spaces were full, Barnett then sought records to see if she was doing her job faithfully and honestly. The records Barnett obtained showed that TCC intentionally discriminated against Barnett and even sent the e-mail communications between he and TCC employee Clark to other TCC employees such as TCC Employee Lisa Stefanic, TCC Employee Bill Carter. After obtaining the e-mails, Barnett then found that Bill Carter violated the TCC e-mail policy and had sent Barnett's e-mail to TCC over to his wife, Susan Barrett at The University of Tulsa. The question then arises for tax payers, what else are TCC employees sending to out side contacts?

24. The records are also necessary to see how often TCC employees are working vs. sending information such as Barnett's e-mails to other parties that do not work at TCC, as was the case with the e-mail he sent to TCC attempting to lease space which was forwarded to The University of Tulsa. Tulsa Community College has been accused of racial discrimination in the past through the filing of several lawsuits by former employees, of which TCC settled most of those lawsuits. The records are necessary to see if discrimination and racism is still taking place at Tulsa Community College. The Public has a right to know as the public has to pay any Judgements that are rendered against TCC. If the records are provided and

there is proof that discrimination is still taking place at TCC, Plaintiff will then file a motion with this court seeking to empanel a Grand Jury and obtain the necessary Signature to have a Grand Jury investigate the matters at hand.

25. Plaintiff seeks the records to see if there is waste, if employees are doing their jobs correctly.

26. Plaintiff asserts that all e-mails sent from any TCC e-mail account by any TCC employee is subject to the Oklahoma Open Records Act. If that employee is sending e-mail from their official work e-mail, it should be made available to the public. If that employee is on the clock and working and sending an e-mail through a TCC e-mail address, or even off the clock but still doing business on their TCC e-mail, that e-mail is subject to the Oklahoma Open Records Act.

27. Upon information and belief, the Plaintiff found through a public records search that TCC Custodian of Records and Vice President Lauren Brookey was also a board member of the Tulsa Metropolitan Utility Authority. Plaintiff submitted a records request to The City of Tulsa for a copy of any and all e-mails sent to or from Lauren Brookey. The City of Tulsa provided all e-mails sent to Lauren Brookey, at her TCC e-mail address but did not provide any of the e-mails that were sent from her address. When Plaintiff questioned The City of Tulsa about this, they claimed they did not have access to the e-mails because they were on the server of Tulsa Community College. The Plaintiff has not only an interest in obtaining the e-mails from TCC for his investigation into TCC, but also for his investigation into the City of Tulsa Water Department and TMUA. If the Defendant, TCC would release all e-mails requested, which without a doubt have to do with public business, this would answer more of Plaintiff's questions about the City's drinking water.

28. The Oklahoma Open Records Act also provides for "In keeping with the legislatively-created presumption that all records of a public body are open, a public body or public official is not civilly liable for damages resulting from disclosure of records pursuant to the Open Records Act. See *id.* § 24A.17(D)" This eliminates the excuses from TCC Vice President Lauren Brookey. Brookey

should release all e-mails without examining them. If public entities could review every e-mail and withhold e-mails they deem "Personal in Nature", the public would never find out about corruption, theft, cheating, affairs, embezzlement or anything else.

CAUSE OF ACTION AND PRAYER FOR RELIEF

29. The ORA expresses "the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government." See ORA §24A.2. Pursuant to this public policy, the stated purpose of the ORA Act "is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power." Id.

30. To effect these purposes, ORA §24A.5 mandates that "[a] records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction " As such, it imposes an affirmative and legally cognizable duty on Lauren Brookey as the custodian of Records for Tulsa

Community College to allow public access to the records within its custody, control, or possession.

31. ORA §24A.5(6) mandates that a public body or an official such as TCC VP Lauren Brookey "must provide prompt, reasonable access to its records."

32. As of the time of filing this complaint, TCC VP Lauren Brookey has denied prompt, reasonable access to records requested by Plaintiff on seven (13) occasions since July 2015. Plaintiff has only received a few records and the Defendant TCC has withheld some records claiming they are "Personal in nature" however the Oklahoma Open Records Act does not have an exemption for "Personal in Nature". The Defendant has also used search fees in an effort to discourage the request and not provide the records requested.

33. The denial of access to records for a period in excess of twenty-six months is per se neither "prompt" nor "reasonable."

34. Pursuant to ORA §24A.17(B), Plaintiff requests (a) declaratory relief in the form of an order declaring that Defendant Tulsa Community College has violated the ORA by failing to provide prompt and reasonable access to public

documents, and (b) injunctive relief in the form of an order for the immediate release of all records responsive to Plaintiff's ORA requests. Plaintiff requests prompt in camera review of all potentially responsive documents for which any exemption from public disclosure is claimed.

35. Plaintiff further requests preliminary injunctive relief to prevent Tulsa Community College from destroying any records relevant to Plaintiff's ORA requests, notwithstanding any retention schedules promulgated by Archives and Records Commission under the Records Management Act. See OKLA. STAT. tit. 67, §§201, et seq.

36. By separate motion, Plaintiff requests that Tulsa Community College be temporarily restrained from any destruction of the requested records.

37. Defendant's failure to provide prompt or reasonable access to the records requested-in some cases for more than twenty-four (26) months. Destruction of records requested by Plaintiff would irreparably harm Plaintiff and the public's right to access the requested documents.

38. Plaintiff prays that the Court temporarily restrain and preliminarily enjoin the destruction of any potentially relevant documents responsive to Plaintiff's various ORA requests until after the conclusion of this action, or any related litigation pertaining to the adequacy of Defendant's responses to the Plaintiffs ORA requests.

39. Plaintiff further prays that the Court Award Plaintiff its reasonable attorneys' fees in this action, as Plaintiff is entitled to attorneys' fees upon successful determination of the action on the merits under ORA §24A.17(B)(2). Currently, Plaintiff has spent over \$28,000.00 on attorney fees to obtain these records from Defendant, Tulsa Community College.

WHEREFORE, all premises considered, Plaintiff respectfully requests a declaration that TCC's policy as stated above violates the OORR, and a permanent injunction against TCC from enforcing this policy in the future, along with all costs and attorney's fees, and any such other relief the Court deems just and equitable. Plaintiff requests that this court order Defendant, Tulsa Community College to preserve all records requested, and fulfill all outstanding Open Records Request outstanding to Plaintiff without charging a search fee, including the e-mails of Lauren Brookey in her official capacity as both the Custodian of Records and as the board member of the Tulsa Metropolitan Utility Authority as all e-mails are on believed to be on the TCC server.

Respectfully submitted

Christopher J. Barnett, Pro-Se

8033 South Mingo Road

Tulsa, Oklahoma 74133

918-340-0517

A handwritten signature in black ink, appearing to read "Chris Barnett", written in a cursive style.

EXHIBIT A

Western Sun
TULSA COMMUNITY COLLEGE

MAILING ADDRESS
4620 WEST KENOSHA
BROKEN ARROW, OK 73002
1-800-925-4773

WESTERN SUN
FEDERAL CREDIT UNION
CHECKS APPROX. OK 10/1/16


10/23/2016 12:00:00 AM

AMOUNT
*****1274.00

PAY TO THE ORDER OF
Six Hundred Seventy-Four and 00/100
Tulsa Community College
RE: QORA

WESTERN SUN FEDERAL CREDIT UNION

Official Check



109395 1303986381 50000000010*

EXHIBIT A

BRYAN & TERRILL

A PROFESSIONAL LIMITED LIABILITY CORPORATION
ATTORNEYS AND COUNSELORS

9 E. 4TH STREET, SUITE 307
TULSA, OKLAHOMA 74103
TELE: 918.935.2777
FAX: 918.935.2778
BRYANTERRILLFIRM@GMAIL.COM
WWW.BRYANTERRILL.COM

January 27, 2015

VIA EMAIL & U.S. MAIL:

Diane Haney
Tulsa Community College
External Affairs
6111 East Skelly Drive, Suite 616
Tulsa, OK 74135
diane.haney@tulsacc.edu

Re: Open Records Request of email communications involving TCC employee Bill Carter

Dear Ms. Haney:

This letter is in regard to your email of January 27, 2016 wherein you informed my client, Christopher Barnett ("Barnett"), that Tulsa Community College ("TCC") would not produce approximately 100 emails between William Carter and Susan Barret.

In support, you cite § 24.3.1 of the Oklahoma Open Records Act and state the emails are "personal nature and unrelated to TCC business and are not 'records' and are not subject to inspection and copying under Section 24A.5 of the Oklahoma Open Records Act."

In Lauren Brookey's January 21, 2016 letter to Barnett, TCC indicates that Barnett will received 1150 emails sent to and from William Carter's TCC email address from January 1, 2013 to August 14, 2015, 742 emails that reference or mention "George Barnett" or "Trey Barnett," and approximately 100 emails that were sent to and from William Carter and Susan Barret for the period ending in July 27, 2015. Despite affirmatively representing that TCC was producing these emails, it withheld them without telling Barnett, who then realized that emails between William Carter and Susan Barret were missing.

As a public officer you have a statutory duty under the Open Records Act ("ORA") to provide public access to TCC emails. The ORA, 51 O.S. 2001 §§24A.1-24A.29 provides for the public right to access to and review of government records. Section 24A.2 provides in pertinent part:

... Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; **provided, the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by such a confidential privilege.**

TCC bears the burden of showing that the requested emails (which were sent to a public domain email address) are subject to a confidential privilege. No such confidentiality exists which would preclude production of emails that utilized public property and the public services.

Attorney General Opinion 2009 OK AG 12, provides that , “a communication that meets the definition of a record under the ORA is subject to disclosure regardless of whether it is created or received on a publicly or privately owned personal electronic communication device, unless some provision of law allows it to be kept confidential.”

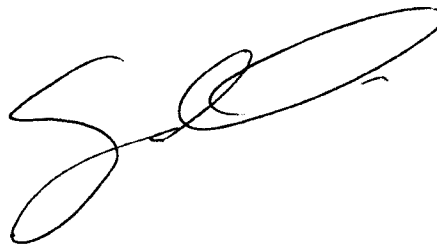
TCC’s position that the emails are “personal” is unpersuasive since Carter’s email account is public. The simplicity of this argument is underscored by the fact that personal email accounts are available to TCC employees who wish to transact personal business. Public accounts (such as the one subject to the open records request) are subject to production to the public by the very nature that they are public records.

Furthermore, the position is illegal because TCC produced emails which were personal in nature. These emails were not removed and were included in TCC’s production. This supports the conclusion that while some personal, non-business related TCC emails were included, emails involving Susan Barrett were the sole exception.

TCC’s position that the emails are personal is unavailing and untenable. The attempt by TCC to prevent a proper open records request is not only disappointing; it is actionable and potentially criminal. Please respond with the requested documents by Friday, January 29, 2016. Failure to provide the requested emails will require legal intervention and a formal complaint to the district attorney’s office.

Should you have any questions or concerns regarding this matter, please contact our office.

Best regards,

A handwritten signature in black ink, appearing to read "S. J. Terrill", written in a cursive style.

Steven J. Terrill

EXHIBIT A

On Thu, Jul 9, 2015 at 1:36 PM, Kelly Clark <kelly.clark@tulsa.gov> wrote:

Please excuse my short response, but I am in a conference call and then into a meeting. My first question is which space. I cannot give you a tour until I know if you are looking at the Main Stage or Studio Theatre. Sorry, the dates are very important for both.

Where have you been performing in the past? Would a tour of our spaces be appropriate?

Let me know which venue you are requesting and I will see what we might have for you.

Thanks again!

Kelly

From: Chris J [mailto:tulsaboi29@gmail.com]
Sent: Wednesday, July 08, 2015 3:55 PM
To: Kelly Clark
Subject: Re: Theatre Rental

Hi Kelly

I wanted to touch base with you again. We have a total of 5 different productions we are planning to do over the course of the next year to year and a half. I know that TCC books out way in advance so I wanted to go ahead and see about reserving the space and paying for that ahead of time. Please let me know what dates you have. Generally we like to space out our productions at least 3 months apart. We also would ask for a full crew from TCC for each show. I checked with our insurance underwriter and we carry 5 million in liability coverage.

I look forward to hearing from you.

EXHIBIT A

From: Bill Carter <billcarter@tulsa.edu>
Sent: Thursday, July 09, 2015 3:32 PM
To: Kelly Clark <kelly.clark@tulsa.edu>
Subject: RE: Theatre Rental

Sent from my iPhone

Begin forwarded message:

From: Lisa Stefani <lisa.stefani@tulsa.edu>
Date: July 9, 2015, 3:54:21 PM CDT
To: Kelly Clark <kelly.clark@tulsa.edu>
Cc: Bill Carter <billcarter@tulsa.edu>
Subject: RE: Theatre Rental

Is it the guy that wants to perform "Susan's Story" that could be a TU grad? Don't think I know him.

From: Kelly Clark
Sent: Thursday, July 09, 2015 3:51 PM
To: Lisa Stefani
Cc: Bill Carter
Subject: FW: Theatre Rental

Does this person sound familiar?

Thanks
Kelly

From: Chris J [mailto:tulsaboi29@gmail.com]
Sent: Thursday, July 09, 2015 3:41 PM
To: Kelly Clark
Subject: Re: Theatre Rental

The black box is the theater we would like. My husband is employed by TCC and has worked in the theater there for TCC. He hasn't had any work calls in a while but is still an active employee, so we're familiar with the space.

This is a new non profit we have just started. My husband is actually a performer and a designer. I simply handle all the finances for all of our projects and the insurance etc.

Just let me know which dates you have available.

Thanks
Chris Barnett

EXHIBIT A



TULSA
COMMUNITY
COLLEGE

January 21, 2016

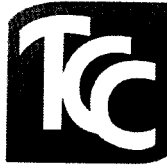


EXHIBIT A

Open Records Request Form
External Affairs Department
Phone: 918/595-7977 Fax: 918/595-7939

This form is intended to serve as a mechanism for fulfilling Open Records Requests from the public. TCC wishes to provide the information you request in a timely and efficient manner. Please direct questions about the policy of the TCC Board of Regents for Open Records or specific questions about the status of your request to Lauren F. Brookey, Vice President of External Affairs.

Name: Christopher Barnett

Date of Request: February 18, 2016

Preferred contact information:

Telephone: (and/or) 918-340-0517

Address: (and/or) 11063-D South Memorial Drive Suite 401 Tulsa Ok 74133

Email: Tulsaboi29@gmail.com

Date of Record (Approximate): July 01, 2015 to current

Request/Nature of Record: Please provide all amounts that TCC has paid to Attorney Tom Vought or his law firm in relation to my request for records, specifically in regards to the 100 e-mails TCC withheld from me, in which I paid TCC for, to and from Susan Barrett and Bill Carter. I understand that privileged information cannot be disclosed, however the amount TCC pays this attorney and Law Firm should qualify as a record. Please also provide a copy of any contract or agreements between TCC and the Law Firm of Tom Vought or with Attorney Tom Vaught.

Investigation into how tax dollars are spent at TCC, and for the interest of the public and I am a tax paying citizen.

Commercial use for request? Yes ___ No X

Non-Commercial use for request? Yes X No ___

Nature of use: To investigate how TCC spends tax dollars, how well it is managed and if it is efficient.

Copy Requested?: Yes ___ No X

Inspection Requested?: Yes X No ___

Preferred time for inspection? As soon as possible.

TCC OFFICE USE

Estimated cost of request: _____

Staff person taking the request: _____

Initials _____

Date request delivered: _____

Signature upon receipt: _____

(form: lb/media/openrecordsrequestform/07/05)

Christopher J. Barnett
8033 South Mingo Road
Tulsa, Oklahoma 74133
918-730-9309

EXHIBIT A

June 27, 2017

Sherry Gaston
Board Secretary to TMUA, RMUA
City Hall
175 East 2nd Street, 8th floor
Tulsa, OK 74103

Re: Oklahoma Open Records Request

To whom it may concern:

My name is Christopher Barnett. I am a citizen and taxpayer who resides in Tulsa, Oklahoma. I am sending this request to you under the Oklahoma Open Records Act also known as the OORA.

I show that the Tulsa Metropolitan Utility Authority employed a Lauren Brookey with a term expiring on April 24, 2017.

I am requesting any and all e-mails sent to or from Lauren Brookey from the dates of January 01, 2014 through current date.

Please also provide any and all memo's either in electronic format or written format sent to or from Lauren Brookey or where Lauren Brookey was copied or a party to receive or send.

Please provide me with how much if any Lauren Brookey was paid by The Tulsa Metropolitan Utility Authority.

Please provide me with how long Lauren Brookey worked for the Tulsa Metropolitan Utility Authority.

This request is being made to the Tulsa Metropolitan Utility Authority under the Oklahoma Open Records Act. I am requesting all records available in electronic format. Any records not available in electronic format, I am happy to pay the fee allowed by law for copying, however no search fee shall be charged.

Please note that Oklahoma State Law clearly states: "In no case shall a search fee be charged when the release of said documents is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants."

My request is in the interest of the public as I am looking into activities concerning Lauren Brookey, possible corruption and criminal wrong doing.

Please send your response to me at the address above.

Sincerely
Christopher J. Barnett