



PART A

IN THE DISTRICT COURT IN AND FOR CLEVELAND COUNTY  
STATE OF OKLAHOMA

Document split into multiple parts

**FILED**

MAY 20 2022

In the office of the  
Court Clerk MARILYN WILLIAMS

THE SUSTAINABLE JOURNALISM )  
 FOUNDATION *d/b/a* NONDOC MEDIA, )  
*and* WILLIAM W. SAVAGE III, )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 THE STATE OF OKLAHOMA *ex rel.* )  
 BOARD OF REGENTS OF )  
 THE UNIVERSITY OF OKLAHOMA, )  
 Defendant. )

Case No. CV-2021-1770  
Judge Walkley

**PLAINTIFFS' MOTION TO COMPEL DISCOVERY**

In response to Plaintiffs' initial discovery requests, consisting of twelve requests for production and twenty-one interrogatories, Defendant has provided Plaintiffs with only one responsive document. Rather than comply with the requirements of the Oklahoma Discovery Code and existing law, Defendant's responses to Plaintiffs' discovery requests instead consist of unsubstantiated boilerplate objections to providing any responses to interrogatories or responsive documents. Critically, Defendant has turned its rationale for denying Plaintiffs access to public records—the claim (among others) that the records sought are privileged attorney-client communications—into an excuse for withholding documents responsive to Plaintiffs' discovery requests. However, Defendant has failed to provide any information necessary to establish its pervasive and numerous privilege claims. Despite good faith efforts by Plaintiffs' counsel to resolve the outstanding discovery issues without court intervention, almost all of the issues remain unresolved.

Because Defendant has failed to comply with many of the requirements of the Oklahoma Discovery Code and existing law in responding and objecting to Plaintiffs' discovery requests, Plaintiffs ask the Court to find that Defendant's claimed privileges and protections are waived

and therefore move this Court pursuant to Okla. Stat. tit. 12, § 3237 for an order compelling Defendant to produce the documents described in Request Nos. 2-12 of Plaintiffs' First Request for Production of Documents and Tangible Things by Defendant and answer Interrogatory Nos. 2-21 of Plaintiffs' First Set of Interrogatories for Defendant.

### **BACKGROUND**

Plaintiffs, members of the news media, brought this action challenging the University of Oklahoma's unlawful withholding of public records. On May 1, 2019, Plaintiffs submitted a written request for public records to Defendant for "any and all reports created by the law firm Jones Day for the University of Oklahoma relating to David Boren or Jim 'Tripp' Hall." Plaintiffs' Petition, Exhibit A. Plaintiffs' request for public records was made pursuant to the Oklahoma Open Records Act ("ORA"), Okla. Stat. tit. 51, §§ 24A.1-24A.33, which exists to "ensure and facilitate the public's right of access to and review of government records...." *Id.* § 24A.2.

After Defendant denied Plaintiffs' ORA request, Plaintiffs filed a Petition on June 10, 2021, to initiate this case. Plaintiffs' Petition alleged Defendant did not satisfy its obligations under the ORA because Defendant failed to conduct an adequate search for responsive records, unlawfully denied Plaintiffs' ORA request, and withheld responsive records. *See* Plaintiffs' Petition, 7-8. After an initial reservation of time, Defendant filed an Answer to Plaintiffs' lawsuit raising several affirmative defenses in support of its claim that the requested records were confidential including the attorney-client privilege, deliberative process privilege, and sections 24A.7(A) (relating to personnel records of public bodies) and 24A.12 (relating to litigation files and investigatory reports of certain public bodies) of the ORA. *See* Defendant's Answer, 5-6.

## DISCOVERY REQUESTS

### **A. Plaintiffs' discovery requests for Defendant**

On December 21, 2021, Plaintiffs served upon Defendant twelve requests for production pursuant to Okla. Stat. tit. 12, §§ 3226 and 3234. Also on December 21, 2021, Plaintiffs served upon Defendant twenty-one interrogatories pursuant to Okla. Stat. tit. 12, §§ 3226 and 3233. A true and correct copy of Plaintiffs' requests for production and interrogatories is attached hereto as **Plaintiffs' Exhibit A**. For the Court's convenience, Plaintiffs' Exhibit A is Defendant's "Responses to Plaintiff's First Set of Discovery Requests," which contains each of Plaintiffs' requests for production and interrogatories along with Defendant's responses and objections.

### **B. Defendant's responses to Plaintiffs' discovery requests**

Defendant's original deadline for compliance with Plaintiffs' requests for production and interrogatories was January 20, 2022. *See id.* §§ 3233 and 3234. At Defendant's request, Plaintiffs agreed to extend the time for Defendant to respond to Plaintiffs' requests for production and interrogatories to February 28, 2022.

On February 28, 2022, Defendant served responses and objections to Plaintiffs' requests for production and interrogatories that were deficient in numerous respects. *See, infra, Section I and II*. Indeed, Defendant produced only one responsive document (the University's ORA policies) in response to Plaintiffs' twelve requests for production and twenty-one interrogatories. A true and correct copy of Defendant's Responses to Plaintiffs' First Set of Discovery Requests is attached hereto as **Plaintiffs' Exhibit A**.

### **C. Issues with Defendant's responses and objections to Plaintiffs' discovery requests**

Defendant's objections and responses to Plaintiffs' Request for Production Nos. 2-12 failed to comply with the Oklahoma Discovery Code and applicable law for several reasons.

First and foremost, Defendant failed to “state with specificity the grounds for objecting to [each] request, including the reasons” and “state whether any responsive materials are being withheld on the basis of that objection.” Okla. Stat. tit. § 3234(B)(2). Defendant also failed to “specify the part and permit inspection of the rest” for each objection made in part. *Id.*

Second, Defendant failed to describe the nature of the documents, communications, or things not produced or disclosed in a manner that would enable Plaintiffs to assess the applicability of the asserted privileges and protections Defendant asserted in response to each request. *Id.* § 3226(B)(5). It is Defendant’s burden to establish a claim of privilege or protection and its applicability. *See Hall v. Goodwin*, 1989 OK 88, n.7, 775 P.2d 291 (1989); *In re Grand Jury Proceedings (Dorokee Co.)*, 697 F.2d 277, 279 (10th Cir.1983); *United States v. Bump*, 605 F.2d 548, 551 (10th Cir.1979); *Feldman v. Pioneer Petroleum, Inc.*, 87 F.R.D. 86, 88 (W.D. Okla. 1980). Bald assertions that production of the requested documents would violate a privilege is not enough to satisfy that burden. *Biliske v. Am. Live Stock Ins. Co.*, 73 F.R.D. 124, 126 (W.D. Okla. 1977).

Defendant’s responses to Plaintiffs’ Requests for Production consisted largely of boilerplate language that failed to conform with any of the aforementioned requirements. For example, nine of Defendant’s twelve responses asserted that Plaintiffs’ request “seeks materials covered by the attorney-client privilege, the ‘work product privilege’ or doctrine and/or any matters prepared in anticipation of litigation or for trial by, or for, Defendant or its agents.” Def.’s Resp. Nos. 2-5, 7, 9-12. Such objections are wholly deficient in that they fail to provide any specific reasons for the objections, fail to address whether any responsive material is being withheld, and fail to provide any description whatsoever of the nature of the documents,

communications, etc. that Defendant chose not to produce or disclose—all of which are required under the Oklahoma Discovery Code and existing law.

Likewise, Defendant's stated objections and responses to Plaintiffs' Interrogatory Nos. 2-21 also failed to comply with the Oklahoma Discovery Code and applicable law for several reasons. First, Defendant failed to state with specificity the reasoning behind any of its claimed objections as required by Okla. Stat. tit. 12, § 3233. Second, Defendant failed to describe the information it chose not to produce or disclose in a manner that would enable Plaintiffs to assess the applicability of the asserted privileges and protections. *Id.* § 3226(B)(5).

As discussed further in the previous paragraphs regarding Defendant's responses and objections to Plaintiffs' Requests for Production, it is Defendant's burden to establish the existence of any privileges or protections and their applicability. With respect to interrogatories, any ground not stated in a timely objection is waived. *See id.* § 3233.

Similar to Defendant's responses to Plaintiffs' Requests for Production, Defendant's responses to Plaintiffs' Interrogatories consist largely of boilerplate language. In each of Defendant's responses, Defendant failed to state the reasons for any asserted objection with specificity. Defendant also failed to offer any explanation of how the information that would form its responses to Plaintiffs' Interrogatories is privileged, and certainly did not provide any explanation that would enable Plaintiffs to assess the applicability of any asserted privileges or protections.

Defendant's asserted objections and protections are baseless and improper for the following reasons:

- 1. "Executive privilege" and/or "the deliberative process privilege." Def.'s RFP Resp. Nos. 2-5, 7, 9-12 and Def.'s Interrog. Resp. Nos. 2-21.**

Defendant failed to provide any authority or law creating or recognizing an “executive privilege” or “deliberative process privilege” in Oklahoma and Plaintiffs deny that any such privileges apply to their requests or interrogatories. Executive privilege and deliberative process privilege have only previously been held to apply to the Governor and even then, the privileges are qualified and not absolute. *See Vandelay Entertainment, LLC v. Fallin*, 2014 OK 109, ¶29, 343 P.3d 1273; *see also* Okla. Stat. tit. 12, §§ 2501, 2509. Moreover, Defendant failed to provide any basis for why such claimed privileges apply to each request or interrogatory, failed to identify whether Defendant is withholding any responsive material or information on the basis of the asserted privileges, and failed to provide any description whatsoever of the nature of the documents, communications, information, etc. that Defendant chose not to produce or disclose on the basis of the asserted privilege. Even after correspondence between counsel and a meet and confer discussion, Defendant has still not specified the basis for this asserted privilege, nor has it identified to what individual or entity it might apply. Accordingly, to the extent that Defendant is withholding responsive documents or information on the basis of such claimed privileges, such documents or information must be identified and produced.

**2. “Informer’s privilege.” Def.’s RFP Resp. Nos. 2-12 and Def.’s Interrog. Resp. Nos. 2-21.**

Defendant also failed to provide any authority or law creating or recognizing an “informer’s privilege” in Oklahoma and Plaintiffs deny that any such privilege applies to their requests or interrogatories. While Okla. Stat. tit. 12, § 2510 establishes a qualified privilege for the United States, state, or subdivision thereof “to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of the law,” Defendant has not provided any justification that would lead Plaintiffs to believe said qualified privilege applies to the documents, communications, and information at issue. *See*

Okla. Stat. tit. 12, §§ 2501, 2509. Moreover, Defendant failed to provide any basis for why such claimed privilege applies to each request or interrogatory, failed to identify whether any responsive material or information is being withheld on the basis of the asserted privilege, and failed to provide any description whatsoever of the nature of the documents, communications, information, etc. that Defendant chose not to produce or disclose on the basis of the asserted privilege. Even after correspondence between counsel and a meet and confer discussion, Defendant has still not specified the basis for this asserted privilege, nor has it identified to what individual or entity it might apply. Accordingly, to the extent that Defendant is withholding responsive documents or information on the basis of such claimed privilege, such documents or information must be identified and produced.

**3. Oklahoma Open Records Act exemptions. Def.'s RFP Resp. Nos. 2-12 and Def.'s Interrog. Resp. Nos. 2-21.**

In each of Defendant's responses to Plaintiffs' requests for production and interrogatories except for one, Defendant objected, without reservation, citing various exemptions and exceptions to the Oklahoma Open Records Act, including "the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files." Plaintiffs deny that any such exceptions or exemptions apply because whether a record is considered an open record under the Oklahoma Open Records Act has no bearing on whether it is discoverable. *See* Okla. Stat. tit. 12, § 3226(B)(1) (describing what is discoverable in litigation). Moreover, "the Oklahoma Discovery Code is not limited by confidential information, whether public or private." *McKesson Corp. v. Campbell*, 2022 OK 6, ¶2, 502 P.3d 1110; *see* Okla. Stat. tit. 12, § 3226(B)(1). Accordingly, to the extent that Defendant is withholding responsive documents or information on the basis of such Oklahoma Open Records Act exemptions, such documents or information must be identified and produced.

**4. Confidential pursuant to University policies and procedures. Def.'s RFP Resp. Nos. 2-12 and Def.'s Interrog. Resp. Nos. 2-21.**

Also in each of Defendant's responses to Plaintiffs' requests for production and interrogatories except for one, Defendant objected, without reservation, citing University policies and procedures. Plaintiffs deny that any such policies or procedures apply to the requested documents or information. Moreover, "the Oklahoma Discovery Code is not limited by confidential information, whether public or private." *McKesson Corp. v. Campbell*, 2022 OK 6, ¶2, 502 P.3d 1110; *see* Okla. Stat. tit. 12, § 3226(B)(1). Accordingly, whether the University's policies and procedures consider information confidential has no bearing on whether that information is discoverable. Only the Oklahoma Legislature can remove state-held information from the reach of the discovery process, and an explicit bar in statute is required to do so. *Id.* Defendant has not cited any relevant statute recognizing that documents or information considered confidential under university policies and procedures are not discoverable. Accordingly, to the extent that Defendant is withholding responsive documents or information on the basis of such University policies and procedures, such documents or information must be identified and produced.

**5. Failure to exhaust administrative remedies. Def.'s RFP Resp. Nos. 2, 4-12 and Def.'s Interrog. Resp. Nos. 2-3, 6-18.**

The majority of Defendant's responses to Plaintiffs' requests for production and interrogatories object, without reservation, on the asserted basis that Plaintiffs "failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation." Defendant failed to provide any authority or law creating or recognizing such an obligation on the part of Plaintiffs or establishing such objection under the Oklahoma Discovery Code—indeed, none exists. Okla. Stat. tit. 51, § 24A.17(B) explicitly authorizes "any person



denied access to records of a public body” to bring “a civil suit for declarative or injunctive relief....” See *Tulsa Tribune Co. v. Oklahoma Horse Racing Comm’n*, 1986 OK 24, 735 P.2d 548 (recognizing the district court’s power to review a public body’s determination of whether its records are exempt from the ORA). In litigation, “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to any party’s claim or defense, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case....” Okla. Stat. tit. 12, § 3226(B)(1). Moreover, Defendant failed provide any explanation as to the applicability of such supposed objection to each request or interrogatory. Accordingly, to the extent that Defendant is withholding responsive documents or information on the basis of this asserted objection, such documents or information must be identified and produced.

**6. Ambiguity, vagueness, compound requests and “sufficient to show.” Def.’s Resp. Nos. 2, 4.**

Defendant objected to two of Plaintiffs’ requests as “ambiguous and vague because it is a compound request and ‘sufficient to show’ is inherently subjective.” There is no prohibition on compound requests. Plaintiffs have described with particularity each item or category of items to be inspected as required. See Okla. Stat. tit. 12, § 3234(B). “Sufficient to show” should be understood to mean documents and communications necessary and sufficient to provide the requested information and is intended to minimize the burden on Defendant as the producing party. Accordingly, to the extent that Defendant is withholding responsive documents on the basis of this asserted objection, such documents must be identified and produced.

**7. Compound requests. Def.’s Interrog. Resp. Nos. 7, 10, 12-16.**

Defendant labeled several of Plaintiffs’ Interrogatories “compound,” without any basis or explanation. Interrogatories that inquire as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence are to be construed as one

interrogatory. Okla. Stat. tit. 12, § 3233. Courts look to whether an interrogatory with subparts is directed at eliciting a common theme, and if so, treat it as a single question for purposes of counting interrogatories. *See, e.g., Pouncil v. Branch Law Firm*, 277 F.R.D. 642, 646 (D. Kan. 2011). None of Plaintiffs' interrogatories are compound. Interrogatory Nos. 7 and 10 seek the names, locations, and information regarding witnesses and should thus each be treated as single interrogatories. Interrogatory No. 12, which contains no subparts, elicits information regarding a common theme (*i.e.*, agreements between the University and Jones Day) and should be considered a single interrogatory. Interrogatory Nos. 13 and 14 likewise seek information regarding a common theme (*i.e.*, ORA requests for discrete subjects) and concern the existence of documents or physical evidence. Accordingly, they should also be treated as a single interrogatory. Interrogatory Nos. 15 and 16 should similarly be treated as single interrogatories as they each seek the identity of witnesses and each concern a particular topic of discussion. To the extent that Defendant is withholding information on the basis of this asserted objection, such information must be identified and produced.

**8. Overly broad, unduly burdensome, and prejudicial. Def.'s RFP Resp. Nos. 2-12 and Def.'s Interrog. Resp. Nos. 2-21.**

Defendant asserted that Plaintiffs' requests and interrogatories are overly broad and unduly burdensome as well as prejudicial, as the requests and interrogatories allegedly seek documents and information protected by asserted privileges. Plaintiffs deny that any such privileges or protections apply to the requested documents or information. If a request or interrogatory seeks privileged information, it is Defendant's burden to establish a claim of privilege or protection and its applicability, which Defendant has failed to do. *See Hall v. Goodwin*, 1989 OK 88, n.7, 775 P.2d 291 (1989). It is also Defendant's burden to support its objections. Okla. Stat. tit. 12, § 3234(B); *see e.g., Cohlmi v. Ardent Health Services, LLC*, No.

05-CV-384-GKF-PJC, 2008 WL 4925764, at \*2 (N.D. Okla. Nov. 14, 2008) (“A party resisting discovery on the ground that the requests are overly broad has the burden of supporting its objection...”); *Miller v. Doctor's Gen. Hosp.*, 76 F.R.D. 136, 139 (W.D. Okla. 1977).

Defendant has not met its burdens in either respect. Accordingly, to the extent that Defendant is withholding responsive documents or information on the basis of this asserted objection, such documents or information must be identified and produced.

**9. Information available to the propounding party. Def.'s RFP Resp. No. 12 and Def.'s Interrog. Resp. Nos. 15-16.**

Defendant asserted that documents sought in response to Plaintiffs' Request for Production No. 12 are “equally available to the propounding party.” However, Defendant's objection failed to specify which responsive documents and communications are already in Plaintiffs' possession or are available online. Accordingly, to the extent that Defendant is withholding responsive documents on the basis of this asserted objection, such documents must be identified and produced.

Additionally, Defendant asserted in response to Plaintiffs' Interrogatory Nos. 15-16 that “responsive information can be ascertained from public ally [sic] available minutes and agendas from the Board of Regents for the University of Oklahoma, available at: <https://www.ou.edu/regents/>.” However, Okla. Stat. tit. 12, § 3233(C) requires a party that chooses to produce business records in response to an interrogatory to “specify the records from which the answer may be derived or ascertained.” The specification “shall be in sufficient detail to permit the party submitting the interrogatory to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.” *Id.* The general website Defendant provided is not sufficient for Plaintiffs to ascertain an answer to either interrogatory.

Accordingly, Defendant must either further detail its answers or identify and produce the requested information.

**10. “Impermissible contention interrogatory.” Def.’s Interrog. Resp. Nos. 19-21.**

Defendant failed to identify the principal or material facts or theories which support its defenses as it stated it would in its answer to each cited interrogatory. Only a court may order that an interrogatory need not be answered until a later designated time. Okla. Stat. tit. 12, § 3233(C). An interrogatory is not objectionable merely because the answer involves an opinion or contention that relates to fact or the application of law to fact. *Id.* Accordingly, Defendant must answer the interrogatories.

**11. Scope of discovery. Def’s RFP Resp. Nos. 2, 4-12 and Def.’s Interrog. Resp. Nos. 2-3, 5-18.**

Defendant objected “to disclosure of information that is beyond both the scope of Plaintiff’s [sic] Open Records Act request and the scope of Plaintiff’s [sic] Petition.” This is a mischaracterization of the scope of discovery. Under Oklahoma law, a party is entitled to “discovery regarding any matter, not privileged, which is relevant to any party’s claim or defense, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case.” Okla. Stat. tit. 12, § 3226(B)(1)(a). For reasons further discussed in the “Relevance” subsection immediately following this paragraph, Plaintiffs’ requests and interrogatories are relevant and within the scope of discovery. Accordingly, to the extent that Defendant is withholding responsive documents or information on the basis of this asserted objection, such documents or information must be identified and produced.

**12. Relevance. Def.’s RFP Resp. Nos. 2, 4-12 and Def.’s Interrog. Resp. Nos. 2-18.**

Defendant asserted boilerplate objections, without any specific reasoning or support, to each of the stated requests and interrogatories on the basis that “the information sought does not

appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or [sic] consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents.”

Okla. Stat. tit. 12, § 3226 allows Plaintiffs to “obtain discovery regarding any matter, not privileged, which is relevant to any party's claim or defense, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Information that falls within this scope need not be admissible in evidence to be discoverable. *Id.*

Each of Plaintiffs' requests for production and interrogatories is relevant and reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs' claim that Defendant did not satisfy its obligations under the Oklahoma Open Records Act because Defendant failed to conduct an adequate search for responsive records, unlawfully denied Plaintiffs' request, and withheld responsive records. Defendant has denied Plaintiffs' claims and asserted affirmative defenses that, among other things, it lawfully denied Plaintiffs' request and withheld responsive records pursuant to a number of exemptions and exceptions to the Act including “the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files.” Each of Plaintiffs' requests for production of documents and interrogatories seek to discover documents and information relevant to these claims and defenses:

A. **Plaintiffs' Request for Production Nos. 2 and 4 and Interrogatory No. 12** seek information about the relationship between the University and the law firm Jones Day, which is relevant to the question of whether the records sought by Plaintiffs' ORA request are open records. *See* Plaintiffs' Petition, 7-8. The nature of the relationship between the University and Jones Day is a dispositive factor in determining whether Defendant's asserted privileges and ORA exemptions apply to the requested records. Information responsive to these requests and interrogatories is also likely to lead to the discovery of admissible evidence related to Defendant's assertion that Plaintiffs' ORA request was denied because the records sought were privileged attorney-client communications and/or work product as well as other asserted privileges (e.g., executive privilege, deliberative process privilege, informer's privilege) and ORA exemptions (§ 24A.7, § 24A.12). *See* Defendant's Answer, 5-6.

B. **Plaintiffs' Request for Production Nos. 5 and 6 and Interrogatory No. 4** seek information about the relationship between the University and David Boren, which is relevant to the question of whether the records sought by Plaintiffs' ORA request are open records. *See* Plaintiffs' Petition, 7-8. The nature of the relationship between the University and David Boren is a dispositive factor in determining whether Defendant's asserted privileges and ORA exemptions apply to the requested records. *See Ross v. City of Owasso I*, 2017 OK CIV APP 4, 389 P.3d 396; *Ross v. City of Owasso II*, 2020 OK CIV APP 66, 481 P.3d 278. Information responsive to these requests and interrogatories is also likely to lead to the discovery of admissible evidence related to Defendant's assertion that Plaintiffs' ORA request was denied because the records sought were exempt under § 24A.7 of the ORA (among other claimed privileges and exemptions). *See* Defendant's Answer, 5-6.

C. **Plaintiffs' Request for Production Nos. 7 and 8 and Interrogatory No. 5** seek information about the relationship between the University and Tripp Hall, which is relevant to the question of whether the records sought by Plaintiffs' ORA request are open records. *See* Plaintiffs' Petition, 7-8. The nature of the relationship between the University and Tripp Hall is a dispositive factor in determining whether Defendant's asserted privileges and ORA exemptions apply to the requested records. *See Ross v. City of Owasso I*, 2017 OK CIV APP 4, 389 P.3d 396; *Ross v. City of Owasso II*, 2020 OK CIV APP 66, 481 P.3d 278. Information responsive to these requests and interrogatories is also likely to lead to the discovery of admissible evidence related to Defendant's assertion that Plaintiffs' ORA request was denied because the records sought were exempt under § 24A.7 of the ORA (among other claimed privileges and exemptions). *See* Defendant's Answer, 5-6.

D. **Plaintiffs' Request for Production Nos. 9, 10, and 11 and Interrogatory Nos. 9, 10, 11, and 16** seek information about David Boren and his actions during his tenure as a public official of the University as well as actions taken by the University while David Boren and/or Tripp Hall were public officials, both of which are dispositive in determining whether Defendant's asserted privileges and ORA exemptions apply to the requested records. *See* Plaintiffs' Petition, 7-8; *see also Ross v. City of Owasso I*, 2017 OK CIV APP 4, 389 P.3d 396; *Ross v. City of Owasso II*, 2020 OK CIV APP 66, 481 P.3d 278. Information responsive to these requests and interrogatories is also likely to lead to the discovery of admissible evidence related to Defendant's assertion that Plaintiffs' ORA request was denied (among other claimed privileges and exemptions) because the records sought were exempt under § 24A.7 of the ORA or that the informer's privilege shields the records from disclosure. *See* Defendant's Answer, 5-6.

E. **Plaintiffs' Interrogatory Nos. 6, 7, 8, 15, 17 and 18** seek information about actions taken by the University while David Boren and/or Tripp Hall were public officials, which is dispositive in determining whether Defendant's asserted privileges and ORA exemptions apply to the requested records. *See* Plaintiffs' Petition, 7-8; *see also* *Ross v. City of Owasso I*, 2017 OK CIV APP 4, 389 P.3d 396; *Ross v. City of Owasso II*, 2020 OK CIV APP 66, 481 P.3d 278. Information responsive to these requests and interrogatories is also likely to lead to the discovery of admissible evidence related to Defendant's assertion that Plaintiffs' ORA request was denied (among other claimed privileges and exemptions) because the records sought were exempt under § 24A.7 of the ORA or that the informer's privilege shields the records from disclosure. *See* Defendant's Answer, 5-6.

F. **Plaintiffs' Request for Production No. 12 and Interrogatory Nos. 2, 3, 13, and 14** seek information about the University's handling of Plaintiffs' ORA request, which is relevant and likely to lead to the discovery of admissible evidence regarding Plaintiffs' claim that Defendant failed to conduct an adequate search for responsive records (i.e., whether there was a search, search conditions, etc.), unlawfully denied Plaintiffs' ORA request (i.e., whether Defendant denied Plaintiffs' ORA request on an impermissible basis), and withheld responsive records. *See* Plaintiffs' Petition, 7-8.

**D. Meet and confer between the parties**

After reviewing and assessing Defendant's responses and objections, Plaintiffs responded on April 7, 2022, seeking to initiate a meet and confer discussion. In their correspondence, Plaintiffs outlined, in detail, the deficiencies in Defendant's discovery responses and objections to facilitate a productive meet and confer discussion and to provide Defendant with an opportunity to further substantiate its responses and objections in accordance with the



requirements of the Oklahoma Discovery Code. A true and correct copy of Plaintiffs' Meet and Confer Letter of April 7, 2022, is attached hereto as **Plaintiffs' Exhibit B**. Defendant responded to Plaintiffs' letter with a letter of its own on April 14, 2022, which did not address Plaintiffs' claims or further substantiate Defendant's responses and objections. A true and correct copy of Defendant's Meet and Confer Letter of April 14, 2022, is attached hereto as **Plaintiffs' Exhibit C**. The parties scheduled a meet and confer discussion shortly thereafter.

Counsel for both parties conferred via Zoom on April 25, 2022, regarding, among other matters, Defendant's failure to comply with the Oklahoma Discovery Code and existing law in responding and objecting to Plaintiffs' discovery requests. Counsel for Defendant confirmed Defendant was not prepared to meet most of Plaintiffs' discovery requests, but agreed to provide Plaintiff some documents including: (i) the engagement letter(s) between the University and Jones Day (re: Plaintiffs' Request for Production No. 2), and (ii) information related to the University's employment of David Boren and Tripp Hall (re: Plaintiffs' Request for Production Nos. 5-8).

Following the meet and confer discussion of April 25, counsel for Plaintiff summarized the parties' discussion via email on April 28. Defendant's counsel responded on May 4 and attached a proposed protective order that was neither addressed in any of the parties' previous correspondence, nor mentioned during the meet and confer discussion. Thereafter, on May 17, Plaintiffs' counsel informed Defendant that Plaintiffs could not agree to the proposed protective order, which was astoundingly overbroad and inconsistent with discovery practices, because Plaintiffs disagreed with Defendant's premise that discovery in this proceeding would involve the exchange of confidential or proprietary information. Plaintiffs further responded that a protective order is not appropriate in this public records matter, nor is it necessary or in the

interest of justice as the Oklahoma Discovery Code requires. A true and correct copy of counsels' email correspondence beginning April 28, 2022, is attached hereto as **Plaintiffs' Exhibit D**.

To date, Defendant has not provided any documents, communications, or information in response to Plaintiffs' discovery requests beyond the single document Defendant included with its responses and objections on February 28. Plaintiffs' counsel has conferred in good faith with counsel for Defendant in an effort to secure the requested information and material without court action but has been unable to resolve the outstanding discovery issues. Additionally, Plaintiffs have incurred reasonable attorney fees and expenses to prepare and file this motion.

#### **REQUESTED RELIEF**


Because Defendant failed to comply with many of the requirements of the Oklahoma Discovery Code and existing law in responding and objecting to Plaintiffs' discovery requests, Plaintiffs ask the Court to find that Defendant's claimed privileges and protections are waived and to order Defendant to produce the documents described in Request Nos. 2-12 of Plaintiffs' First Request for Production of Documents and Tangible Things by Defendant and answer Interrogatory Nos. 2-21 of Plaintiffs' First Set of Interrogatories for Defendant. *See* Okla. Stat. tit. 12, § 3233 ("All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown."); *see e.g., Brenford Env't Sys., L.P. v. Pipeliners of Puerto Rico, Inc.*, 269 F.R.D. 143, 147 (D.P.R. 2010) (party's objections to requests for production waived where it failed to provide specific reasons for objections); *see also* Okla. Stat. tit. 12, § 3237 ("[T]he court in which the action is pending on motion may make such orders in regard to the failure as are just...").

However, even if the Court finds Defendant's claimed privileges and protections are not waived, the Court should still grant an order requiring Defendant to produce the documents described in Request Nos. 2-12 of Plaintiffs' First Request for Production of Documents and Tangible Things by Defendant and answer Interrogatory Nos. 2-21 of Plaintiffs' First Set of Interrogatories for Defendant. Defendant should also be required to produce a privilege log that includes the following information in support of each of its objections: (a) the author(s), (b) the recipient(s), (c) the origination date, (d) the length, (e) the nature of the document or its intended purpose, (f) the basis for the objection, and (g) "if a [document/]communication withheld on the ground of attorney-client privilege is in regard to a claim that concerns a pending investigation, claim or action and if the communication was created prior to, or after commencement of, the pending investigation, claim or action to which it relates... [and] how disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation or proceeding in the public interest." Okla. Stat. tit. 12, § 3237(A)(2); *Oklahoma ex rel. Edmondson v. Tyson Foods, Inc.*, No. 05-CV-329-GKF-SAJ, 2008 WL 183362, at \*2 (N.D. Okla. Jan. 16, 2008).

Plaintiffs further request relief which this Court deems just and equitable, including an award of costs and reasonable attorney fees in connection with this motion as contemplated by Okla. Stat. tit. 12, § 3237(A)(4).

**Dated: May 20, 2022**

Respectfully submitted,



Kathryn E. Gardner, OBA #33509  
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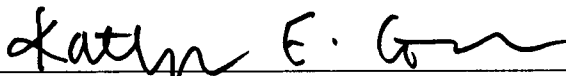
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NonDoc Media and Savage

**CERTIFICATE OF SERVICE**

I hereby certify Plaintiffs' Motion to Compel was mailed this 20th day of May 2022, by depositing it in the U.S. Mail, postage prepaid and via email to counsel of record for Defendant:

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Kathryn E. Gardner

# **EXHIBIT A**

**IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA**

THE SUSTAINABLE JOURNALISM  
FOUNDATION *d/b/a* NONDOC MEDIA  
*and* WILLIAM W. SAVAGE III,

Plaintiff

v.

STATE OF OKLAHOMA, *ex rel.* BOARD OF  
REGENTS OF THE UNIVERSITY OF  
OKLAHOMA,

Defendant.

Case No. CV-2021-1770

**STATE OF OKLAHOMA, *ex rel.* BOARD OF REGENTS OF THE UNIVERSITY OF  
OKLAHOMA'S REPOSES TO PLAINTIFF'S FIRST SET OF DISCOVERY  
REQUESTS**

COMES NOW, Defendant, State of Oklahoma, *ex rel.* Board of Regents of the University of Oklahoma (the "University"), hereby submits these objections and responses to Plaintiff's First Request for Production if Documents and Tangible Things by Defendant.

**GENERAL OBJECTIONS & RESPONSES**

1. Each of the following responses is made without waiving any objections Defendant may have with respect to the subsequent use of these responses or any documents referred to herein.

2. Defendant specifically reserves the following: (1) all questions and objections as to the competency, relevance, materiality and admissibility of responses contained herein; (2) the right to object to the use of responses set forth herein in any subsequent suit or proceeding in this action, on any or all of the foregoing grounds or on any other proper grounds; (3) the right to object to other discovery procedures involving or relating to responses contained herein, including but not limited to the number of Requests for Production of Documents provided herein as well as all

terms and definitions; and (4) the right, at any time, upon proper showing, to revise, correct or clarify any of the responses set forth herein.

3. Defendant objects to any purported requirements of Plaintiff's Discovery Requests, which are beyond the requirements of the Discovery Code.

4. Defendant objects to any instructions by Plaintiff which purports to require Defendant to supply information which may be based "upon information and belief," to supply estimates in place of unknown information, and to specify any inability to answer a particular Discovery Request(s) posed by Plaintiff such as requirements that exceed what is required by the Discovery Code. Defendants will supply information in response to Plaintiff's Requests for Production of Documents pursuant to the provisions of the Discovery Code.

5. Defendant objects to any Discovery Requests that seek a response, which is covered by the attorney-client privilege, the "work product" privilege or doctrine and/or any matters prepared in anticipation of litigation or for trial by, or for, Defendant or its agents.

6. Defendant objects to any Discovery Requests that seek a response, which would disclose mental impressions, conclusions, opinions or legal theories of any representative of Defendant concerning this lawsuit.

7. Defendant objects to any Discovery requests that seek a response which would disclose pre-decisional materials, opinions, facts, or investigative materials which is covered by the deliberative process privilege.

8. Defendant objects to any Discovery Requests that seek a response which would be covered by exemptions included in 51 O.S. § 24A.5(1)(a).

9. Defendant objects to any Discovery Requests that seek a response which would be covered by exemptions included in 51 O.S. § 24A.7(A).



10. Defendant objects to any Discovery Requests that seek a response which would be covered by exemptions included in 51 O.S. § 24A.12.

11. Defendant objects to any Discovery requests that seek a response which would disclose information or materials which are covered by informer's privilege.

12. Defendant objects to all Discovery Requests which seek to circumvent the protections, privileges and exemptions provided by law, whether constitutional, statutory, or common law, whether specifically mentioned here or otherwise allowed.

13. Defendant objects to the expansive definition of the terms "agreement," "communication," "document," "including," "person," "prohibited conduct," "public record," "relating to," "request," "identify," and "describe in detail" contained in Plaintiff's Discovery Requests to the extent such definitions exceed any requirements under the Discovery Code.

14. Pursuant to Okla. Stat. tit. 12 § 3226(e) and because discovery is ongoing, Defendant may supplement this response.

#### **REQUESTS FOR PRODUCTION**

1. All DOCUMENTS sufficient to show YOUR policies and/or procedures in place since January 1, 2019, for responding to REQUESTS for PUBLIC RECORDS. This request includes, but is not limited to, both written and unwritten policies and/or procedures.

**Response to Request for Production No. 1:** The University will produce responsive documents.

2. All DOCUMENTS and COMMUNICATIONS relating or referring to YOUR engagement of JONES DAY for ANY purpose from January 1, 2018, to present, including, but not limited to, engagement letters, retainer agreements, etc., as well as DOCUMENTS sufficient to show JONES DAY'S scope of representation and PERSONS to be represented. This request

includes all DOCUMENTS and COMMUNICATIONS sufficient to show ANY modifications, additions, changes, etc. to the relationship between JONES DAY and the UNIVERSITY. See Defendant's Answer, p. 2, ¶ 7 ("In 2018, Jones Day was hired as counsel to the University to give legal advice on the alleged misreporting on alumni donor data and also to advise on the effects thereof.").

**Response to Request for Production No. 2:** Defendant objects to this Request as ambiguous and vague because it is a compound request and "sufficient to show" is inherently subjective. Defendant further objects to Request For Production No. 2 which seeks materials covered by the attorney-client privilege, the "work product" privilege or doctrine and/or any matters prepared in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Request For Production No. 2 because it seeks materials covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant further objects to this Request as overly broad and unduly burdensome as it seeks documents protected by asserted privileges and some of the responsive materials fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information

and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

3. All DOCUMENTS and COMMUNICATIONS created, authored, prepared, produced, edited, etc by JONES DAY pursuant to ANY engagement with the UNIVERSITY from January 1, 2018, to present.

**Response to Request for Production No. 3:** Defendant objects to Request for Production No. 3 which seeks materials covered by the attorney-client privilege, the "work product" privilege or doctrine and/or any matters prepared in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Request For Production No. 3 because it seeks materials covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive materials fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential

pursuant to University policies and procedures. Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

4. DOCUMENTS sufficient to show all payments made to JONES DAY for ANY purpose from January 1, 2018, to present, including how those payments were coded in YOUR accounting system (i.e., ledger codes, ledger descriptions, full descriptions, etc.).

**Response to Request for Production No. 4:** Defendant objects to this Request as ambiguous and vague because it is a compound request and “sufficient to show” is inherently subjective. Defendant further objects to Request For Production No. 4 which seeks materials covered by the attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Request for Production No. 4 because it seeks materials covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive materials fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer’s privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open

records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

5. All DOCUMENTS and COMMUNICATIONS relating or referring to the status and terms of BOREN'S employment relationship with the UNIVERSITY from January 1, 2017, to present including, but not limited to, BOREN'S employment, hiring, appointment, promotion, demotion, discipline, resignation, or termination.

**Response to Request for Production No. 5:** Defendant objects to Request For Production No. 5 which seeks materials covered by the attorney-client privilege, the "work product" privilege or doctrine and/or any matters prepared in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Request For Production No. 5 because it seeks materials covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Defendant also objects because some of the responsive materials fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures. Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

6. All DOCUMENTS relating to ANY compensation, consideration, and/or gift BOREN has received from YOU from January 1, 2017, to present, including, but not limited to, salary, wage, benefits, insurance policies, bonuses, paid leave, pension funds, retirement plans, severance, commissions, expense accounts, reimbursement, housing, vehicles, etc.

**Response to Request for Production No. 6:** Defendant objects because some of the responsive materials fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as

personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

7. All DOCUMENTS and COMMUNICATIONS relating or referring to the status and terms of HALL'S employment relationship with the UNIVERSITY from January 1, 2017, to present including, but not limited to, HALL'S employment, hiring, appointment, promotion, demotion, discipline, resignation, or termination.

**Response to Request for Production No. 7:** Defendant objects to Request For Production No. 7 which seeks materials covered by the attorney-client privilege, the "work product" privilege or doctrine and/or any matters prepared in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Request For Production No. 7

because it seeks materials covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive materials fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

8. All DOCUMENTS relating to ANY compensation, consideration, and/or gift HALL has received from YOU from January 1, 2017, to present, including, but not limited to,



salary, wage, benefits, insurance policies, bonuses, paid leave, pension funds, retirement plans, severance, commissions, expense accounts, reimbursement, housing, vehicles, etc.

**Response to Request for Production No. 8:** Defendant also objects because some of the responsive materials fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

9. All DOCUMENTS and COMMUNICATIONS relating or referring to complaints, reviews, and/or investigations, including, but not limited to those related to Title IX, based on PROHIBITED CONDUCT involving BOREN.

**Response to Request for Production No. 9:** Defendant objects to Request For Production No. 9 which seeks materials covered by the attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Request For Production No. 9 because it seeks materials covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive materials fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer’s privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff’s Open Records Act request and the scope of Plaintiff’s Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and

information which this suit seeks and for which privileges, protections and immunities have been asserted.

10. All DOCUMENTS and COMMUNICATIONS relating or referring to sanctions imposed on BOREN for violations of YOUR Sexual Misconduct, Discrimination, and Harassment Policy. Sanction includes, but is not limited to, verbal/written reprimands, required counseling/training, community service, administrative leave with or without pay, removal of supervisory or other roles/duties, conduct agreements, abrogation of tenure, and termination of employment.

**Response to Request for Production No. 10:** Defendant objects to Request For Production No. 10 which seeks materials covered by the attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Request For Production No. 10 because it seeks materials covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive materials fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer’s privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open

records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Request is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

11. All DOCUMENTS and COMMUNICATIONS relating or referring to the misreporting of alumni donors to U.S. News and World Report during BOREN's tenure as president of the UNIVERSITY. See Defendant's Answer, p. 2, ¶ 6 (“[W]hile David Boren (‘Boren’) was president of the University, the percent of alumni donors reported to the U.S. News and World Report was inflated.”).

**Response to Request for Production No. 11:** Defendant objects to Request For Production No. 11 which seeks materials covered by the attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Request For Production No. 11 because it seeks materials covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive materials fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

12. ALL DOCUMENTS and COMMUNICATIONS related or referring to the REQUEST AT ISSUE in this ACTION.

**Response to Request for Production No. 12:** Defendant objects to Request For Production No. 12 which seeks materials covered by the attorney-client privilege, the "work product" privilege or doctrine and/or any matters prepared in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Request For Production No. 12

because it seeks materials covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant further objects to production of documents already in Plaintiff's possession or equally accessible to Plaintiff from sources, such as open records accessible online.

Defendant also objects because some of the responsive materials fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Moreover, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and

immunities have been asserted. Finally, Defendant objects to this request as information sought is equally available to the propounding party.

### **INTERROGATORIES**

1. DESCRIBE IN DETAIL YOUR policies and/or procedures in place since January 1, 2019, for responding to REQUESTS for PUBLIC RECORDS, including written and unwritten policies and/or procedures, and all versions of such policies and/or procedures.

**Response to Interrogatory No. 1:** Pursuant to Okla Stat. tit. 12 § 3233(C), Plaintiff opts to specify the following writings from which the answer may be derived or ascertained: UNIVERSITY\_NONDOC-000001-000039.

2. IDENTIFY all PERSONS who have been involved in any way with the REQUEST AT ISSUE in this ACTION, including, but not limited to, those who received the request, reviewed it, were involved in its processing and/or assessment, responded to it, searched for and/or retrieved responsive records, etc.

**Response to Interrogatory No. 2:** Defendant objects to Interrogatory No. 2 which seeks information covered by the attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 2 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation

and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

3. With respect to each PERSON identified in YOUR response to INTERROGATORY NO. 2, DESCRIBE IN DETAIL their involvement and all actions they took related to the REQUEST AT ISSUE in this ACTION.

**Response to Interrogatory No. 3:** Defendant objects to Interrogatory No. 3 which seeks information covered by the attorney-client privilege, the "work product" privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 3 because it seeks information covered by executive privilege and the deliberative process privilege as intra-



governmental information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

4. DESCRIBE IN DETAIL YOUR employment relationship with BOREN from January 1, 2017, to present, including every change or modification to that relationship.

**Response to Interrogatory No. 4:** Defendant objects to Interrogatory No. 4 which seeks information covered by the attorney-client privilege, the "work product" privilege or doctrine

and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 4 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very information which this suit seeks and for which privileges, protections and immunities have been asserted.

5. DESCRIBE IN DETAIL YOUR employment relationship with HALL from January 1, 2017, to present, including every change or modification to that relationship.

**Response to Interrogatory No. 5:** Defendant objects to Interrogatory No. 5 which seeks information covered by the attorney-client privilege, the "work product" privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for,

Defendant or its agents. Defendant further objects to Interrogatory No. 5 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very information which this suit seeks and for which privileges, protections and immunities have been asserted.

6. DESCRIBE IN DETAIL all YOUR review(s) and/or investigation(s) into the misreporting of alumni donors to U.S. News and World Report, including the status of said review(s) and/or investigation(s). *See* Defendant's Answer, p. 2, ¶ 6 (“[W]hile David Boren (‘Boren’) was president of the University, the percent of alumni donors reported to the U.S. News and World Report was inflated.”).

**Response to Interrogatory No. 6:** Defendant objects to Interrogatory No. 6 which seeks information covered by the attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 6 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer’s privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff’s Open Records Act request and the scope of Plaintiff’s Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and

information which this suit seeks and for which privileges, protections and immunities have been asserted.

7. With respect to each review and/or investigation identified in YOUR response to INTERROGATORY NO. 6, IDENTIFY all PERSONS who have been involved in ANY way with the review(s) and/or investigation(s) into the misreporting of alumni donors to U.S. News and World Report during BOREN'S tenure as president of the UNIVERSITY by (i) name, (ii) address, (iii) telephone number, (iv) relationship, if any, to YOU, (v) employer, and (vi) title.

**Response to Interrogatory No. 7:** Defendant objects to this Request as it is a compound interrogatory. Defendant further objects to Interrogatory No. 7 which seeks information covered by the attorney-client privilege, the "work product" privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 7 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information

and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

8. With respect to each PERSON identified in YOUR response to INTERROGATORY NO. 7, DESCRIBE IN DETAIL their involvement and all actions they took related to the review(s) and/or investigation(s) into the misreporting of alumni donors to U.S. News and World Report during BOREN's tenure as president of the UNIVERSITY.

**Response to Interrogatory No. 8:** Defendant objects to Interrogatory No. 8 which seeks information covered by the attorney-client privilege, the "work product" privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 8 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation

and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

9. DESCRIBE IN DETAIL all of YOUR review(s) and/or investigation(s) into ANY allegations of PROHIBITED CONDUCT involving BOREN including the status of said review(s) and/or investigation(s).

**Response to Interrogatory No. 9:** Defendant objects to Interrogatory No. 9 which seeks information covered by the attorney-client privilege, the "work product" privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 9 because it seeks information covered by executive privilege and the deliberative process privilege as intra-

governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

10. IDENTIFY all PERSONS who have been involved in ANY way with the review(s) and/or investigation(s) into ANY allegations of PROHIBITED CONDUCT involving BOREN,



which YOU describe and identify in response to INTERROGATORY NO. 9, by (i) name, (ii) address, (iii) telephone number, (iv) relationship, if any, to YOU, (v) employer, and (vi) title.

**Response to Interrogatory No. 10:** Defendant objects to this Request as it is a compound interrogatory. Defendant further objects to Interrogatory No. 10 which seeks information covered by the attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 10 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer’s privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff’s Open Records Act request and the scope of Plaintiff’s Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

11. With respect to each PERSON identified in YOUR response to INTERROGATORY NO. 10, DESCRIBE IN DETAIL their involvement and all actions they took related to the review(s) and/or investigation(s) of ANY allegations of PROHIBITED CONDUCT involving BOREN.

**Response to Interrogatory No. 11:** Defendant objects to Interrogatory No. 11 which seeks information covered by the attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 11 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer’s privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open

records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

12. DESCRIBE IN DETAIL ANY confidentiality agreements and/or agreements asserting a common interest, joint defense, etc. related or referring to DOCUMENTS prepared, created, or authored by JONES DAY for or on behalf of the UNIVERSITY from January 1, 2018, to present, including but not limited to the terms of the agreement, parties to the agreement, scope of the agreement, etc.

**Response to Interrogatory No. 12:** Defendant objects to this Request as it is a compound interrogatory. Defendant further objects to Interrogatory No. 12 which seeks information covered by the attorney-client privilege, the "work product" privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 12 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

13. IDENTIFY all ORA REQUESTS from January 1, 2018, to present, for DOCUMENTS referring or relating to YOUR misreporting of alumni donors to U.S. News and World Report including (i) the requestor's name, (ii) the date the UNIVERSITY received the REQUEST, (iii) a brief description of the REQUEST, and (iv) the REQUEST'S disposition (pending, withdrawn, fulfilled, denied, etc.).

**Response to Interrogatory No. 13:** Defendant objects to this Request as it is a compound interrogatory. Defendant further objects to Interrogatory No. 13 which seeks information covered by the attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 13 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer’s privilege, and are confidential pursuant to University policies and procedures. Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff’s Open Records Act request and the scope of Plaintiff’s Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the

University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

14. IDENTIFY all ORA REQUESTS from January 1, 2018, to present, for DOCUMENTS referring or relating to ANY allegation of PROHIBITED CONDUCT involving BOREN including (i) the requestor's name, (ii) the date the UNIVERSITY received the REQUEST, (iii) a brief description of the REQUEST, and (iv) the REQUEST'S disposition (pending, withdrawn, fulfilled, denied, etc.).

**Response to Interrogatory No. 14:** Defendant objects to this Request as it is a compound interrogatory. Defendant objects to Interrogatory No. 14 which seeks information covered by the attorney-client privilege, the "work product" privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 14 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures. Defendant objects to this request as the information

sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

15. IDENTIFY all UNIVERSITY Board of Regents meetings where the Regents discussed or reviewed information referring or relating to the misreporting of alumni donors to U.S. News and World Report during BOREN's tenure as president of the UNIVERSITY, including the meeting's (i) date, (ii) location, and (iii) attendees.

**Response to Interrogatory No. 15:** Defendant objects to this Request as it is a compound interrogatory. Defendant objects to Interrogatory No. 15 which seeks information covered by the

attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 15 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer’s privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff’s Open Records Act request and the scope of Plaintiff’s Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.



Without waiving the stated objections, pursuant to Okla Stat. tit. 12 § 3233(C), Plaintiff opts to specify that responsive information can be ascertained from public ally available minutes and agendas from the Board of Regents for the University of Oklahoma, available at: <https://www.ou.edu/regents/>.

16. IDENTIFY all UNIVERSITY Board of Regents meetings where the Regents discussed or reviewed information referring or relating to ANY allegation of PROHIBITED CONDUCT involving BOREN including the meeting's (i) date, (ii) location, and (iii) attendees.

**Response to Interrogatory No. 16:** Defendant objects to this Request as it is a compound interrogatory. Defendant objects to Interrogatory No. 16 which seeks information covered by the attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 16 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information

and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Request is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

Without waiving the stated objections, pursuant to Okla Stat. tit. 12 § 3233(C), Plaintiff opts to specify that responsive information can be ascertained from public ally available minutes and agendas from the Board of Regents for the University of Oklahoma, available at: <https://www.ou.edu/regents/>.

17. DESCRIBE IN DETAIL the UNIVERSITY'S obligation(s) to investigate ANY misreporting of financial data to PERSONS outside of the UNIVERSITY.

**Response to Interrogatory No. 17:** Defendant objects to Interrogatory No. 17 which seeks information covered by the attorney-client privilege, the "work product" privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents, including but not limited to seeking legal conclusions.. Defendant further objects to Interrogatory No. 17 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer's privilege, and are confidential pursuant to University policies and procedures. Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff's Open Records Act request and the scope of Plaintiff's Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

18. DESCRIBE IN DETAIL the UNIVERSITY'S obligation(s) to investigate ANY allegations of PROHIBITED CONDUCT by an employee of the UNIVERSITY.

**Response to Interrogatory No. 18:** Defendant objects to Interrogatory No. 18 which seeks information covered by the attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents, including but not limited to seeking legal conclusions.

Defendant further objects to Interrogatory No. 18 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer’s privilege, and are confidential pursuant to University policies and procedures. Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents.

Defendant objects to this request as the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence and does not have any tendency to make the existence of any fact that is or consequence to the determination of the open records action more probable or less probable than it would be without the requested information and documents. Defendant further objects to disclosure of information that is beyond both the scope of Plaintiff’s Open Records Act request and the scope of Plaintiff’s Petition. Plaintiff has further failed to exhaust non-litigation remedies by failing to request these records from the

University prior to instituting litigation and discovery is not a waiver of privileges and protections afforded under common-law and statute.

Finally, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted.

19. DESCRIBE IN DETAIL the basis for YOUR assertion that PUBLIC RECORDS responsive to the REQUEST AT ISSUE “are confidential pursuant to 51 O.S. § 24A.7(A),” and identify any other privacy, state, or public interests YOU have determined apply to or are implicated by the REQUEST AT ISSUE in this ACTION. *See* Defendant’s Answer, p. 5, ¶ 6.

**Response to Interrogatory No. 19:** Defendant objects to Interrogatory No. 19 which seeks information covered by the attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 19 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer’s privilege, and are confidential pursuant to University policies and procedures. Moreover, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and

attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted. Finally, Interrogatory No. 19 is overly broad and unduly burdensome as it is an impermissible contention interrogatory at this stage of litigation. In responding to an interrogatory that seeks all facts and theories supporting its claim or defense, it is sufficient for the answering party to identify principal or material facts or theories which support a defense. Accordingly, Defendant will identify the principal and materials facts which support its defenses.

20. DESCRIBE IN DETAIL the basis for YOUR assertion that PUBLIC RECORDS responsive to the REQUEST AT ISSUE “are covered by the privilege of deliberative process.” See Defendant’s Answer, p. 5, ¶ 4.

**Response to Interrogatory No. 20:** Defendant objects to Interrogatory No. 20 which seeks information covered by the attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 20 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer’s privilege, and are confidential pursuant to University policies and procedures. Moreover, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and


attempts to obtain the very documents and information which this suit seeks and for which privileges, protections and immunities have been asserted. Finally, Interrogatory No. 20 is overly broad and unduly burdensome as it is an impermissible contention interrogatory at this stage of litigation. In responding to an interrogatory that seeks all facts and theories supporting its claim or defense, it is sufficient for the answering party to identify principal or material facts or theories which support a defense.

21. DESCRIBE IN DETAIL the basis for YOUR assertion that PUBLIC RECORDS responsive to the REQUEST AT ISSUE “are confidential pursuant to 51 O.S. § 24A.12.” See Defendant’s Answer, p. 6, ¶ 7.

**Response to Interrogatory No. 21:** Defendant objects to Interrogatory No. 21 which seeks information covered by the attorney-client privilege, the “work product” privilege or doctrine and/or any matters prepared or discovered in anticipation of litigation or for trial by, or for, Defendant or its agents. Defendant further objects to Interrogatory No. 21 because it seeks information covered by executive privilege and the deliberative process privilege as intra-governmental documents and information reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

Defendant also objects because some of the responsive information fall under the § 24A.5 privilege exemptions, § 24A.7 exemption as personnel records, § 24A.12 exemption as litigation and/or investigatory files, are privileged under the informer’s privilege, and are confidential pursuant to University policies and procedures. Moreover, this Requests is unduly burdensome and prejudicial to Defendant as it improperly seeks to circumvent protections provided by law and attempts to obtain the very documents and information which this suit seeks and for which

privileges, protections and immunities have been asserted. Finally, Interrogatory No. 21 is overly broad and unduly burdensome as it is an impermissible contention interrogatory at this stage of litigation. In responding to an interrogatory that seeks all facts and theories supporting its claim or defense, it is sufficient for the answering party to identify principal or material facts or theories which support a defense.

  
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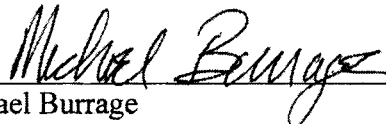
**ATTORNEYS FOR STATE OF  
OKLAHOMA, ex rel. BOARD OF  
REGENTS OF THE UNIVERSITY OF  
OKLAHOMA**



**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of February 2022, a true and correct copy of the foregoing was mailed postage prepaid to:

Kathryn E. Gardner  
Reporters Committee for Freedom of the Press  
110 S. Hartford Ave., Ste 2524  
Tulsa, OK 74120  
[kgardner@rcfp.org](mailto:kgardner@rcfp.org)

  
\_\_\_\_\_  
Michael Burrage

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