



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

PART A

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

vs. )

Case No. CV-2021-1770  
Judge Walkley

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

**PLAINTIFFS' STATEMENT OF ARGUMENTS AND AUTHORITIES  
IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }  
FILED  
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In this Open Records Act (“ORA”) case concerning the disclosure of two records (collectively, the “**Reports**”) the Court should deny the University summary judgment as a matter of law. The first report, completed in September 2018, concerns an investigation into whether, and to what extent, the University misreported data about its alumni donors to outside organizations like U.S. News & World Report (hereinafter the “**Alumni Donor Report**”). That report was compiled using emails, documents, and interviews obtained from non-attorney employees of the University, and information in the Alumni Donor Report was shared (at least) with outside organizations like U.S. News & World Report and discussed extensively in public by University officials. The second report, completed in April 2019, pertains to an investigation into whether the University’s former president, David Boren, abused his position by making sexual advances toward or engaging in sexual misconduct with University students and employee subordinates (hereinafter the “**Sexual Misconduct Report**”). The Sexual Misconduct Report was intentionally disclosed at least in part to Boren himself (and his attorney), to one or more witnesses interviewed by Jones Day, and, the University itself contends, to law enforcement.

As a public entity seeking to withhold public records, Defendant must meet a burden statutorily prescribed by the legislature for nearly half a century. It has not done so. In fact, *none* of the privileges and exemptions Defendant asserts allow it to withhold either of the Reports as a matter of law. Indeed, the attorney client privilege is not available because for communications that involve closed or completed investigations, claims, or actions “there is no privilege” as a matter of law. 12 O.S. § 2502(D)(7). The informer’s privilege not available because it is limited by statute to encompass only the identity of an informant who furnishes information to a law-enforcement agency actively investigating a violation of law—not the contents of entire reports, and not information gathered by non-law enforcement agencies like the University. 12 O.S. §

2510. The deliberative process privilege is not available because it only previously been applied to the Governor. *Vandelay Ent., LLC v. Fallin*, 2014 OK 109, ¶ 9 & n.4, 343 P.3d 1273. The personnel records exemption is not available because the Reports are not records traditionally recognized as “personnel records.” 51 O.S. § 24A.7. And the “investigatory files exemption” does not apply because Jones Day is not an “agency attorney.” 51 O.S. § 24A.12.

Alternatively, should the Court find any that any of the asserted exemptions or privileges may apply, summary judgment for Defendant must *still* be denied because significant disputes of material facts remain as to the application of those privileges, as set forth below and in Plaintiffs’ concurrently filed Response to Defendant’s Statement of Material Facts and Additional Statement of Material Facts (“Pls. SMF”), and the affidavits filed in support of this opposition.

#### **STANDARD OF DECISION AND GOVERNING LAW**

“Summary judgments are not favored and they should be granted only where it is perfectly clear that there are no issues of material fact in a case.” *Jordan v. Jordan*, 2006 OK 88, ¶ 17, 151 P.3d 117, 121. “[A]ll inferences and conclusions to be drawn from the underlying facts contained in such materials as affidavits, . . . , exhibits and the like, must be viewed in the light most favorable to the party opposing the motion.” *Northrip v. Montgomery Ward & Co.*, 1974 OK 142, 529 P.2d 489, 491. Although Plaintiffs are the non-moving party, if they appear be entitled to judgment as a matter of law and there is no substantial controversy over material facts, the Court is *required* to render summary judgment *in Plaintiffs’ favor*. *Okla. Ass’n of Broads., Inc. v. City of Norman*, 2016 OK 119, ¶ 3, 390 P.3d 689, 691; 12 Ok. Stat. ch. 2 App., Okla. Dist. Ct. R. 13(e). The Court, “in making a decision on whether summary judgment is appropriate” inevitably “considers factual matters,” but the ultimate decision turns purely on legal determinations, *i.e.*, whether one party is

entitled to judgment as a matter of law because *there are no material disputed factual questions.*” *Carmichael v. Beller*, 1996 OK 48, ¶ 2, 914 P.2d 1051, 1053 (emphasis added).

The “Legislature’s emphatic message to government agencies is, unless otherwise specifically excluded, the public must have prompt and reasonable access to records.” *Okla. Ass’n of Broads.*, 2016 OK 119, ¶ 15, 390 P.3d at 694 (citations omitted). Indeed, the Legislature enacted the ORA to safeguard a constitutional “guarantee” that “political power is inherent in the people.” 51 O.S. § 24A.2. This guarantee overrides private interests; courts “must construe the Act’s provisions to allow access unless an exception clearly applies; the burden is on a public agency seeking to deny access to show that a record should not be made available.” *Okla. Ass’n of Broads.*, 2016 OK 119, ¶ 15, 390 P.3d at 694; *see* 51 O.S. § 24A.2. “Unless a record falls within a statutorily-prescribed exemption in the Act, the record *must* be made available for public inspection.” *Ross v. City of Owasso (Ross II)*, 2020 OK CIV APP 66, ¶ 9, 481 P.3d 278, 282.

These well-established principles reveal the University misled the Court as to the standard of governing law. *See* Def. MSJ Br. at 8–10. **First**, the University is not entitled to “deference on summary judgment.” *Compare* Def. MSJ Br. at 8, *with Okla. Ass’n of Broads.*, 2016 OK 119, ¶ 15, 390 P.3d at 694 (“burden is on the public agency”). As the University’s own cited authority cautions, the “clear public purpose” of the ORA “would be inherently undermined” if an agency’s initial determination to disclose or conceal a document were afforded too much judicial deference. *Ross II*, 2020 OK CIV APP 66, ¶ 13, 481 P.3d at 282–83. **Second**, if the University were correct in its claim that it need only “justify” its decision to withhold documents—as opposed to meeting its burden of demonstrating an exemption applies—“the established case law examining a public body’s discretion” to invoke an exemption “would be entirely unnecessary.” *Compare* Def. MSJ

Br. at 8, with *Ross II*, ¶ 17, 481 P.3d at 283. The University “does not meet [its] burden *by simply making a decision*” to withhold records. *Ross*, ¶ 17, 481 P.3d at 283 (emphasis in original).

*Third*, the balancing test the University references, *see* Def. MSJ Br. at 9, applies only to the ORA’s statutory personnel record and investigatory files exemptions. *See* 51 O.S. § 24A.7. The privileges the University asserts are not governed by any similar evaluation of competing interests, *see id.* § 24A.5(1), but more to the point, if the Court “determines the University inappropriately relied on” an asserted privilege or exemption, Def. MSJ Br. at 9, no balancing is necessary at this stage because summary judgment must be denied.

*Fourth*, the University misinforms the Court by suggesting that the ORA establishes no procedure for “accommodating” a request for public records. *See* Def. MSJ Br. at 8. In fact, the ORA mandates that “any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portion.” 51 O.S. § 24A.5(3); *accord Progressive Indep., Inc. v. Okla. State Dep’t of Health*, 2007 OK CIV APP 127, ¶ 15, 174 P.3d 1005, 1009. The University never engages with this obvious remedy to its purported concerns; this alone is a failure to meet its burden. *In re Foster*, 188 F.3d 1259, 1264 (10th Cir. 1999) (“The party must bear the burden as to specific questions or documents, not by making a blanket claim.”).

Ultimately, this Court must decide whether the University has proven, as a matter of law, that the Reports are clearly exempt from disclosure under one of the ORA’s narrowly construed exceptions. *Okla. Ass’n of Broads.*, 2016 OK 119, ¶ 15, 390 P.3d at 694. Still, the Court will have to undertake a fact-intensive analysis to determine whether any of the University’s stated exemptions is applicable; in each case, the University must demonstrate undisputed facts that

resolve all controversy as to these questions.<sup>1</sup> “[T]here are often no clear answers to privilege issues due to the fact-dependent case by case analysis that is required.” *Lindley v. Life Invs. Ins. Co. of Am.*, 267 F.R.D. 382, 398 (N.D. Okla. 2010). Where that is the case, summary judgment is improper. *Progressive*, 2007 OK CIV APP 127, ¶ 16, 174 P.3d 1005 at 1009.

## ARGUMENT

**I. Summary judgment must be denied because the University has not carried its burden for any of the privileges, exemptions, or other theories it asserts.**

**A. The attorney-client privilege does not apply as a matter of law and does not support summary judgment.**

Whether the attorney-client privilege applies “is a question of fact for the trial court.” *Cooper*, 1983 OK CR 154, ¶ 4, 671 P.2d at 1172; *see also Lindley*, 267 F.R.D. at 391 (“What is clear is that the determination is fact-driven.”); *Hurt v. State*, 1956 OK CR 88, ¶ 13, 303 P.2d 476, 481 (attorney-client privilege “presents a question of fact”). The University “has the burden of clearly showing” the privilege applies. *Lindley*, 267 F.R.D. at 388; *Okla. ex. rel. Edmonton v. Tyson*, 5-cv-329, 2008 WL 183362, at \*1 (N.D. Okla. Jan. 16, 2008); *Hurt*, 1956 OK CR 88, ¶ 13, 303 P.2d at 481. Additionally, “because all privileges are in derogation of the search for truth, [they] are narrowly construed.” *Lindley*, 267 F.R.D. at 388.

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<sup>1</sup> **Attorney-client privilege**—*see Cooper v. State*, 1983 OK CR 154, ¶ 4, 671 P.2d 1168 (“Whether the attorney client privilege is involved . . . is a question of fact for the trial court”); *Chandler v. Denton*, 1987 OK 38, ¶ 20, 741 P.2d 855, 865 (“burden to establish the protected status of testimony sought to be excluded rests on the party asserting it”); **“Deliberative process” executive privilege**—*see Vanedelay Ent., LLC v. Fallin*, 2014 OK 109, ¶ 9 & n.4, 343 P.3d 1273, 1276 & n.4 (“the burden falls on the government entity asserting the privilege”). **Informer’s privilege**—*see Robinson v. State*, 1981 OK CR 107, ¶ 7, 634 P.2d 734, 737 (Cornish, J., Concurring) (“The determination of whether the informant's identity should be disclosed, rests with the sound discretion of the trial judge.”); **Personnel records exemption**—*see Ross II*, 2020 OK CIV APP 66, ¶ 9, 481 P.3d 278, 282 (“The public body urging an exemption has the burden to establish the applicability of such exemption.”); **Investigatory records exemption**—*see generally* 51 O.S. § 24A.2 (“the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by such a confidential privilege”).

1. **The University does not currently hold an attorney-client privilege over either Report because it is a public entity.**

The University entirely ignores a controlling provision that ends this inquiry before it begins. Specifically, the Oklahoma attorney-client privilege, 12 O.S. § 2502, states:

D. There is *no privilege* under this section: . . .

7. As to a communication between a public officer or agency and its attorney *unless* the communication concerns a pending investigation, claim or action *and* the court determines that 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.

Compare 12 O.S. § 2502(D)(7) (emphasis added), with Def. Br. at 12–15; see also *Tyson*, 2008 WL 183362, at \*1; *McMurtry v. Aetna Life Ins. Co.*, 2006 WL 8436510, at \*1–2 (W.D. Okla. July 18, 2006) (“Oklahoma law provides narrower protection for attorney-client communications than federal law.”).<sup>2</sup> There is no privilege *whatsoever* as to a communication between a public entity and its attorney *unless* the conditions listed in § 2502(D)(7) are met. *Id.*

This limitation applies to all “public bodies” subject to open meetings requirements, *Okla. Ass’n of Mun. Att’ys v. State*, 1978 OK 59, ¶ 16, 577 P.2d 1310, 1314 (discussing a predecessor statute, 12 O.S. § 418.2(D) (1977)), including “boards of public and higher education in this state,” such as Defendant. 25 O.S. § 304(1). Thus, the scope of attorney client privilege for a public entity like the University is limited to communications that (i) “concern a pending investigation,” which (ii) if disclosed “will seriously impair the ability of the [public body] to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.” *Id.*<sup>3</sup> For

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<sup>2</sup> In fact, the University improperly cites the elements of traditional attorney-client privilege, as applicable to private parties, to misleadingly suggest that formulation is relevant to this Court’s decision. Def. MSJ Br. at 14–15. It unequivocally *is not*. 12 O.S. § 2502(D)(7).

<sup>3</sup> The privilege is “principally designed to protect confidential communications between attorney and client.” See *Superintendent of Ins. v. Att’y Gen.*, 558 A.2d 1197, 1202–03 (Me. 1989) (interpreting similar law). “When dealing with public agencies and their lawyers, however, such

communications that involve *closed or completed* investigations, claims or actions—like those at issue in the Reports—“there is no privilege” as a matter of law. *Id.*<sup>4</sup>

As demonstrated conclusively in Plaintiffs’ concurrently filed Statement of Material Facts, neither the Alumni Donor Report, Pls. SMF 15, nor the Sexual Misconduct Report Pls. SMF 38, involve a pending investigation, claim, or action. As such there is no attorney-client privilege available to the University over the contents of either report. Because the attorney-client privilege does not apply to the Reports as a matter of law—nor does any other privilege or exemption, discussed *infra*—the Court is *required* to render summary judgment in Plaintiffs’ favor. *See supra* p. 2; *Okla. Ass’n of Broads.*, 2016 OK 119, ¶ 3; 12 Ok. Stat. ch. 2 App., Okla. Dist. Ct. R. 13(e).

**2. The Reports almost certainly contain information that was never a confidential attorney-client communication.**

Oklahoma law further limits the scope of attorney client privileged material to “confidential communications [between a client and their counsel] made for the purpose of facilitating the rendition of professional legal services to the client.” 12 O.S. § 2502; *Chandler*, 1987 OK 38, ¶ 20, 741 P.2d at 865. “Generally,” then, “the mere status of an attorney-client relationship does not make every communication between attorney and client protected by the privilege.” *Scott v. Peterson*, 2005 OK 84, ¶ 7, 126 P.3d 1232, 1234; *see also Motley v. Marathon Oil Co.*, 71 F.3d 1547, 1550–51 (10th Cir. 1995) (“[T]he mere fact that an attorney was involved in a communication does not automatically render the communication subject to the attorney-client privilege.”). “Although the ‘status’ of lawyer is one of the Court’s considerations in determining

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considerations are of lesser importance,” thus, “confidential communications between a public agency and its lawyer are the exception rather than the rule.” *Id.*

<sup>4</sup> The *dicta* Defendant cites in *Okla. Ass’n of Mun. Attys*, Def. MSJ Br. at 13–14, does not say otherwise—it explains the rationale for the attorney-client privilege *only when* there is a pending investigation, claim or action, and disclosure would impair the public body’s position.



the nature of the advice,” still, “the Court must consider the context of or circumstances surrounding the communication.” *Lindley*, 267 F.R.D. at 388–89. For the privilege to apply, the “communication between the lawyer and client must relate to legal advice or strategy sought by the client.” *United States v. Johnston*, 146 F.3d 785, 794 (10th Cir. 1998). As a practical matter, “[m]ost disputes as to the applicability of the privilege pivot on whether the confidential communication was made for the purpose of seeking or providing legal advice.” *Lindley*, 267 F.R.D. at 389.

In addition, the scope of the privilege excludes protection for communications made between employees of the University prior to Jones Day’s hiring—even if those communications were later attached to the Reports as appendices or exhibits. “[A] pre-existing document or writing . . . does not become privileged simply through its transfer to an attorney and thereby constitute a communication.” Leo H. Whinery, *Oklahoma Evidence—Commentary on the Law of Evidence*, 3 OKPRAC § 36.14 (Apr. 2023); *see, e.g., Dawe v. Corrs. USA*, 263 F.R.D. 613, 621 (E.D. Cal. 2009) (non-privileged e-mail among corporate employees does not become privileged because it was “cc’d” to outside counsel); *McMurtry*, 2006 WL 8436510, at \*2 (citing *Johnston*, 146 F.3d at 794) (“the attorney-client privilege attaches to confidential communications between an attorney and client for the purpose of seeking legal advice; it does not attach to underlying facts.”). As the United States Supreme Court recognizes, “[a] fact is one thing and a communication concerning that fact is an entirely different thing.” *Upjohn Co. v. United States*, 449 U.S. 383, 395–96 (1981) (internal citations omitted). “The client . . . may not refuse to disclose any relevant fact within his knowledge merely because he incorporated a statement of such fact into his communication to his attorney.” *Id.* Here, any portions of the Reports consisting of routine correspondence between employees of the University fall outside the scope of privilege the University can assert.

The University has not even attempted to meet its burden of demonstrating that portions of the Reports were *not* this manner of ordinary, non-privileged communication. For this reason, and because there is no “pending investigation, claim or action” relevant to either of the Reports, summary judgment can be denied as a matter of law as to attorney-client privilege.

**3. Assuming, *arguendo*, that the University holds the attorney-client privilege with respect to the closed Jones Day investigations, there are genuine issues of material fact precluding the application of that privilege to the Alumni Donor Report.**

Even assuming, *arguendo*, that the University holds the attorney-client privilege, there are several genuine issues of material fact precluding a finding that the Alumni Donor Report may be withheld, in full, as a matter of law pursuant to 51 O.S. § 24A.5(1)(A). *First*, the material facts submitted by both parties demonstrate that the Alumni Donor Report could have been compiled by any manner of investigator or auditor; lawyers were not necessary. In other words, there is a genuine issue of material fact as to whether the Alumni Donor Report was “made for the purpose of facilitating the rendition of professional legal services to the client.” 12 O.S. § 2502(B). *See, e.g., Evanhoe v. State*, 1987 OK CR 145, ¶ 4, 738 P.2d 1379, 1379 (affirming trial court decision that communications from attorney acting as an accountant were not privileged). The University submits no evidence that attorneys were needed to “conduct[] an internal investigation regarding OU’s reporting of certain data to external publications.” Def. MSJ Br. 5; Def. Ex. 3. Instead, the evidence shows the investigation was primarily “a review of what data was incorrectly reported, what the correct data was, how long misreporting had occurred for, who was involved with the misreporting, and whether anyone was compensated (via bonus, agreement or other compensation) for participating in the misreporting or in a coverup of the misreporting.” Pls. Ex. G at 5; Pls. SMF 5, 8, 9. Critically, the attorney-client privilege does not apply when “an attorney is simply acting as a conduit for factual information or business advice.” *See Atoka Precision Mach. Shop, LLC v.*

*Peerless Ins. Co.*, 2013 WL 817279, \*1 (E.D. Okla. 2013). Indeed, “[d]ocuments which are investigative reports prepared in the ordinary course of business, as opposed to ‘in anticipation of litigation,’ are discoverable notwithstanding the fact that they were generated by an attorney.” *See id.* The result should be no different in the public records context.<sup>5</sup>

**Second**, there is a genuine issue of material fact as to whether portions of the Alumni Donor Report are confidential attorney-client communications at all, as opposed to routine correspondence between non-attorney employees of the University. The statute defines confidential communications as follows:

A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

O.S. Ann. tit. 12, § 2502. As such, the University’s asserted privilege over the Alumni Donor Report, such as one exists, cannot apply to communications that were known to have been disclosed to third persons. Importantly, one of the primary bases for the Alumni Donor Report appears to have been a file from the University’s Development Office containing ordinary University files, and very likely including emails between non-attorney University employees.

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<sup>5</sup> In *Diversified Industries, Inc. v. Meredith*, 572 F.2d 596 (8th Cir. 1978), the plaintiff Diversified sought to protect from discovery a memorandum and report prepared for it by the law firm Wilmer, Cutler & Pickering. Due to some financial irregularities, “the Board of Directors of Diversified concluded that it should cause an investigation to take place . . . [Wilmer] was hired to make that investigation.” *Id.* at 600. This resulted in a report, which gave “a full and detailed report of the investigation; it identified persons who had been interviewed and set out the substance of what they had said . . . [and] contained a number of recommendations.” *Id.* at 601. Because “[a] communication is not privileged simply because it is made by or to a person who happens to be a lawyer,” *id.*, and because “[t]he work that [Wilmer] was employed to perform could have been performed just as readily by non-lawyers aided to the extent necessary by a firm of public accountants,” *id.*, the appellate court concluded that the report was not privileged.

Pls. SMF 9 & Ex. J. The University cannot assert attorney-client privilege over portions of the report reproducing or based on this correspondence.

*Third*, there is a genuine issue of material fact as to whether the University waived its purported attorney-client privilege over the Alumni Donor Report by disclosing “any significant part of the privileged matter.” And waiver occurs if the holder of privilege “voluntarily discloses or consents to disclosure of any significant part of the privileged matter.” 12 O.S. § 1251. “Courts should consider the facts of the particular case and the objectives of the particular privilege in judging whether the holder of a privilege has disclosed a significant part of a privileged matter so as to waive the privilege as to the whole communication.” *Hogan v. State*, 2006 OK CR 19, ¶ 35, 139 P.3d 907, 922. Here, a significant portion of the Alumni Donor Report was provided by the University to U.S. News & World Report after it was completed. Pls. SMF 10, 11; Pls. Exs. H, K, Q. Moreover, Gallogly and Gollahalli chose to disclose information from the report to the public, through press conferences and other public statements. Pls. SMF 13. The University shared information from the report by discussing it in its meetings, which legislators have the ability to attend, and by putting that information in publicly-available meeting minutes. Pls. SMF 14. These voluntary disclosures constitute express waivers of any attorney-client privilege the University claims in the Alumni Donor Report.<sup>6</sup> Thus, because the University made intentional disclosures

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<sup>6</sup> For example, in *Dougherty v. Esperion Therapeutics, Inc.*, the plaintiff sought drafts of press releases that the defendant’s attorney had advised it to issue. Defendant sought to assert the attorney-client privilege over the drafts, but because they had previously been sent to a third party (the FDA), the court held that the privilege had been waived. No. 16-10089, 2020 WL 7021688, at \*4 (E.D. Mich. Nov. 30, 2020). Likewise, in *Electro Scientific Industries, Inc. v. General Scanning*, the defendant sought to assert the attorney-client privilege over several communications from its counsel, but the record showed several exchanges with outside corporations (Mitsubishi, IBM, and Siemens) wherein the defendant “disclosed substantive components of what otherwise would have been privileged communications,” and that the defendant had issued a news release that made similar disclosures. 175 F.R.D. 539, 543 (N.D. Cal. 1997).

of the Alumni Donor Report in service of managing its reputation and restoring its relationship with U.S. News & World Report and the public, it cannot claim that the Alumni Donor Report must remain confidential.

**4. Assuming, *arguendo*, that the University holds the attorney-client privilege with respect to the closed Jones Day investigations, there are genuine issues of material fact precluding application of that privilege to the Sexual Misconduct Report.**

Even assuming, *arguendo*, that the University is not barred by statute from asserting the attorney-client privilege over Reports reflecting Jones Day's closed investigations, genuine disputes of material fact preclude applying that privilege to the Sexual Misconduct Report. *First*, there is a genuine issue of fact as to whether the Sexual Misconduct Report contains confidential attorney-client communications. Notwithstanding the University's repeated claim that the Reports "were created by its law firm," *e.g.*, Def. MSJ Br. at 5–6, 14, it has not established that Jones Day was acting in the capacity of its attorney in compiling the report. Indeed, "consultation with one admitted to the bar but not in that person's role as a lawyer is not protected." *In re Lindsey*, 148 F.3d 1100 (D.C. Cir. 1998). Contrary to the University's emphasis on the terms of its engagement letter, *see* Def. MSJ Br. at 5 ¶ 3, the mere fact of retaining a law firm is insufficient. *Lindley*, 267 F.R.D. at 391–92 ("the Court must determine the primary or predominate purpose of the communication").<sup>7</sup> Virtually all authorities agree. *E.g.*, *Peterson*, 2005 OK 84, ¶ 7, 126 P.3d at 1234; *In re Grand Jury Proc.*, 616 F.3d 1172, 1182 (10th Cir. 2010); *Motley*, 71 F.3d at 1551. This genuine dispute of material fact makes summary disposition inappropriate.

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<sup>7</sup> The University has given incompatible explanations as to the nature of Jones Day's role, at times describing it as a Title IX investigator, *see, e.g.*, Def. MSJ Br. at 2, despite the inherent conflict of interest in having a Title IX investigator report to the office of General Counsel, which is charged with mitigating institutional risk, and despite no record evidence that the University ensured that Jones Day's work met any one of the myriad federally mandated requirements to work in that capacity. *See* below, Section C.

*Second*, the University waived any purported attorney-client privilege because it purposefully provided (at least) large portions of the Sexual Misconduct Report and (at least) some of the evidence underlying that report to Boren and his attorney. Pls. SMF ¶¶ 20, 30. The University also purposefully provided a portion of the Sexual Misconduct Report to one of Boren's alleged victims, Jess Eddy. Pls. SMF ¶ 31; *see* Eddy Aff. ¶ 29, 30. These disclosures amount, unequivocally, to waiver. 12 O.S. § 2511 ("A person upon whom [the Oklahoma Evidence Code] confers a privilege waives the privilege if the person or the person's predecessor voluntarily discloses or consents to disclose any significant part of the privileged matter."). "As a general rule, if a client chooses to make or to receive a communication to or from his attorney in the open presence of unnecessary third persons, the communication ceases to be confidential and is not entitled to the protection afforded by the rule of confidentiality. This is so because a third person does not stand in any confidential relationship to the client." *Chandler*, 1987 OK 38, ¶ 21, 741 P.2d at 865; *see also Buffington v. Gillette Co.*, 101 F.R.D. 400, 404 (W.D. Okla. 1980) (voluntary disclosure of hospital records to adverse party waived physician-patient privilege); *Miller v. Ameristate Bank of Atoka, Inc.*, 2013 OK CIV APP 102, ¶ 11, 314 P.3d 278, 283 (OSBI's voluntary disclosure of records waived state evidentiary privilege). "When a party waives the attorney-client privilege, it waives the privilege as to all communications that pertain to the same subject matter of the waiver." *S.E.C. v. Microtune, Inc.*, 258 F.R.D. 310, 317 (N.D. Tex. 2009); *see also Nguyen v. Excel Corp.*, 197 F.3d 200 at 208 ("disclosure of any significant portion of a confidential communication" including "selectively disclosing" portions of privileged material waives privilege).

For instance, in *Doe 1 v. Baylor University*, "the Baylor University Board of Regents hired the law firm Pepper Hamilton, LLP, to conduct an independent and external review of Baylor

University's institutional responses to Title IX and related compliance issues." 320 F.R.D. 430, 434 (W.D. Tex. 2017) (cleaned up). Baylor and Pepper Hamilton's engagement letter stated that the purpose of Pepper Hamilton's work was "to provide legal advice and guidance," and that "all material prepared, and communications made . . . are privileged work product." *Id.* But "Baylor released two documents summarizing the results of the Pepper Hamilton investigation," along with other statements—disclosures far more attenuated than those made by the University, which disclosed portions of the Sexual Misconduct Report itself. The court found that Baylor's "disclosures were intentional and together provide substantial detail about both what Baylor and its employees told Pepper Hamilton and what advice Baylor received in return," *id.* at 437, and "conclude[d] that the waiver encompasses the entire scope of the investigation, and all materials, communications, and information provided to Pepper Hamilton as part of the investigation." *Doe I.*, 320 F.R.D. at 440. Here too, by disclosing large portions of the Sexual Misconduct Report to third parties, the University has waived the entire Jones Day investigation and all materials and reports resulting from that investigation, precluding summary judgment for Defendant.

For the same reason, the University cannot demonstrate—and the Court cannot determine—that disclosure of the Reports would jeopardize the University's ability to protect the public interest in any pending investigation or claim. *See* 12 O.S. § 2502(D)(7).<sup>8</sup> Surely, the most probable litigants that would arise from disclosure would be either (a) a victim of President Boren's sexual offenses and/or (b) President Boren. Yet—incredibly—the few individuals outside of the University's leadership that the University has acknowledged were provided an opportunity to review all or part of the Sexual Misconduct Report were (a) a victim of President Boren's sexual

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<sup>8</sup> As explained herein, the public interest plainly favors disclosure of both Reports and transparency as to the University's handling of such grave and sensitive matters.

offenses, Eddy, and (b) President Boren. *See* Pls. SMF 30, 31; Eddy Aff. ¶¶ 25. In both cases, the University was keenly aware of the risk these potentially adverse parties might publicize the contents of the Reports in a manner inconsistent with the University's efforts to maintain their secrecy. Under these circumstances, it is appropriate to "question[] whether the Reports could be considered confidential when it is clear that no party intended the communication to remain undisclosed." *Club Properties, Inc. v. City of Sherwood*, 2008 WL 276289, at \*2 (E.D. Ark. Jan. 30, 2008) (applying similar state law);. "Even assuming that the communications could be considered 'confidential,' a requirement of attorney-client privilege, the Court cannot find that the disclosure will seriously impair the ability of the public officer or agency to conduct the litigation in the public interest." *Id.*

*Third*, the University has also admitted (though without evidentiary basis) that it willingly disclosed the entirety of both reports to law enforcement. *See* Def. MSJ Br. at 2; Pls. SMF 35. The University has stated that its disclosure was subject to subpoena. *See* Def MSJ Br. at 10; Pls. SMF 35. But the University has produced no documentary evidence confirming this matter other than news reporting, *see* Def. MSJ Br. at 10 & n.4; *see also* Pls. SMF 35, and contemporaneous reporting of the matter reveals that the University refused to confirm or deny that it provided the Sexual Misconduct Report to OSBI or the grand jury. *See* Tres Savage, *OU, others decline to say if David Boren report given to OSBI*, NonDoc (May 9, 2019), <https://perma.cc/38MK-GS7R>.<sup>9</sup>

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<sup>9</sup> An exemplary case from another jurisdiction crystalizes the matters before this Court. *See generally Abraham v. Phillips*, 287 A.3d 848 (Pa. Super. Ct. 2022). In *Abraham*, Thomas Jefferson University "retained outside counsel to conduct an investigation and to render legal advice regarding [a] Title IX complaint," *Id* at \*2, which "conducted an extensive investigation, including conducting interviews of individuals" and purportedly "advised these individuals that any information disclosed in connection with the investigation would be kept confidential." *Id.* "Jefferson argued the Report was therefore protected by attorney-client privilege." *Id.* The court observed "[a] fact is not transformed into privileged information solely by virtue of its having been communicated [by] counsel." *Id.* Guided by this, the court found that Jefferson did not produce



But subpoena or no, this, too, is waiver. “The right to compulsory process does not negate traditional privileges such as the attorney-client privilege.” *Cooper*, 1983 OK CR 42, ¶ 6, 661 P.2d at 907. Indeed, the attorney-client privilege is one of “a very limited number of recognized privileges . . . [that] provide legitimate grounds for refusing to comply with a grand jury subpoena.” *Grand Jury*, 616 F.3d at 1181. This is because intentional disclosure of any kind—even to law enforcement—undercuts the entire objective of the privilege, which is to protect the attorney-client relationship. “Voluntary cooperation with government investigations may be a laudable activity, but it is hard to understand how such conduct improves the attorney-client relationship. If the client feels the need to keep his communications with his attorney confidential, he is free to do so under the traditional rule by consistently asserting the privilege, even when the discovery request comes from a ‘friendly’ agency. *In re Qwest Commc’ns Int’l Inc.*, 450 F.3d 1179, 1187 (10<sup>th</sup> Cir. 2006).<sup>10</sup>

**B. The Informer’s Privilege does apply as a matter of law and does not support summary judgment.**

**1. The Informer’s Privilege cannot be construed to permit the University to withhold either of the Reports.**

The University’s argument that the informer’s privilege permits it to withhold the Reports to protect victims and “their stories” is both disingenuous and wrong. *See* Def. MSJ Br. at 2.<sup>11</sup>

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any “evidence explaining the scope or purpose of the Report.” *Id.* Instead, “the only proffer regarding the contents of the Report has been that the Report was created using witness interviews.” *Id.* Like Jefferson, the University fails to carry its burden here.

<sup>10</sup> Even if the University had an agreement in place with OSBI that it would not further disseminate the Reports, which the University has not even attempted to show, that would not be enough to cure the waiver. *See Qwest Commc’ns*, 450 F.3d at 1187 (collecting cases).

<sup>11</sup> For example, Defendant sanctimoniously argues, citing no facts, that “the ultimate irony of this case is that the Reports only exists [*sic*] because of the protections promised to the witnesses that Plaintiffs seek to undermine.” Def. MSJ Br. at 3. But this begs a core question: *Did the participants in the investigation condition their cooperation on confidentiality?* To date, only Plaintiffs have produced competent testimonial evidence from an “informant” who participated in

The informer's privilege is limited by statute to encompass *only* (i) the identity of an informant who (ii) furnishes information to a law-enforcement agency actively investigating a violation of law:

The United States, state or subdivision thereof has a privilege 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 a law to a law enforcement officer or member of a legislative committee or its staff conducting the investigation.

12 O.S. § 2510. Plainly, the statutory privilege does not encompass the contents of entire reports, nor does it apply to information gathered by non-law enforcement agencies like the University.

The United States Supreme Court, in its seminal opinion construing the informer's privilege, cautions against its broad application: "The scope of the privilege is limited by its underlying purpose," which is encouraging "citizens to communicate their knowledge of the commission of crimes to law-enforcement officials." *Roviaro v. United States*, 353 U.S. 53, 60 (1957). If withholding a portion of a communication does not achieve that purpose, the privilege does not apply. *Id.* For instance, "where the disclosure of the contents of a communication will not tend to reveal the identity of an informer, the contents are not privileged," and "[l]ikewise, once the identity of the informer has been disclosed to those who would have cause to resent the communication, the privilege is no longer applicable." *Id.* Oklahoma courts construe the privilege to serve the same policy: "Before the privilege of non-disclosure is applicable in the first instance, the person whose identity the State seeks to protect must come within the rationale of the rule[.]" *Corbett v. State*, 1974 OK CR 181, ¶ 9, 527 P.2d 200, 203. Here, neither the text of the law nor its animating purpose applies.

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either of the Reports—and the testimony of that witness undermines the University's representation it is protecting the interests of any victims or witnesses. *See generally* Eddy Aff.

The attorneys the University retained from Jones Day—operating out of the Atlanta office of one of the world’s largest private international law firms—were not “law enforcement officer[s].” 12 O.S. § 2510; *see* Pls. SMF 27; Eddy Aff. ¶ 12; Def. Ex. 4; Pls. Ex. I.<sup>12</sup> Courts uniformly hold that the informer’s privilege is restricted to “a privilege to withhold from disclosure the identity of persons who furnish information of violations of law to *officers charged with enforcement of that law.*” *Fruchtman v. Town of Dewey Beach*, 886 F. Supp. 2d 427, 428 (D. Del. 2012) (emphasis in original) (citing *Roviaro*, 353 U.S. at 59); *see also Cofield v. City of LaGrange*, 913 F. Supp. 608, 617–18 (D.D.C. 1996) (“Whether the broad protections of [the privilege] apply turns on whether the information was furnished by a confidential source during a law enforcement investigation.”) (interpreting federal Freedom of Information Act (“FOIA”), 5 U.S.C. § 552). All published Oklahoma authorities applying the privilege of which Plaintiffs are aware concern law-enforcement investigations.<sup>13</sup>

The University’s cited authorities comport with this rule. *See* Def. MSJ Br. at 11 (citing *Stephenson Enters., Inc. v. Marshall*, 578 F.2d 1021 (5th Cir. 1978); *Film Allman, LLC v. Sec’y of Lab.*, 682 F. Appx. 860 (11th Cir. 2017)). In both *Stephenson* and *Film Allman*, the Secretary of

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<sup>12</sup> The University’s agreements with Jones Day confirm this—if there were ever any doubt. *See* Def. Ex. 4, Pls. Ex. I. The engagement letters expressly advise that “Jones Day *does not* . . . represent the State of Oklahoma.” *Id* (emphasis added). And, contrary to Defendant’s reference to other “arms of the State of Oklahoma,” *see* Def. MSJ Br at 10–11, the engagement letters emphasize that Jones Day “currently and regularly represents clients in matters that are *directly adverse* to the State of Oklahoma, the Oklahoma Tax Commission, and other *branches, bodies, agencies, and instrumentalities* of the State of Oklahoma.” *Id* (emphasis added).

<sup>13</sup> *E.g.*, *McCoy v. State*, 1985 OK CR 49, ¶¶ 6–7, 699 P.2d 663, 664–65 (search warrant); *Corley v. State*, 1985 OK CR 153, ¶ 12, 713 P.2d 12, 14 (same); *Robinson v. State*, 1981 OK CR 107, ¶¶ 5–6, 634 P.2d 734, 735 (informant’s tip to Detective); *Taylor v. State*, 1980 OK CR 121, ¶ 4, 621 P.2d 1184, 1185 (requiring *in camera* for confidential eyewitness); *Hill v. State*, 1979 OK CR 2, ¶ 16, 589 P.2d 1073, 1077 (controlled narcotics purchase); *Chronister v. State*, 1975 OK CR 134, ¶¶ 4–5, 538 P.2d 215, 216–17 (criminal co-conspirator); *Corbett*, 1974 OK CR 181, ¶¶ 9–11, 527 P.2d at 203–04 (confidential criminal informant witness to crime).

Labor relied on the privilege to conceal the names of informants in enforcement actions against employers for violations of the Occupational Safety and Health Act. 578 F.2d at 1025–26; 682 F. Appx. at 861–62. Even relying on the arguably broader common-law informer’s privilege,<sup>14</sup> these decisions nevertheless limit the scope of the privilege to participants in *law-enforcement investigations*. *See id.*

The University’s reliance on the informer’s privilege suffers from another glaring infirmity—it seeks to apply the privilege to *all information* supplied by supposed “informants,” but the law’s plain terms extend only to conceal *the identities* of confidential informants. *Compare* Def. MSJ Br. at 12 (“the witness *statements* are cloaked with the informers’ privilege”) (emphasis added), *with* 12 O.S. § 2510 (the state “has a privilege to refuse to disclose *the identity* of a person who has furnished information”) (emphasis added). The University asks this Court to impermissibly “stretch[]the informer’s privilege to reach beyond that information which would reasonably identify the informer” to encompass each of the Reports in their entirety. *Cofield*, 913 F. Supp. at 620; *see also* 18 Okla. Op. Att’y Gen. 69 (1986) (“This statute clearly does not confer any right of confidentiality of the information obtained, but only of the identity of such informer.”);<sup>15</sup> *Brock v. Frank v. Panzarino, Inc.*, 109 F.R.D. 157, 158 (E.D.N.Y. 1986). *Roviaro* does not support the University’s position; “in fact, *Roviaro* better supports the view that the privilege applies only to the informer's identity.”<sup>16</sup> *Cofield*, 913 F. Supp. at 620; *cf.* Def. MSJ Br.

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<sup>14</sup> “At common law, the prosecution in a criminal case was ordinarily privileged to withhold from an accused the identity of persons who furnished information relating to violations of the law.” *Gordon v. United States*, 438 F.2d 858, 874–75 (5th Cir. 1971).

<sup>15</sup> An opinion of the Attorney General, while not binding, is “accorded great respect” by the courts. *State ex rel. Dep’t of Transp. v. Opubco, Inc.*, 2002 OK CIV APP 72, ¶ 11, 50 P.3d 1146, 1148.

<sup>16</sup> *Vogel*—at nearly 150 years old—is outdated; as federal circuit courts have counseled for nearly 60 years, “it is important to recognize that *Roviaro* considerably changed the character of the privilege.” *Westinghouse Elec. Corp. v. City of Burlington*, 351 F.2d 762, 767 (D.C. Cir. 1965). “Prior to the decision of that case, the informer’s privilege was broadly conceived and frequently

at 11–12. Applying *Roviaro*, “[o]nly the identity of the informer is privileged. The content of the communication is not privileged[.]” *Cofield*, 913 F. Supp. at 620.<sup>17</sup>

Because the informer’s privilege does not apply to the Reports as a matter of law, the Court is *required* to render summary judgment Plaintiffs’ favor. *See supra* p. 2; *Okla. Ass’n of Broads.*, 2016 OK 119, ¶ 3; 12 Ok. Stat. ch. 2 App., Okla. Dist. Ct. R. 13(e).

**2. Assuming, *arguendo*, that the University may assert the informer’s privilege, there are genuine disputes of material fact precluding application of that privilege to the Alumni Donor Report.**

The Alumni Donor Report was not the result of Jones Day’s or the University’s investigation into “a possible violation of a law.” Instead, Jones Day’s work for the University included a review of what alumni donor data was incorrectly reported, what the correct data was, who was involved with misreporting the data, and whether anyone was compensated for misreporting the data. Pls. SMF 8; Pls. Ex. G at 5. Defendant does not set forth any material facts establishing that any portion of the Alumni Donor Report may be withheld on the basis of the informer’s privilege, focusing exclusively on the application of that privilege to the Sexual Misconduct Report. *See* Def. MSJ Br. at 10–12. As such, the argument should be deemed waived. The Alumni Donor Report, which was not prepared for law enforcement or in anticipation of litigation, *see* Pls. SMF 12, did not involve “an investigation of a possible violation of a law to a law enforcement officer.”

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considered an ‘absolute’ one, as was stated in the leading case of *Vogel*.” *Id.* at 767 (citing 110 U.S. 311). Following *Roviaro*, however, “[t]he approach taken in the *Vogel* [] case[] is virtually abandoned.” *Id.* at 768.

<sup>17</sup> “[T]he informer’s privilege ends where information unrelated to the informer’s identity begins.” *Id.* If the privilege were applicable to the Reports at all—and it is not—the correct result would be redaction, not wholesale withholding. *See Matter of Search of 1638 E. 2nd St., Tulsa, Okla.*, 993 F.2d 773, 775 (10th Cir. 1993) (“[A] redacted version [of the communication] should be made available if doing so would not reveal the informant’s identity or prejudice an ongoing investigation.”).

**3. Assuming, *arguendo*, that the University may assert the informer's privilege, there are genuine disputes of material fact precluding application of that privilege to the Sexual Misconduct Report.**

Even assuming the informer's privilege could apply—and it cannot—Defendant is not entitled to summary judgment with respect to the Sexual Misconduct Report because of several disputes of material fact. *First*, the University cannot invoke the informer's privilege on the grounds that it provided the Sexual Misconduct Report to the Oklahoma State Bureau of Investigation ("OSBI") because doing so does not make the Board of Regents a law enforcement agency. *See* Def. MSJ Br. at 10 n.3 (citing Tres Savage, *OSBI Gets Jones Day Report, Stitt Wants OU Regents to Do 'The Right Thing'*, <https://perma.cc/7DT2-2WW3>). The privilege protects only the identities of those who supply confidential information *to* a law enforcement body; it does not protect those who supply information to third parties even if the information later ended up in the hands of prosecutors. *See Town of Dewey Beach*, 886 F. Supp. 2d at 428; *see also Roviario*, 353 U.S. at 60; *Cofield*, 913 F. Supp. at 618. Nor, as set forth above, does the privilege protect the information provided—it only applies to the informant's identity.

Here, the evidentiary record is clear that Jones Day did not act in the capacity of a law enforcement agency. The only witness to have participated in the investigation avers that Jones Day denied affiliation with or duty to report to law enforcement. *See* Eddy Aff. ¶ 24 ("During the March 26, 2019, interview, one of the sexual assault victims' advocates asked Mr. Deane whether he and his colleagues were required to report crimes alleged during their interview to law enforcement. Mr. Deane responded that their obligation was only to report to the University, and that the University would have to make its own judgment."). And the University attempted to *prohibit* its former President Gallgoly from voluntarily sharing his knowledge related to the Reports with law enforcement. *See* Pls. SMF 34; Pls. Ex. P at 3.

The University's decision to refer the Sexual Misconduct Report to OSBI does not alter this analysis. In *Fruchtman*, a federal district court held that the informer's privilege does not protect information merely referred to prosecutors by another government entity if the referring entity—like the University here—did not receive the information in a law enforcement capacity. 886 F. Supp. 2d at 428. In that case, a town mayor invoked the privilege to attempt to conceal the identities of individuals who made anonymous reports of zoning violations, arguing that her office had the “power to see the laws and ordinances of the said Town faithfully executed.” *Id.*; cf. Def. MSJ Br. at 10–11 (arguing that the Board of Regents and OSBI are “both arms of the State,” and the Reports “utilize information given to” OSBI).<sup>18</sup> As the court in that case explained, even the general authority of a public body to oversee compliance with local law “does not grant to [it] the degree of participation in law enforcement required to confer the status of law enforcement official for purposes of invoking the informer's privilege.” 886 F. Supp. 2d at 428. Thus, government entities, like the University, with no law enforcement role do not become law enforcement officials when they hand that information over to prosecutors.<sup>19</sup> *See id.*

*Second*, the current evidentiary record demonstrates a genuine issue of material fact as to whether the witnesses who participated in the Jones Day investigation were “undisclosed person[s] who confidentially volunteer[] material information of violation of the law.” *See Gordon v. United States*, 438 F.2d 858, 874 (5th Cir. 1971) (citing *Roviaro*, 353 U.S. at 59). Plaintiffs expect to

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<sup>18</sup> Notably, the anonymous individuals in *Fruchtman* made their reports directly to a government agency; the interviewees in this case spoke to a private law firm.

<sup>19</sup> Like the University does here, the mayor warned disclosure “would have the effect of chilling future cooperation from the citizenry in investigations.” *Id.* at 429 n.2; cf. Def. MSJ Br. at 12 (“This will have a chilling effect on University investigations of misconduct.”). The court in *Fruchtman* acknowledged this “important concern” but nonetheless observed that its duty—like that of this Court—is to apply the plain terms of the law: “[T]he issue the Court must decide is whether Defendants have met their burden to prevent the disclosure sought and, for the reasons explained, the Court finds that Defendants have not done so.” 886 F. Supp. 2d at 429 n.2.

continue to confirm through discovery that many relevant witnesses, like Eddy, did not confidentially volunteer information to the Jones Day investigators but instead provided information as part of their paid employment or pursuant to employment or severance agreements. *See* Eddy Aff. ¶ 12 (“I was under the impression my employment severance agreement with the University obligated me to participate in this investigation.”). Moreover, Plaintiffs expect to confirm that witnesses did not provide information proactively, but rather were approached by Jones Day for interview. Pls. SMF 26. Such “persons who supply information only after being interviewed by police officers, or who give information as witnesses during the course of an investigation, are not informers.” *Gordon*, 438 F.2d at 875. Finally, Plaintiffs dispute the University’s claim that “[t]hroughout both investigations, the University and Jones Day represented that . . . [all] the witnesses identifies [sic] would remain confidential . . . and any witness statement or information provided would be protected by privilege from disclosure and is protected work product” and its corresponding claim that all “witness [sic] further relief on these representations concerning the confidentiality of their identities, statements, and information in cooperating with investigations.” *See* Pls. SMF ¶ 28 *cf.* Def. MSJ Br. at 6. Indeed, it appears that the Jones Day specifically disclaimed the University’s ability to keep witness identities confidential. Pls. SMF ¶ 28; Pls. Response to Def. SMF 1 (discussing Def. Ex. 1-B at IV).

**Third**, the Sexual Misconduct Report was provided to David Boren and his attorney. “Once the identity of the informer has been disclosed to those who would have cause to resent the communication, the privilege is no longer applicable.” *Roviaro*, 353 U.S. at 60; 12 O.S. ¶ 2510(C)(1). This is fatal to the University’s defense: It disclosed (at least) large portions of the Sexual Misconduct Report and the underlying evidentiary record to the individual most likely to resent any participating informants—David Boren. Pls. SMF 20, 30. The privilege exists to



promote law-enforcement priorities, not to protect individual privacy interests. *Gordon*, 438 F.2d at 874; 12 O.S. § 2510(C)(1) (Evidence Subcommittee’s Note) (“if the identity of the informer is disclosed, nothing further is to be gained from suppressing identity and there is no privilege”). Thus, even if the University had clearly established that the informer’s privilege precludes releasing the names of witnesses who provided information to Jones Day investigators—and it has not—any such privilege has been waived. Because the informer’s privilege does not apply to the Reports—nor does any other privilege or exemption—the Court is *required* to render summary judgment Plaintiffs’ favor. *See supra* p. 2; *Okla. Ass’n of Broads.*, 2016 OK 119, ¶ 3; 12 Ok. Stat. ch. 2 App., Okla. Dist. Ct. R. 13(e).

**C. The Governor’s “deliberative process” privilege does not apply to the Reports as a matter of law and does not support summary judgment.**

**1. The University is not the Governor.**

As the University has acknowledged, its argument regarding deliberative process privilege requires the Court to expand a privilege that has only previously been applied to the Governor. Def. MSJ Br. at 15. The Court should not expand the law in this manner, and it can decline to do so as a matter of law. *See Vandelay Ent., LLC*, 2014 OK 109, ¶ 9 & n.4, 343 P.3d 1273.

The Oklahoma Supreme Court’s decision in *Vandelay* was premised on the separation of powers in the Oklahoma Constitution, OK Const. Art. 4 § 1, and the unique powers granted to the Governor in Article 6, OK Const. Art. 6 §§ 1–6. 2014 OK 109, ¶¶ 13–15, 29, 343 P.3d 1273, 1277–79. The Supreme Court was explicit that its holding involved a qualified “deliberative process component of executive privilege,” *id.* 2014 OK 109 ¶ 26. But there is no indication in *Vandelay* that the executive privilege extends to protect the communications of any other chief

executive in the state—let alone a body like the University’s Board of Regents.<sup>20</sup> And it is especially inappropriate for Defendant to argue for expansion of this privilege on its own behalf given its admittedly legislative function within the University system. Def. MSJ Br. at 16 (stating Board of Regents has “the power to pass all rules and regulations” for the University) (citation omitted). The separation of powers concern in *Vandelay* is not remotely implicated and the deliberative process privilege is inapplicable to either Report as a matter of law. Because the deliberative process privilege does not apply to the Reports as a matter of law, the Court is *required* to render summary judgment Plaintiffs’ favor. *See supra* p. 2; *Okla. Ass’n of Broads.*, 2016 OK 119, ¶ 3; 12 Ok. Stat. ch. 2 App., Okla. Dist. Ct. R. 13(e).

**2. Genuine issues of material fact preclude the application of the deliberative process privilege.**

Even if, *arguendo*, the deliberative process privilege was available to Defendant, which it is not, application thereof would require Defendant to make a fact showing that it has not even attempted to make. Specifically, in the context of federal FOIA and similar state laws, “[t]o qualify for protection under the [deliberative process] privilege, the party seeking to invoke the privilege bears the burden of proving that the document at issue is both predecisional and deliberative.” *Cherokee Nation v. Salazar*, 986 F. Supp. 2d 1239, 1245 (N.D. Okla. 2013). The only evidence submitted by Defendant even arguably related to this question is the Long Affidavit, which conflates both Reports—written under separate engagements and on markedly different topics—and claims, perfunctorily, that their purpose “was to permit the Board of Regents of the University of Oklahoma and its administration to be informed and advised concerning the Events and their

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<sup>20</sup> The quoted portion of *State ex rel. Oklahoma State Bd. Of Med. Licensure & Supervision v. Rivero*, 2012 OK 31 ¶ 77, in Defendant’s motion is *dicta*, and does not refer to executive privilege at all, but executive sessions occurring under the Administrative Procedures Act, 75 O.S. § 309(D).

legal ramifications, and to be able to engage in frank discussion.” Def. Ex. 2 at 5. The University has never claimed that the Reports were drafts; there is no indication in this statement (or elsewhere) that either of the Reports preceded a decision by the University’s Board of Regents, nor that the Board of Regents utilized either report in its deliberations. In fact, there is a genuine issue of material fact as to whether the Board of Regents even received the Alumni Donor Report.

Moreover, like other privileges, the deliberative process privilege can be waived when a record is disclosed to third parties. *Goodrich Corp. v. EPA*, 593 F. Supp. 2d 184, 190 (D.D.C. 2009). As Plaintiffs have demonstrated, this privilege, like others invoked by Defendant, has been waived, to the extent it covers the Reports at all. Because these privileges do not apply to the Reports, the Court is required to render summary judgment Plaintiffs’ favor. *See supra* p. 2.

**D. The personnel records exemption does not apply to the Reports as a matter of law and does not support summary judgment.**

**1. As a matter of statutory construction, the Alumni Donor Report and Sexual Misconduct Report are not personnel records.**

A public body may, but is not required to, keep “personnel records” confidential related to:

1. Internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation; or
2. Where disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, employment applications submitted by persons not hired by the public body, and transcripts from institutions of higher education maintained in the personnel files of certified public school employees.”

51 O.S. § 24A.7. All records that do not specifically fall within either of these two exceptions must be made public including, for instance, records of final disciplinary actions resulting in loss of pay, suspension, demotion of position, or termination. 51 O.S. § 24A.7.

Here, as a threshold matter, the Reports are distinct from records traditionally recognized as “personnel records,” *see, e.g., Brown v. Perez*, 835 F.3d 1223, 1235 (10th Cir. 2016) (discussing exempt status of home addresses and payroll information found in employee personnel records); *Okla. Pub. Emps. Ass’n v. State ex rel. Okla. Off. of Pers. Mgmt.*, 2011 OK 68, ¶ 4, 267 P.3d 838, 842 (discussing exempt status of dates of birth and employee identification numbers of public employees). This is particularly clear because Defendant’s production includes former President Boren’s personnel file— these salary, benefit, and related records are those contemplated by the statute. *See, e.g., Pls. Ex. N* (excerpt of Boren personnel file).

Oklahoma courts may look to interpretations of the federal Freedom of Information Act for guidance in resolving ORA disputes. *See Citizens Against Taxpayer Abuse, Inc. v. City of Okla. City*, 2003 OK 65, ¶ 21, 73 P.3d 871, 877. FOIA has long instructed that “the type of privacy interests Congress intended to protect under provision of . . . FOIA[] exempting . . . personnel records and similar files from disclosure encompass the individual’s control of information concerning his or her person.” *Brown v. Perez*, 835 F.3d 1223 (10th Cir. 2016). But a concern over “individuals’ control of information concerning his or her person” is not an all or nothing proposition; records may contain some information in need of redaction and not be, as a matter of law, “personnel records” in their entirety. *See, e.g., 51 O.S. § 24A.5(3); Transp. Info. Servs., Inc. v. State ex rel. Okla. Dep’t of Corr.*, 1998 OK 108, ¶ 11, 970 P.2d 166, 171 (discussing segregability requirement of ORA). As such, the argument that the entirety of both Reports may be withheld under this exemption is ill-founded as a matter of law. Because the personnel records exemption does not apply to the Reports as a matter of law, the Court is **required** to render summary judgment Plaintiffs’ favor. *See supra* p. 2; *Okla. Ass’n of Broads.*, 2016 OK 119, ¶ 3; 12 Ok. Stat. ch. 2 App., Okla. Dist. Ct. R. 13(e).

**2. Under any construction, genuine issues of material fact exist as to whether either report is a personnel record.**

Neither Report constituted a “personnel investigation[]” or “examination and selection of material for employment, hiring, appointment, promotion, demotion, discipline, or resignation,” and their “disclosure would [not] constitute a clearly unwarranted invasion of personal privacy.” 51 O.S. § 24A.7. And the University sets forth no material facts supporting its contention that the personnel records exemption applies to the Alumni Donor Report. Instead, citing only *Ross II*, Defendant incorrectly assumes the exemption applies. But the report that was the subject of *Ross I* (*Ross v. City of Owasso*, 2017 OK CIV APP 4, 389 P.3d 396) and *Ross II*, see Pls Ex. O, concerned a named person—Rodney Ray, *see id.* at p. 1 (describing Ray as the “principal subject of the Complaint” to which the report relates); notwithstanding that fact, the court determined that the “[c]ity identifie[d] no valid privacy, state, or [other] interests” that would render the report eligible for withholding under the personnel records exemption. *Ross II*, 481 P.3d at 284.<sup>21</sup> This point is instructive when juxtaposed with the Alumni Donor Report, which, in contrast, does not “principal[ly]” concern one named person. Instead, it relates to a broader inquiry into misreporting of alumni donor data to various external publications, lending further support for disclosure. Pls. SMF 8–9.

Nor would that report’s disclosure “constitute a clearly unwarranted invasion of personal privacy,” 51 O.S. § 24A.7. Here, *Oklahoma Public Employees Association v. State ex rel. Oklahoma Office of Personnel Management* is illuminating. 2011 OK 68, ¶ 3, 267 P.3d 838, 842. In that case, the Supreme Court of Oklahoma ruled that “the information requested,” if disclosed,

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<sup>21</sup> Notably, the report in *Ross I* and *II* which the Court found *could not be withheld under the ORA*, was prepared by a law firm (coincidentally, the law firm of Boren’s attorney Mr. Brewster), and is stamped “Privileged and Confidential Attorney-Client Communication.” Ex. O.

“could result in cases of identity theft and compromise of governmental computer systems yet bring little, if any, information to public attention which would enlighten Oklahoma citizens as to how their government runs, performs, or spends their tax dollars.” *Id.* Thus, it “determine[d] that . . . release of birth dates and employee identification numbers of State employees ‘would constitute a clearly unwarranted invasion of personal privacy’ under 51 O.S. Supp. 2005 § 24A.7(A)(2).” *Id.* In this light, the contrast between the Alumni Donor Report and the highly personal birth dates and employee identification numbers at issue in *Public Employees Association* is stark. The Alumni Donor Report chronicles alleged misconduct related to reporting donor data—information in which there is a compelling public interest, *see infra* at § I.D.3—and to which no privacy interest attaches because it is a systemic overview of the referenced allegation.<sup>22</sup>

Ultimately, “release of . . . names and other identifying information does not inherently and always constitute a ‘clearly unwarranted’ invasion of personal privacy.” *Brown*, 835 F.3d at 1235 (citing *Dep’t of State v. Ray*, 502 U.S. 164, 176 n.12 (1991)). In *Brown*, the Tenth Circuit emphasized that “the agency ha[d] not provided any testimony . . . or any other evidence—to support its assertion that treating physicians have a privacy interest in their business addresses.” *Id.* Similarly, here, the University has not provided any evidence alleging that the contents of the Alumni Donor Report would lead to invasion of privacy of the sort protectable under the ORA. Accordingly, the University has not met its evidentiary burden as to the personnel records

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<sup>22</sup> Furthermore, to the extent the report implicates named individuals who may have played a role in the alleged misconduct, it is well-established that public officials “have a somewhat diminished privacy interest.” *Citizens for Responsibility & Ethics in Wash. v. Dep’t of Justice*, 746 F.3d 1082, 1092 (D.C. Cir. 2014) (citation omitted); *see also Wis. State J. v. Univ. of Wis.-Platteville*, 160 Wis. 2d 31 (Ct. App. 1990) (“[B]y accepting appointment as dean of department at university, professor voluntarily took position of public prominence and *relinquished his right to keep confidential activities directly related to his employment.*”) (emphasis added).

exemption invoked to withhold the Alumni Donor Report, and summary judgment for the University must be denied. Likewise, the University has set forth *no evidence* that the Sexual Misconduct Report constituted “examination and selection of material for employment, hiring, appointment, promotion, demotion, discipline, or resignation.” 51 O.S. § 24A.7.

**3. The University has not even attempted to make the factual showing necessary to demonstrate that it was permitted to withhold the Reports under the personnel records exemption.**

*First*, there is no evidence that the Board of Regents decided that the Reports should be withheld under the personnel records exemption. The court in *Ross I* made this clear—the question of whether a record may be withheld under the personnel records exemption “cannot” be answered until “a decision . . . [is] made by” the public entity, here, the board of Regents. 2017 OK CIV APP 4, ¶ 18, 389 P.3d at 401. Without such a decision, the question is not ripe for the Court. Here, there is a material question of fact as to whether the Board of Regents even *received or reviewed* the Alumni Donor Report, let alone made a determination on whether it should be released. SMF 14 n.9 And there are genuine issues of fact regarding whether any such determination was made as to the Sexual Misconduct Report—indeed, one Regent has publicly stated, “I think it’s the universal feeling of the regents that when this is all over and to the extent it is possible, there will be an airing of what happened . . . We are all in favor of it. I don’t think there is any question about that.” Tres Savage, James Lankford: ‘There will have to be a report’ on Boren investigation, NonDoc (Oct. 8, 2019), <https://perma.cc/W2DN-LZNM> (emphasis added).

*Second*, public interest favors release of the Reports. Even if the Reports were personnel records, the University’s decision to withhold the Reports based on countervailing privacy interests would be subject to judicial scrutiny. *See Merrill*, 1992 OK 53 § 6, 831 P.2d at 640; *see also Ross II*, 2020 OK CIV APP 66, ¶ 14, 481 P.3d at 283 (agency’s “discretion in the matter is limited and

subject to review”). On review, the question of the exemption’s applicability is one of law, but the question of whether the University properly exercised its discretion is a question of fact. *Ross II*, 2020 OK CIV APP 66, ¶ 8, 481 P.3d at 281; *see also* 51 O.S. § 24A.7(B) (“All personnel records not specifically falling within the exceptions provided in [] this section shall be available for public inspection and copying[.]”). The Parties’ genuine dispute as to this material fact precludes summary judgment as a matter of law. *E.g.*, *Jordan*, 2006 OK 88, ¶ 17, 151 P.3d at 121.

Students’ lives and futures are entrusted with the University, from the opportunities they receive after graduating to their safety while living away from home for the first time. *Daniels Aff.* ¶ 9; *Eddy Aff.* ¶ 35. Donors also place trust in the University to accurately account for their funds, and alumni trust that its leaders will meet a standard of performance and conduct befitting the state’s flagship public school. *Daniels Aff.* ¶ 8. And taxpayers and voters in the state, by necessity, place trust in the officials that budget funds for public education in the state and appoint and confirm members of the Board of Regents. *Daniels Aff.* ¶ 9; *Savage Aff.* ¶ 2–5. But it was not just trust that was broken in recent years. Former Board of Regents Chairman Gary Pierson called the University’s Development Office, in which the data falsification occurred, as “inoperative” and “broken to its core” in 2021. *Savage Aff.* ¶ 6–7 (quoting Pierson remarks in Mar. 4–5, 2021 Board of Regents Meeting). Separately, Eddy has noted “the University’s system for reporting and investigating misconduct suffered by subordinates at the hands of those in positions of authority is broken.” *Eddy Aff.* ¶ 34. That sentiment was echoed by the Faculty Senate and Provosts Advisory Committee for Women’s Issues (PACWI) which has called the University “ineffective at building a reputation . . . for reporting findings in a transparent manner, thus undermining trust” in the Title IX office. *Pls. Ex. U.*



The solution, as several high-ranking public officials have noted, is disclosure of the Jones Day Reports. See Tres Savage, *James Lankford: 'There Will Have to Be a Report' on Boren Investigation*, NonDoc (Oct. 8, 2019), <https://nondoc.com/2019/10/08/james-lankford-wants-report-boren-investigation/Disclosure> (quoting Lankford, Frank Keating); see generally Daniels Aff. Disclosure of the Reports, for which the University paid more than \$1.5 million, Pls. Ex. M, would achieve accountability for any wrongdoers, and would provide the University community—students, parents, employees, faculty, alumni, donors, and taxpayers—insight as to what the University has done and must still do. Daniels Aff. ¶ 7–9; Savage Aff. ¶ 2–5; Eddy Aff. 33–36.

**E. The investigatory files exemption does not apply to the Reports as a matter of law and does not support summary judgment.**

**1. Defendant cannot invoke the investigatory files exemption.**

The University cannot assert the “investigatory files exemption” codified at 51 O.S. § 24A.12 because Jones Day is not an “agency attorney[]” permitted to assert that exemption:

Except as otherwise provided . . . , the Attorney General of the State of Oklahoma and agency attorneys authorized by law . . . may keep its litigation files and investigatory reports confidential.

51 O.S. § 24A.12; compare *id.*, with Board of Regents, Univ. of Okla. (last accessed Apr. 28, 2023), <https://www.ou.edu/regents>. On that plain text reading alone, summary judgment pursuant to the Investigatory Files Exemption must be denied.

But even under a construction that incorrectly defines the scope of “agency attorney,” the exemption is further limited by a second provision, 51 O.S. § 24A.20, which provides: “Access to records which, under the Oklahoma Open Records Act, would otherwise be available for public inspection and copying, shall not be denied because a public body or public official is using or has taken possession of such records for investigatory purposes or has placed the records in a litigation or investigation file.” *Id.* This prevents the University from simply claiming that the Reports are

within the University General Counsel's "investigation file" to prevent the disclosure of those records, as it attempts here. *See* Def. MSJ Br. at 19

Instead, even under an improperly broad construction that brings the University within the scope of the statutory term "agency attorneys," the Court must look to the specific nature of the Reports to determine whether they constitute "investigatory reports." *See, e.g., Salazar v. State*, 1998 OK CR 70, ¶ 22, 973 P.2d 315, 324 (referring to "investigative report prepared by law enforcement"); *Humphreys v. State*, 1997 OK CR 59, ¶ 25, 947 P.2d 565, 575 (referring to "investigative reports prepared by law enforcement"); *Saxon v. Macy*, 1990 OK 60, 795 P.2d 101 (referring to investigation reports of District Attorneys). As set forth at Pls. SMF 27, 33, 34, they do not. The Court need not even conduct that fact-based analysis, however, if it applies a natural, plain text reading that excludes the University from the scope of the exemption.

Moreover, Defendant itself has confirmed that the inquiries in question have ended. Pls. SMF 15 (Alumni Donor Report); 38 (Sexual Misconduct Report). Records of closed investigations are routinely disclosed. *Seabolt v. City of Muskogee*, No. CIV-07-255-JHP, 2008 WL 2977865, at \*2 (E.D. Okla. July 30, 2008) ("Further, there will be no interference with any ongoing investigation, as the proceedings [implicated by the record] are complete."); *see also Bentkowski v. Trafis*, 2015-Ohio-5139, ¶ 2, 56 N.E.3d 230, 233 (disclosure of record about police investigation was proper where investigation had closed); *Prince George's Cnty. v. The Wash. Post Co.*, 149 Md. App. 289 (2003) (investigations exemption did not bar disclosure of investigatory files where they related to closed cases); *Linzmeier v. Forcey*, 2002 WI 84 (open records law applied to report of a police investigation of teacher, even if redaction of identities of persons interviewed by police during course of investigation was required, where the investigation had been closed). Because the investigatory files exemption does not apply to the Reports as a

matter of law, the Court is *required* to render summary judgment Plaintiffs' favor. *See supra* p. 2; *Okla. Ass'n of Broads.*, 2016 OK 119, ¶ 3; 12 Ok. Stat. ch. 2 App., Okla. Dist. Ct. R. 13(e).

**2. Even if, *arguendo*, this exemption did apply, public interest balancing is required and supports the release of the Reports.**

Under similar public records laws in other jurisdictions, courts balance the public interest in the release of disclosure against the privacy interests in withholding investigatory records. In *Linzmeier v. Forcey*, 2002 WI 84, for example, the Wisconsin Supreme Court discussed at length how any interests in withholding a report of a closed investigation into inappropriate teacher-student interactions did not outweigh the public interest in disclosure. The court reasoned that although releasing such a report could potentially embarrass the teacher or dent his reputation, much of the alleged activity that was subject of report was public and well-corroborated, and release would not dissuade qualified others from applying to be teachers or impede prosecution of criminal activity. *See id.* Here, releasing the Reports will enable the public to discern the appropriateness or lack thereof of a public institution's response to serious claims of misconduct and juxtapose its contents with Defendant's public representations about the matter.

**F. Neither Title IX nor private assurances of confidentiality control whether Defendant must disclose the Reports.**

Occasionally, the University emphasizes various obligations of confidentiality imposed by Title IX policies. *See, e.g.*, Def. MSJ Br. at 12. Elsewhere, it purports that Jones Day promised confidentiality to some or all witnesses to the investigation. *Id.* at 6. Both propositions rely on untested factual suppositions and neither supports summary judgment.

a. **Jones Day’s work on the Sexual Misconduct Report was not conducted consistent with the requirements of Title IX.**

The University has put forth no evidentiary basis showing that Title IX edicts apply to the Sexual Misconduct Report.<sup>23</sup> The University’s engagement letter with Jones Day does not indicate that firm was retained for the purposes of conducting a Title IX investigation—indeed, it makes *no mention* of Title IX at all. *See* Def. Ex. 4. Pursuant to the engagement, Jones Day was to report to the University’s General Counsel’s Office—*not* its Institutional Equity Office. *Id.*<sup>24</sup>

Indeed, although the University has revealed very little about the Jones Day investigation, available facts discredit the notion that it was governed by Title IX. An investigation undertaken pursuant to Title IX observes strict procedures. *See* 34 C.F.R. § 106.45. The University must provide all parties notice of the commencement of a grievance process and details of the allegations at issue. *Id.* at § 106.45(b)(2); Def. Ex. 1-B at § VII(A). Plaintiffs believe the investigation into Boren’s sexual misconduct was initially triggered in or around 2018 when Dr. Belinda Bisco reported to senior administrators experiences of harassment that Jess Eddy shared with her. *See* Pls. SMF 16–18; Eddy Aff. ¶ 8. Bizarrely, Eddy was presented with a purported “Intake Summary” by President Boren’s personal counsel in early 2019. *Id.* ¶ 9. But Eddy received no formal notice from the Institutional Equity Office as required by Title IX regulations. *See id.* ¶ 17.

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<sup>23</sup> Undeniably, the policies and regulations of Title IX do not apply to the Alumni Donor Report, which has nothing to do with gender-based discrimination. *See* 20 U.S.C. § 1681 *et seq.*

<sup>24</sup> Jones Day’s purported dual role as both private counsel to the University *and* Title IX investigator would present an irreconcilable conflict of interest. “Having the institution as the ‘client’ and then also helping the institution maintain compliance” results in “advice meant to keep the institution in good legal standing . . . and not necessarily what is in the best interest of the [reporting party].” Russell Froman, Assistant Vice President for Accessibility and Gender Equity, ADA and Title IX Coordinator, Univ. of Florida, *Institutional Compliance and the Potential Resulting Conflict Involving the General Counsel*, p. 7, <https://perma.cc/ND2D-SM9Y>; *see* 34 C.F.R. § 106.45(b)(iii) (Title IX investigator must be free from conflict of interest); *see also* Ex. U (“We are concerned that past communication streams between the OU’s Title IX Office and OU Legal Counsel may be perceived as a conflict of interest.”).

In fact, when Eddy asked Jones Day whether his interview was part of a Title IX investigation, Jones Day did not confirm it was acting in this capacity. *Id.* ¶ 19. Later, when Eddy learned—from the news—that Boren was given an opportunity to review the Sexual Misconduct Report, he emailed the Office of Institutional Equity to request the same. Eddy Aff. ¶ 26; Pls. Ex. B. The University’s Title IX Coordinator responded and explicitly advised that he “cannot approve [Eddy’s] request to review the investigative report associated with David Boren because, thus far, you have not filed a complaint against him with our sexual misconduct office.” *Id.*

If the Jones Day investigation was conducted pursuant to Title IX procedure, the University was also obligated to ensure the Jones Day investigators received specific training mandated by that law. 34 C.F.R. § 106.45(b)(1)(iii). There is no evidence in the record that the University provided such training or ensured Jones Day’s attorneys had had otherwise completed it. Pls. SMF 24. If Jones Day was conducting a Title IX investigation, the University was required to conduct a formal investigation consistent that afforded all parties the protections of governing law. *See* 34 C.F.R. at § 106.45(b)(5). Eddy was entitled to present witnesses and evidence, review evidence compiled during the investigation, and submit a written response to that evidence. *Id.* The University was required to create an investigative report that fairly summarized all evidence and share it with Eddy for review and response. *Id.* at § 106.45(b)(5)(vii). The University observed none of these procedures. Pls. SMF 23–24; Eddy Aff. ¶ 11, 15, 22. Eddy—as a Title IX complainant—should also have been entitled to “all rights afforded to the charged individual.” Def. Ex. 1-B (OU Policy) at § VII(A). He was denied those rights as well: the University provided

Boren with an opportunity to review *and* respond to the Reports; it attempted to deny both to Eddy. *Compare* Eddy Aff. ¶ 9, 17, 26–27, with Pls. SMF 30.<sup>25</sup>

The University’s persistent and pervasive disregard for Title IX procedures and requirements illustrates the obvious: the University did not treat the Jones Day investigation as a Title IX grievance proceeding and the Sexual Misconduct Report was not governed by Title IX regulations.<sup>26</sup> In any event, there is a genuine dispute of fact as to whether Title IX policies govern the Reports; summary judgment is thus improper. *See Jordan*, 2006 OK 88, ¶ 17, 151 P.3d at 121.

**b. The University is not entitled to summary judgment based on its own representation that it promised witnesses confidentiality.**

The University’s contention that it promised its witnesses confidentiality for their interviews that informed the Sexual Misconduct Report is contradicted by a witness who was actually interviewed—Jess Eddy. *See* Eddy Aff. at ¶ 14. Eddy states that Jones Day advised him only that officials would “try to keep interview participants’ identities anonymous”—not that all information he provided would be exempt from disclosure. *Id.* Jones Day further advised that its representatives could not guarantee anonymity. *Id.* The only evidence the University cites in support of its otherwise uncorroborated assertion that it assured witness confidentiality is the

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<sup>25</sup> Although Mr. Eddy was eventually sent a letter suggesting that, because Boren had officially resigned the week prior, the University was abandoning any continued proceedings on Mr. Eddy’s complaint, Pls. Ex. E, that letter was premised on Mr. Eddy’s May 21 correspondence with the University — not his allegations that seemingly provoked the University to hire Jones Day. *Id.* It also does not remotely satisfy the requirements of a written final determination as contemplated by Title IX law. For instance, it is not written by an appointed independent decision maker, *id.*; *cf.* 34 C.F.R. § 106.45(b)(7)(i), and it does not include any of the required contents of a final determination. *Compare* Pls. Ex. E, with 34 C.F.R. § 106.45(b)(7)(ii).

<sup>26</sup> As recently as this month, the University’s counsel made representations seemingly incompatible with the idea that the Sexual Misconduct Report was triggered by a Title IX complaint. Pls. Ex. S (Burrage June 6 email to Weeks) (detailing search for records and stating “the University did not possess documents or correspondence that constitute allegations, complaints, reviews, and investigations, against Boren, prior to Jones Day being retained”).

affidavit of Heidi Long. *See generally* Def. MSJ Br. at 6, ¶ 5. Crucially, there is considerable reason to doubt the credibility of Ms. Long’s representations.<sup>27</sup> *See* Okla. Dist. Ct. R. 13(c) (affidavit in support of summary judgment “shall be made on personal knowledge” and “shall show that the affiant is competent to testify as to the matters stated therein”). Although Ms. Long professes “personal knowledge” of the facts asserted in her affidavit, she fails to demonstrate any foundation for her knowledge as to many of those facts. *See* Def. Ex. 2; Plfs. Response to Def. SMF 5. Eddy was interviewed twice by Jones Day and reports that no OU personnel attended. Eddy Aff. ¶ 11, 22. Ms. Long’s claim to personal knowledge of these matters—again, directly contradicted by Eddy’s firsthand experience as a victim and witness—is improbable.

Ms. Long’s affidavit also includes an even more audacious claim—that the witnesses who participated in the investigation “relied” on the University’s representations concerning confidentiality, and that “any witness statements would be considered privileged.” Def. Ex. 2 ¶ 3. Setting aside the impossibility—and basic immodesty—of Ms. Long’s proposed personal knowledge of third-party intentions, that advice contradicts the University’s own policies.<sup>28</sup> And, plainly, to the extent Jones Day acted in the capacity of counsel to the University, its communications with third-party witnesses—that is, nonclients—are *not protected* by attorney-client privilege or work product.<sup>29</sup> *Grand Jury*, 616 F.3d at 1183 (“A communication by an attorney to a third party or a communication by a third party to an attorney cannot be invoked as

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<sup>27</sup> Pursuant to Okla. Dist. Ct. R. 13(c), Plaintiffs object to the Court’s reliance on Ms. Long’s affidavit for purposes of this Motion and object to its admissibility for any purpose until such time that Ms. Long demonstrates her competence to testify to these facts.

<sup>28</sup> Def. Ex. 1-B (OU Policy) at § VI (“individuals should know that University officials [] may not be able to maintain legal confidentiality of the complainant” . . . “The University must weigh such requests for privacy against its duty to provide a safe and nondiscriminatory environment”).

<sup>29</sup> Any privilege attending communications with the University’s agents belongs solely to the University. *See United States v. Merida*, 828 F.3d 1203, 1209–10 (10th Cir. 2016).

privileged.”). There is thus an obvious factual dispute as to whether witnesses were promised confidentiality and/or whether they relied on such promises. Moreover, the University has not identified any authority—because there is none—that such promises would override the requirements of the ORA.

**II. Summary judgment must be denied because Plaintiffs have been denied the opportunity to engage in necessary discovery prior to briefing this motion.**

Plaintiffs have been prevented from obtaining necessary party discovery in this case that would demonstrate additional issues of material fact. Plaintiffs have pursued fact discovery since December 21, 2021, when they served Defendant with twelve requests for production and twenty-one interrogatories. *See generally* Pls. Mot. to Compel Discovery, May 20, 2022 (detailing obstruction); Pls. Reply in Sup. of Mot. to Compel Discovery, Jul. 25, 2022. Defendant resisted these requests and failed to offer any meaningful compromise during several meet-and-confer efforts. *See id.* Indeed, over the past 17 months—until May 22, in fact—Defendant’s document production consisted of one document reflecting the University’s policies for responding to ORA requests. *See* Pls. Opp. to & Mot. to Strike Def. Emergency Mot. for Discovery Conf. and Protective Order, May 26, 2023 at 2; *id.* Ex. 1 at 2–3. Defendant’s lack of cooperation in the discovery process eventually necessitated Plaintiffs’ filing a motion to compel on May 20, 2022. Pls. Mot. to Compel, May 20, 2022. Nine months later, on February 21, 2023, the Court granted Plaintiffs’ motion to compel in part, ordering Defendant to complete its discovery within twenty days of the entry of a protective order governing the disclosure of confidential discovery materials to third parties. Summ. Order, Feb. 21, 2023. This May 22 production has proven to be incomplete in numerous ways, which Plaintiffs have raised both with Defendant and the Court. Weeks Aff ¶ 17; Pls. Ex. R; Jun. 2, 2023 Hearing Tr. 10:1–11:25, 18:23–20:10. It has not been meaningfully supplemented, Weeks Aff. ¶ 17; Jun. 2, 2023 Hearing Tr. 14:18–16:23. Plaintiffs will seek to



compel a complete production. Plaintiffs also anticipate addressing deficiencies with Defendant's designees during the June 9, 2023, deposition conducted pursuant to 12 O.S. 3230(C)(5)—in particular the deponent's seeming unfamiliarity with major fact issues in this case clearly contemplated by Plaintiffs' noticed deposition topics.<sup>30</sup> Weeks Aff. ¶ 18.

Plaintiffs have also been prevented from taking necessary non-party discovery. On January 5, 2023, Plaintiffs informed the University of their intent to take the deposition of James Gallogly, former President of the University, on February 22. *See* Pls. Resp. in Opp. to Def. Mot. for Protective Order & Mot. to Quash Gallogly Dep., Feb. 28, 2023, at Ex. A. Notwithstanding a letter from Gallogly indicating he was prepared to offer testimony on key issues like whether the Reports were confidential, whether privilege was waived, and whether the Reports could be redacted to segregate identities of informers, *id.* at 8–9, Ex. C, the Court entered a protective order preventing this deposition from occurring at all. *See id.* at Ex. C; Summ. Order, Mar. 31, 2023.<sup>31</sup>

The Court cannot conclude that there are no remaining genuine issues of material fact because all material facts have not yet been discovered. Given that the exemptions and privileges asserted by Defendant are not applicable as a matter of law, the only dispositive result available to the Court at this juncture is summary judgment as a matter of law in favor of Plaintiffs.

### CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that this Court must deny the University's Motion for Summary Judgment.

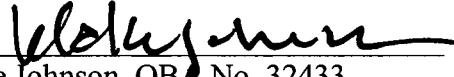
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<sup>30</sup> The Court also significantly narrowed the scope of this deposition in an order dated just four days before the deposition was set to occur. Summ. Order, Jun. 5, 2023.

<sup>31</sup> Moreover Plaintiffs were unable to pursue the full scope of topics sought through the 12 O.S. 3230(C)(5) deposition of non-party the University of Oklahoma Foundation (“OU Foundation”) pursuant to the Court's May 30 Order and June 9 Journal Entry as counsel for the OU Foundation instructed their client not to answer questions regarding waiver occurring through means other than direct transmission of the Jones Day Report to OU Foundation. Weeks Aff. ¶ 19.

Dated: June 15, 2023

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify Plaintiffs' Statement of Arguments and Authorities in Opposition to Defendant's Motion for Summary Judgment, and all affidavits and exhibits thereto, was mailed on June 15, 2023, by depositing it in the U.S. Mail, postage prepaid to counsel of record for Defendant:

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

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

vs. )

Case No. CV-2021-1770  
Judge Walkley

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

**AFFIDAVIT OF JESS EDDY  
IN SUPPORT OF PLAINTIFFS' RESPONSE TO  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I, Jess Eddy, state under penalty of perjury under the laws of Oklahoma and in accordance with 12 O.S. § 426 that the following is true and correct to the best of my knowledge:

1. I am a graduate of the University of Oklahoma (the "University").
2. During the fall semester of 2010, I worked as a teaching assistant for former University President David Boren.
3. During portions of 2011 and 2012, I worked in the Office of the University President.
4. I was also employed by the University after I graduated. In July 2017, I was hired as an executive assistant to the Associate Vice President of Outreach, Belinda Biscoe.
5. While I was employed in Dr. Biscoe's office, I confided in her that former University President David Boren had made unwanted sexual advances toward me while I was working for him and enrolled as student, starting in November 2010. These unwanted sexual advances continued on a sporadic basis in 2011 and 2012.

6. I first recall telling Dr. Biscoe about these unwanted sexual advances during a meeting for the National Conference on Race and Ethnicity in Higher Education in July or August 2017.

7. In April 2018, I transferred from Dr. Biscoe's office to a position in the Diversity Office of the University, where I worked under the Vice President for University Community.

8. Upon information and belief, on or around November 8, 2018, Dr. Biscoe reported what I told her about former President Boren's unwanted sexual advances to another member of the University administration.

9. Dr. Biscoe made that report without my knowledge. I became aware that she made her report in late February 2019, when counsel for former President Boren, Clark Brewster, provided me a document that purports to be a copy of an "Intake Summary," which contained a narrative similar to the one I shared with Ms. Biscoe. Brewster advised me that my story was the reason that Jones Day had been hired to conduct its investigation into President Boren's sexual misconduct. That document, dated November 8, 2018, is attached hereto as **Exhibit A**.

10. My employment with the University ended on December 23, 2018.

\* \* \*

11. On February 13, 2019, I was interviewed by three people working for Jones Day. Richard Deane and Deborah Sudbury were two of the interviewers, and Mr. Deane did most of the questioning. I cannot recall the name of the third Jones Day interviewer. My father, Rand Eddy, was also present. Neither the Sexual Misconduct Officer nor any other member of the University's Institutional Equity Office, nor any other representative of the University was present.

12. At that time, I was under the impression my employment severance agreement with the University obligated me to participate in this investigation.

13. I was informed that the purpose of the interview was an investigation into allegations that former President Boren misused his authority with respect to subordinates and students, including unwanted sexual advances made toward subordinates and students.

14. Mr. Deane informed me that he and his colleagues would try to keep interview participants' identities anonymous but could not guarantee anonymity.

15. I asked Mr. Deane whether the interview comprised part of an investigation under Title IX. He did not answer that question directly but instead stated that his colleagues had been asked by the University to gather facts, and that the University would subsequently determine what, if any, actions would be taken.

16. Mr. Deane began the February 13, 2019 interview with a series of general questions. Midway through the interview, however, his tone changed, and it became clear to me that the purpose of the interview was to elicit evidence of specific incidences of sexual misconduct by former President Boren toward me.

17. I felt ambushed by Mr. Deane and his colleague's approach because I had not been provided notice of the nature of the interview; I did not know at that time that Ms. Biscoe had reported what I told her about former President Boren's advances. I gathered that Ms. Biscoe had shared that information after my departure from the interview.

18. Following my February 13, 2019 interview, counsel for Boren, Clark Brewster, provided me a copy of the purported "Intake Summary" described above.

19. In mid-March 2019, I reported Boren's conduct, as well as the conduct of another University administrator named Tripp Hall, to the Norman Police Department.

20. Following that report, a representative of Norman PD informed me that Norman PD had referred the matter to the Oklahoma University Police Department.

21. I further recall that I was informed that the Oklahoma University Police Department referred the matter to the Oklahoma State Bureau of Investigation (“OSBI”) because part of the conduct I reported occurred out of state. I was later interviewed by an OSBI agent named Meghan Bowman.

22. On March 26, 2019, I participated in another interview with Jones Day. Richard Deane and Deborah Sudbury were again present, and Mr. Deane again did most of the questioning. My father, along with two sexual assault victims’ advocates were also present. Neither the Sexual Misconduct Officer nor any other member of the University’s Institutional Equity Office was present. Prior to the March 26 interview, I asked Susanna Gattoni to attend and she indicated that she would, but neither she nor any other representative of the University was present.

23. During the March 26, 2019 interview, I again asked Mr. Deane whether the investigation he and his colleagues were conducting was a Title IX investigation. He confirmed that their investigation included a Title IX investigation.

24. During the March 26, 2019 interview, one of the sexual assault victims’ advocates asked Mr. Deane whether he and his colleagues were required to report crimes alleged during their interview to law enforcement. Mr. Deane responded that their obligation was only to report to the University, and that the University would have to make its own judgment about whether it had an obligation to report alleged crimes to law enforcement.

\* \* \*

25. On or about May 6, 2019, I read an article by Nolan Clay published in The Oklahoman titled *OU Pays Law Firm More than \$500K for David Boren, Financial Data Investigations*, which is available at the website of The Oklahoman at <https://perma.cc/DV7V-DKGC>. That article indicated that Jones Day had issued a report summarizing the investigation I had been interviewed for. Clay's May 6, 2019, article stated that Jones Day's "report on its findings was more than 50 pages long. Boren has responded in writing through his attorney to that report. Boren could face sanctions if the university decides he was inappropriate."

26. On May 9, 2019, I emailed Bobby Mason, who was then the Title IX Coordinator for the University, and asked to review the investigative report that was provided to former President Boren's attorney. A true and correct copy of my correspondence with Mr. Mason dated May 9-10 is attached hereto as **Exhibit B**.

27. On May 10, 2019, Mr. Mason responded, stating, "I cannot approve your request to review the investigative report associated with David Boren because, thus far, you have not filed a complaint against him with our Sexual Misconduct Office. . . . You have the right to file a complaint and, if you chose to do so, you will be entitled to a notice of the outcome of your complaint and to be apprised of the evidence relied upon by the investigator." **Exhibit B**.

28. On May 21, 2019, Kirsten Burkett, then an employee in the University's Institutional Equity Office (which handles Title IX reports for the University), emailed me, stating,

[O]ur office does not currently have an open investigation with you as the complainant. If you would like us to proceed with an investigation, based on your reported allegations of sexual misconduct during your time at the University, you may file a formal grievance. . . . At your request we can also open an investigation through our office based on the information you have already provided to Jones Day, through that investigation.

However, because you were a witness in the Jones Day investigation, we cannot provide you with a copy of that report. If you would like to review the portions of



that report related to your interview with Jones Day we can arrange for that as we have with other witnesses.

A true and correct copy of my correspondence with Mr. Mason and several other University officials dated May 13–28 is attached hereto as **Exhibit C**.

29. On May 21, 2019, I responded to Ms. Burkett electing to review the portion of the Jones Day report that related to my interview. **Exhibit C**. I also confirmed that I was requesting that a Title IX investigation be opened based on the information I had provided Jones Day. **Exhibit C**. I indicated that I believed, based on my status as a victim, that I was entitled to the entire report, but that I also wanted to see the part of the report they were proposing to make available.

30. On May 28, 2019, Ms. Burkett facilitated providing me with a link to an electronic copy of a document purporting to be a portion (specifically, pages 19–22) of the report issued by Jones Day. A true and correct copy of the document I was provided by the University is attached hereto as **Exhibit D**.

31. On June 20, 2019, I received an electronic copy of a letter signed by Burkett. A true and correct copy of this letter is attached hereto as **Exhibit E**.

32. Burkett's letter stated that the information I provided to Jones Day had been used in an investigation opened by the University's Title IX office on May 21, 2019. Burkett's letter stated:

[T]he evidence was found to be sufficient to substantiate that you had been subjected to a hostile working environment. In accordance with University policy, the outcome of that investigation was submitted to the Board of Regents for appropriate administrative action.

On June 12, 2019, the Office of Institutional Equity was notified that David Boren had resigned from his transition agreement and has ended all affiliation with the University of Oklahoma. Once an individual voluntarily separates or resigns from OU, the University lacks jurisdiction over the individual, as the maximum sanction that the University can impose on anyone is disassociation with the

University. . . . This action—resignation—has the corollary effect of also ensuring that behaviors are stopped, and further occurrences are prevented to the best of the University’s ability.

Exhibit E.

\* \* \*

33. It is vital that the full report written and compiled by Jones Day investigating former President Boren’s conduct while at the University be released to the public.

34. I know from first-hand experience that the University’s system for reporting and investigating abuse suffered by subordinates at the hands of those in positions of authority is broken. That system failed me at multiple levels, and I believe it has also failed others in similar situations.

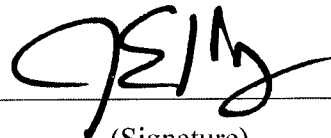
35. Without release of the full report, I do not believe that students and subordinates at the University can be assured that the University has taken steps to correct these failures.

36. Without the release of the full report written and compiled by Jones Day investigating former President Boren’s conduct while at the University, I do not believe that there will be accountability for the people and systems responsible for these failures. And most importantly, there will be no remediation of the systemic failures that permitted extensive abuse.

June 14, 2023

(Date and Place)

OKC, OK 73118



(Signature)

# **Plaintiffs' Exhibit A**

Intake Summary

DLB Allegations

Nov 8, 2018

Employee [REDACTED] reported that in the spring of 2018 [REDACTED] began coming to [REDACTED] office to talk and that over the course of several conversations he reported the following information:

[REDACTED] reported a long history of DLB having relationships with students. This alleged behavior included members of the DLB's inner circle arranging for DLB to engage in sexual relationships with students. This allegedly occurred while out of town and at University hosted events and that members of the "inner circle would identify students and make the introduction to DLB. [REDACTED] reported he personally experienced this behavior, he allegedly was at an event and he was introduced to DLB by an unnamed individual who took him to a hotel room where DLB was waiting. [REDACTED] reported that DJB came on to him but that he rejected this advance but that he remained close with DLB and considered himself a member of the inner circle. [REDACTED] also reported the he worked in the President's office when he was a student [REDACTED]

The following individuals were reported as members of the inner circle:

[REDACTED]

The names in bold were alleged to have engaged in sexual activity with the DLB. [REDACTED] suggested that these individuals remained in the inner circle and were appointed to elevated administrative positions based on these relationships and their silence regarding this behavior. It was suggested that the Deans were also given VP titles and compensation based on this knowledge. When asked about [REDACTED] reported that [REDACTED] did mention [REDACTED] name and talked about him but that he doesn't recall him saying that [REDACTED] knew about these allegations.

[REDACTED] reported that every member of the inner circle was aware of this behavior but that it had been [REDACTED] who was responsible for arranging trips and hotel rooms for these meeting. He mentioned OU Texas and unnamed recruiting events hosted by the University.

[REDACTED]

**Plaintiffs' Exhibit B**

**From:** Mason, Bobby J. [bjm@ou.edu](mailto:bjm@ou.edu)  
**Subject:** RE: Boren Investigation  
**Date:** May 10, 2019 at 10:28 AM  
**To:** Jess Eddy [jesseddy@icloud.com](mailto:jesseddy@icloud.com)



Jess,

I cannot approve your request to review the investigative report associated with David Boren because, thus far, you have not filed a complaint against him with our Sexual Misconduct Office. Your cooperation and participation have been important, without question, but you have chosen to participate as a witness. In accordance with University policy, only the parties to a complaint are entitled to the information you have requested. You have the right to file a complaint and, if you choose to do so, you will be entitled to a notice of the outcome of your complaint and to be apprised of the evidence relied upon by the investigator.

Whether or not you choose to file a grievance, the University can provide you with information and resources. The University has arranged for counseling services with Magellan for former students and employees (calling instructions below). The services provided are confidential.

Sincerely,

Bobby

**Magellan EAP Services:**

- Contact Magellan at **phone number: 800-327-5043**. They will be connected to a licensed clinician.
- Have the former employee/student identify themselves by their **name and what campus they are with**.
- To streamline the discussion, have the former employee/student mention that **“a special arrangement has been put in place to allow access this service.”**
- The Magellan clinician will take it from there.
- All services provided are **confidential and no reporting by name/reason, etc. of call will occur**.

**From:** Jess Eddy [<mailto:jesseddy@icloud.com>]  
**Sent:** Thursday, May 09, 2019 8:34 AM  
**To:** Mason, Bobby J. <[bjm@ou.edu](mailto:bjm@ou.edu)>  
**Cc:** Gallogly, James L. <[jgallogly@ou.edu](mailto:jgallogly@ou.edu)>; Gollahalli, Anil V. <[agollahalli@ou.edu](mailto:agollahalli@ou.edu)>; Gattoni, Susanna M. <[sgattoni@ou.edu](mailto:sgattoni@ou.edu)>  
**Subject:** Boren Investigation

Bobby,

Pursuant to the Title IX INVESTIGATIVE PROCESS FOR INTERNAL COMPLAINTS UNDER THE SEXUAL MISCONDUCT DISCRIMINATION AND HARASSMENT POLICY - Section VII (A), "At all times, through the proceedings, the original complainant shall have all rights afforded to the charged individual."

I am under the impression that I am of the condition of "original complainant," according to David Boren's attorney and am therefore entitled to a copy of the investigative report that was provided to David Boren's attorney recently.

I also understand that David Boren or his attorney has submitted a response to the investigative report. David Boren had the right to review the response, I maintain that I also have a right to that response.

Furthermore, please advise me of any other rights afforded to me as they may or may not have been exercised by David Boren.

Please confirm your receipt of this email.

Regards,

Jess Eddy

# **Plaintiffs' Exhibit C**



**From:** Jess Eddy [jesseddy@icloud.com](mailto:jesseddy@icloud.com)  
**Subject:** Re: Boren Investigation  
**Date:** May 28, 2019 at 11:03 AM  
**To:** Burkett, Kristen S. [kburkett@ou.edu](mailto:kburkett@ou.edu)

Kristen,

When can I expect to hear from you regarding when and how I will be able to access the report?

Jess

On May 28, 2019, at 7:53 AM, Jess Eddy <[jesseddy@icloud.com](mailto:jesseddy@icloud.com)> wrote:

Kristen,

I received your email. Thank you for letting me know. I'll await further instruction from you.

Thank you,

Jess

On May 24, 2019, at 1:38 PM, Burkett, Kristen S. <[kburkett@ou.edu](mailto:kburkett@ou.edu)> wrote:

Jess,

I wanted to provide you an update. I have made arrangements for you to view your information in the report next week electronically. I will send you instructions on Tuesday of how to access and view the report. If you have any additional questions, just let me know.

Have a good holiday weekend.

Respectfully,

Kristen Burkett  
Equal Opportunity Investigator  
Interim Sexual Misconduct Officer  
Institutional Equity Office  
University of Oklahoma  
Email: [kburkett@ou.edu](mailto:kburkett@ou.edu) | (405) 325-1991

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**From:** Jess Eddy [<mailto:jesseddy@icloud.com>]  
**Sent:** Wednesday, May 22, 2019 1:11 PM  
**To:** Burkett, Kristen S. <[kburkett@ou.edu](mailto:kburkett@ou.edu)>  
**Subject:** Re: Boren Investigation

Thank you Kristen --

Jess

On May 22, 2019 at 1:10 PM, "Burkett, Kristen S." <[kburkett@ou.edu](mailto:kburkett@ou.edu)> wrote:

Jess,

Yes, I have received your email and I am in the process of making arrangements for you to view your portions of the Jones Day investigation. I will be in touch with you as soon as I receive a copy of said information. Thank you for checking with me.

Respectfully,

Kristen Burkett  
Equal Opportunity Investigator  
Interim Sexual Misconduct Officer  
Institutional Equity Office  
University of Oklahoma  
Email: [kburkett@ou.edu](mailto:kburkett@ou.edu) | (405) 325-1991

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**From:** Jess Eddy [<mailto:jesseddy@icloud.com>]  
**Sent:** Wednesday, May 22, 2019 1:04 PM  
**To:** Burkett, Kristen S. <[kburkett@ou.edu](mailto:kburkett@ou.edu)>  
**Subject:** Fwd: Boren Investigation

Kristen,

I'm confirming the transmission of the below email to you yesterday. Did you receive it? I would like to be able to view the portions mentioned as soon as possible.

Jess Eddy

Begin forwarded message:

**From:** Jess Eddy <[jesseddy@icloud.com](mailto:jesseddy@icloud.com)>  
**Date:** May 21, 2019 at 6:13:49 PM CDT  
**To:** "Burkett, Kristen S." <[kburkett@ou.edu](mailto:kburkett@ou.edu)>  
**Subject: Re: Boren Investigation**

Kristen,

In response to this excerpt of your email: "...or arrange for you to view the portions of the report that relate to your interview with Jones Day." — I respond to state that while I disagree with your positions, as articulated below, I will exercise my rights to review the portions you are here referencing. I would like to do so at your earliest convenience.

Note: All following correspondence is inclusive of previous correspondence, transmitted on May 9th and 13th, 2019 to employees of the University of Oklahoma Title IX Office and included below. It should not be seen to revise or alter such but further elaborate and advance the intent, thereof.

To be clear: you are stating that as a victim of sexual misconduct, whereas someone filed a complaint on my behalf as a victim, I am not entitled to any rights to review the findings of the investigation into such misconduct against me? If this is what you are maintaining, I receive it to be a clear trespass of the spirit and letter of applicable laws.

I maintain that I have previously met the standards for filing a complaint as such was done so on my behalf, in the alternative, that my statements to Jones Day on March 26th, 2019 constituted a formal complaint, and in the alternative, that I expressed that your office should receive my correspondence to constitute such a complaint on May 9th and 13th, 2019.

Please also advise me as to why you, who appear to be uninformed as to my recent correspondence with Bobby and Tanner, are now involved. You are placing additional burdens on me to bring you current and are essentially asking me to do something that I have already done.

Finally, let this correspondence constitute an affirmative request to open an investigation in response to your statement: "At your request we can also open an investigation through our office based on the information you have already provided to Jones Day, through that investigation." This now constitutes the 6th instance of the filing of a grievance related to sexual misconduct against me by David Boren and Tripp Hall.

Also, please let this serve as record of a complaint against Bobby Mason for denying me the rights of a victim complainant in a timely manner on the occasion of refusing, directly and in his neglect to respond to my email dated May 13, 2019, to grant me the findings of the Boren/Hall investigation conducted by Jones Day and now complete.

-----  
Also, please let this serve as record of a complaint against Tanner Condley and Bobby Mason for neglecting to commence an investigation at my previous requests.

I look forward to notice of receipt of this email, the report in fulfillment of my outstanding request, and confirmation of commencement of a redundant, additional investigation that should include the report per my previous request.

I have inserted previous, herein referenced correspondence below for your information.

Finally, I am concerned that OU and the Regents continue to be anything but transparent and that OU and the Regents remain committed to covering up misconduct by Boren, Hall and others rather than redressing the misconduct.

Jess Eddy

----

Begin forwarded message:

**From:** Jess Eddy <jesseddy@icloud.com>  
**Subject:** Fwd: Boren Investigation  
**Date:** May 13, 2019 at 11:52:14 AM CDT  
**To:** [tannerc@ou.edu](mailto:tannerc@ou.edu)

Tanner,

See the below. As iterated in the below correspondence, I maintain that I have filed complaints of misconduct against Boren and Hall with OU.

However, let this email serve as a fifth instance of complaint against Boren and Hall for sexual misconduct against me.

As a complainant victim, pursuant to Title IX investigative policy, I should be afforded the report given to David Boren and his attorneys. Please comply with haste.

Regards,

Jess Eddy

Begin forwarded message:

**From:** Jess Eddy  
<[jesseddy@icloud.com](mailto:jesseddy@icloud.com)>  
**Date:** May 13, 2019 at 9:25:24 AM  
CDT  
**To:** [bjm@ou.edu](mailto:bjm@ou.edu),  
[regentalbert@ou.edu](mailto:regentalbert@ou.edu),  
[regentshirley@ou.edu](mailto:regentshirley@ou.edu), Renzi Stone  
<[regentstone@ou.edu](mailto:regentstone@ou.edu)>, [regentrainbolt-forbes@ou.edu](mailto:regentrainbolt-forbes@ou.edu),  
[regentkeating@ou.edu](mailto:regentkeating@ou.edu),  
[regentstevenson@ou.edu](mailto:regentstevenson@ou.edu),  
[regentpierson@ou.edu](mailto:regentpierson@ou.edu)  
**Subject: Re: Boren Investigation**

Bobby,

You have drawn several factually incorrect and inconsistent conclusions.

Firstly, I did not choose to participate as a witness. I was legally obligated by the University to speak with Jones Day to be interviewed in regards to an OU Title IX investigation, pursuant to my severance contract, dated December 10, 2018.

Secondly, as you know, I am a victim of David Boren and Tripp Hall as well as a witness to their misconduct, Anil Gollahalli's misconduct, Susanne Gattoni's misconduct, and your misconduct. As a consequence, I am reluctant to work with any apparatus of the University regarding this matter, with the exception of OU Regents, President Gallogly, or Mr. Drew Neville.

Thirdly, I maintain that the complaint filed on my behalf by a mandatory reporter regarding my experiences with

Boren and Hall afforded me the condition of complainant; that my statements to Jones Day on March 26th, 2019 cement this condition further; and that my email to you yesterday had the same effect. This correspondence, which serves to confirm the veracity of my statements regarding David Boren and Tripp Hall made to Jones Day attorneys, law enforcement, and media, now comes to constitute the fourth instance of a complaint having been filed with OU.

In consideration of the various layers of university personnel and law firms involved, I will grant that it is entirely possible that you were unaware of some of the aforementioned. To that extent, I am comforted that the University appears to realize the impropriety - at some level - of your and Gollahalli's involvement in this matter.

If I am not in receipt of the requested report that satisfies the conditions of the rights afforded to me as a victim complainant, promptly, I will proceed to file a complaint with the Department of Justice, Civil Rights Division on behalf of myself and numerous other victims of misconduct at the University of Oklahoma.

On the whole, I receive your email to be offensive and indicative of the immoral form and fashion by which you and your office manage claims of misconduct.

Dear University of Oklahoma Regents,

Attached you will find an audio recording of a conversation between Bobby Mason and Marcella Fleming, made only a few hours after my filing

made only a few hours after my filing of a formal grievance on August 24th, 2018 against Interim Associate Vice President Belinda Biscoe, Anil Gollahalli, then-VP of Human Resources - Marcella Fleming, and other staff persons for retaliating and discriminating against me for my condition as a recovering alcoholic and for my association with Jabar Shumate, my friend and former supervisor. The recording is revealing of the culture of the University of Oklahoma regarding claims of misconduct and the unprofessional, unethical manner in which Bobby Mason conducts the business of the Equal Opportunity Office and Title IX office. If Boren and Tripp's misconduct were open secrets at the University, so was Title IX's complicity.

Thank you,  
Jess Eddy  
405.627.1801

On May 10, 2019, at 10:28 AM, Mason, Bobby J.  
<[bjm@ou.edu](mailto:bjm@ou.edu)> wrote:

Jess,

I cannot approve your request to review the investigative report associated with David Boren because, thus far, you have not filed a complaint against him with our Sexual Misconduct Office. Your cooperation and participation have been important, without question, but you have chosen to participate as a witness. In accordance with University policy, only the parties to a complaint are entitled to the

information you have requested. You have the right to file a complaint and, if you choose to do so, you will be entitled to a notice of the outcome of your complaint and to be apprised of the evidence relied upon by the investigator.

Whether or not you choose to file a grievance, the University can provide you with information and resources. The University has arranged for counseling services with Magellan for former students and employees (calling instructions below). The services provided are confidential.

Sincerely,

Bobby

**Magellan EAP Services:**

- Contact Magellan at **phone number: 800-327-5043**. They will be connected to a licensed clinician.
- Have the former employee/student identify themselves by their **name and what campus they are with**.
- To streamline the discussion, have the former employee/student mention that “**a special**



arrangement has been put in place to allow access this service.”

- The Magellan clinician will take it from there.
- All services provided are **confidential and no reporting by name/reason, etc. of call will occur.**

**From:** Jess Eddy  
[mailto:[jesseddy@icloud.com](mailto:jesseddy@icloud.com)]  
**Sent:** Thursday, May 09, 2019 8:34 AM  
**To:** Mason, Bobby J.  
<[bjm@ou.edu](mailto:bjm@ou.edu)>  
**Cc:** Gallogly, James L.  
<[jlgallogly@ou.edu](mailto:jlgallogly@ou.edu)>;  
Gollahalli, Anil V.  
<[agollahalli@ou.edu](mailto:agollahalli@ou.edu)>;  
Gattoni, Susanna M.  
<[sgattoni@ou.edu](mailto:sgattoni@ou.edu)>  
**Subject:** Boren Investigation

Bobby,

Pursuant to the Title IX  
INVESTIGATIVE  
PROCESS FOR  
INTERNAL  
COMPLAINTS UNDER  
THE SEXUAL  
MISCONDUCT  
DISCRIMINATION AND  
HARASSMENT POLICY  
- Section VII (A), “At all  
times, through the  
proceedings, the original

complainant shall have all rights afforded to the charged individual.”

I am under the impression that I am of the condition of “original complainant,” according to David Boren’s attorney and am therefore entitled to a copy of the investigative report that was provided to David Boren’s attorney recently.

I also understand that David Boren or his attorney has submitted a response to the investigative report. David Boren had the right to review the response, I maintain that I also have a right to that response.

Furthermore, please advise me of any other rights afforded to me as they may or may not have been exercised by David Boren.

Please confirm your receipt of this email.

Regards,

Jess Eddy

-----  
On May 21, 2019, at 4:55 PM, Burkett, Kristen S. <[kburkett@ou.edu](mailto:kburkett@ou.edu)> wrote:

Jess,

I’ve been told that you reached out to one of our

investigators, as well as Bobby Mason, and requested a copy of the report related to David Boren. While we are aware of the comments you have made publicly, as well as your statements to Jones Day, our office does not currently have an open investigation with you as the complainant. If you would like us to proceed with an investigation, based on your reported allegations of sexual misconduct during your time at the University, you may file a formal grievance under our Sexual Misconduct, Discrimination and Harassment policy. We invite you to contact the Sexual Misconduct Office at 325-2215 to schedule a meeting to discuss our grievance process and available resources. Also attached is a brochure for our office and a link to our website (<http://www.ou.edu/eoo>) that provides additional information regarding our policies, procedures, and resources. At your request we can also open an investigation through our office based on the information you have already provided to Jones Day, through that investigation.

However, because you were a witness in the Jones Day investigation, we cannot provide you with a copy of that report. If you would like to review the portions of that report related to your interview with Jones Day, we can arrange for that as we have with other witnesses.

Please let us know what you decide on how to move forward and we will either schedule a meeting with you to discuss the investigation process with you or arrange for you to view the portions of the report that relate to your interview with Jones Day.

Respectfully,

Kristen Burkett  
Equal Opportunity Investigator  
Interim Sexual Misconduct Officer  
Institutional Equity Office  
University of Oklahoma  
Email: [kburkett@ou.edu](mailto:kburkett@ou.edu) | (405) 325-1991

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For convenience this email to the intended recipient, be advised that any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. If you have received this email in error, please notify the sender immediately by a "reply to sender only" message and destroy all electronic and hard copies of this email and any attached files.

<Sexual Misconduct Student Tri-fold - All  
Campus.pdf>

# **Plaintiffs' Exhibit D**

## Jess Eddy - Info

Former Employee III<sup>11</sup>

Jess Eddy, a former OU student and former staff employee, was put in uncomfortable situations by and received multiple unwelcome sexual advances from President Boren as an OU

<sup>11</sup> Jones Day interviewed Mr. Eddy twice - first on February 13, 2019 and again on March 26, 2019. In his first interview, Mr. Eddy denied receiving any sexual advances from President Boren. Mr. Eddy stated that he ultimately decided to share his knowledge of President Boren's sexual behavior in a second interview because he thought about other potential victims and how it was "very likely that [President Boren] had destroyed some people's lives." Additionally, multiple times during the second interview, Mr. Eddy expressed his distrust of the University's Institutional Equity Office, Office of Legal Counsel, and Office of the President, which distrust, according to Mr. Eddy, further contributed to his reluctance to share his knowledge of President Boren's sexual conduct during Mr. Eddy's first interview. The same day that Jones Day interviewed Mr. Eddy for the second time, a lengthy article regarding Mr. Eddy's alleged experiences ran in *NewsDoc*. Apparently, Mr. Eddy shared the contents of his second interview with the *OKlahema* press, despite Jones Day's request to Mr. Eddy to keep the information confidential.

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Attorney-Client Communication  
Confidential Attorney Work Product*

student. These encounters began in a hotel room during a fall 2010 trip to Houston and continued for a period thereafter during private meetings in President Boren's office. Additionally, Mr. Eddy received a sexual advance from President Boren's close associate, Tripp Hall, during the same 2010 Houston trip.<sup>42</sup>

(1) Houston Trip

In 2010, during the fall semester of his junior year, Mr. Eddy worked as a teaching assistant for President Boren. Mr. Eddy described President Boren's behavior towards him during this period as "excessively personal" and that of "infatuation," stating that President Boren was often complimentary of Mr. Eddy's physique and character. At one point during the fall 2010 semester, President Boren invited Mr. Eddy to Houston for a University event. Mr. Eddy stated that he was "eager" to go on this trip with President Boren but also "anxious" given President Boren's apparent infatuation with him and the rumors of President Boren being gay. In anticipation of the trip, Mr. Eddy spoke with his friend and mentor, Former Senior Administrator I,<sup>43</sup> and expressed concern to Former Senior Administrator I that Mr. Eddy would be put in an "inappropriate" situation with President Boren. Mr. Eddy reported that Former Senior Administrator I agreed that Mr. Eddy would likely find himself in an uncomfortable situation and advised him not to drink too much, to talk about his girlfriend, and to "leave" after a "reasonable" amount of time.

On the day of the Houston trip, Mr. Eddy met President Boren on the North Oval. President Boren and Mr. Eddy were driven by Former Senior Staff V in President Boren's red Jaguar to the airport. They stopped at a liquor store named the Spirit Shop on the corner of Berry Road and W. Main Street on the way. President Boren gave Mr. Eddy a \$100 bill and asked Mr. Eddy to purchase a bottle of Belvedere as well as anything that Mr. Eddy wanted.<sup>44</sup> President Boren requested that Mr. Eddy put the bottles of alcohol in Mr. Eddy's backpack, which Mr. Eddy did. President Boren and Mr. Eddy flew in a private plane alone to Houston. Once in Houston, and despite the fact that numerous other University administrators were in Houston for the trip, President Boren invited Mr. Eddy alone to his hotel room at night, where they drank alcohol and ate pizza. Mr. Eddy stated that President Boren did not touch him in the hotel room or engage in any "sexual banter." Nevertheless, Mr. Eddy felt "anxious," "scar[ed]," and "deeply confus[ed]" by the situation, stating that, in the moment, he was "in denial" and "[unable] to accept reality." Mr. Eddy described the whole experience as "so inappropriate."

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<sup>42</sup> The alleged serious misconduct by Tripp Hall is outside the scope of this Report but, if credited, is informative of the "culture" surrounding President Boren's close associates.

<sup>43</sup> When contacted for an interview, Former Senior Administrator I stated that he did not have knowledge relevant to the investigation. A second request was made to Former Senior Administrator I to which he did not respond.

<sup>44</sup> Mr. Eddy recalled purchasing the bottle of Belvedere and a bottle of scotch.

*Privileged and Confidential  
Attorney-Client Communication  
Confidential Attorney Work Product*

The next morning, Mr. Eddy got into a vehicle with Tripp Hall, President Boren, and three other senior University administrators. Mr. Eddy sat in the back of the vehicle next to Mr. Hall. According to Mr. Eddy, Mr. Hall asked Mr. Eddy whether Mr. Eddy had "a good time last night?" Mr. Eddy replied that he did, to which Mr. Hall stated warmly, "I'm really happy to hear that" and rubbed the inside of Mr. Eddy's thigh, grazing Mr. Eddy's genitals with the back of his hand.

Mr. Eddy did not speak with President Boren about the Houston trip until March 17, 2019. On March 17, Mr. Eddy, along with his attorney, called President Boren and asked for compensation related to President Boren's conduct during the Houston trip and thereafter. Mr. Eddy reported that, during this conversation, President Boren denied knowing to what Mr. Eddy was referring, stating, this could "go on for years," and declined to provide Mr. Eddy with any compensation.

(2) Private Meetings in President Boren's Office

After the Houston incident, Mr. Eddy stated that he began drinking to excess. Mr. Eddy subsequently received four drinking-related arrests between December 2010 and May 2011.<sup>57</sup> In May 2011, after his fourth alcohol-related arrest, Mr. Eddy went for treatment at a rehabilitation program. According to Mr. Eddy, President Boren contacted Mr. Eddy while Mr. Eddy was in a rehabilitation facility and asked Mr. Eddy to come see him after getting out of the rehabilitation facility. Mr. Eddy complied and went to see President Boren in his office.

Mr. Eddy described this meeting as a "pinnacle" moment, after which President Boren's behavior towards him shifted. According to Mr. Eddy, during this meeting, and in multiple meetings thereafter, President Boren made multiple sexual advances to Mr. Eddy in the President's office. Mr. Eddy recalled these advances happening once or twice a semester "with regularity" through at least the spring of 2012. Mr. Eddy described President Boren's sexual behavior as "grandfatherly" but nevertheless "inappropriate." Specifically, in the context of "prolonged hugs," President Boren would kiss Mr. Eddy on the cheek and neck and grab Mr. Eddy's buttocks, while also making comments about how "wonderful" or "special" Mr. Eddy was. During one such encounter, President Boren told Mr. Eddy that he wanted to "keep close tabs on [Mr. Eddy]" and asked Mr. Eddy to work on the President's Action Line, to which Mr. Eddy agreed. Mr. Eddy described his emotions throughout this period as varying between "confused," "angry," and "depressed." Mr. Eddy also stated that his encounters with President Boren "felt like an invitation and that [ ] was the troubling thing." That summer, President Boren arranged for Mr. Eddy to see a University psychiatrist, with whom Mr. Eddy met approximately four times. Mr. Eddy perceived that this psychiatrist was reporting information about his therapy back to President Boren and stated that the psychiatrist "went on and on about how great [President Boren] was."

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<sup>57</sup> Mr. Eddy reported that President Boren made University student discipline related to these arrests "disappear." Jones Day did not confirm this allegation.



*Privileged and Confidential  
Attorney-Client Communication  
Confidential Attorney Work Product*

At one point during this period, Mr. Eddy expressed a desire to Former Senior Administrator I to pursue legal action against President Boren for President Boren's sexual conduct, but Former Senior Administrator I "talked [Mr. Eddy] out of it." Mr. Eddy could not recall the specifics of his conversation with Former Senior Administrator I except that Former Senior Administrator I did not believe that pursuing legal action against President Boren was "a good idea."

Despite providing differing accounts of his alleged experiences to Jones Day and others, Jones Day ultimately assessed Mr. Eddy to provide generally credible information during his second interview. Specifically, Jones Day confirmed that Mr. Eddy disclosed President Boren's advances to two other witnesses, Employee IV and Senior Administrator XIV (his supervisor), prior to the start of the instant investigation. Additionally, Mr. Eddy's account of President Boren's sexual advances is generally consistent with and similar to the accounts of others among The Six Witnesses—in particular the hotel room evenings described by SAIII and the President's Office meetings described by SAXII. As such, Jones Day determined that Mr. Eddy provided generally reliable information during his second interview with respect to President Boren's sexual conduct. That said, Jones Day acknowledges the credibility issues raised by Mr. Eddy's varying accounts and his conduct related to the same. Thus, Jones Day notes that the core findings and conclusions in this Report do not rely heavily and certainly not exclusively on Mr. Eddy's statements.

*End Jess Eddy INFO*

**Plaintiffs' Exhibit E**



*The* UNIVERSITY of OKLAHOMA.  
*Institutional Equity Office*

June 20, 2019

Jess Eddy

*Delivered via Email*

Mr. Eddy,

Pursuant to your May 21, 2019 e-mail, the Title IX office opened an investigation into your allegations against David Boren utilizing the information you had previously provided to Jones Day. As no new evidence or information was provided, it was determined that these allegations have already been investigated.

After thorough review of information and evidence, consideration of the totality of the circumstances and the context in which the alleged incident(s) occurred, utilization of a preponderance of the evidence standard, the evidence was found to be sufficient to substantiate that you had been subjected to a hostile working environment. In accordance with University policy, the outcome of that investigation was submitted to the Board of Regents for appropriate administrative action.

On June 12, 2019, the Office of Institutional Equity was notified that David Boren had resigned from his transition agreement and has ended all affiliation with the University of Oklahoma. Once an individual voluntarily separates or resigns from OU, the University lacks jurisdiction over the individual, as the maximum sanction that the University can impose on anyone is disassociation with the University (e.g., expulsion of a student, termination of an employee, or disassociation with donors). This action – resignation – has the corollary effect of also ensuring that behaviors are stopped, and future occurrences are prevented to the best of the University's ability.

We appreciate your patience and cooperation during this process. The University has also arranged for confidential counseling services for former students and employees. To access these services, you can contact Magellan EAP Services by 800-327-5043. All services provided are confidential and no reporting by name/reason, etc. of call will occur.

Please let us know if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristen Burkett".

Kristen Burkett  
Interim Sexual Misconduct Officer  
University of Oklahoma



**Plaintiffs' Exhibit F  
TO BE FILED  
UNDER SEAL**

**Plaintiffs' Exhibit G  
TO BE FILED  
UNDER SEAL**

**Plaintiffs' Exhibit H**  
**SUBJECT TO DECISION ON**  
**ADMINISTRATIVE MOTION TO**  
**FILE UNDER SEAL**

**Plaintiffs' Exhibit I**  
**SUBJECT TO DECISION ON**  
**ADMINISTRATIVE**  
**MOTION TO FILE UNDER SEAL**

**Plaintiffs' Exhibit J**



1. - 20 01 12:13P

America's Best Colleges 2001  
Main Survey  
University of Oklahoma



Fy2000

3184,24

160. Early Decision Admissions (CDS C21): Does your institution offer an early decision plan for first-time, first-year (freshman) applicants for fall enrollment? (Note: an early decision plan allows students to apply early and be notified of an admission well in advance of the regular notification date and asks students to commit to attending if accepted.)

- No. Skip to question 167.
- Yes. Please continue with the next question.

161. First or only early decision plan closing date (mm/dd)	
162. First or only early decision plan notification date (mm/dd)	
163. Other early decision plan closing date (mm/dd)	
164. Other early decision plan notification date (mm/dd)	
165. Number of early decision applications received by your institution for fall 2000 entering class	
166. Number of applicants admitted under early decision plan for fall 2000 entering class	

167. Early Action Admissions (CDS C22): Do you have a nonbinding early action plan whereby students are notified of an admission decision well in advance of the regular notification date but do not have to commit to attending your college?

- No. Skip to question 172.
- Yes. Please continue with the next question.

168. What is the closing date for submitting early action applications? (mm/dd)	
169. What is the notification date for submitting early action applications? (mm/dd)	
170. Number of early action applications received by your institution for fall 2000 entering class?	
171. Number of applicants admitted under early action plan for fall 2000 entering class?	

Undergraduate Alumni Giving: Please enter information on undergraduate alumni giving, as defined below. As noted, exclude students who earned only graduate degrees and undergraduates who didn't graduate from your institution.

What was the number of undergraduate alumni of record at your institution? (Alumni of record are former full- or part-time students with an undergraduate degree from your institution and for whom you have a current address.)

- 172. Number of undergraduate alumni of record in 1998-2000?  - remove BCI
- 173. Number of undergraduate alumni of record in 1998-1999?

What was the number of undergraduate alumni solicited at least once during the year?

- 174. Number of undergraduate alumni of record solicited in 1998-2000?
- 175. Number of undergraduate alumni of record solicited in 1998-1999?

What was the number of undergraduate alumni donors for your institution in the following years? (Alumni donors are alumni with undergraduate degrees from your institution who made one or more gifts for either current operations or capital expenses during the specified academic year)

- 176. Number of undergraduate alumni donors in 1999-2000?  True
- 177. Number of undergraduate alumni donors in 1998-1999?

Increase to 18%  
18,348 reported

Note: For colleges with graduate schools, the alumni-giving data reported to U.S. News will be different than what was submitted to the Council for Aid to Education in its annual Voluntary Support of Education Survey.

University of Oklahoma Foundation, Inc.

8/8/00

Count Alumni with 'U' Type Degrees who were 99/00 Donors

Count Donors

13350

*undergrad  
donors*

PF/200-1

Jeanne -

I didn't get this to Dave this week. Would you hold this until Wednesday or Thursday (latest). If for any reason I'm not back in the office, I'd like you to take it to Dave for his approval.

What I didn't get to talk to you about (I just forgot until too late) was this:

I'm assuming that the figures on the chart - and the ones on your survey sheet for the latest year - are already "doctored", correct? We doctored them when you and Jerry ordered them, correct?

\* I've penciled in alternate figures in case Dave would like the number to go up one notch.

Thanks, Jeanne. Don't let me forget this if I come in. Numbers are due to them on Friday the 12<sup>th</sup>.

-SW

met with Dave 4/8/02  
\* per Dave use 1970 figures  
FAXed to Cheryl 4/10/02  
jd

FY. 03

2004 Survey of Colleges -- (31 14, 4) University of Oklahoma

286. Maximum number of credits or courses that may be transferred from a two-year institution (CDS D13):

Number of: Unit type: semester hours

287. Maximum number of credits or courses that may be transferred from a four-year institution (CDS D14):

Number of: Unit type: semester hours

288. Minimum number of credits that transfers must complete at your institution to earn an associate degree (CDS D15):

289. Minimum number of credits that transfers must complete at your institution to earn a bachelor's degree (CDS D16): 30

290. Describe other transfer credit policies: (CDS D17) Maximum number of allowable characters is 4000

Undergraduate Alumni Giving: Please enter information on undergraduate alumni giving, as defined below. As noted, exclude students who earned only graduate degrees and undergraduates who didn't graduate from your institution.

What was the number of undergraduate alumni of record at your institution? (Alumni of record are former full- or part-time students with an undergraduate degree from your institution and for whom you have a current address.)

Alumni

291. Number of undergraduate alumni of record in 2002-2003? 110,201 per Jerry

292. Number of undergraduate alumni of record in 2001-2002? 109,334

What was the number of undergraduate alumni solicited at least once during the year?

293. Number of undergraduate alumni of record solicited in 2002-2003? 73,000 per Kike

294. Number of undergraduate alumni of record solicited in 2001-2002? 97,024 actual 86,927

What was the number of undergraduate alumni donors for your institution in the following years? (Alumni donors are alumni with undergraduate degrees from your institution who made one or more gifts for either current operations or capital expenses during the specified academic year)

295. Number of undergraduate alumni donors in 2002-2003? ~~17,644~~ 19,264

296. Number of undergraduate alumni donors in 2001-2002? 22,476

Note: For colleges with graduate schools, the alumni-giving data reported to U.S. News will be different than what was submitted to the Council for Aid to Education in its annual Voluntary Support of Education Survey.

Faculty Salaries 2003 - 2004 Academic Year: Please report salaries for full-time instructional faculty, defined as full time faculty whose regular assignment is instruction. Include those on paid leave. Exclude administrative officers with titles such as dean, librarian, and registrar, even if they devote time to instruction. Exclude non-professorial rank faculty with title of instructor, lecturer or no-rank. Exclude faculty on unpaid leave, but include visitors who are temporarily replacing them. Full-time salaries other

Gift Stats for "U" Type Degrees 7/1/2002 thru 6/30/2003

7/25/2003

# of Donors	# of Gifts	Total
14644	23027	\$15,161,389.48

Reported 22,476

FY 2004

Dover, Jeanne L.

---

From: Yeager, Karen K.  
Sent: Wednesday, September 01, 2004 8:56 AM  
To: Dover, Jeanne L.  
Subject: RE: Donor Count



Yes, but I coded it the way that doesn't count them twice. Should I have?

---

From: Dover, Jeanne L.  
Sent: Tuesday, August 31, 2004 2:41 PM  
To: Yeager, Karen K.  
Subject: RE: Donor Count

Karen,

This number seems very low. Did you request soft credit etc gifts?

jd

---

From: Yeager, Karen K.  
Sent: Tuesday, August 31, 2004 10:37 AM  
To: Dover, Jeanne L.  
Subject: Donor Count

From the request dated 8-27-04, the count for U Type Degree donors for FY03/04 is 15,992.

Reported

22,979

Karen Kozik Yeager  
Programmer/Analyst  
University of Oklahoma Foundation, Inc.  
klyeager@ou.edu  
405-321-1174

9/1/2004

Okay by Paul + Robyn 9-4-07

PERCENT OF ALUMNI DONORS BY FISCAL YEAR

PERIOD	U.S. TOTAL ALUMNI SOLICITED	U.S. ALUMNI SOLICITED	TOTAL DONORS	ALUMNI DONORS	% OF ALUMNI DONORS	USE %	TOTAL UNDERGRADS SOLICITED	UNDERGRADS SOLICITED	UNDERGRAD DONORS REPORTED*	% OF UNDERGRAD ALUMNI DONORS REPORTED*	UNDERGRAD ALUMNI DONORS PUBLISHED**	% OF UNDERGRAD ALUMNI DONORS PUBLISHED**
FY 08-09	175,167	117,887	42,063	23,557	22%	13.7%	126,438	19,833	27%	16.7%	21%	21%
FY 09-10	171,023	115,900	41,410	25,856	22%	15.0%	115,076	23,588	25%	21%	21%	21%
FY 10-11	172,888	118,733	40,300	25,405	22%	14.7%	114,135	23,408	27%	21%	21%	21%
FY 11-12	165,826	101,397	36,617	24,381	24%	14.7%	112,084	22,970	28%	21%	21%	21%
FY 12-13	158,777	108,789	34,036	24,046	23%	16.1%	110,201	22,951	28%	23%	23%	23%
FY 13-14	152,304	104,596	37,258	24,501	24%	16.2%	109,334	22,476	23%	23%	23%	23%
FY 14-15	148,088	100,440	35,251	24,298	24%	18.5%	107,274	20,699	23%	18%	18%	18%
FY 15-16	145,051	91,380	34,706	21,800	24%	15.0%	104,156	18,348	23%	18%	18%	18%
FY 16-17	144,816	84,839	31,428	20,434	24%	14.1%	102,189	18,160	24%	18%	18%	18%
FY 17-18	140,617	84,482	31,378	19,857	24%	14.1%	99,479	17,961	23%	18%	18%	18%
FY 18-19	117,570	83,910	30,098	18,698	23%	16.2%	96,112	17,461	23%	17%	15%	15%
FY 19-20	100,106	100,106	28,009	17,004	17%		94,103	15,952	17%	13%	11%	11%
FY 20-21	107,434	107,434	25,016	16,361	19%							
FY 21-22	106,655	106,655	21,502	13,585	13%							
FY 22-23	111,285	112,967	23,470	13,137	12%							
FY 23-24	111,098	108,711	18,200	10,919	10%							
FY 24-25	105,204	105,204	17,249	9,991	9%							
FY 25-26	106,436	101,113	14,478	8,308	6%							

\*Based on undergrads solicited  
\*\*Based on all undergrads

*Undergrad donors*

*FY 2008*

Donor Count	Gift Count	Total Amount
20309	39923	37090801.01

*Reported 23,856*





*Undergrad Count FY09-*

giftcount	donorcount	total
34743	18581	31586787

*reported 20,902*

FY 2010

Degree Type	US Addr	Foreign	Lost	Parent	DNM	Deceased	TOTAL	% Lost	Stats Date
'U' Degrees	125,595	2,210	7,557	7,850	1,092	29,268	172,480	5.5%	7/16/2009
'GP' Degrees only	52,148	1,828	2,923	894	580	7,901	66,492	5.1%	7/16/2009
All Degrees	177,743	4,038	10,480	8,544	1,652	37,169	237,972	5.4%	7/16/2009
AI AN	8,430	62	692	2,406	73	3,678	18,874	6.7%	7/16/2009
TOTAL	187,173	4,098	11,172	10,950	1,725	40,847	256,646	5.5%	7/16/2009

Degree Type	US Addr	Foreign	Lost	Parent	DNM	Deceased	TOTAL	% Lost	Stats Date
'U' Degrees	137,995	2,182	4,845	1,153	1,037	30,215	176,390	3.3%	7/14/2010
'GP' Degrees only	55,411	1,821	1,534	210	551	8,178	67,154	2.6%	7/14/2010
All Degrees	193,408	4,003	6,379	1,363	1,588	38,393	243,544	3.1%	7/14/2010
AI AN	11,535	79	667	1,191	79	3,763	17,235	5.0%	7/14/2010
TOTAL	204,941	4,082	7,048	2,554	1,667	42,156	260,779	3.2%	7/14/2010

undergrad clones 19,000

Reported 23,109

Undergraduate donors

donor\_count gift\_count amount\_rcvd  
18094 34633 \$39,199,202.92

Correct  
for Kura  
FY 11

Kirk:

Solicited Alumni 72913 Kirk  
30000 Alumni  

---

102913

Solicited Undergrads 50838 Kirk  
25000 Alumni  

---

75838

Donor Count  
1809

Gift Count Amt Rec'd  
27534 \$ 28,242,651.81

FY 12

27,798 Reported

Kirk Solicited Undergrads

84738

Total Undergrads

120538

FY 2013

donors	gifts	total gifts
<u>18546</u>	28658	\$ 36,034,307.56

JG Donors

18546  
9000  

---

22544

random added

Kirk solicited  
187825  
85016

Almond  
JG

**Liu, Andree C.**

---

**From:** Hansen, Glenn J.  
**Sent:** Friday, June 1, 2018 8:25 AM  
**To:** Liu, Andree C.  
**Cc:** Hathaway, Nicholas S.; Stroud, Robin L.  
**Subject:** Re: US News Alumni Reporting

Andree,

I hope you are well. I'm wanting to follow-up on the US News ranking data.

I see we reported 14,038 for UG alumni donors and 125,117 alumni of record. In a conversation with Nick, he indicated that Guy Patton puts the number of alumni at 161,000. Are you in agreement with 161,000?

Thank you!

Glenn J. Hansen, Ph.D.  
Director, Office of Business Analytics  
University of Oklahoma

**From:** "Glenn J. Hansen" <gjh@ou.edu>  
**Date:** Tuesday, May 8, 2018 at 1:49 PM  
**To:** "Liu, Andree C." <aliu@ou.edu>  
**Subject:** US News Alumni Reporting

Andree,

Do you have a minute to talk about the data that you reported? We are really trying to just understand. Thank you for any help.

Glenn J. Hansen, Ph.D.  
Director, Office of Business Analytics  
University of Oklahoma

125,117 apply following criteria:

- Living alumni with an undergraduate degree
- Other exclusion includes confidential, FERPA, no complete US address (foreign and lost), do not solicit and people who are 90 years and above which will include those with invalid Bday as 01/01/1001 (\*\*This is the logic we had to apply to get close to acceptable number by the institution).

161,000 (Foundation count in Glenn's email) looks like this count apply following criteria:

- Living alumni with an undergraduate degree and an US address (with no other exclusion) – It's really 160,782

\*\*This is the number we or any programmer would provide if not inherit any logic and not asked by the institution to hit a target number and not making interpretation of the questions but just answer the survey questions as they are.

160,247 apply following criteria:

- Living alumni with an undergraduate degree and an US address
- Other exclusion includes confidential & FERPA

158,962 apply following criteria:

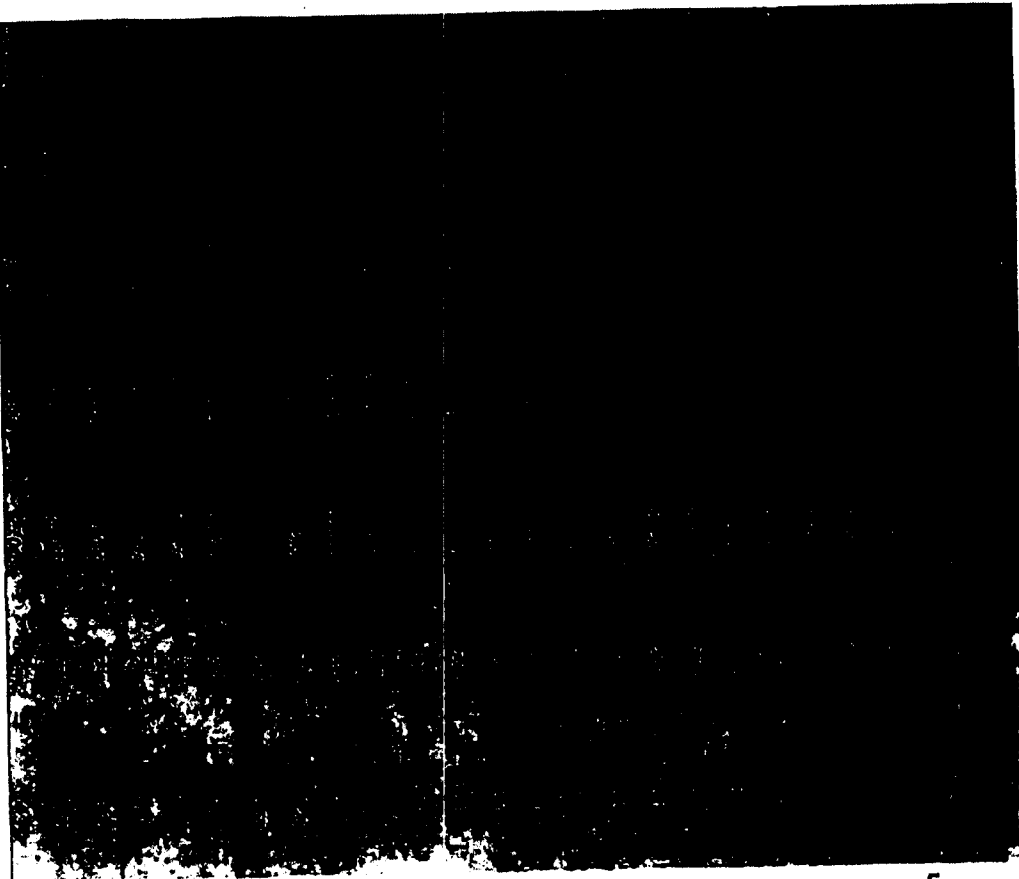
- Living alumni with an undergraduate degree and an US address
- Other exclusion includes confidential, FERPA, do not solicit and do not mail

6/1/2018

Approved by TIPP Ball.

PERCENT OF ALUMNI DONORS BY FISCAL YEAR

US News & World Report Survey Stats (April)



TOTAL UNDERGRAD	UNDERGRAD SOLICITED	UNDERGRAD DONORS	% OF UNDERGRAD ALUMNI DONORS Solicited	% OF UNDERGRAD ALUMNI DONORS Published
126,117	81,158	14,038	17.30%	11.22%
120,825	79,209	19,794	24.87%	16.41%
116,992	78,187	18,827	25.37%	16.06%
128,505	87,540	23,804	27.19%	18.52%
127,303	85,018	22,546	26.52%	18.54%
120,538	84,738	23,988	27.81%	19.89%
119,183	75,838	21,084	27.81%	18.89%
118,995	81,828	23,108	28.22%	19.60%
118,905	81,429	20,902	22.85%	18.01%
116,501	88,129	23,856	27.07%	20.80%
116,028	87,188	23,820	27.32%	21%
115,076	85,400	23,588	25.00%	21%
114,135	85,216	23,408	27.00%	21%
112,094	83,176	22,979	27.89%	21%
110,201	87,858	22,851	26.18%	21%
108,334	87,024	22,478	23.17%	20%
107,274	89,440	20,889	22.89%	19%
104,158	80,849	18,348	22.75%	18%
102,188	78,880	18,180	23.02%	18%
98,479	78,533	17,981	23.09%	18%
88,112	78,481	17,580	23.00%	17%
94,109	81,828	15,862	17.08%	15%
81,387	87,725	11,471	13.08%	10%



**From:** Feuerborn, Barry T.  
**Sent time:** 03/31/2009 08:32:05 PM  
**To:** Dover, Jeanne L.  
**Subject:** RE: US NEWS

Let's try to visit tomorrow. I may be going to Tulsa with Tripp on Thurs so it would be a good time to discuss. I don't like that April 6th deadline though. Tripp is going to need to talk to Nick.

**From:** Dover, Jeanne L.  
**Sent:** Tuesday, March 31, 2009 10:56 AM  
**To:** Feuerborn, Barry T.  
**Subject:** FW: US NEWS

Barry,

Please let me know when you have time to discuss this survey.

Thanks

Jeanne  
**From:** Ferguson, Jennifer L.  
**Sent:** Monday, March 30, 2009 2:15 PM  
**To:** Dover, Jeanne L.  
**Subject:** US NEWS

Hi Jeanne,

Last year you helped some questions for the US News World Survey. If you could update the information below to reflect the stated years, that would be great. If I could get this back by Monday, April 6<sup>th</sup>, that would be great. Please let me know if I can be of any additional help.

Thanks,  
Jennifer

**Undergraduate Alumni Giving:** Please enter information on undergraduate alumni giving, as defined below. As noted, *exclude* students who earned only graduate degrees and undergraduates who didn't graduate from your institution.

What was the number of undergraduate alumni of record at your institution? (*Alumni of record are former full- or part-time students with an undergraduate degree from your institution and for whom you have a current address.*)  
283 . Number of undergraduate alumni of record in 2007-2008?

284 . Number of undergraduate alumni of record in 2006-2007? (provided for your reference) 116,026

What was the number of undergraduate alumni solicited at least once during the year?

285 . Number of undergraduate alumni of record solicited in 2007-2008?

286 . Number of undergraduate alumni of record solicited in 2006-2007? (provided for your reference)

87,188

What was the number of undergraduate alumni donors for your institution in the following years?  
(*Alumni donors are alumni with undergraduate degrees from your institution who made one or more gifts for either current operations or capital expenses during the specified academic year*)

287 . Number of undergraduate alumni donors in 2007-2008?

288 . Number of undergraduate alumni donors in 2006-2007? (provided for your reference) 23,820

Jennifer Ferguson  
Institutional Research and Reporting  
University of Oklahoma

(405) 325-2418  
[iferguson@ou.edu](mailto:iferguson@ou.edu)

**Johnson, Shemeka A.**

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**From:** Hall, Jim III  
**Sent:** Monday, October 25, 2010 12:00 PM  
**To:** Hamilton, Melanee; Audas, Jean-Paul; Mainers, Allison L (HSC); Tower, Robyn M.; Garton, Kirk O.  
**Cc:** Hathaway, Nicholas S.; Feuerborn, Barry T.  
**Subject:** FW: Information

All: please read President Boren's message below. Let's work to figure a way to accomplish this idea, Tripp

---

**From:** Boren, David L.  
**Sent:** Monday, October 25, 2010 11:28 AM  
**To:** Hall, Jim III  
**Subject:** Information

Dear Tripp,

I noticed in listening to the OSU football game that they have a way for alumni to give \$10 to their scholarship fund from a cell phone or email. I think it would be very good to send an email blast to all of our alumni doing the same thing. Maybe we should also consider advertising on our football radio broadcast like they do. Please contact our in-house web page people. (FYI - it was like the texting for the Haiti relief fund drive) I think we should do something like that to get our numbers up for US News on percentage of our alumni who are giving to the university everywhere. I would also expand any other ways we can with email, text, etc. which broadens our alumni giving base.

DLB

**To:** Feuerborn, Barry T. [btfeuerborn@ou.edu]  
**From:** Liu, Andree C.  
**Sent:** Tue 5/10/2016 10:41:23 AM  
**Subject:** RE: Data Request: US News Best Colleges Survey  
TrippMemo\_USnews.docx

Edited version

*Andree*

**From:** Feuerborn, Barry T.  
**Sent:** Tuesday, May 10, 2016 10:37 AM  
**To:** Liu, Andree C. <alliu@ou.edu>  
**Subject:** RE: Data Request: US News Best Colleges Survey

***Live On, University!***



***Barry Feuerborn '91***  
Associate Vice President  
**University of Oklahoma**  
**Development Operations &**  
**Corporate Relations**  
339 W. Boyd St. Room 133  
Norman OK, 73019  
Office: 405.325.7862  
Cell: 405.642.6074  
[www.ou.edu/corporaterelations](http://www.ou.edu/corporaterelations)

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**From:** Liu, Andree C.  
**Sent:** Tuesday, May 10, 2016 9:28 AM  
**To:** Feuerborn, Barry T. <btfeuerborn@ou.edu>  
**Subject:** FW: Data Request: US News Best Colleges Survey

Hi Barry, here is the email I am drafting for Tripp.

Hi Tripp,

Would you please review those numbers that I am going to provide OU Institutional Research for FY2015 US News.

Our undergraduate alumni number is down due to not all 2015 grads are completed entered. In addition, our Record team is cleaning up deceased records in our database.

The undergraduate donor count also dropped. I believe it is due to difficult economy in recent years.

With those counts, the percentage will drop from 18.52% to 16.66%.

Although our overall alumni participation rate dropped in the past few years due to difficult economy, our total alumni giving total is still going up (FY2014 – 62.2M and FY2015 – 77.7M). With our new investment in Alumni giving, I believe we will gain more support from our young alumni donors.

The survey deadline is 5/17 but Eugene needs this data to prepare the survey so I am hoping to provide him the figure as soon as we can.

Thank you.

*Andree*

**From:** Albin, Eugene J.  
**Sent:** Thursday, May 05, 2016 4:33 PM  
**To:** Liu, Andree C. <[allu@ou.edu](mailto:allu@ou.edu)>  
**Subject:** RE: Data Request: US News Best Colleges Survey

Andree,

I am working on this year's submission for the US News Survey and I'm hoping you can help me with this information again.

Number of undergraduate alumni of record in 2014-2015: 118,992  
Number of undergraduate alumni of record in 2013-2014 (provided for your reference): 128,505

Number of undergraduate alumni of record solicited at least once during the 2014-2015 year: 78,137  
Number of undergraduate alumni of record solicited at least once during the 2013-2014 year (provided for your reference): 87,850

Number of undergraduate alumni donors in 2014-2015: 19,827  
Number of undergraduate alumni donors in 2013-2014 (provided for your reference): 23,804

The deadline for this survey is May 17<sup>th</sup>, but I'll need a bit of time to compile and submit the data. Thank you so much for your assistance, and please let me know if you have any questions.

Eugene "Joey" Albin, MILS  
Institutional Research Analyst  
Institutional Research & Reporting  
University of Oklahoma  
Facebook  
Twitter

**From:** Liu, Andree C.  
**Sent:** Thursday, May 07, 2015 11:08 AM  
**To:** Albin, Eugene J.  
**Subject:** RE: Data Request: US News Best Colleges Survey

You are very welcome.  
Regards,

*Andree*

**From:** Albin, Eugene J.  
**Sent:** Wednesday, May 06, 2015 2:22 PM  
**To:** Liu, Andree C.  
**Subject:** RE: Data Request: US News Best Colleges Survey

Thank you so much for your help!

**Eugene Albin, MILS**  
Institutional Research Analyst  
Institutional Research & Reporting  
University of Oklahoma

**From:** Liu, Andree C.  
**Sent:** Wednesday, May 06, 2015 2:07 PM  
**To:** Albin, Eugene J.  
**Subject:** RE: Data Request: US News Best Colleges Survey

Hi Eugene,  
I just got those numbers back.  
Please see the new numbers in red below.  
Please do not hesitate to contact me if you have any question.

*Andree*

**From:** Albin, Eugene J.  
**Sent:** Wednesday, April 29, 2015 2:05 PM  
**To:** Lea, Deborah A.  
**Subject:** Data Request: US News Best Colleges Survey

Deborah,

I'm currently working on OU's submission for this year's US News Best Colleges survey. Last year, you helped us with some alumni/donor information. If you are still in the position to do so, I would very much appreciate your help again. If not, please recommend the best contact for this request.

Please provide numbers for the following items:

Number of undergraduate alumni of record in 2013-2014: 128,505  
Number of undergraduate alumni of record in 2012-2013 (provided for your reference): 127,303

Number of undergraduate alumni of record solicited at least once during the 2013-2014 year: 87,850

Number of undergraduate alumni of record solicited at least once during the 2012-2013 year (provided for your reference): 85,016

Number of undergraduate alumni donors in 2013-2014: 23,804  
Number of undergraduate alumni donors in 2012-2013 (provided for your reference): 22,546

This survey is due quite soon, so any expediency in fulfilling this request would be greatly appreciated. Thank you so much for your help, and please don't hesitate to contact me should any questions arise.

**Eugene Albin, MILS**  
Institutional Research Analyst  
Institutional Research & Reporting  
University of Oklahoma

**To: Nick Hathaway**  
**From: Tripp Hall**  
**Subject: Donor Count Reporting**  
**Date: May 10, 2016**

**Due to the difficult economy in recent years, our undergraduate donor count has dropped from 18.52% to 16.66%. We are being asked to report to U.S. News report. I want to give you and the President this information before we report the number.**

**Although our overall alumni participation rate dropped, our total alumni giving total has gone up due to the strong support of our closest alumni partners.**

**We have reorganized internally to maximize our efforts to increase alumni participation. We recognize that a robust donor pipeline is necessary to sustain the University of Oklahoma fundraising initiatives.**

**We need to respond to the Eugene Albin at the Institutional Research & Reporting for OU by May, 13.**

**Thank you.**

**To:** Hall, Jim III**Cc:** Feuerborn, Barry T.[bfeuerborn@ou.edu]  
**From:** Liu, Andree C.  
**Sent:** Fri 5/13/2016 5:25:35 PM  
**Subject:** Re: Data Request: US News Best Colleges Survey

Will do.  
Have a good weekend :)

Andree

On May 13, 2016, at 4:19 PM, Hall, Jim III <[tripp@ou.edu](mailto:tripp@ou.edu)> wrote:

I have not heard back from President Boren. Please hold tight. Tripp

Tripp Hall  
Vice President  
Office of Development  
University of Oklahoma

[tripp@ou.edu](mailto:tripp@ou.edu)  
Office: 405-325-1700  
Cell:405-642-1890

On May 13, 2016, at 4:14 PM, Liu, Andree C. <[ajliu@ou.edu](mailto:ajliu@ou.edu)> wrote:

Hi Tripp,  
Do we have greenlight to provide this data to Eugene Albin?  
Thank you.

*Andree*

**From:** Albin, Eugene J.  
**Sent:** Friday, May 13, 2016 3:25 PM  
**To:** Liu, Andree C. <[ajliu@ou.edu](mailto:ajliu@ou.edu)>  
**Subject:** RE: Data Request: US News Best Colleges Survey

Andree,

I just wanted to check on the status of these requested figures. I need to submit this survey no later than Tuesday, 5/17, and want to be sure I will have them before that deadline. Thank you for your assistance, and have a great weekend.

Eugene "Joey" Albin, MILS  
Institutional Research Analyst  
Institutional Research & Reporting  
University of Oklahoma  
Facebook  
Twitter

**From:** Liu, Andree C.  
**Sent:** Tuesday, May 10, 2016 11:42 AM  
**To:** Albin, Eugene J.  
**Subject:** RE: Data Request: US News Best Colleges Survey

Hi Eugene,



I just want to let you know that I will get those stats to you soon.

Kind regards,

*Andree*

**From:** Albin, Eugene J.  
**Sent:** Thursday, May 05, 2016 4:33 PM  
**To:** Liu, Andree C. <[aliu@ou.edu](mailto:aliu@ou.edu)>  
**Subject:** RE: Data Request: US News Best Colleges Survey

Andree,

I am working on this year's submission for the US News Survey and I'm hoping you can help me with this information again.

**Number of undergraduate alumni of record in 2014-2015:**  
**Number of undergraduate alumni of record in 2013-2014 (provided for your reference): 128,505**

**Number of undergraduate alumni of record solicited at least once during the 2014-2015 year:**  
**Number of undergraduate alumni of record solicited at least once during the 2013-2014 year (provided for your reference): 87,850**

**Number of undergraduate alumni donors in 2014-2015:**  
**Number of undergraduate alumni donors in 2013-2014 (provided for your reference): 23,804**

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Institutional Research & Reporting  
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This survey is due quite soon, so any expediency in fulfilling this request would be greatly appreciated. Thank you so much for your help, and please don't hesitate to contact me should any questions arise.

Eugene Albin, MILS  
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University of Oklahoma