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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

WAKE COUNTY, C.S.C.  
IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
10 CVS 10416

NORTH CAROLINA INSTITUTE FOR )  
CONSTITUTIONAL LAW, )  
 )  
Plaintiff, )

v. )

**ORDER**

STATE OF NORTH CAROLINA; NORTH )  
CAROLINA DEPARTMENT OF THE )  
SECRETARY OF STATE; and ELAINE F. )  
MARSHALL, North Carolina Secretary of )  
State, in her official capacity, )  
 )  
Defendants. )

This cause came on to be heard before the undersigned Judge Presiding on 12 November 2010 on Plaintiff's Motion for Judgment on the Pleadings pursuant to N.C. Gen. Stat. §1A-1, Rule 12(c) of the North Carolina Rules of Civil Procedure. Plaintiff was represented by Robert F. Orr and Jeanette K. Doran of the North Carolina Institute for Constitutional Law. Defendants were represented by Melissa H. Taylor and Brandon L. Truman of the North Carolina Department of Justice. The Court has considered the arguments of counsel at the hearing, the memoranda of law and all pleadings in this case.

The Court finds there are no genuine issues of material fact and that Plaintiff is entitled to judgment as a matter of law on the three claims for relief presented in the Verified Complaint and Petition for Declaratory Judgment. Facts as alleged in the Verified Complaint and admitted in either the Answer or at the hearing, and the Court's conclusion of law are as follows:

1) Beginning 27 May 2009, Plaintiff North Carolina Institute for Constitutional Law ("NCICL") sought public records of lobbying by or on behalf of Spirit AeroSystems Inc., ("Spirit Aero") the recipient of an economic development incentives package from the State of North Carolina. Upon learning that the Secretary of State had no lobbying registration records for SpiritAero, on 16 July 2009, Plaintiff filed a formal complaint of an apparent lobbying law violation. Thereafter, Plaintiff requested public records and information regarding the status of its formal complaint. Defendants refused to tell Plaintiff anything at all about its lobbying law violation complaint.

2) While Defendants have not responded to allegations about whether Plaintiff made such requests, Defendants did admit that they had not fulfilled the requests and that they relied on legal advice in so doing. By admitting they have not satisfied the records requests and that they relied on legal advice to do so, Defendants have implicitly admitted they received such records requests from Plaintiff. Consider *United States v. Hubbell*, 530 U.S. 27, 36, 120 S. Ct. 2037, 2043, 147 L. Ed. 2d 24, 36 (2000) (noting that "the act of producing documents in response to a subpoena . . . may implicitly communicate statements of fact" because "[b]y producing documents . . . the witness would admit that the papers existed, were in his possession or control, and were authentic" (internal quotations omitted)).

3) Defendants in paragraphs 11 and 12 of the Answer admitted that Plaintiff received no communication from Defendants regarding Plaintiff's complaint dated 16 July 2009 and that on or about 23 November 2009, Joal Broun, Lobbying Compliance Director of the Secretary of State's Office refused to provide any information to Plaintiff about the status of its complaint or any action taken by the Department in regard to it and has continued to refuse to provide any information to the Plaintiff. Plaintiff argued at the hearing on its Motion for Judgment on the

Pleadings that its complaint filed with the Secretary of State alleging a violation of the State's lobbying laws constitutes a public record and all procedural actions taken by the Secretary of State's office in addressing the complaint and the final disposition of the complaint constitute public records under the laws of this state and that no statutory exceptions applied.

4) Defendants argued to the contrary that the exception to the Public Records Law in N.C. Gen. Stat. § 120-600(c) precludes the release of the requested documents and information on the grounds that the same are considered "confidential records and may be released only by order of a court of competent jurisdiction."

5) Plaintiff further argued that the "confidential records" exception set forth in N.C. Gen. Stat. § 120C-600(c) applies to the investigatory records accumulated in the investigation of the complaint or systematic review and not to the procedural information requested by Plaintiff as to action taken or not taken in regard to Plaintiff's complaint of a lobbying law violation. In addition, Plaintiff contended at the hearing that if N.C. Gen. Stat. § 120C-600(c) did apply in such a way as to prevent Plaintiff, the press, and the public from determining what action or inaction the Secretary of State's office had taken in regard to lobbying law violations, the statute violated the provisions of the North Carolina Constitution in Article I, § 14, Freedom of the Press, and Article I, § 18, the Open Courts provision. Plaintiff contends that the interpretation advocated by Defendants would effectively prevent the press and the public from finding out whether lobbying law violations had taken place; whether punishment in the form of civil fines or referral for prosecution to the Wake County District Attorney had taken place; or whether complaints of lobbying law violations had been ignored and/or dismissed,

6) Defendants further argued that it was legislative intent to close proceedings and exempt all records from the public records laws including the procedural action taken or not taken in regard to complaints of lobbying law violations.

7) The Court determines that there are no material facts at issue; that the positions of the parties as to whether the requested material and information is available as public records and whether the public and the press have access to the proceedings and action taken or not taken by the Secretary of State's Office in regard to complaints of lobbying law violations is solely a question of law for this Court.

8) The Court therefore concludes as a matter of law:

a. The powers and duties of the Secretary of State in regard to violations and enforcement of the laws of this state applicable to lobbying are set forth in N.C. Gen. Stat. § 120C-600 and including in part the statutory responsibility to investigate complaints of violations of Articles 2, 4, and 8 of the lobbying laws of North Carolina as set forth in Chapter 120C of the General Statutes.

b. Pursuant to N.C. Gen. Stat. § 120C-600(c) complaints of violations of Articles 2, 4, and 8 of Chapter 120C, and "all other records accumulated in conjunction with the investigation of these complaints, and any records accumulated in the performance of a systematic review shall be considered confidential records and may be released only by order of a court of competent jurisdiction."

c. Plaintiff's complaint at issue in this case alleged violations of Articles 2 and 4 of Chapter 120C.

d. Pursuant to Chapter 132 of the General Statutes, the information sought by Plaintiff in regard to its complaint of lobbying law violations constitutes a public record as defined at N.C. Gen. Stat. § 132-1.

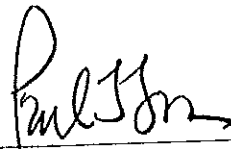
e. That the records and information sought by Plaintiff to wit, an explanation of what action or inaction Defendants took in response to Plaintiff's complaint of lobbying law violations, is not confidential records or confidential information so as to except that information from the Public Record Law or to permit Defendants to refuse Plaintiff full and complete access to that information in a timely and open manner.

f. That the interpretation and application of N.C. Gen. Stat. § 120C-600(c), by Defendants violates the public records laws and violates Article I, §§ 14 and 18 of the Constitution of North Carolina by excluding the press and public from its right to access and information concerning the enforcement and application of the laws of North Carolina pertaining to lobbying, violations of these laws resulting in potential civil fines or referral to the Wake County District Attorney for criminal prosecution.

WHEREFORE, IT IS ORDERED by the Court that:

- 1) Judgment on the Pleadings is entered in favor of Plaintiff.
- 2) Defendants are ordered to comply with Plaintiff's request for public records and public information relative to Plaintiff's complaint filed with the Secretary of State as to alleged lobbying law violations and to provide a complete explanation of what procedural actions have taken place in regard to any lobbying law violation including fines levied or referrals to the District Attorney of Wake County, arising out of the allegations made by Plaintiff.
- 3) That the cost of this action be taxed against Defendant.

This the 13 day of December 2010.



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Paul G. Gessner  
Judge Presiding

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