

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

NORTH CAROLINA INSTITUTE FOR)
CONSTITUTIONAL LAW,)

Plaintiff,)

v.)

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.)

**VERIFIED
COMPLAINT AND PETITION
FOR DECLARATORY JUDGMENT**

87
STATE OF NORTH CAROLINA
SUPERIOR COURT DIVISION
COUNTY OF WAKE

Plaintiff, by and through undersigned counsel, complaining of Defendants, alleges and

says:

INTRODUCTION

1. This action is brought pursuant to the Uniform Declaratory Judgment Act, N.C. Gen. Stat. § 1-253 to challenge Defendants' use of Article 6, Chapter 120C-600(c) of the North Carolina General Statutes to deny Plaintiff's request for records and information pursuant to the North Carolina public records statute at N.C. Gen. Stat. §132-1, *et seq*, and further to obtain an order compelling Defendants to comply with Plaintiff's request for public information and public records.

PARTIES

2. Plaintiff North Carolina Institute for Constitutional Law ("NCICL") is a nonprofit corporation incorporated in North Carolina and is authorized by the laws of North Carolina to

sue and to be sued. NCICL has its principal place of business in Wake County, North Carolina. The maintenance of this lawsuit is in furtherance of NCICL's purposes, which include enforcement of constitutional limitations on government, investigation of violations of state law and publishing pertinent information to the public through newsletters, reports and its website.

3. Defendant State of North Carolina is a general-purpose state government which is capable of being sued, and which is being sued, for unlawfully denying Plaintiff's public records requests and request for information pursuant to a complaint filed by Plaintiff pertaining to a lobbying law violation.

4. Defendant North Carolina Department of the Secretary of State is an agency and department of the State of North Carolina created by N.C. Gen. Stat. § 143A-19.

5. Defendant Elaine F. Marshall is sued in her official capacity as the North Carolina Secretary of State. Pursuant to N.C. Gen. Stat. § 143A-19, the Secretary of State is head of the Department of the Secretary of State. Pursuant to N.C. Gen. Stat. § 132-2, as head of the Department of Secretary of State, Defendant Marshall is the custodian of the public records of Defendant Department of Secretary of State. Pursuant to N.C. Gen. Stat. § 120C-603(a), the Secretary of State "may investigate complaints of violations of [lobbying laws] and shall report apparent violations [of lobbying laws] to the district attorney of the prosecutorial district defined in G.S. 7A-60 of which Wake County is a part...."

JURISDICTION AND VENUE

6. This action is brought pursuant to N.C. Gen. Stat. § 1-253, the Uniform Declaratory Judgment Act, for the purpose of determining the constitutionality of certain actions of the State of North Carolina and for proper application of pertinent statutory provisions. This Court has jurisdiction over the subject matter of this action pursuant to N.C. Gen. Stat. § 1-253, the Uniform Declaratory Judgment Act.

7. This Court has jurisdiction over the parties pursuant to N.C. Gen. Stat. § 1-75.4.

8. Venue is proper in this Court pursuant to N.C. Gen. Stat. § 1-82.

STATUTORY FRAMEWORK

9. The North Carolina Public Records Law (“the Public Records Law”), N.C. Gen. Stat. §§ 132-1 through 132-10, generally requires the release of public records upon request because:

The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of the State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. N.C. Gen. Stat. § 132-1(b).

10. Public records are defined at N.C. Gen. Stat. § 132-1(a) as:

all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

11. The Public Records Law requires:

Every custodian of public records shall permit any record in the custodian’s custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law.

N.C. Gen. Stat. § 132-6(a).

12. The Public Records Law also provides a remedy for those whose records requests have been denied:

Any person who is denied . . . copies of public records . . . may apply . . . for a [court] order compelling disclosure or copying, and the court shall have jurisdiction to issue such orders. Actions brought pursuant to this section shall set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

N.C. Gen. Stat. § 132-9(a).

13. The North Carolina Lobbying Act, N.C. Gen. Stat. § 120C-1, *et seq.*, regulates the activities and conduct of lobbying efforts in North Carolina. "Lobbying" is defined as any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that designated individual's immediate family.

b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that designated individual's immediate family with the intention of influencing current or future legislative or executive action, or both.

N.C. Gen. Stat. § 120C-100(a)(10).

14. A "designated individual" is a "legislator, legislative employee, or public servant."

N.C. Gen. Stat. § 120C-(a)(2).

15. Among the Lobbying Act's provisions are various registration requirements which lobbyists and principals must satisfy, as well as requirements that the Secretary of State make such registrations available in electronic, searchable format. N.C. Gen. Stat. § 120C-200 through 220.

16. The Lobbying Act codifies the enforcement procedure to be employed for alleged violations of the act:

The [State Ethics Commission] or the Secretary of State, as appropriate, may investigate complaints of violations of this Chapter and shall report apparent violations of this Chapter to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person or governmental unit who violates any provisions of this Chapter.

N.C. Gen. Stat. § 120C-603.

17. The Lobbying Act also authorizes the Secretary of State to impose civil punishment:

In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for a violation of any provision of Articles 2, 4, or 8 of this Chapter up to five thousand (\$5,000) per violation.

N.C. Gen. Stat. § 120C-602.

18. N.C. Gen. Stat. § 120C-600 enumerates the “powers and duties” of the Secretary of State with regard to enforcement of the Lobbying Act and, upon information a belief, Defendants contend that certain documents are shielded from public disclosure, relying in pertinent part on the following:

Complaints of violations of Articles 2, 4, and 8 of this Chapter, 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.

N.C. Gen. Stat. § 120C-600(c).

19. N.C. Gen. Stat. § 132-6(c) states, “[n]o request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information.”

FACTUAL BACKGROUND

20. On or about 14 May 2008, the Office of the Governor of North Carolina issued a press release announcing the commitment of Spirit AeroSystems, Inc. (“Spirit Aero”), to locate a manufacturing plant at the North Carolina Global TransPark in Kinston, North Carolina. Upon information and belief, Spirit Aero extracted from government officials promises for millions of dollars in public assistance in the way of so-called economic development incentives plus a commitment for a facility worth approximately \$100 million dollars. The \$100 million facility was to be paid for with primarily public money distributed from the Golden Leaf Foundation and

laundered through the Global TransPark for the benefit of Spirit Aero. A copy of the press release is attached hereto as Exhibit A and incorporated by reference.

21. Pursuant to the Public Records Law, on or about 27 May 2009, Plaintiff requested copies of all documents relating to lobbyist activity for or on behalf of Spirit Aero in connection with the solicitation and negotiation of economic development incentive activity with North Carolina government officials and office holders. This request was submitted to Kathryn Hunter, Lobbying Compliance Division, North Carolina Department of the Secretary of State. A copy of this request is attached hereto as Exhibit B and incorporated by reference.

22. On or about 1 June 2009, Plaintiff submitted via email its previous records request to Joal Broun, Lobbying Compliance Division Director, North Carolina Department of the Secretary of State.

23. The following day, on or about 2 June 2009, Broun advised Plaintiff via email: "The Secretary of State has no lobbying filings related to Spirit Aerosystems."

24. On or about 3 June 2009, Plaintiff confirmed via email with Broun that "the Secretary of State has no filings related to Spirit Aerosystems, whether protected as an economic development initiative or not." In the same email, Plaintiff asked Broun whether the Lobbying Compliance Division takes action "if a principal or lobbyist fails to register lobbying activity."

25. On or about 9 June 2009, Broun advised Plaintiff that the Lobbying Compliance Division opens an investigation pursuant to Article 6 of the Lobbying Act in the event of a complaint that a principal or lobbyist fails to register.

26. Copies of the emails described at ¶¶ 21-25 are attached hereto as Exhibit C and incorporated by reference.

27. On or about 16 July 2009, Plaintiff by and through its executive director filed a formal complaint with the Department of the Secretary of State, pursuant to Article 6, Chapter 120 of the General Statutes. The complaint was addressed to Defendant Marshall and outlined alleged violations of the Lobbying Act.

28. Plaintiff's complaint included email correspondence and other documents obtained by Plaintiff demonstrating that, over the course of a year and a half, Mike Mullis, president of J.M. Mullis, Inc., a project location firm, attempted to influence then Governor Michael F. Easley, then Secretary of Commerce James T. Fain, and other officials in the Office of the Governor and the Department of Commerce to award economic incentives to Spirit Aero.

29. Plaintiff's complaint urged Defendant Marshall to investigate its complaint and take all necessary action to remedy the violations.

30. Over the course of several months, Plaintiff received no communication from Defendants regarding its complaint dated 16 July 2009. As a result, Plaintiff requested a report of the status of its complaint.

31. On or about 23 November 2009, Broun, on behalf of the Department of the Secretary of State refused to provide any information to Plaintiff about the status of its complaint or any action taken by the Department in regard to it. Broun maintained that N.C. Gen. Stat. § 120C-600(c) precluded 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."

32. On or about 10 March 2010, Plaintiff again requested information pertaining to two matters. First, Plaintiff renewed its May 2009 request for copies of documents relating to lobbyist activity for or on behalf of Spirit Aero in connection with the solicitation and

negotiation of economic development incentive activity with North Carolina government officials and office holders. Second, Plaintiff requested “any and all documents pertaining to the action or inaction taken by [the Department of the Secretary of State] on [NCICL’s] complaint.” Plaintiff explicitly stated its request was not for criminal investigations records, rather it requested “the release of information as to what action the Secretary of State’s office took in regard to [Plaintiff’s complaint].” A copy of this letter is attached hereto as Exhibit D and incorporated by reference.

33. By letter dated 24 March 2010, Broun on behalf of the Defendants stated the Secretary of State “still has no lobbying registration or expense report filings related to Spirit AeroSystems.” The letter again denied a status report or other documents related to Plaintiff’s lobbying violation complaint filed in July 2009, stating the Attorney General’s Office advised “the Department that we could not confirm the existence, the status, or the conclusion of an investigation pursuant to G.S. 120C-600(c).” A copy of the letter is attached hereto as Exhibit E and incorporated by reference.

34. Upon information and belief, Defendants’ refusal to fulfill Plaintiff’s public records request on the basis of N.C. Gen. Stat. § 120C-600(c) is based on an advisory letter dated 16 June 2009 from the North Carolina Department of Justice as authored by Assistant Attorney General Melissa H. Taylor and addressed to Joal Broun as Director of the Lobbying Compliance Division of the Department of the Secretary of State. A copy of this letter is attached hereto as Exhibit F and incorporated by reference.

35. The Attorney General advisory letter referenced above states in pertinent part:

Your first question is whether the Department [of the Secretary of State] can disclose documents obtained pursuant to complaint investigations or systematic reviews without obtaining a court order. If those documents resulted from a review initiated pursuant to N.C. Gen. Stat. § 120C-600(a) or a complaint of violation of Articles 2, 4, and 8, those

documents are confidential pursuant to N.C. Gen. Stat. § 120-600(c) and are not to be released by the Department [of the Secretary of State] except by court order.

36. The Attorney General advisory letter referenced above addressed at least six questions asked by the Department of the Secretary of State. The advisory letter does not reference Plaintiff's records requests and, in fact, predates Plaintiff's records requests in connection with SpiritAero.

37. As of the date of the filing of this action, Plaintiff has received no documents satisfying its requests for records related to Plaintiff's complaint of Lobbying Act violations.

FIRST CLAIM FOR RELIEF
Violation of the Public Records Act

38. Plaintiffs incorporate by reference and reallege fully herein the contents of the foregoing paragraphs 1 through 37.

39. Defendants have failed to satisfy Plaintiff's public records requests as outlined in Plaintiff's letter dated 10 March 2010.

40. The records requested by Plaintiff are public records as defined by N.C. Gen. Stat. § 132-1.

41. Defendants have no legal excuse for denying Plaintiff's public records request.

42. The interpretation relied upon by Defendants to refuse to inform Plaintiff of the status of Plaintiff's complaint of a lobbying law violation and as to what action, if any, was taken by the Secretary of State's office is incorrect, inaccurate and serves only to hide from Plaintiffs, the public, and the press what official action, pursuant to the laws of North Carolina, has been taken by the Secretary of State.

43. Defendants have misinterpreted and misapplied the statutes of North Carolina, in particular, N.C. Gen. Stat. § 120C-601(c), by claiming that they are prohibited from disclosing

what action or actions were taken in response to the formal lobbying law violation complaint filed by Plaintiff.

44. Defendants are in violation of the North Carolina Public Records Law, N.C. Gen. Stat. § 132-1, *et seq.*

SECOND CLAIM FOR RELIEF
Violation of the Freedom of the Press

45. Plaintiff incorporates by reference and realleges fully herein the contents of the foregoing paragraphs 1 through 44.

46. Defendants have violated Article I, sec. 14 of the North Carolina Constitution which states: "Freedom of speech and of the press are two great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse."

47. Defendants' misinterpretation and misapplication of N.C. Gen. Stat. § 120C-601(c) and refusal to disclose what action was taken in regard to Plaintiff's lobbying law violation complaint constitutes a restraint on the press in that said refusal to disclose what action was taken effectively precludes the press in all its iterations from reporting to the public on the actions of government officials and those seeking to influence government action and what actions government officials have taken or not taken as to violations of the lobbying laws of this State.

48. As a consequence of Defendants refusal to disclose what action was taken in regard to Plaintiff's lobbying law violation complaint, Plaintiff's ability to prepare articles for publication in weekly and monthly newsletters, reports and website articles has been impaired in that Plaintiff cannot inform its readership of what action was taken in response to Plaintiff's lobbying law violation complaint, nor can Plaintiff inform its readership of the status of enforcement of North Carolina's lobbying laws with regard to SpiritAero and other similar lobbying activities.

THIRD CLAIM FOR RELIEF
Violation of Constitutional Mandate of Open Courts

49. Plaintiff incorporates by reference and realleges fully herein the contents of the foregoing paragraphs 1 through 48.

50. Defendants have violated Article I, sec. 18 of the North Carolina Constitution, which states: "All courts shall be open . . ."

51. Defendants' misinterpretation and misapplication of N.C. Gen. Stat. § 120C-601(c) and refusal to disclose what action was taken in regard to Plaintiff's lobbying law violation complaint effectively closes court proceedings to Plaintiff, the public and the press by keeping hidden whether the complaint at issue was forwarded to the district attorney of Wake County pursuant to N.C. Gen. Stat. § 120C- 603(a) and whether fines were imposed by the Secretary of State pursuant to N.C. Gen. Stat. § 120C-602.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays:

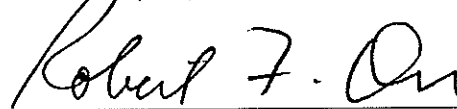
- A. That this matter be accorded priority and set down for hearing as immediately as possible, pursuant to N.C. Gen. Stat. § 132-9(a);
- B. For an order, pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, that the records requested by Plaintiff are public records as defined by N.C. Gen. Stat. § 132-1;

- C. For an order declaring that the opinion stated in the 16 June 2009 Attorney General advisory opinion does not prohibit Defendants from providing Plaintiff with copies of the records for which Plaintiff has submitted requests;
- D. For an order, pursuant to N.C. Gen. Stat. § 132-9(a) requiring Defendants to provide Plaintiff with copies of the records for which Plaintiff has submitted requests;
- E. For an order requiring the Secretary of State to comply with Plaintiff's request for public information and public records;
- F. For an order pursuant to N.C. Gen. Stat. § 132-9(c), awarding Plaintiff reasonable attorneys fees and/or reimbursement of costs incurred by Plaintiff in prosecuting this matter;
- G. That costs of this action be taxed against Defendants; and
- H. For such other and further relief as the court shall deem necessary and proper.

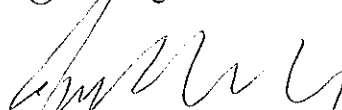
Dated: This the 21st day of June 2010.

Respectfully Submitted,

NORTH CAROLINA INSTITUTE FOR
CONSTITUTIONAL LAW
333 E. Six Forks Rd. Suite 180
Raleigh, NC 27609
Telephone: (919) 838-5313
Facsimile (919) 838-5316



Robert F. Orr (N.C. Bar No. 6798)
orr@ncicl.org

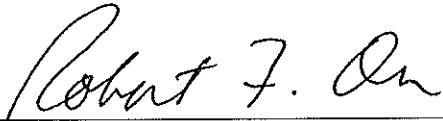


Jeanette K. Doran (N.C. Bar No. 29127)
doran@ncicl.org

VERIFICATION

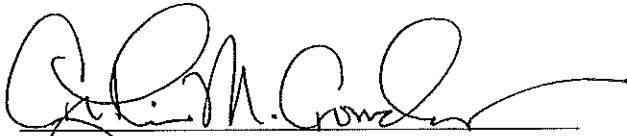
Wake County, North Carolina

I, Robert F. Orr, having been duly sworn, depose and state that I have read the foregoing Verified Complaint and Petition for Declaratory Judgment, and that the information stated therein as factual is true, and those factual matters which are stated upon information and belief are believed to be true.

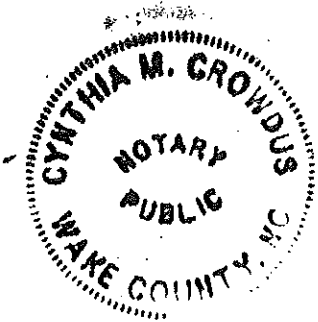


Robert F. Orr

Subscribed, sworn to and acknowledged before me this the 21st day of June, 2010.



Cynthia M. Crowds, Notary Public
My commission expires on February 4, 2014.



Michael F. Easley
Governor



State of North Carolina
Office of the Governor

For Release: IMMEDIATE
Date: May 14, 2008

Contact: Emma Lipscomb
Phone: 919/ 733-5612

GOV. EASLEY ANNOUNCES 1,000 JOBS AT GLOBAL TRANSPARK
State Grants Help Spirit AeroSystems Locate in Lenoir County

RALEIGH – Gov. Mike Easley announced today that Spirit AeroSystems Inc., the world’s largest independent supplier of commercial airplane assemblies and components, will open a manufacturing plant at the N.C. Global TransPark in Kinston. Plans call for investment of more than \$570.5 million and the creation of 1,031 jobs during the next six years. State grants from the One North Carolina Fund and Job Development Investment Grant program and a grant from the non-profit Golden LEAF Foundation to the Global TransPark Authority helped make the project possible.

“The Global TransPark was built to help this region make the transition from a tobacco-dependent economy to one that attracts knowledge-based, high-tech industries,” said Easley. “Today’s announcement not only shows that eastern North Carolina can successfully compete in today’s global marketplace, but that North Carolina continues to be a leader in the aerospace industry more than 100 years after the Wright Brothers made their historic first flight at Kitty Hawk. As we can continue to provide the skilled workforce, this is likely just the beginning of Spirit’s potential for bringing significant jobs and investment.”

Wichita, Kan.-based Spirit AeroSystems (NYSE:SPR), whose customers include Airbus, Boeing, Gulfstream, Cessna and Hawker Beechcraft among others, specializes in manufacturing composites; fuselages; pylons (which hold the engine to the wing), nacelles (which are engine components) and wing structures. Spirit’s long-term plans call for the Global TransPark facility to serve as a composite manufacturing Center of Excellence, using advanced technology in its production processes. Spirit employs 14,000 workers in five locations in the United States and Europe, including approximately 10,000 at the company’s headquarters in Wichita.

Spirit today announced it has signed an agreement with Airbus to design and produce a major composite fuselage structure for the A350 XWB (Xtra Wide-Body) program. Spirit will design and manufacture the Section 15 center fuselage frame section, a composite structure that will be approximately 65 feet long, 20 feet wide and weigh nearly 9,000 pounds. Accommodating this and other new work packages led to Spirit’s announced plans to expand its operations with a new facility in North Carolina.

While wages for the new jobs will vary by job function and responsibilities, the average wage will be about \$48,000 a year not including benefits. This is more than the Lenoir County average of \$27,042.

“The State of North Carolina met our requirements for financial incentives and this location offers a strong industrial base, a runway and port access, a growing labor force and an excellent technical training system,” said Spirit President and CEO Jeff Turner. “Additionally, the Global TransPark facility provided what we were looking for in a site.”

Governor’s Press Office
State Capitol, Raleigh, NC 27603-8001
(919) 733-5612 - Toll Free 1-800-662-7005
FAX (919) 733-5166



Easley said this project was especially rewarding because of the close collaboration among state, local, public and private entities. "From the General Assembly, which provides money for incentives such as the One North Carolina Fund, and the state Community College system to the non-profit Golden LEAF Foundation and Global TransPark Authority, North Carolina economic development partners have come together to make this exceptional project a reality," he said.

Spirit AeroSystems has been awarded a \$5 million grant from the state's One North Carolina Fund, which helps the state with economic recruitment and expansion by providing financial assistance through local governments to attract business projects that will stimulate economic activity and create new jobs. Through the use of this Fund, more than 30,000 jobs and \$4.5 billion in investment have been created since 2001.

In addition, the state's Economic Investment Committee voted today to award a Job Development Investment Grant to Spirit. This is the 77th JDIG award announced since Easley and the General Assembly started the program in 2002, and the seventh awarded this year. Under terms of the 12-year agreement, the N.C. Department of Commerce estimates the project will:

- Generate a cumulative gross product value of \$2.94 billion
- Produce a positive, cumulative net state revenue impact of \$39.2 million.

For each year in which the company meets the required performance targets, the state will provide a grant equal to 75 percent of the state personal income withholding taxes derived from the creation of new jobs. Should the company create the jobs called for under the agreement and sustain them for 12 years, the agreement could yield as much as \$20.23 million in maximum benefits for Spirit AeroSystems.

Job Development Investment Grants are awarded only to new and expanding businesses and industrial projects whose benefits exceed the costs to the state and which would not be undertaken in North Carolina without the grant. Since the first grant was awarded in 2003, the program has been responsible for creating more than 28,000 jobs and \$4 billion in investment in North Carolina.

The Golden LEAF Foundation Board also voted today to provide a \$100 million grant to the GTP Authority to construct the initial buildings for the new Spirit facility. The company, in turn, plans to invest \$100 million to build additional manufacturing facilities in phases during the next six years. The authority will own and lease the facilities to Spirit for a nominal amount. The agreement calls for the company's rent payments to increase if Spirit fails to reach the targeted investment and job creation numbers.

Golden LEAF Chairman Tommy Bunn said the foundation's board was impressed by Spirit's plans for its Global TransPark operations, which he described as an "ideal match" between the aerospace company's business strategy and the mission of the TransPark to be an economic development engine for the region.

Other partners who assisted with this announcement include: the N.C. Department of Commerce, N.C. Community College System, N.C. Department of Transportation, Global TransPark Foundation, N.C. State University, Lenoir County and City of Kinston.

For more information about Spirit AeroSystems, visit www.spiritaero.com.

North Carolina Secretary of State's Office
Lobbying Compliance Division
2 Salisbury Street
Raleigh, NC 27602-2903

27 May 2009

RECORDS REQUEST

To Kathryn Hunter:

Pursuant to the state Open Records Law, N.C. Gen. Stat. §132-1 to 132-10, I am writing to request access to and copies of all documents relating to lobbyist activity for and on behalf of Spirit Aerosystems.

N.C. Gen. Stat. §120C-101(b) further provides that confidential information related to economic development incentives "shall remain confidential until the State, a unit of local government, or the business has announced a commitment by the business to expand or locate a specific project in this State... and the business has communicated that commitment or decision to the State or local government agency involved in the project."

Attached to this Records Request is a copy of the May 14, 2008, press release issued by the Office of the Governor announcing the commitment of Spirit Aerosystems to locate a manufacturing plant at the N.C. Global TransPark in Kinston, NC.

Please take any steps that you believe necessary to disclose this information at the present time. I agree to pay any reasonable duplication fees for the processing of this request. Please provide a receipt indicating the charges for each document.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. Also, please provide all segregable portions of otherwise exempt material.

Thank you for your assistance.

Sincerely,

Dan Cowan

NC Institute for Constitutional Law
333 E. Six Forks Road, Suite 180
Raleigh, NC 27609
(919) 838-5313



From: Cowan <Cowan@ncicl.org>
To: "jbroun@sosnc.com" <jbroun@sosnc.com>
Date: 6/1/2009 2:03 PM
Subject: Public Records Request
Attachments: Lobbying Compliance Division Records Request.doc; SpiritPressRelease.pdf

Ms. Broun,

As we just discussed on the phone, here is a copy of our Public Records request along with a copy of the press release from the Governor's Office announcing the project with Spirit Aerosystems. Thank you for your assistance.

Regards,

Dan

--
Dan Cowan
NC Institute for Constitutional Law
cowan@ncicl.org<mailto:cowan@ncicl.org>
(919) 838-5313



From: Cowan <Cowan@ncicl.org>
To: Joal Broun <jbroun@sosnc.com>
Date: 6/9/2009 2:40 PM
Subject: RE: Public Records Request

Thanks Ms. Broun. That is all the questions I have for now. I will let you know if I have more.

Best,

Dan

-----Original Message-----

From: Joal Broun [mailto:jbroun@sosnc.com]
Sent: Tuesday, June 09, 2009 2:27 PM
To: Cowan
Subject: RE: Public Records Request

Dear Mr. Cowan,

If there is a complaint that a principal or lobbyist fails to register, the Lobbying Compliance Division opens an investigation and investigates pursuant to Article 6 of the Lobbying Act.

Joal H. Broun
Lobbying Compliance Division Director
N.C. Department of the Secretary of State
P.O. Box 29622
Raleigh, N.C. 27626-0622
(919) 807-2172

Email to and from me, in conjunction with the transaction of public business, is subject to N.C. Public Records Law and may be disclosed to third parties.

>>> Cowan <Cowan@ncicl.org> 6/9/2009 1:22 PM >>>
Ms. Broun,

Thank you for responding so quickly to my inquiry. Just to be certain, the Secretary of State has no lobbying filings related to Spirit Aerosystems, whether protected as an economic development initiative or not. Is that correct?

Also, if a principal or lobbyist fails to register lobbying activity, does the Lobbying Compliance Division take action against those individuals?

Thank so much,

Dan

-----Original Message-----

From: Joal Broun [mailto:jbroun@sosnc.com]
Sent: Tuesday, June 02, 2009 11:37 AM
To: Cowan
Subject: Re: Public Records Request

Dear Mr. Cowan,

The Secretary of State has no lobbying filings related to Spirit Aerosystems. If you have any additional

questions, do not hesitate to give me a call at my direct number of (919) 807-2172. I will be out of the office this afternoon, but if you speak with the office assistant, she can contact me.

Joal H. Broun
Lobbying Compliance Division Director
N.C. Department of the Secretary of State
P.O. Box 29622
Raleigh, N.C. 27626-0622
(919) 807-2172

Email to and from me, in conjunction with the transaction of public business, is subject to N.C. Public Records Law and may be disclosed to third parties.

>>> Cowan <Cowan@ncicl.org> 6/1/2009 2:01 PM >>>
Ms. Broun,

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Regards,

Dan

--
Dan Cowan
NC Institute for Constitutional Law
cowan@ncicl.org<mailto:cowan@ncicl.org>
(919) 838-5313

From: Cowan <Cowan@ncicl.org>
To: Joal Broun <jbroun@sosnc.com>
Date: 6/3/2009 10:16 AM
Subject: RE: Public Records Request

Ms. Broun,

Thank you for responding so quickly to my inquiry. Just to be certain, the Secretary of State has no lobbying filings related to Spirit Aerosystems, whether protected as an economic development initiative or not. Is that correct?

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Thank so much,

Dan

-----Original Message-----

From: Joal Broun [mailto:jbroun@sosnc.com]
Sent: Tuesday, June 02, 2009 11:37 AM
To: Cowan
Subject: Re: Public Records Request

Dear Mr. Cowan,

The Secretary of State has no lobbying filings related to Spirit Aerosystems. If you have any additional questions, do not hesitate to give me a call at my direct number of (919) 807-2172. I will be out of the office this afternoon, but if you speak with the office assistant, she can contact me.

Joal H. Broun
Lobbying Compliance Division Director
N.C. Department of the Secretary of State
P.O. Box 29622
Raleigh, N.C. 27626-0622
(919) 807-2172

Email to and from me, in conjunction with the transaction of public business, is subject to N.C. Public Records Law and may be disclosed to third parties.

>>> Cowan <Cowan@ncicl.org> 6/1/2009 2:01 PM >>>

Ms. Broun,

As we just discussed on the phone, here is a copy of our Public Records request along with a copy of the press release from the Governor's Office announcing the project with Spirit Aerosystems. Thank you for your assistance.

Regards,

Dan

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Dan Cowan

NC Institute for Constitutional Law
cowan@ncicl.org <mailto:cowan@ncicl.org>
(919) 838-5313

NC INSTITUTE for
CONSTITUTIONAL LAW

Ms. Kathryn Hunter
North Carolina Secretary of State's Office
Lobbying Compliance Division
2 Salisbury Street
Raleigh, NC 27602-2903

10 March 2010

Dear Ms. Hunter:

By this letter, we again request information pertaining to the two matters referenced below. We ask that you reduce your responses to this request to writing within ten (10) business days.

First, on 27 May 2009, pursuant to the North Carolina Public Records statute at N.C. Gen. Stat. § 132-1 to 132-10, we requested access to and copies of all documents relating to lobbyist activity for and on behalf of Spirit Aero in connection with the solicitation and negotiation of economic development incentive activity with North Carolina government officials and office holders.

In connection with that request, I note that N.C. Gen. Stat. § 132-1.11 states that any agency of North Carolina government or its subdivisions may withhold public records related to the proposed expansion or location of specific business or industrial projects. However, the statutes provide that when the "the State, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project" the State or its subdivisions may not withhold public records of these activities, but "shall disclose as soon as practicable, and within 25 business days" any requested public records not otherwise made confidential by law.

We attach again for your reference a copy of the May 14, 2008, press release issued by the Office of the Governor announcing the commitment of Spirit Aero to locate a manufacturing plant at the N.C. Global TransPark in Kinston, North Carolina. As part of this announcement Spirit Aero received commitments for millions of dollars in public assistance in the way of incentives plus a \$100 million facility for the company paid for primarily with public funds provided by the Golden Leaf Foundation and "laundered" through the Global TransPark for the benefit of Spirit Aero. Someone on behalf of Spirit Aero secured these financial commitments by lobbying government officials and securing these public funds for the use and benefit of Spirit Aero. The information we received from your office indicated that no one had registered as a lobbyist for Spirit Aero during the time frame in question or in conjunction with this project.

Second, in July of 2009, the North Carolina Institute for Constitutional Law by and through the undersigned as Executive Director filed a formal complaint regarding alleged violations of Articles 2 and 4 of Chapter 120C of the North Carolina General Statutes which regulates lobbying activity. That complaint directly alleged that the lobbying laws of the state would appear to have been violated by

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the party or parties securing the financial incentives referenced above on behalf of Spirit Aero without complying with the lobbying laws. I have attached a copy of that complaint.

Over the course of several months, we received no information indicating what action your office had taken in respect to our complaint. When ultimately asked for a report on the status of that request, your office's investigator as well as legal counsel, Joel Broun, refused to provide any information to us about the status of the complaint or any action taken by your office in regard to our complaint. We again request pursuant to the Public Records laws of this state for any and all documents pertaining to the action or inaction taken by your office on our complaint.

Your office indicated that pursuant to N.C. Gen. Stat. § 132-1.4 records pertaining to a criminal investigation were not considered public records and thus your office could not comply with our request. Let me be perfectly clear. Our request was not for the disclosure or release to us of criminal investigation records. Our request then as now, is for the release of information as what action the Secretary of State's office took in regard to our complaint. Our complaint, which was filed over seven months ago, should either have been reviewed then closed with no action taken or investigated and appropriate action taken. N.C. Gen. Stat. Sec. 120C-603 states that either the Commission or the Secretary of State...shall report violations of this Chapter and report apparent violations of this Chapter to the district attorney ..." for Wake County who shall prosecute any person who violates this chapter. Your refusal to adequately answer our request for information about what action was taken or not taken and to further fail to explain your action or inaction or to produce public records of that action taken or why no action was taken, constitutes a violation of the Public Records laws.

The complaint raises a valid legal question as whether actions taken by representatives of businesses seeking to secure substantial sums of public money for private use may avoid registering as lobbyists and disclosing their principal and expenditures. Your office has both a legal and ethical responsibility to answer that question specifically in the context of the complaint filed by us. Further attempts to stonewall this matter will simply not be tolerated and litigation will by necessity follow if no adequate response is forthcoming.

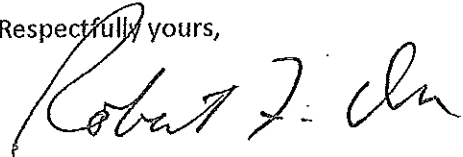
NCICL agrees to pay any reasonable duplication fees for the processing of this request. Please provide a receipt indicating the charges for each document. We note for your consideration N.C. Gen. Stat. § 132-6(c), which states "[n]o request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information."

If our requests are denied in whole or part, please justify all deletions or nonresponses by reference to specific exemptions of the Public Records laws or other statutory references. Also, please provide all segregable portions of otherwise exempt material. Failure to properly satisfy our request within ten (10) days may well require us to file suit to protect the rights of the public and enforce the statutory obligations of public agencies.

I note in closing that the Public Records law observes the following: "the public records and public information compiled by the agencies of North Carolina Government or its subdivisions are the property of the people." Furthermore, the lobbying laws of this state fully require, in our opinion, the registration and disclosure of the activities set forth in our complaint. Your compliance with both the spirit and letter of the law is anticipated.

Thank you for your assistance.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Robert F. Orr". The signature is written in a cursive style with a large initial "R".

Robert F. Orr

North Carolina Institute for Constitutional Law

cc: Elaine Marshall, North Carolina Secretary of State
Reginald Watkins, North Carolina Department of Justice
Joel Broun, Legal Counsel, North Carolina Secretary of State



*State of North Carolina
Department of the Secretary of State*

ELAINE F. MARSHALL
SECRETARY OF STATE

Joal H. Broun
Lobbying Compliance Director

March 24, 2010

VIA FACSIMILE & REGULAR MAIL

Robert F. Orr
North Carolina Institute for Constitutional Law
Suite 180, Six Forks Place I
333 E. Six Forks Road
Raleigh, N.C. 27609

RE: Public Records Request

Dear Mr. Orr,

I am writing in response to the letter you sent dated March 10, 2010. First, your letter raises two issues regarding a Public Requests Request presented by Don Cowan on behalf of the N.C. Institute for Constitutional Law (hereinafter "NCIC") on June 1, 2009. Second, you resubmitted in your letter of March 10, 2010 a request for a status report that you sought in November of 2009.

We are puzzled by your resubmission of the June 1st 2009 public records request since, as you will recall, we responded to the June 1st Public Records Request on June 2, 2009, one day after the request was made. In addition, on that day, we indicated that the Secretary of State has no lobbying principal registration or expense report filings related to Spirit AeroSystems. While we are somewhat baffled by your new inquiry, the Secretary of State still has no lobbying registration or expense report filings related to Spirit AeroSystems.

On June 9, 2009, Mr. Cowan asked what occurs after a non-registration complaint is filed with our office. We responded that "If there is a complaint that a principal or lobbyist fails to register, the Lobbying Compliance Division opens an investigation and

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(919) 807-2215



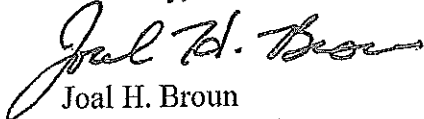
investigates pursuant to Article 6 of the Lobbying Act.” We have enclosed the email responses of June 2nd, 3rd, and 9th to Mr. Cowan.

Concerning your resubmission of your request for a status report, as you may recall in our telephone conversation on November 23, 2009, I told you that G.S. §120C-600(c) governs your status inquiry. (See attached.) During our conversation, I also indicated to you that we had received advice from our legal counsel at the Attorney General’s Office that the Department could not confirm the existence, the status, or the conclusion of an investigation pursuant to G.S. §120C-600(c). We have also been apprized that the relevant legislative staff holds this same interpretation of that statute as well.

Furthermore, on November 24, 2009, I called you and provided you Assistant Attorney General Melissa Taylor’s name and telephone number at the Attorney General’s office, concerning your questions of November 23, 2009 about the legal advice provided us by the Attorney General’s office.

If you have any additional questions, do not hesitate to contact me at 919-807-2172 or the email address of jbroun@sosnc.com.

Sincerely,



Joal H. Broun

Enclosures: (4)

Attachment

G.S. §120C-600(c).

Complaints of violations of Articles 2, 4, and 8 of this Chapter, 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.



State of North Carolina

Department of Justice
PO Box 629
Raleigh, North Carolina
27602

ROY COOPER
ATTORNEY GENERAL

Reply to: MELISSA H. TAYLOR
INSURANCE SECTION
(919) 716-6610
FAX: (919) 716-6757

June 16, 2009

Ms. Joal H. Broun
Director, Lobbying Compliance Division
NC Department of the Secretary of State
PO Box 29622
Raleigh, NC 27626-0622

Advisory Letter - Confidentiality of Lobbying Report Investigations under NC
General Statutes 120C-600(c)

Dear Ms. Broun:

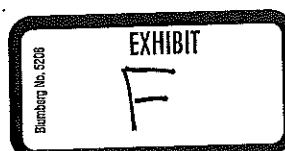
This letter is in response to your letter dated March 31, 2009, our discussion on April 20, 2009, and your letter dated April 29, 2009, requesting advice regarding the amount and type of file information the North Carolina Department of the Secretary of State (hereinafter "the Department") may disclose during Lobbying Division complaint investigations and/or systematic reviews and after the completion of such investigations and reviews. You inquired as to the scope of the confidentiality of documents accumulated pursuant to investigations and systematic reviews. You further inquired whether documents generated by the Department itself that contain or reflect confidential information from said documents received pursuant to an investigation or review are considered confidential under N.C. Gen. Stat. § 120C-600(c).

N.C. Gen. Stat. § 120C-600(a)(2008) states:

The Secretary of State shall perform systematic reviews of reports required to be filed under Articles 4 and 8 of this Chapter on a regular basis to assure complete and timely disclosure of reportable expenditures.

N.C. Gen. Stat. § 120C-600(c)(2008) states:

Complaints of violations of Articles 2, 4, and 8 of this Chapter, all other records accumulated in conjunction with the investigation of these complaints, and any



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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.

N.C. Gen. Stat. § 120C-600(c) provides that all records accumulated in conjunction with an investigation or systematic review under 120C-600(a) are considered confidential. Therefore, documents accumulated in conjunction with investigations or systematic reviews are confidential unless the requested records are ordered released by a court of competent jurisdiction.

Your first question is whether the Department can disclose documents obtained pursuant to complaint investigations or systematic reviews without obtaining a court order. If those documents resulted from a review initiated pursuant to N.C. Gen. Stat. § 120C-600(a) or a complaint of violation of Articles 2, 4, and 8, those documents are confidential pursuant to N.C. Gen. Stat. § 120C-600(c) and are not to be released by the Department except by court order. N.C. Gen. Stat. § 120C-600(c) does not state who may or may not seek a court order to have the confidential records released. Therefore, although it appears unlikely that the legislature contemplated the possibility that the Department itself might initiate legal action, nothing in N.C. Gen. Stat. § 120C-600(c) specifically precludes the Department from petitioning a court of competent jurisdiction for the release of records considered confidential.

Your second and third questions deal with whether *McCormick v. Hanson*, 164 N.C. App. 459, 596 S.E.2d 431, *writ denied, review denied, appeal dismissed*, 359 N.C. 69, 603 S.E.2d 131 (2004) prohibits the Department from initiating legal action allowing the release of confidential information. In my opinion, *McCormick* does not preclude such legal action by the Department. The *McCormick* legal analysis focused on the specific Public Records Act provisions which allow a person who has been denied records to seek an order compelling disclosure. In contrast, your questions deal with whether the Department can seek disclosure of the confidential records under N.C. Gen. Stat. § 120C-600(c), which does not directly implicate the Public Records Act. However, if a third party seeks disclosure, then the Public Records Act would be triggered and it would be up to the third party to seek disclosure by a court of competent jurisdiction.

Your fourth question asked whether the Department is released from any obligations to secure judicial approval before distributing confidential records if the filer of the records authorizes the Department to release publically or otherwise "publish" the records. N.C. Gen. Stat. § 120C-600(c) provides that the documents received during a systematic review or complaint investigation are confidential and can only be released by order of a court of competent jurisdiction. A filer, of course, could release copies of its own records if it elected to do so.

In our discussion on April 20, 2009, you raised a fifth question regarding whether documents generated by the Department such as notices to a principal or lobbyist where there

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was no violation of the Lobbying Act, letters requesting additional documents, settlement agreements, or orders assessing civil penalties are included in the confidentiality provision of N.C. Gen. Stat. § 120C-600(c). Because N.C. Gen. Stat. § 120C-600(c) provides that documents accumulated during an investigation or review are confidential, the foregoing documents would also be confidential.

During the April 20, 2009, discussion, you raised a sixth question regarding how documents accumulated during an investigation or systematic review and covered by N.C. Gen. Stat. 120C-200(c) would be handled at the Office of Administrative Hearings (OAH). If an appeal is made to OAH regarding a civil penalty assessment, either party could file a motion to have confidential documents sealed. A motion could also be made requesting that a hearing be closed if confidential documents are to be introduced.

In your letter dated April 29, 2009, you asked a seventh question about the confidentiality status of documents related to an open investigation. N.C. Gen. Stat. § 120C-600(c) does not differentiate between open and closed investigations or reviews. Therefore, all documents accumulated during an investigation or review are confidential unless released by a court of competent jurisdiction, whether the investigation or review is open or closed.

I hope that this letter is responsive to your inquiries. Please feel free to contact me if you have any further questions regarding this issue.

This is an advisory letter. It has not been reviewed or approved in accordance with the procedures for issuing an Attorney General's advisory opinion.

Sincerely yours,

Handwritten signature of Melissa H. Taylor in cursive script.

Melissa H. Taylor
Assistant Attorney General