

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
10 CVS 11621

WNCN, WNCT, *Winston Salem Journal*, )  
*Independent Tribune, The News Herald,* )  
*The Hickory Daily Record, Statesville* )  
*Record and Landmark, Mooresville Tribune,* )  
*The McDowell News, Time Warner* )  
Entertainment-Advance/Newhouse )  
Partnership d/b/a News 14 Carolina, )  
Paxton Media Group, LLC d/b/a *The Daily* )  
*Dispatch, The News and Observer* )  
Publishing Company d/b/a *The News &* )  
*Observer, The Charlotte Observer* )  
Publishing Company d/b/a *the Charlotte* )  
*Observer, Sandy Semans, Capital* )  
Broadcasting Company, Incorporated d/b/a )  
WRAL-TV, the John Locke Foundation, )  
Inc. d/b/a *Carolina Journal and WTVD* )  
Television LLC (WTVD-TV) )

Plaintiffs,

VS.

DEPARTMENT OF CRIME CONTROL )  
AND PUBLIC SAFETY, an agency of the )  
State of North Carolina, DIVISION OF )  
STATE HIGHWAY PATROL, a principal )  
subunit of an agency of the State of North )  
Carolina, and REUBEN YOUNG, in his )  
official capacity as Secretary of the )  
Department of Crime Control and Public )  
Safety, )

Defendants.

FILED  
2010 JUL 21 PM 2:31  
CLERK COUNTY C.S.C.

ORDER

THIS MATTER was filed on July 9, 2010 pursuant to the North Carolina Public Records Law, Chapter 132 of the North Carolina General Statutes in which the Plaintiffs are seeking:

1. an order compelling the defendants to permit the inspection and copying of public records pursuant to N.C. Gen. Stat. § 132-9(a);

2. an order in the nature of a writ of mandamus requiring the defendants and all persons at the direction of or in concert with defendants to comply with the Public Records Law including, but not limited to, N.C. Gen. Stat. § 132-6(a); and
3. an order awarding the plaintiffs their reasonable attorney fees pursuant to N.C. Gen. Stat. § 132-9(c)(1).

The Defendants filed an Answer with Motion for Judgment on the Pleadings on July 16, 2010.

The matter came on for hearing on July 19, 2010 before the Honorable Paul G. Gessner, Superior Court Judge Presiding. The Plaintiffs were represented by C. Amanda Martin and Hugh Stevens. The Defendants were represented by Melissa L. Trippe, Special Deputy Attorney General of the North Carolina Department of Justice. The issue before the court is whether personal electronic communications (i.e., those not made or received pursuant to law or ordinance in connection with the transaction of public business) that are received by a state government employee on their state owned, issued and maintained cellular telephone which were sent from a non state issued device are subject to the North Carolina Public Records Law and properly available for inspection and copying.

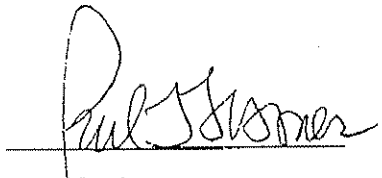
This matter was before the court on the Defendant's Motion for a Judgment on the Pleadings pursuant to N.C. Gen. Stat. § 1A-1 Rule 12(c). During the course of the hearing counsel for the Defendants offered the court an envelope containing a computer disc purported to contain the subject matter of this litigation and a transcribed copy of the electronic communications which are the subject of this litigation. These items were in a sealed envelope and accompanied by an affidavit of Joseph Dugdale, General Counsel to the State Highway Patrol. These items were received by the court without objection from the Plaintiffs. The Plaintiffs participated in the hearing and did not request a continuance or additional time to produce evidence in light of the evidence offered.

After hearing arguments from counsel the court took the matter under advisement and conducted an *in camera* review of the transcribed copy of the electronic communications.

These were matters outside the pleadings and were considered by the court in reaching its decision on the judgment on the pleadings, therefore it is appropriate to treat this matter as a motion for summary judgment pursuant to N.C. Gen. Stat. § 1A-1 Rule 56.

After thorough review of the pleadings, the affidavit of Joseph Dugdale, and the transcribed copy of the electronic communications the court finds and concludes that there is no genuine issue of material fact and the Defendant is entitled to judgment as a matter of law.

SO ORDERED, this the 21<sup>st</sup> day of July, 2010.

A handwritten signature in black ink, appearing to read "Paul G. Gessner", written over a horizontal line.

Paul G. Gessner

Resident Superior Court Judge