

From: [Michael Barfield](#)
To: ["Communications"; Generalcounsel@ncf.edu](#)
Cc: ["Andrea Mogensen"; bgalvano@grimesgalvano.com](#)
Subject: RE: Records request 02.24.2023
Date: Friday, March 17, 2023 4:16:00 PM
Attachments: [image001.png](#)

Dear Custodian(s):

Pursuant to section 119.12, Florida Statutes, notice is given that no records have been produced in response to the request dated February 24, 2023, which sought the following records:

For the period between **January 6, 2023, through February 6, 2023**, we hereby request the production of records that were made, sent or received by any of the following members of the Board of Trustees of New College: **Debra A. Jenks, Ron Christaldi, Ryan Anderson, Mark Bauerlein, Lance Karp, Grace Keenan, Charles Kesler, Matthew Lepinski, Sarah Mackie, Christopher Rufo, Matthew Spalding, Eddie Speir, Mary Ruiz**, individually or collectively, as follows:

1. **Any electronic record sent to or received from Robert Allen regardless of the means or method of transmission;**
2. **Any electronic record exchanged with the number (305) 490-6592;**
3. **A log of all electronic records exchanged with the number (305) 490-6592, including a phone log and a text log.**

Please produce the records prior to the expiration of 30 days from the date of the request, which is **March 27, 2023**.

Michael Barfield | Director of Public Access



1661 Ringling Blvd.

P.O. Box 2723

Sarasota, FL 34230

Direct 941.228.1575 | records@flcga.org

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“When you’re accustomed to privilege, equality feels like oppression.” — **Franklin Leonard**

From: Michael Barfield

Sent: Friday, February 24, 2023 1:28 PM

To: Communications <communications@ncf.edu>

Cc: David Smolker <dsmolker@ncf.edu>; Andrea Mogensen <andrea@sarasotacriminallawyer.com>

Subject: Records request 02.24.2023

Dear Custodian(s):

This is a request for records pursuant to Chapter 119, Florida Statutes, otherwise known as the Public Records Act (“the Act”) and art. I, sec. 24 of the Florida Constitution on behalf of the Florida Center for Government Accountability. This request is for public records **in the possession of New College of Florida (the “Agency”), which includes its appointed board members, employees, agents, representatives, and any individual or entity acting on behalf of the Agency, (“Individual Custodians”), regardless of the location of those records.**

We understand that a citizen is not required to make a written request to obtain public records under the Act, but we want to be clear about what we are seeking from you. Additionally, a written request for records also serves to fulfill any notice requirements set forth in the Act, including, but not limited to, section 119.12(1)(b), Florida Statutes. This written request satisfies the five-day notice provision contained in section 119.12(1)(b). We will not provide any additional notice of your statutory obligation to timely furnish responsive records.

Accordingly, for the period between **January 6, 2023, through February 6, 2023**, we hereby request the production of records that were made, sent or received by any of the following members of the Board of Trustees of New College: **Debra A. Jenks, Ron Christaldi, Ryan Anderson, Mark Bauerlein, Lance Karp, Grace Keenan, Charles Kesler, Matthew Lepinski, Sarah Mackie, Christopher Rufo, Matthew Spalding, Eddie Speir, Mary Ruiz**, individually or collectively, as follows:

1. **Any electronic record sent to or received from Robert Allen regardless of the means or method of transmission;**
2. **Any electronic record exchanged with the number (305) 490-6592;**
3. **A log of all electronic records exchanged with the number (305) 490-6592, including a phone log and a text log.**

If any portion of this request is readily available, please furnish that record immediately regardless of whether other portions of the request are not readily available.

It is important that the Agency and Individual Custodians understand that the term “record” as used herein shall have the same meaning and definition set forth in section 119.011(12), Fla. Stat., and includes, **but is not limited to**, electronic records regardless of the physical form, characteristics, or means of transmission or receipt. Electronic records include, **but are not limited to**, email, text, sms, mms, iMessages, .doc, .docx, voicemail, Dropbox, ftp site, mobile application, intranet, VOIP, cloud file platform, social media platform, or workplace communications tool. The term “text” includes any record sent or received via sms, mms, iMessages, and any encrypted messaging app such as Signal, [Rocket.Chat](#), NetSfere, Telemessage, Troop Messenger, Element, Threema, Telegram, Wickr Me, Viber, Wire, Dust, or similar messaging system. The above definitions and examples are not intended to be an exhaustive description of electronic records and texts and the Agency and Individual Custodians must produce all records responsive to this request regardless of the format, or the means or method of transmission of any device or system capable of sending or receiving a message or record that is converted into alphanumeric characters. If you do not understand technological terms, please consult with an IT professional or attorney to understand your obligations under

Florida's Public Records Act.

This request for records further includes any responsive records sent or received by the Agency or Individual Custodians via any private, nongovernmental account as well as those records maintained, stored or archived in the cloud, on a shared drive, on the internet, via any electronic portal, via social media accounts, by screenshot or any other electronic system or device such as a cell phone, tablet, flash drive, computer or server that is capable of sending, receiving or storing digital information.

This request **is directed to the Agency, and the Individual Custodians, and any individual or entity acting on their behalf.** See section 119.011(2), Fla. Stat. It also includes any individual acting on behalf of the agency using an alias or pseudonym. However, if the Agency or Individual Custodians do not have direct access or possession of any of the records responsive to this request, please construe this as a request under section 119.0701(3)(a), Fla. Stat., and notify any third party in possession of responsive records of the request for public records and the statutory obligation to provide them within a reasonable period of time.

Pursuant to section 119.07(1)(d), Fla. Stat., “[a] person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.”

Also, section 119.07(1)(e), Fla. Stat., provides that “[i]f the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.”

If you contend that any record, or portion thereof, is exempt from inspection, please state in writing the basis for the exemption and include the applicable statutory exemption. See section 119.07(1)(e), Fla. Stat. Additionally, pursuant to the requirements of section 119.07(1)(f), Fla. Stat., we hereby request that you explain in writing and with particularity the reasons for your conclusion that the record is confidential or exempt.

We would direct your attention to the following statutory requirements set forth in section 119.07(1), Fla. Stat.:

(h) Even if an assertion is made by the custodian of public records that a requested record is not a public record subject to public inspection or copying under this subsection, **the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was served on or otherwise made to the custodian of public records by the person seeking access to the record.** If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian of public records may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

(i) The absence of a civil action instituted for the purpose stated in paragraph (g) does not relieve the custodian of public records of the duty to maintain the record as a public record if the record is in fact a public record subject to public inspection and copying under this subsection and does not otherwise excuse or exonerate the custodian of public records from any unauthorized or unlawful disposition of such record.

(Emphasis added).

Under the above statutory provisions, **do not delete any records, even if you contend that such records are not a public record unless and until a judge of a court of competent jurisdiction has issued a final order authorizing you to do so.** Immediately preserve all responsive records without delay.

We are seeking the requested records in their native, digital electronic medium. See § 119.01(2)(f), Fla. Stat. For emails, we request that the records be produced in .pst format. For text messages, we request that you produce the records in the digital format by which the Agency or Individual Custodian archives text messages. For all other records, please produce them in their native digital format.

We are requesting that you **notify each and every individual and entity in possession of records responsive to this request, including Individual Custodians,** and that all such records be preserved on an immediate basis.

Please produce all records responsive to this request as provided by § 119.12(1)(b), Fla. Stat.

If any costs are anticipated in fulfilling this request, please do not exceed \$50 without advance written authorization and an invoice describing the nature of any special service charge allowed by law.

If you have any questions about the scope of this request or need clarification of what records we are seeking, please do not hesitate to communicate the same to us at records@flcga.org.

Michael Barfield | Director of Public Access



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