

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA**

OFFICE OF THE ATTORNEY GENERAL,

Plaintiff,

v.

Case No. \_\_\_\_\_

ATLANTIC COAST CONFERENCE,

Defendant.

\_\_\_\_\_ /

**COMPLAINT FOR WRIT OF MANDAMUS**

The Florida OFFICE OF THE ATTORNEY GENERAL brings this action against the ATLANTIC COAST CONFERENCE pursuant to Fla. R. Civ. P. 1.630 for violation of the Florida Public Records Act.

**I. INTRODUCTION**

1. Under secret media rights contracts located somewhere in the North Carolina headquarters of the Atlantic Coast Conference (ACC), the fate of *hundreds of millions of dollars* of a Florida *public university* is written.

2. The Office of the Attorney General requested these media rights contracts; the ACC refused. The ACC would not produce a single word of the contracts, including terms already disclosed publicly (including by the ACC itself), the signature blocks, dates, the numbers of paragraphs, recitals or even the numbers of pages. The contracts are a public record because Florida State University (FSU) examines and uses the media rights contracts in the transaction of the agency's official business. The contracts are also the product of delegated authority by FSU to the ACC.

3. The ACC has designated itself the exclusive custodian of these contracts, denying the photocopying or other custodial access by a public university, including FSU, forcing the

expenditure of public monies to view the contracts in-person. The failure of the ACC to produce these public records in accordance with the Public Records Act subjects the ACC to self-imposed liability, and this litigation is the result of its refusals.

## **II. PARTIES**

4. The ACC is an unincorporated nonprofit association under North Carolina law.
5. The Attorney General of Florida is the chief legal officer of Florida. The Office of the Attorney General protects the public fisc and the welfare of its citizens, is the enforcement authority under the Florida Antitrust Act, and made the public records request at issue.

## **III. JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to article V, section 5(b) of the Florida Constitution and section 119.11, Florida Statutes.
7. This Court has jurisdiction over the ACC because the ACC is doing business in Florida, has two members who are located in Florida, and is otherwise engaged in substantial and not isolated activity in Florida. §§ 48.193(1)(a) and 48.193(2), Fla. Stat. Additionally, violations committed by the ACC occurred in Florida.
8. Venue is proper and convenient in Leon County because the cause of action accrued in Leon County and because the public agency that the ACC acts on behalf of is located in Leon County. *See Holton v. Prosperity Bank of St. Augustine*, 602 So. 2d 659, 662 n.2 (Fla. 5th DCA 1992); *see also* § 47.011, Fla. Stat. (resident venue).

## **IV. FACTS UPON WHICH PLAINTIFF RELIES FOR RELIEF**

### **A. The Media Rights Contracts are public records.**

9. The media rights contracts were made or received in connection with the official business of a public state university, or persons acting on their behalf. FSU, along with other members of

the ACC, entered in a “Grant of Rights” in 2013 and 2016, transferring exclusive media rights to all its “home” games contests to the ACC. In “exchange” of the authority granted under the Grant of Rights, the ACC (in its own words) negotiated “on behalf of the collective” universities,<sup>1</sup> and entered into material media contracts with ESPN, Inc. and ESPN Enterprises (“Media Rights Contracts”). In 2016, it specifically sought “to generate additional revenue through its partnership with ESPN *on behalf of* its Member Institutions.”<sup>2</sup>

10. Since that time, FSU was recently crowned the ACC’s undefeated football champion. Despite this achievement, FSU was deprived of a coveted playoff spot in the 2023-2024 College Football Playoff in favor of two other one-loss teams from competing conferences. Apart from FSU losing this opportunity to compete for a championship, “years of failures by the ACC” led to a deteriorating environment for the Media Rights Contracts, creating “insurmountable” financial disparity and a threatened imposition of “unparalleled” withdrawal penalties that could range from \$572,000,000 to \$700,000,000.<sup>3</sup> The ACC’s “chronic fiduciary mismanagement, bad faith, and self-dealing” led FSU to sue the ACC in this court for declaratory relief.<sup>4</sup>

11. On January 4, 2024, the Office of the Attorney General made a public records request to the ACC for the Media Rights Contracts (“Request”) given the public interest and severity of the deteriorating situation. *See* Ex. 1 at ¶¶ 2-6. To properly educate the ACC about its obligations, the Request briefed the ACC on its obligation as an exclusive custodian of a public record under Florida caselaw (specifically citing to *NCAA v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA

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<sup>1</sup> Complaint, *Atlantic Coast Conference v. Board of Trustees of Florida State University*, Case No. 23-CVS-040918-590 at ¶ 49 (Mecklenburg Co. Sup. Ct.).

<sup>2</sup> Complaint, *Atlantic Coast Conference v. Board of Trustees of Florida State University*, Case No. 23-CVS-040918-590 at ¶ 68 (Mecklenburg Co. Sup. Ct.) (emphasis added).

<sup>3</sup> Amended Complaint, *Florida State University Board of Trustees v. Atlantic Coast Conference*, Case No. 23-CA-2860 at Summary (Leon Co. Cir. Ct.) (filed Jan. 29, 2024).

<sup>4</sup> *Id.*

2009), *review denied*, 37 So. 3d 848 (Fla. 2010)), and separately, its legal obligations as an agent/contractor of a public university.

12. The ACC refused the Request as it related to the Media Rights Contracts. In its response, it ignored *NCAA v. Associated Press*, which shares a nearly identical factual predicate to the case at present: when an entity such as the ACC receives and uses the records in the conduct of the agency's business, the records are public records subject to the Public Records Act. Instead, the ACC argued that the Public Records Act has no implication for the ACC. *See* Ex. 2. And even if the Media Rights Contracts were public records, the ACC posited it had no obligation to produce any portion of the contracts because the entirety of the Media Rights Contracts are trade secrets. *See id.* It refused to produce any part of the Media Rights Contracts, redacted or otherwise, including portions the ACC has openly disclosed or discussed.

**B. The ACC has exclusive custody of the Media Rights Contracts and unilaterally restricts access.**

13. The ACC has exclusive custody of the Media Rights Agreement. It affirmatively prevents photocopying or remote access by any member of the ACC, including FSU, and limits access to in-person viewing only: in order for FSU to view a copy, personnel must travel (presumably at public expense) to the North Carolina headquarters, and upon appointment, is granted view access. Since FSU and the ACC engaged in litigation against each other, news reports disclose that several universities have sent their officials to North Carolina to view the Media Rights Contracts.

14. The ACC's liability under the Public Records Act is the ACC's own making. While the ACC has not produced a single word of the Media Rights Contracts, in portions that the ACC disclosed publicly in court filings, the ACC's exclusive custodial arrangement is not a function of the Media Rights Contracts at all, but is its own preference, and may be contrary to the Media Rights Contracts. *See* First Amended Complaint, *Atlantic Coast Conference v. Board of Trustees*

*of Florida State University*, Case No. 23-CVS-040918-590 at Ex. 8, 9 (Mecklenburg Co. Sup. Ct.) (filed Jan. 17, 2024) (permitting disclosure to each institution).

15. Accordingly, the ACC could have disseminated the Media Rights Contracts to FSU and reduced its exposure under the Public Records Act.

**C. The ACC has disclosed and discussed portions of the Media Rights Contracts, and has not, and cannot, exercise control over other public records of FSU relating to the same subject matter.**

16. Because the ACC has failed to provide a single word of the Media Rights Contracts, the issue of whether any portion of the contracts are protected by trade secrets (and the appropriateness of any attendant redactions) under section 119.0715, Florida Statutes, is for another day. Still, in anticipation of the ACC's continued obstinance, the Office of the Attorney General can preview for this Court that any trade secret information protected under section 119.0715, Florida Statutes, must meet the definition of a trade secret under section 688.002(4), Florida Statutes:

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

17. The ACC has not maintained the secrecy of many portions of the Media Rights Contracts, including portions relating to confidentiality, the existence of warranties, descriptions of the amounts previously received by FSU under the contracts at issue in this litigation, and “Grant of Rights Fee(s)/Payments” and “Rights Fee(s).”

18. Additionally, revenues (including revenue for athletics from television broadcasts from conference revenue-sharing arrangements) are recorded in public records and other systems of FSU over which the ACC (and any other counterparty to the Media Rights Contracts) have no

control. These revenues are reported to the NCAA; they are the subject of the other public records requests, and they are frequently a topic of news articles.<sup>5</sup>

19. While the ACC has refused to produce any part of the Media Rights Contracts, in litigation it filed against FSU, it incorrectly quoted the provisions relating to disclosure under the contracts:

“106. The terms and conditions of the 2016 Multi-Media Agreement and the ACC Network Agreement are confidential. Both agreements stipulate that their terms and conditions cannot be disclosed to the public and impose a confidentiality obligation on the Conference.

107. Thus, the 2016 Multi-Media Agreement and ACC Network Agreement provide that “*each party shall maintain the confidentiality of this Agreement and its terms.*” 2016 Multi-Media Agreement ¶ 25.11; ACC Network Agreement ¶ 18.11.”<sup>6</sup>

(emphasis added). But this recitation misstates the 2016 Multi-Media Agreement (one of the Media Rights Contracts).

20. Contrary to the ACC’s representations to a North Carolina court, the 2016 Multi-Media Agreement **does not state without exception (and conclude the sentence)** that “each party shall maintain the confidentiality of this Agreement and its terms.[sic]” Instead, the agreement specifically states that disclosure is permitted to FSU, who shall maintain confidentiality subject to applicable laws, which includes the Public Records Act:

“Each party shall maintain the confidentiality of this Agreement and its terms, and any other Confidential Information, **except when disclosure is:** (a) to a party’s employees and contractors, accountants, auditors, tax advisors and legal counsel, each under a similar obligation of confidentiality; (b) as may be required in connection with a bona fide audit; (c) **to each Conference Institution**, provided that each Conference Institution shall agree

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<sup>5</sup> Methodology for 2022 NCAA athletics department revenue-and-expense database, USA Today, 2023 WLNR 13303960 (Apr. 13, 2023) (pursuant to public records requests, revenues for public universities are reported, including “revenue for athletics from radio and television broadcasts, Internet and e-commerce rights received from institution-negotiated contracts, the NCAA and conference revenue-sharing arrangements; and revenue from corporate sponsorships, licensing, sales of advertisements, trademarks and royalties.”).

<sup>6</sup> See First Amended Complaint, *Atlantic Coast Conference v. Board of Trustees of Florida State University*, Case No. 23-CVS-040918-590 at Ex. 8, 9 (Mecklenburg Co. Sup. Ct.) (filed Jan. 17, 2024).

to maintain the confidentiality of this Agreement, *subject to the law applicable to each such Conference Institution*; and (d) as may be required by any legal process, court order, or governmental agency, in which event unless prohibited from doing so by law the party making such disclosure shall so notify the other party or parties as promptly as practicable prior to making such disclosure and shall seek confidential treatment of such information.”

21. All conditions precedent to the bringing of this action have occurred or been waived, including sections 119.0701(3)(a), 119.12, 284.30, Fla. Stat.

## V. ARGUMENT

22. Mandamus is an appropriate remedy to enforce compliance with the Public Records Act. *See Chandler v. City of Greenacres*, 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014). The six required elements for a writ of mandamus are: (1) the petitioner has a clear and certain legal right; (2) to the performance of a particular duty; (3) by a government or a representative of the government; (4) whose performance of that duty is ministerial and not discretionary, (5) who has failed to perform despite an adequate request, and (6) who has left the petitioner with no other legal method for obtaining relief. *See Huffman v. State*, 813 So. 2d 10 (Fla. 2000); 21 Fla. Prac. § 1701:1 (2023-24 ed.).

23. The Florida Constitution creates a broad right to inspect the records of any state or local governmental body. Article I, section 24(a) of the Florida Constitution grants “[e]very person ... the right to inspect or copy any public record made or received in connection with the official business of any public body, officer or employee of the state, or *persons acting on their behalf*.” (emphasis added).

24. Article I, section 24(c) of the Florida Constitution provides that the right to inspect public records shall be “self-executing.” The rights created by the constitution may be enforced under the procedures in the public records law, Chapter 119, Florida Statutes, the Public Records Act.

25. Florida courts construe the public records law liberally in favor of the state’s policy of open government. *See Lighbourne v. McCollum*, 969 So. 2d 326, 332-33 (Fla. 2007). If there is any doubt about the application of the law in a particular case, the doubt is resolved in favor of disclosure. *See Dade County Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, 304 (Fla. 3d DCA 2001).

26. “Public records” means “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” § 119.011(12), Fla. Stat. The Florida Supreme Court provided additional clarity to this definition in *Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.*, 379 So. 2d 633 (Fla.1980). In *Shevin*, the Supreme Court grafted the dictionary definition of “record” upon the statutory definition to give content to the statute. *Id.* at 640 (defining a public record as “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”).

27. An agency “means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law . . . and any other public or private agency, person, partnership, corporation, or business entity *acting on behalf of* any public agency.” § 119.011(2), Fla. Stat. (emphasis added).

28. “Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.” § 119.07, Fla. Stat.



29. Documents are public records even if prepared and maintained by a private organization if they were “received” by agents of a public agency and used in connection with public business. *Nat'l Collegiate Athletic Ass'n v. Associated Press*, 18 So. 3d 1201, 1207 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010) (“*NCAA*”).

30. The term “received” in section 119.011(12) refers not only to a situation in which a public agent takes physical delivery of a document, but also to one in which a public agent examines a document residing remotely; otherwise, a party could easily circumvent the public records laws. *See NCAA* at 1207.

31. Matters of public concern are not transformed into a private matter merely because the documents the University lawyers use reside with a private organization. *See NCAA* at 1207.

32. Documents become public records when they are examined by state lawyers and used for a public purpose. *See NCAA* at 1207; *see also Times Publishing Co. v. City of St. Petersburg*, 558 So. 2d 487 (Fla. 2d DCA 1990) (documents pertaining to negotiations were prepared and maintained exclusively by a private organization, but examined by agents for the City under a confidentiality agreement, were subject to disclosure under the public records law because they were examined by agents for the City and used in the course of its business). The legal status of such public records is no different than it would be if they had been prepared by the University’s lawyers and if the only existing copies were in the private party’s possession. *See NCAA* at 1209.

33. Separate from the “less complicated” conclusion that a document becomes a public record in the hand of a private entity if they were received by agents of a University and used in connection with University business, a record created and maintained by a private organization can also be subject to disclosure as a public record on an agency theory: if a private entity is acting on behalf of the state or local government and creates a document that reflects the business of the

governmental entity, the document can become a public record. *NCAA* at 1209; *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992) (the Supreme Court setting out a nine-factor test to determine whether records held by a private party must be disclosed under the public record act on the theory that the private party is acting on behalf of the government). The key inquiry is whether the private party assumes the role of the government. *NCAA* at 1209. “Typically, the private entity has a contract with the government and performs a public function in the course of its duties under the contract. The private entity is acting not as a business adversary to the government but as a surrogate for the government.” *NCAA* at 1209.

34. And separate from this alternative agency theory, the ACC becomes a public “agency” in its own right under section 119.011(2), Florida Statutes, by stepping into the shoes of the University and assuming a public duty of the University. *NCAA* at 1209.

35. Section 119.07(1)(d), Florida Statutes, requires the custodian of the document to redact only that portion of the record for which an exemption is asserted and to provide the remainder of the record for inspection and copying. *See, e.g., City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995).

36. A public record cannot be transformed into a private record merely because an agent of the government has promised that it will be kept private. *See NCAA* at 1208-09. Nor is it material that the ACC had an expectation that the documents would remain private. *See id.*

### **COUNT I: VIOLATION OF THE PUBLIC RECORDS ACT**

37. The Office of the Attorney General hereby incorporates all preceding paragraphs.

38. The Office of the Attorney General sent the ACC the Request on January 4, 2024.

39. The Office of the Attorney General requested the Media Rights Contracts.
40. The Media Rights Contracts are public records under Chapter 119, Florida Statutes. FSU views and uses the Media Rights Contracts in the transaction of official business. The ACC acted on behalf of FSU in negotiating the Media Rights Contracts.
41. The ACC has exclusive custody of the Media Rights Contracts. The Media Rights Contracts allow the ACC to distribute a copy of the Media Rights Contracts to FSU, but the ACC has declined to do so, and has assumed custodial responsibilities for the Media Rights Contracts.
42. The ACC prevents FSU from having custody of a photocopy of the Media Rights Contracts.
43. A true and correct copy of the Request is attached as Exhibit 1.
44. The Office of the Attorney General sent a copy of the Request directly to FSU.
45. The ACC acknowledged the Request and partially responded to the Request.
46. A true and correct copy of the ACC's acknowledgement and response cover letter is attached as Exhibit 2.
47. The ACC failed to respond to the Office of the Attorney General's Request in a timely manner. Specifically, the ACC failed to produce a single word of the Media Rights Contracts.
48. The unjustified delay in making non-exempt public records available violates the Public Records Act.
49. Under the Public Records Act, unjustifiable delay in making records available to the point of forcing a requester to file an enforcement action is by itself tantamount to an unlawful refusal to provide public records in violation of the Act.
50. The ACC has failed to perform its obligations under the Public Records Act despite an adequate request.

51. The Office of the Attorney General has no other legal method to obtain the Media Rights Contracts.

52. The Office of the Attorney General is entitled to mandamus relief.

WHEREFORE, the Office of the Attorney General requests the following:

- a) Enter an Alternative Writ/Order to Show Cause directing Defendants to show cause why the relief sought in this Complaint should not be granted;
- b) Set and hold an immediate hearing pursuant to section 119.11, Florida Statutes;
- c) Find that the requested records are public records subject to disclosure under the Public Records Act;
- d) Find that the Defendants unlawfully refused to permit access to the Media Rights Contracts in violation of the Public Records Act and article I, section 24 of the Florida Constitution;
- e) Enter an Order directing the Defendants to immediately provide the requested records to the Office of the Attorney General;
- f) Award Plaintiff its reasonable costs of enforcement, including reasonable attorneys' fees, costs, and expenses incurred in this action pursuant to section 119.12, Florida Statutes; and
- g) Grant any other relief this Court deems necessary and appropriate at law or in equity.

Respectfully submitted this 25th day of April, 2024.

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**ASHLEY MOODY**  
**Attorney General of Florida**

/s/ Nicholas J. Weilhammer

John Guard

Chief Deputy Attorney General

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COUNSEL FOR PLAINTIFF

# **EXHIBIT 1**



## STATE OF FLORIDA

**ASHLEY MOODY  
ATTORNEY GENERAL**

January 4, 2024

Atlantic Coast Conference  
c/o Pearlynn Houck, Esq.  
General Counsel  
620 South Tryon Street  
Charlotte, North Carolina 28202

Dear Ms. Houck:

It is this office's understanding that the Atlantic Coast Conference ("ACC" or "You") is in custody of certain records, executed by public employees of Florida State University (FSU) in their official capacity, or by You as an agent thereof, and in the transaction of official business of FSU, and that the ACC places restrictions on the location and availability of such records.

Accordingly, the Office of the Attorney General hereby requests the following records:

All the financial, business, and membership records of the Atlantic Coast Conference that pertain to Florida State University,<sup>1</sup> directly or indirectly, including but not limited to:

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<sup>1</sup> § 119.01(3), Fla. Stat. ("If public funds are expended by an agency in payment of dues or membership contributions for any person, corporation, foundation, trust, association, group, or other organization, all the financial, business, and membership records of that person, corporation, foundation, trust, association, group, or other organization which pertain to the public agency are public records and subject to the provisions of s. 119.07."); Fla. Const. art. I, sec. 24; § 119.07, Fla. Stat. See also *NCAA v. Associated Press*, 18 So. 3d 1201, 1207 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010).

1. An executed copy of the Atlantic Coast Conference Grant of Rights Agreement (2013).<sup>2</sup>
  - a. Any other amendment(s) or extensions to the Atlantic Coast Conference Grant of Rights Agreement (2013), including any 2016 extensions.<sup>3</sup>
  - b. The Atlantic Coast Conference's "Competitive Market Analysis" (2013).
  - c. All communications between You and ESPN, Inc. (ESPN) or ESPN Enterprises, Inc. relating to the Atlantic Coast Conference Grant of Rights Agreement and any amendments, including any ultimatum from ESPN or ESPN Enterprises, Inc. that any grant of rights be extended.
2. An executed copy of the Multi-Media Agreement dated July 8, 2010, between You and ESPN, the Amendment and Extension Agreement dated May 9, 2012 (collectively referred to as the "Amended ESPN Amendment"), and the Second Amendment to the Multi-Media Agreement (2014).
  - a. Any other amendment(s) or extensions to the "Amended ESPN Agreement."
3. An executed copy of the 2014 Amended Multimedia Agreement and the July 21, 2016 Amended and Restated ACC-ESPN Multi-Media Agreement between You and ESPN, and any amendment(s) or extension(s), including any August 14, 2021 option extension.
4. Any other executed agreements referred to as the "ESPN Agreement."
5. Any other executed agreements between You and ESPN, including the July, 2016 ACC-ESPN Network Agreement for ACC's prestige network.
6. Any other executed agreements between You and ESPN Enterprises, Inc.
7. Any other executed agreements between You and Disney.
8. Any Atlantic Coast Conference Constitution and Bylaws not attached to Your Complaint in *Atlantic Coast Conference v. Board of Trustees of Florida State University* (Mecklenburg Co. Sup. Ct.) (filed Dec. 21, 2023).

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<sup>2</sup> Exhibit 2 attached to Your Complaint in *Atlantic Coast Conference v. Board of Trustees of Florida State University* (Mecklenburg Co. Sup. Ct.) (filed Dec. 21, 2023), is undated on page 1.

<sup>3</sup> Exhibit 7 attached to Your Complaint in *Atlantic Coast Conference v. Board of Trustees of Florida State University* (Mecklenburg Co. Sup. Ct.) (filed Dec. 21, 2023), is undated on page 1.



9. Your annual operating budget for 2023-2024 and for 2024-2025.

Should you deny the agency's request, or any part thereof, please state in writing the basis for the denial, including the exact statutory citation authorizing the denial as required by section 119.07(1)(e), Florida Statutes. The agency also requests that the custodian of public records state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential. § 119.07, Fla. Stat.

Please note that the contracts referenced above almost certainly constitute property of a public university, and are to be disclosed. See *Volume Services, Inc. v. Ovations Food Services, L.P.*, 2018 WL 5094388, at \*15 (N.C. Super. Oct. 17, 2018) (holding “[c]ontracts with a public body, and any information contained therein, are generally considered public information” and in determining the trade secret exception’s “applicability to information contained in a contract between a private person and a public entity, [the North Carolina] Court of Appeals held that negotiated terms of a public contract are not exempt from disclosure because they are not the ‘property of a private ‘person’ as *the terms belong to both the private party and the government entity.*”) (emphasis added); see also *Wilmington Star-News, Inc. v. New Hanover Reg’l Med. Ctr., Inc.*, 480 S.E.2d 53, 57 (N.C. Ct. App. 1997).

Please note that section 119.10(2), Florida Statutes, states that any person who willfully and knowingly violates any of the provisions of chapter 119, Florida Statutes, “commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.”

We ask that you provide these records no later than 10 days from receipt of these requests because they are readily accessible.

If you have any questions in the interim, please contact Nick Weilhammer, Associate Deputy Attorney General for Enforcement at (850) 414-3861.

Sincerely,



Ashley Moody  
Florida Attorney General

cc: Carolyn Egan, Esq.  
*General Counsel, Florida State University*

# **EXHIBIT 2**



January 19, 2024

*Via U.S Mail*

Attorney General Ashley Moody  
Office of the Attorney General  
State of Florida  
PL-01, The Capitol  
Tallahassee, Florida 32399-1050

Dear Attorney General Moody:

I am in receipt of your letter dated January 4, 2024, which I received on January 10, 2024. In addition, this letter follows up on the conversations that your office had with our attorneys over the past week. We appreciate your willingness to discuss this matter with our counsel.

Your letter requests four groups of documents: (1) the Grant of Rights and Amended Grant of Rights executed by Florida State in 2013 and 2016; (2) all agreements between the Conference and ESPN or Disney; (3) the ACC By-Laws; and (4) the annual operating budgets for the Conference for 2023-2024 and 2024-2025.

I will respond to each of these requests separately, as each raises substantially different issues.

By way of background, it is important to clarify the legal relationships in this matter. The Conference is an unincorporated nonprofit association under North Carolina law. Florida State, as a Member, participates in its management (along with the other Members). As you are aware, Florida State has actively participated in the management and the affairs of the Conference for the nearly 32 years that it has been part of the ACC.

As an unincorporated nonprofit association under North Carolina law, the ACC is not an agency of the State of Florida within the meaning of the Public Records Act. Florida Stat. § 119.011(2) (“Agency” means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law”). The ACC has a juridical existence created by the State of North Carolina and exists separately from its members, including Florida State; however, Florida State participates in the management of its affairs. The Conference also does not act as Florida State’s agent. *See News & Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Grp., Inc.*, 596 So. 2d 1029, 1031–32 (Fla. 1992) (setting forth a nine-factor test to determine whether a private entity is an agent of a public agency, at least five of which are immaterial to the relationship between Florida State and the Conference). Rather, the Conference acts on behalf of all of its Members collectively according to the directions of the Board of Directors - - not on behalf of or for any single Member.

In this regard, I note that in your demand for records under the Florida Public Records Act, you cite two cases from North Carolina in support of your claim that these agreements are public records. However, the mere fact that a public entity is a Member of a private entity, such as a







corporation or unincorporated association, does not make the private entity a public agency. For example, in *Southern Environmental Law Center v. The North Carolina Railroad Company*, 378 N.C. 202 (2021), the North Carolina Supreme Court held that a corporation in which the sole shareholder was the State of North Carolina (and to which the General Assembly and Governor named the Board of Directors), was not an agency of the State subject to the Public Records Act. It did so based in part on the fact that any control exercised by the State was as a shareholder, not as a sovereign. Similarly, Florida State’s right to participate in the management of the affairs of the Conference (with the other Members) stems not from its status as a governmental body, but from its membership in an unincorporated nonprofit association under the rights granted to it by the State of North Carolina, its common law, and the Constitution and Bylaws of the ACC.

### **The Grant of Rights and Amended Grant of Rights**

Paragraph 1 of your letter requests contracts between Florida State and the Conference termed the Grant of Rights and Amended Grant of Rights.

As you are aware, and after review by Florida State’s counsel at the time, Florida State executed a Grant of Rights with the Conference in 2013 and an amendment modifying the term in 2016. Florida State, like every other Member, was entitled to retain its own copy of these agreements, as they constitute a contract between Florida State and the Conference.

Your letter states that the “ACC places restrictions on the location and availability” of these agreements. This is not correct. Each Member should have its own copy of the agreements which it executed.

There is also no dispute here that Florida State retained a fully-executed copy of the Grant of Rights after its execution in 2013. In 2016, Florida State provided a fully executed copy to a blogger in response to his request. This was subsequently posted on “Warchant.com” and can be found today at <https://www.on3.com/boards/threads/ag-moody-demands-acc-espn-documents.1271384/> (in the “Tribal Council Forum”). In 2016, the Conference was informed by Florida State that its general counsel had provided this information to the blogger as a public record.

As you correctly note, the Conference filed these documents as exhibits in *The Atlantic Coast Conference v. Board of Trustees of Florida State*,” filed in the Superior Court of Mecklenburg County on December 21, 2023, and served on Florida State on December 22, 2023 (“the North Carolina litigation”). These were attached as Exhibits 2 and 7.<sup>1</sup> Your office was served with these documents and accepted service on the morning of January 3, 2024, and your letter indicates that you are in possession of these documents. While the Conference did seek to seal several exhibits in connection with this lawsuit, it did not ask for any protection for the Grant of Rights or Amended Grant of Rights.

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<sup>1</sup> Your letter notes that Exhibit 2, the 2013 Grant of Rights executed by Florida State, and Exhibit 7, the Amended Grant of Rights executed by Florida State, do not have dates on the first page, though there are dates on all signature pages. This is so because the effective date of these contracts did not occur until after all Members had executed the Grant of Rights and they were accepted by the Conference in North Carolina. The effective date was thus as of the date of the Conference’s acceptance, as indicated by the date on the Commissioner’s signature pages.





Thus, these materials have been publicly available for years, have previously been provided to the public by Florida State’s counsel, are now part of the public court file, and are in the possession of Florida State.<sup>2</sup> The copies of these contracts which you have are identical to the agreements maintained by the Conference.

**All Agreements Between the Conference and ESPN or Disney**

Your letter further requests in paragraphs 2 through 7, all agreements between the Conference and ESPN or Disney. There is no date limitation on these requests, nor are they tied in any way to either Florida State or any other agency in the State of Florida.

As an initial matter, the Conference has no agreements with Disney.

The Conference, after approval by its Members, has entered into material media agreements with ESPN, Inc. and ESPN Enterprises over the course of the past 25 years. The signatories to these agreements are the ACC and ESPN. These are not government contracts but are commercial agreements between non-governmental entities. These are not contracts between Florida State and the Conference, and therefore are not contracts between a public body and a private entity.

These agreements contain commercially sensitive and proprietary information which, if publicly disclosed, would irreparably harm the Conference’s and ESPN’s ability to negotiate future rights agreements. The Conference has an obligation to ESPN, as a party to the agreements, to protect its fundamental business interests as reflected in the agreements. Courts across the country have protected these types of agreements, including the present agreements between the Conference and ESPN, in a variety of lawsuits. *See, e.g.*, Order Granting Stipulation Regarding Second Addendum to Stipulated Protective Order, In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig., No. 14-02541 (N.D. Cal. Oct. 12, 2016). These agreements further require that ESPN and the Conference take all steps to preserve and protect the confidentiality of these agreements and bar their disclosure to third parties. The Conference has taken appropriate measures to protect the confidentiality of these agreements by limiting access to them and maintaining them only at its Headquarters, which is common practice in the industry for media agreements executed by athletic conferences.

The present agreements with ESPN do permit Members to inspect the agreements so long as the terms of confidentiality are imposed. As you are aware, Florida State asked for access to these agreements to inspect them on multiple occasions and on each occasion it was made clear to Florida State (and in some instances its outside counsel), that a condition of access was confidentiality. Florida State agreed to those restrictions. No Member has been provided with a copy of these agreements; all Members are required to review these agreements at the Conference’s Headquarters in North Carolina.

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<sup>2</sup> To the extent that you appear to take the position that the Conference is a “contractor” with Florida State within the meaning of Florida Stat. § 119.0701(1)(a) as to the Grant of Rights and Amended Grant of Rights (which the Conference denies), a request for these records is required to be made directly to Florida State. Florida Stat. § 119.0701(3)(a).







Moreover, even if these agreements between nongovernmental entities could somehow be construed as public records, and ignoring the fact that the Conference is not an “agency” within the meaning of the law, these agreements plainly constitute trade secrets within the meaning of Florida Stat. §§ 688.002(4) and 812.081(f). *See Off. of Ins. Regul. v. State Farm Fla. Ins. Co.*, 213 So. 3d 1104, 1106 (Fla. 1st DCA 2017). These agreements set forth a “program” or “process” which derives economic value from not being readily accessible or known to third parties. Moreover, and as you point out in your letter, there is no dispute that the Conference has taken reasonable measures to maintain their secrecy. *See Seapro Corp. v. Fla. Dep’t of Env’t Prot.*, 839 So. 2d 781, 784–85 (Fla. 1st DCA 2003). As trade secrets, they are exempt from disclosure under Florida Stat. § 119.0715(2). *See Fla. Stat. § 815.045.*

Finally, and most importantly, production of these agreements in response to your demand would place the Conference in material breach of the agreements, jeopardizing the contracts themselves. As such, this would also cause irreparable harm to the Conference and its Members (including Florida State).

We understand that your Office seeks these documents based on the Complaint filed by Florida State in Leon County. However, the allegations of the Complaint rest on the Grant of Rights, Amended Grant of Rights, and the provisions of the ACC Constitution and Bylaws. There is no allegation that any agreement between ESPN and the Conference imposes payments on Florida State of any kind. Indeed, because Florida State is not a signatory to these agreements, these agreements simply do not relate to Florida State’s legal claims concerning its obligation to make a withdrawal payment upon leaving the Conference, or its agreement to provide its Media Rights to the Conference for the term and whether that agreement survives its departure from the Conference.

Consequently, and respectfully, the Conference is bound by its contractual obligations to preserve the confidentiality of these trade secrets and are not in a position to provide them at this time. However, we understand your good faith disagreement with our analysis and are willing to continue our conversations with your office to provide information that you may require as part of your duties.

### **All By-Laws or Portions of the ACC Constitution**

Paragraph 8 of your request seeks any By-Laws or portions of the ACC Constitution which were not attached as exhibits to the North Carolina litigation.

As previously stated, the Conference is not an agency of the State of Florida, and its Constitution and By-Laws maintained in North Carolina are not public records. Florida State has access to the Constitution and By-Laws without restriction. Each year, the Conference transmits to each of its Members (including Florida State), complete copies of the Constitution and By-Laws of the Conference.





While the Conference is not a public agency, and does not believe that its Constitution and Bylaws are public records, we are producing the Bylaws of the Conference as an accommodation. We are doing so without prejudice to our position that the Conference is not a public agency subject to the Public Records Act and that these are not public records.

**Annual Operating Budgets for 2023-24 and 2024-25**

Paragraph 9 of your request seeks the Conference’s Operating Budget for 2023-24 and for 2024-25. You appear to tie this request to your claim that these financial records are covered by Florida Stat. § 119.01(3), which refers to “public funds expended by an agency in payment of dues or membership contributions.” Florida State does not transmit any public funds to the Conference, nor has it since it joined the Conference in 1991. The Conference receives revenue from the various agreements it has with its media partners, venues, and vendors. The Conference then funds the operations necessary to meet its obligations under the media agreements, and, after providing for its expenses and appropriate reserves, then distributes the remaining revenues to its Members according to a formula determined by the Members. While Florida State has provided its Media Rights to the Conference for purposes of marketing those rights to ESPN, no public funds were received by the Conference. To the contrary, revenue from the Conference comprises a portion of the athletic department revenue at Florida State (thus reducing the public funds that may be required to fund Florida State’s athletic programs). The Conference’s revenue does not constitute “public funds.”<sup>3</sup>

Florida State, like all Members, is presented with and approves the Conference’s Operating Budget at a regularly-scheduled Board meeting. Florida State’s role in doing so is to approve the expenditure of funds by the Conference before distribution to the Members. In other words, there is nothing about this Operating Budget or the approval process that involves the use or spending of public funds by Florida State.

However, and again as an accommodation, we are providing a copy of the Operating Budget for 2023-2024 which is approved by the Members (including Florida State). There is no Operating Budget yet in place for the 2024-2025 fiscal year. As with the production of the ACC Constitution and Bylaws, we provide this without prejudice to our position that the Conference is not a public agency subject to the Public Records Act and that these are not public records.

Sincerely,

Pearlynn G. Houck  
General Counsel

Enclosures

<sup>3</sup> We do note that the taxpayers of North Carolina - - not Florida - - do provide revenue to the Conference by virtue of a State-funded grant for maintaining the Headquarters in North Carolina and conducting a specified number of championship games in the State. Florida State benefits from these North Carolina funds.

