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STATE OF WYOMING)
) ss.
COUNTY OF ALBANY)

IN THE DISTRICT COURT FOR THE
SECOND JUDICIAL DISTRICT

CHEYENNE NEWSPAPERS, INC.,)
a Wyoming corporation,)
dba *The Wyoming Tribune-Eagle*;)
LEE NEWSPAPERS, a Foreign corporation,)
dba *The Casper Star-Tribune*, and)
THE ASSOCIATED PRESS, a)
not-for-profit news cooperative,)

Docket No. 32631

Plaintiffs,)
)
)

vs.)
)

THE UNIVERSITY OF WYOMING)
and its BOARD OF TRUSTEES,)
in their capacity as custodians of records,)

Defendants.)
)

**ANSWER AND COUNTERCLAIM OF DEFENDANTS
UNIVERSITY OF WYOMING AND ITS
BOARD OF TRUSTEES**

COME NOW, Defendants, The University of Wyoming and its Board of Trustees, by and through undersigned counsel, and for their Answer to the Petition filed herein, state:

1. Answering the allegations of ¶ 1, Defendants note that the entity “Lee Publications, Inc.” is not named as a Plaintiff. Defendants have insufficient knowledge regarding the proper name of the publisher of the Casper Star-Tribune, and therefore deny that allegation. Defendants admit the remaining allegations of ¶ 1 of the Petition.

2. Answering ¶ 2, Defendants admit that the University is the only publicly-funded four year university in Wyoming, admit that the University is an agency of the State for the purposes of the Public Records Act, and admit that the Board of Trustees is a custodian, as defined by Wyo. Stat. § 16-4-201(a)(i), of records of the University of Wyoming.

3. Defendants admit the allegations of ¶ 3.

4. Answering the allegations of ¶ 4, Defendants state that their position was explained in an op-ed column authored by the President of the Board of Trustees, David Bostrom, and published by the Casper Star-Tribune on November 14, 2012, as well as on the

University's web site, which statements speak for themselves. Defendants further state that the statute which deals with "applications" is Wyo. Stat. § 16-4-203(d)(iii).

5. Answering the allegations of ¶ 5, Defendants state that the "Initial Screening Committee" is comprised of five members of the Board of Trustees, with additional members from the student body, faculty, staff, UW Foundation, and external constituent groups as appointed by the President of the Board. The Initial Screening Committee is charged with identification of no fewer than 12 candidates who warrant further consideration. A Secondary Screening Committee consists of five other members of the Board of Trustees, with additional members from the student body, faculty, staff, UW Foundation, and external constituent groups as appointed by the President of the Board. The Secondary Screening Committee is charged with recommending no fewer than five best qualified applicants for consideration by the full board. Defendants admit that the target date for reducing the candidate pool to no fewer than five best qualified applicants is January 24, 2013, and that the target date for the Board of Trustees to select the president is February 27, 2013. The detailed process is contained in a Resolution of the Board of Trustees of the University of Wyoming dated October 12, 2012, available on the University's website.

6. Answering the allegations of ¶ 6, Defendants state that the Casper Star-Tribune, through its editor, Mr. Darrell Ehrlick, made a public records request on October 11, 2012, wherein it requested "any and all documents evidencing or related to travel plans, itineraries or correspondence (whether in written or electronic form) pertaining to any finalist in the upcoming University of Wyoming presidential search to replace outgoing President Thomas Buchanan." In a November 1, 2012, follow-up letter, Mr. Ehrlick referred to the prior request as seeking "records that relate to the finalists, including travel arrangements, itineraries and correspondence...listing the names of the finalists and/or related to their visits to the UW campus." Whether the Casper Star-Tribune intended that these requests include "applications" or "letters of reference" is unknown to Defendants, and therefore, Defendants deny the allegations of ¶ 6.

7. Answering the allegation of ¶ 7, Defendants have insufficient knowledge regarding the scope of the records Plaintiffs seek in this action, and therefore deny the same.

8. Answering the allegations of ¶ 8, Defendants state that the same are too vague with regard to the identity of the alleged speaker or the circumstances of the "conversations" to

admit or deny, and therefore, Defendants deny the same. Defendants admit that the University's position on public disclosure of the identities of the candidates is set out in the published statements referenced in ¶ 4, above, and Defendants believe that this position has been summarized in conversations between Mr. Chad Baldwin and Mr. Ehrlick.

9. Answering the allegations of ¶ 9, Defendants state that the same is a conclusion of law to which no response is required. To the extent that any fact is alleged, Defendants deny the same.

10. Answering the allegations of ¶ 10, Defendants state that whether or not the provisions of the Open Meetings Law may be applicable to this case is a question of law and no response is required. To the extent that any fact is alleged, Defendants deny the same.

11. Answering the allegations of ¶ 11, Defendants admit the same to the extent that it appears that Plaintiffs seek the Court's declaration of their rights to inspect the records described in ¶ 6, above.

12. Answering the allegations of ¶¶ 12 through 14, inclusive, Defendants admit that this Court has jurisdiction over declaratory judgment actions, and admit that there is a dispute between the Plaintiffs and Defendants concerning the rights of the parties under the Public Records Act which dispute is subject to judicial resolution under the Uniform Declaratory Judgments Act, and in particular, Wyo. Stat. § 1-37-103.

13. Answering the allegations of ¶¶ 15 through 37, inclusive, Defendants state that the allegations are conclusions of law to which no response is required. To the extent that any fact is alleged, except as admitted in ¶ 5, above, Defendants deny the same.

14. Defendants deny each and every allegation not specifically admitted herein.

AFFIRMATIVE DEFENSES

15. Plaintiff, Casper Star-Tribune has acknowledged that the records it sought do not currently, and may not ever, exist. To the extent that Plaintiffs seek inspection of records that do not now exist, or will not exist, the Petition fails to state a claim upon which relief can be granted.

16. To the extent that records sought do not exist, or will not exist, the Petition seeks an improper advisory opinion.

17. Defendants are mindful of the requirements of Rule 11, Wyo.R.Civ.P. Therefore, Defendants reserve the right, with leave of Court, to assert additional affirmative defenses which the record in this matter may properly support.

Wherefore, Defendants pray that the Plaintiffs' Petition for relief be denied and that judgment be entered in their favor.

COUNTERCLAIM

Defendants/Counterclaim Plaintiffs, by and through undersigned counsel, Counterclaim against the Plaintiffs/Counterclaim Defendants herein, and allege:

PARTIES

1. Counterclaim Plaintiff University of Wyoming is the only four-year university in the State of Wyoming. Pursuant to the Wyoming Constitution, the University of Wyoming is governed by the Counterclaim Plaintiff Board of Trustees. Wyo. Const., Art. 7, § 17. The Board of Trustees is ultimately responsible for the maintenance, care and keeping of the public records of the University, and therefore falls within the definition of "official custodian" of the University's records in Wyo. Stat. § 16-4-201(a)(ii).

2. Counterclaim Defendant Lee Publications, Inc., is a corporation authorized to do business in the State of Wyoming. On information and belief, Lee Publications, Inc. is the owner of the Casper Star-Tribune, a newspaper of general circulation in Natrona County, Wyoming, and throughout the State of Wyoming.

3. Counterclaim Defendant Cheyenne Newspapers, Inc., is a corporation authorized to do business in the State of Wyoming. On information and belief, Cheyenne Newspapers, Inc. is the owner of the Cheyenne Tribune-Eagle, a newspaper of general circulation in Laramie County, Wyoming, and throughout the State of Wyoming.

4. Counterclaim Defendant Associated Press is a not-for-profit news cooperative owned by its newspaper and broadcast members. The Associated Press maintains one or more offices within the State of Wyoming, including Cheyenne, Wyoming.

JURISDICTION AND VENUE

5. This counterclaim is authorized by the provisions of Wyo. Stat. § 16-4-203(g), which permits the official custodian of any public record to apply to the District Court in the district in which the record is located for an order permitting the restriction of disclosure on the

ground that disclosure would do substantial injury to the public interest. Therefore, this Court has jurisdiction over this case, and venue is proper in this judicial district.

6. This counterclaim is further required by the provisions of Rule 13(a), Wyo.R.Civ.P.

FACTUAL ALLEGATIONS

7. Counterclaim Plaintiffs are currently involved in an international search for an individual to fill a vacancy in the office of the president of the University due to the announced retirement of current President Thomas Buchanan. The search is being managed by a professional executive search consultant firm, Greenwood/Asher & Associates, Inc., which was retained by Counterclaim Plaintiffs, University of Wyoming and its Board of Trustees, and is acting on their behalf.

8. The goal of the search is to attract the greatest number of the most experienced and highest qualified persons to become candidates for the position of President of the University of Wyoming. The University and Board of Trustees hope to attract “lateral” candidates for the position, including current high-ranking executive officers of other colleges and universities throughout the country and internationally.

9. It is in the public interest that the pool of candidates from which the selection will be made be as large as possible, and that the best qualified candidates be included in the pool.

10. Counterclaim Plaintiffs are informed and believe, and therefore allege, that most sitting, high-ranking officials of other colleges and universities will not become candidates for the position of president of the University of Wyoming if their identities are publicly disclosed.

11. Counterclaim Plaintiffs are informed and believe, and therefore allege, that sitting, high-ranking officials of other colleges and universities who are currently candidates for the position of president of the University of Wyoming will withdraw from the candidate pool unless confidentiality of their identities can be assured.

12. Counterclaim Plaintiffs believe and therefore allege that the refusal of sitting, high-ranking officials of other colleges and universities to become candidates for the position of president, and the withdrawal of those who are currently candidates for the position of president, if their identities are not protected, will cause substantial injury to the public interest.

WHEREFORE, Counterclaim Plaintiffs pray that the Court take jurisdiction over this Counterclaim and, following a hearing, find and declare that public disclosure of the identities of

the finalists for the position of president of the University of Wyoming would do substantial injury to the public interest, notwithstanding the fact that the records might otherwise be available to public inspection, and order such other and further relief as the Court shall find just and proper in the circumstances.

Dated this 13th day of December, 2012.

THE UNIVERSITY OF WYOMING and
the Board of Trustees, Defendants.

By: 

Bruce A. Salzburg (WY Bar No. 6-711)
Attorney for Defendants
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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing Answer and Counterclaim was served on counsel for the Plaintiffs on this 13th day of December, 2012, by first class mail, addressed as follows:

Bruce T. Moats, Esq.
Law office of Bruce T. Moats, P.C.
2515 Pioneer Ave.
Cheyenne, WY 82001

