

Monroe A. Miller, Jr.  
19 Big Spruce Lane  
Waynesville, NC 28786  
(828) 456-3718  
March 11, 2013

The Grievance Committee  
**The North Carolina State Bar**  
208 Fayetteville Street  
PO Box 25908  
Raleigh, NC 27611  
(919) 828-4620

**Subject: Complaint against Patrick U. Smathers**

I, the undersigned hereby complain against

Patrick U. Smathers  
**Smathers & Smathers**  
118 Main Street, Suite B  
Waynesville, NC 28716  
(828) 648-8240

I agree to cooperate by furnishing to the representatives of the North Carolina State Bar all pertinent information and records in my possession concerning the alleged misconduct of said attorney. I further agree that if a hearing or inquiry is ordered concerning the alleged misconduct of said attorney, then I will furnish evidence concerning the facts by submitting to deposition or personal attendance at the hearing or inquiry. I hereby indicate that this information is provided and transmitted by me to the North Carolina State Bar for the purpose of investigating the alleged misconduct of the above named attorney. I understand that I may also need to reveal this information to a privately-retained attorney to pursue private remedies on my behalf. I further understand that the immunity granted by North Carolina General Statute 84-28.2 applies only to those statements made without malice and intended for transmittal only to the North Carolina State Bar.

I also understand that the North Carolina State Bar may reveal this information to the accused attorney for his response to a formal inquiry and to others pursuant only to the Rules and Regulations of the North Carolina State Bar.

On March 5, 2013, Pat Smathers sent me a threatening letter (enclosed) informing me that a harassment complaint had been filed against me which he was authorized to investigate, and invited me to attend a meeting with him, the retained lawyer for Haywood Community College (HCC), Bill Aiken, the Interim President of HCC, and myself. He wrote that "The basis of the claim is that you are not following procedures established for requesting public documents, and thereby affecting the employee's ability to carry out his duties and the responsibilities of his employment." The "policy" Smathers was referring to was HCC **Policy 1.1: Public Records Policy**, which he approved while being retained as counsel for HCC (also enclosed). Smathers further stated that "I have been asked by the College's Administration to assist in investigating a harassment claim an employee has made against you. ... My investigation is limited solely as it may affect operations of the College and not any personal action the employee may or may not have against you. I would appreciate the opportunity to meet with you in regard to this claim to determine its merit and address other issues outlined in this letter".

Unfortunately, the "policy" is fatally flawed, in that the policy he approved oversteps North Carolina General Statutes, Superior Court Rulings, and other generally accepted guidelines for Open Meetings and Public Records, as will be shown.

Consequently, the basis for the whole harassment claim was rendered null and void. The claim was made by Bill Dechant, an HCC employee. Presumably, Smathers counseled Dechant to use this particular strategy (**Policy 1.1**) as the basis of the harassment claim.

**The conflict of Interest.**

I am to be investigated by a lawyer (Smathers) regarding a harassment claim by an HCC employee (Dechant) based on a fatally flawed "policy" that he (Smathers) approved, with he (Smathers) now representing that HCC employee. Who is Smathers going to defend? The HCC employee using the fatally flawed "policy" as a basis for his complaint, or the fatally flawed "policy" itself that he himself (Smathers) approved?

The HCC employee, Dechant, has no standing to have filed the harassment claim in the first place based on a fatally flawed "policy".

**The Policy.**

This policy's centerpiece is a "gatekeeper", the interposition of a person between members of the public who desire access to public records and the custodians of public records. The first sentence of the third paragraph of **Policy 1.1: Public Records Policy** states: "All requests for public information are to be presented to the Haywood Community College Marketing and Communications Office". Debbie Davis, an HCC employee, is the Marketing and Communications person, who reports directly to Aiken.

A lawsuit was filed in Buncombe County in 1999 by Don Yelton and other plaintiffs 99 CVS 03497 (enclosed), because the then (and still current) Buncombe County Manager, Wanda Greene, attempted to insert herself as a "gatekeeper" in the implementation of the County's policy. Specifically, Superior Court Judge Loto Caviness ruled:

5. That the term "custodian of public records" as contained in North Carolina General Statutes Section 132-6(a) refers to the individual who in fact has possession of records, and not to the County Manager other than as to those records which she does in fact have personal possession of, and the Defendant Greene cannot therefore legally make herself in effect a "Gatehouse" for access to public records as she has attempted to in the implementation of the County's policies to these Plaintiffs".

Judge Caviness struck down Buncombe County's attempt at inserting a "gatekeeper" between the public and the custodian of public records".

The custodian of public records at HCC, generally speaking, is the President, i.e. Interim President Bill Aiken. The HCC Board of Trustees are custodians of public records unavailable to Bill Aiken.

As a review, North Carolina General Statute § 132-6. **Inspection and examination of records**, referred to in Judge Caviness's ruling states:

(a) 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. As used herein, "custodian" does not mean an agency that holds the public records of other agencies solely for purposes of storage or safekeeping or solely to provide data processing.

Furthermore, from the UNC website, <http://www.sogpubs.unc.edu/cmgs/cmgs08.pdf>, County and Municipal Government in North Carolina, Article 8, Open Meetings and Public Records, by David M. Lawrence, UNC Chapel Hill School of Government,

### **Records Management**

#### **The Custodian**

G.S. Chapter 132 imposes a number of responsibilities on the *custodian* of public records. This official maintains public records, may bring actions to recover records improperly held by others, and is required to permit public inspection of records and provide copies of records to those who request them. G.S. 132-2 declares that the official in charge of an office that holds public records is the custodian of those records. Thus, the register of deeds is the custodian of records in her office, the sheriff is the custodian of records held by the sheriff's department, the county assessor is the custodian of records in his or her office, and so on.

In the case of HCC, my experience attempting to go through Debbie Davis, the "gatekeeper" was frustrating and unrewarding, as generally speaking, she could not even understand the questions being asked. Responses were practically worthless and a waste of everyone's time. The past HCC president, Rose Johnson, and the current Interim President, Bill Aiken, have inserted an HCC employee to respond to my questions, Bill Dechant, an architect by trade. This individual has shown also that he is not capable of responding to my requests. As of late, I have directed requests for public information directly to the Interim President, Bill Aiken, and when that fails, to the Chairman of the HCC Board of Trustees, Bob Morris and other trustees. Thus far, Aiken has been hostile and uncooperative, while Board Members have been of great assistance in obtaining the information I have been requesting. And the reason is natural - they are interested in getting answers to the questions that I am asking. Dechant, feeling miffed, because I am circumventing him, filed a harassment claim, with **Policy 1.1** as the basis.

**HCC Policy 1.1: Public Records Policy**, is fatally flawed and valueless.

#### **Approval of Policy 1.1**

This certainly presents a problem for HCC with Smathers approval of Policy 1.1. The best case is that Smathers is simply a lawyer ignorant of court rulings and NC General Statutes, but the worst case is that he intentionally will be creating problems for HCC by having approved this stupid policy, and the unintended consequences that follow thereof. It wasn't as though Smathers was not forewarned about this. I sent Rose Johnson the following e-mail on September 5, 2012, one day after the "policy" was approved:

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

Subject: Policy 1.1 Public Records Policy vs 99 CVS 03497

Date: Wed, 05 Sep 2012 17:44:07 -0400

From: Monroe Miller <monroemillerjr@bellsouth.net>

To: Rose Johnson <rjohnson@haywood.edu>

CC: Tammy Goodson <trgoodson@haywood.edu>, Debbie Davis, Don Yelton, Art Patten, Bob Morris <bmorris@blueridgeglass.com>, Jonnie Cure, Terry Ramey

Ms. Johnson,

Thank you for having Tammy Goodson forward my request for public information to Debbie Davis and having her send me your newly revised/approved Public Records Policy (re-attached). That Policy clearly defines you, the President, as being deemed the custodian of all public records for the College. (There was confusion in my mind if Tammy Goodson was actually the custodian of all public records for the College, which has now been resolved).

Evidently, neither you nor Pat Smathers decided to pay any attention to Buncombe County Superior Court decision 99 CVS 03497, previously provided and also attached to this e-mail, prior to approving this Public Records Policy. I'd like to remind you that any Superior Court decision certainly trumps any "policy" approved by a community college regarding public records requests.

**Since I don't have Pat Smathers e-mail address, can you kindly forward this e-mail with attachments to him, so that he can constipate over it.**

Finally, and no disrespect for Debbie Davis, but she has been identified as a "gatekeeper" per 99 CVS 03497 by this policy, so I will be making all future requests for public information to you, the President of HCC, the custodian of all public records for the College. Who you decide to have respond to those requests is up to you. Let me know if you have any problem with this.

Thank you,

Monroe Miller

p.s. Don Yelton, on this copy list, was an original plaintiff in Case 99 CVS 03497.

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

Subject: Your requests

Date: Wed, 5 Sep 2012 18:53:12 +0000

From: Debbie Davis <ddavis@haywood.edu>

To: Monroe Miller (monroemillerjr@bellsouth.net) <monroemillerjr@bellsouth.net>

Attached is Policy 1.1 Public Records Policy that you requested. The Presidential Search Criteria is not yet available. I will send it to you as soon as it is.

Debra M. Davis  
Director of Marketing and Communications  
Haywood Community College  
185 Freedlander Drive  
Clyde, NC 28721  
ddavis@haywood.edu  
828-627-4521

All e-mail correspondence to and from this address is subject to the North Carolina Public Records Law, which may result in monitoring and disclosure to third parties, including law enforcement.

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Clearly, there was a request to forward this information to Pat Smathers. Either communication is intentionally poor at HCC, or Smathers chose to ignore this information and throw it in the trash.

In addition, I sent a letter to Bill Aiken on December 5, 2012, the subject of **Policy and Procedural Development and Adoption Procedure**, in which I stated:

“This **Policy 1.1 Public Records Policy** is a bogus, worthless policy, per 99cvs03497. When I now request Public Information from the county, I go directly to the custodian of that information, not David Teague. Prior to Rose Johnson’s departure, I made all requests for public information through her, as the president of HCC is the custodian of all public information, not Debbie Davis. Any future HCC public information requests will be directed to you, as Interim President. You, of course, can designate anyone you choose to respond to the request.”

Evidently, Bill Aiken chose not to forward this information to Pat Smathers and instead, threw it in the trash. Otherwise, this policy would have been invalidated and could not then have been used as a basis for Dechant's harassment claim against me.

In Smathers threatening letter, he attempts to reiterate and reenforce his fatally flawed policy by saying: "I have also been made aware that in addition of the claim of the employee, that you are making requests of other employees for documents and information, but not following the College's procedure to facilitate you receiving the same. I am enclosing a copy of the College's policy addressing this issue, and requesting that any future requests for documents and information be made through Ms. Debbie Davis in the Public Information Office of the College. For your information, Ms. Davis works directly for the President of the College who is custodian of the records." Smathers is correct in that, the President is the custodians of the records, and while Debbie Davis may work directly for him, she is still a "gatekeeper".

Smathers continues to threaten me when he writes: "If it is determined that your actions have been made to harass an employee, or interfere with operations of the College, or otherwise fail to follow the enclosed policy and Chapter 132 of the General Statues, it may be necessary that the College take appropriate legal action to prevent disruption of the educational process."

What! No actions have been made to harass any employees, simply circumvent them due to their inability to respond to requests for public information. In no way, shape or form has there been anything done to disrupt the educational process at HCC.

I don't appreciate threats.

I wrote to Bob Morris, chair of HCC regarding the possible adverse effects Smathers may have upon the College with a letter dated March 9, 2013, enclosed.

Restating:

I am to be investigated by a lawyer (Smathers) regarding a harassment claim by an HCC employee (Dechant) based on a fatally flawed "policy" that he (Smathers) approved, with he (Smathers) now representing that HCC employee. Who is Smathers going to defend? The HCC employee using the fatally flawed "policy" as a basis for his complaint, or the fatally flawed "policy" itself that he himself (Smathers) approved?

Please review this complaint and determine the legitimacy of why Pat Smathers has threatened me and investigating me for Bill Dechant's baseless harassment claim, and why there is not a conflict of interest.

enc:

- Letter from Pat Smathers dated March 5, 2013
- Policy 1.1: Public Records Policy
- Superior Court Ruling, Buncombe County, 1999, 99CVS03497
- E-mail to Rose Johnson, September 5, 2013
- Letter to Bill Aiken, December 5, 2013
- Letter to Bob Morris, March 9, 2013

\_\_\_\_\_  
Monroe A. Miller Jr.  
19 Big Spruce Lane  
Waynesville, NC 28786  
(828) 456-3718

[Notary Stamp Here]

**Jurat**

Signed and sworn before me \_\_\_\_\_, on this day, the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Signed: \_\_\_\_\_

Printed: \_\_\_\_\_

Monroe A. Miller, Jr.  
19 Big Spruce Lane  
Waynesville, NC 28786  
(828) 456-3718  
March 25, 2013

The Grievance Committee  
**The North Carolina State Bar**  
208 Fayetteville Street  
PO Box 25908  
Raleigh, NC 27611  
(919) 828-4620

**Subject:** Complaint against Patrick U. Smathers, Supplement 1

**Re:** Your file number 13G0195

I, the undersigned in my complain against

Patrick U. Smathers  
**Smathers & Smathers**  
118 Main Street, Suite B  
Waynesville, NC 28716  
(828) 648-8240

add the following enclosed letter as a supplement to my original complaint dated March 11, 2013. The letter is addressed to Bill Aiken, Interim President of Haywood Community College dated March 24, 2013. The letter is an account of a meeting that was called for by Pat Smathers in his March 5, 2013 letter to me, already on file. The meeting was attended by:

- Pat Smathers
- Bill Aiken, HCC Interim President
- Bob Morris, Chair, Haywood Community College Board of Trustees.

The meeting started at 9:50am (scheduled to start at 10am) and lasted for one hour and ten minutes.

Please add this letter as a supplement to my complaint against Pat Smathers. Please let me know if it is necessary to have a notarized page attached to this supplement and I will resubmit it.

Thank you,

---

Monroe A. Miller Jr.  
19 Big Spruce Lane  
Waynesville, NC 28786  
(828) 456-3718

Monroe A. Miller, Jr.  
19 Big Spruce Lane  
Waynesville, NC 28786  
March 24, 2013

William Aiken, Interim President  
Haywood Community College  
185 Freedlander Drive  
Clyde, NC 28721

**Subject: Recap - Smathers "Investigation" / Interrogation of me in your Star Chamber<sup>1</sup> on March 19, 2013**

Upon reflection of our meeting on March 19, 2013, I feel it useful to all to summarize the essence of that meeting from my perspective.

First of all, Smathers tried in every way possible to dissuade me from attending the meeting ("investigation") that he called for in his threatening letter to me of March 5, 2013. That included, among a list of issues, issuing an opinion in a very hostile telephone call that Terry Ramey is excluded from the meeting and thus denying me effective assistance of counsel. He further stated in another very hostile telephone call (recorded two of his very hostile telephone conversations) that we could not have the meeting at my home because "he did not trust me", and I was not going to be allowed to record the meeting. Repeatedly, if I didn't like the conditions of the meeting, he threatened that I did not have to attend, and they would have the meeting without me. The topics of the meeting were to be held strictly to Policy 1.1 and the harassment claim.

I asked if the meeting was being recorded, and both you and Smathers indicated it was not recorded.

Smathers attempted to make a point at the onset that this was not an investigation about me. He asked me several times if I understood that. Well, if it was not about me, why were we having the meeting? You indicated in your letter of March 14, 2013, that "I have requested that Mr. Smathers conduct an investigation of the complaint, **and the results of his investigation will be discussed with you at our meeting**".

Well, upon reflection and with Bob Morris as witness, Smathers grilled me like a hot potato during that meeting. There were no "results of his investigation" provided at that meeting. I ask again, what right does Smathers have to investigate me, a private citizen, based on an internal HCC complaint, based on your Policies 1.1 and 6.34?

Rather than an "investigation", I viewed this more of an **Interrogation** or **Inquisition**.

Now some specifics, in no particular order..., as I took few notes during the interrogation.

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<sup>1</sup> The **Star Chamber** (Latin: *Camera stellata*) was an English court of law that sat at the royal Palace of Westminster until 1641. It was made up of Privy Councillors, as well as common-law judges and supplemented the activities of the common-law and equity courts in both civil and criminal matters. The court was set up to ensure the fair enforcement of laws against prominent people, those so powerful that ordinary courts could never convict them of their crimes. Court sessions were held in secret, with no indictments, and no witnesses. Evidence was presented in writing. Over time it evolved into a political weapon, a symbol of the misuse and abuse of power by the English monarchy and courts. [From Wikipedia].



- **Parking Lot Survey Fiasco** - Smathers asked if there was an interaction with Dechant about a survey. When I referred to the survey drawings that I brought to the meeting (of which we were going to need a bigger table), Smathers immediately shut up and moved immediately to the next topic, apparently thinking I was not prepared to discuss Dechant's behavior at this interrogation.
- **Teresa Starrs** - Smathers asked if I had asked Teresa Starrs to attend a meeting. This was a meeting I requested be set up to answer specific questions I had regarding the FLS solar thermal installation. I had requested that Teresa Starrs attend, as I felt that since she had the word "energy" in her title and it would be beneficial to have her at the meeting. Up to that point, extracting answers from Dechant was an unfulfilling experience. If I was thinking any faster, I would have reminded everyone attending that you, Mr. Aiken, were the individual, in a hostile telephone conversation, that excluded Teresa Starrs from attending that meeting. You burned the first bridge. I suspended the request for the meeting after you refused to allow Teresa Starrs to attend. (Second bridge was your siccing Smathers on me with this harassment claim).
- **99CVS03497 - "Gatekeepers"**. Smathers went nearly ballistic over this Buncombe County Superior Court Case. He asked me if I had a copy of the case, and nearly dropped his jaw when I produced it. He held the copy up dramatically and said it didn't count here in Haywood County, because it did not go to appellate court. He said that is why I needed a lawyer to be present. He asked if the copy I showed to him was his copy. No, it was my original, he could print a copy off my web site.  
[re: <http://haywoodtp.net/pub11/120803-99cvs03497.pdf>].

You know, I am going to share with you one of my life long experiences here. A lawyer can only issue an opinion, it is the judges that make the rulings. I have since researched this Superior Court Ruling, and a Superior Court ruling stands as law. If a case was appealed, it would have been due to objections that had to do with the circumstances of that particular case. One example being the case Haywood County lost to Superior Court with Judge Laura Bridges ruling against Haywood County in favor of the Cameron's. Haywood County stood to loose additional money (over the one-half million dollars already) if they appealed, so they didn't. Based on Smathers opinion, 99CVS03497 meant nothing. What do you want to have happen? Have a lawsuit filed against HCC? What makes you or Smathers think the outcome would be any different here than in Buncombe County?

Another instance of a Superior Court Ruling having ramifications across the entire state is:

[http://www.cbsnews.com/2100-201\\_162-2007258.html](http://www.cbsnews.com/2100-201_162-2007258.html), **N.C. Cohabitation Law Struck Down**, A North Carolina Superior Court judge has issued a formal ruling declaring that the state's law barring unmarried couples from living together is unconstitutional and blocked state officials from enforcing it...

I believe I will go with the Judge Loto Caviness's ruling in this instance, rather than Smathers opinion.

- **Motives** - Smathers introduced a line of questioning seeking my motives for inquiring about the FLS system at the CAB in an attempt to discredit me. Unfortunately for Smathers, my motives are as pure as the driven snow, and are unchallengeable. We would not have been in that meeting if everyone would have been forthright and answered questions in a straightforward manner in the first place. But no.
- **Letter to Bob Morris** - Smathers then deviated from his own stated intentions of this "investigation" / Interrogation / Inquisition and started asking questions about a letter I had sent to Bob Morris. What was that all about? He certainly seemed agitated. He then threatened to "step outside after the meeting" and it appeared I was going to get another earful of threats. I said, "Sure, I have my recorder with me, and I will turn it on". Do you know what, Smathers never had that threatening discussion after the meeting after all! Recordings like that are usually splashed on my website.

- **Party to Proceedings** - Smathers interestingly said at one point, that I was not a party to these proceedings. What? I am the one who Smathers targeted in a harassment claim in his threatening March 5<sup>th</sup> letter to me. I sure as hell am a party, if not the party.
- **Effective Assistance of Counsel** - I had advised "Tracy" at Smathers office via telephone on March 7<sup>th</sup> ("Tracy" would not reveal her last name when asked) that Terry Ramey would be attending this "investigation". On March 8<sup>th</sup>, Smathers, in a very hostile telephone call, informed me that I was not going to be allowed to record this meeting, and that Ramey was not to attend. Why, I asked? As far as the recording, Smathers indicated it was a personnel matter. As far as Ramey, he said that Ramey did not have the ethics a lawyer has, in terms of being involved in a personnel matter. Well let me advise you of one thing, Mr. Aiken, Terry Ramey, in my opinion, has a higher ethical standard than any lawyer in this county (save maybe one that I know of). When I told Smathers that Terry was going to act as effective assistance of counsel, he still refused to allow Terry into the meeting. I asked Smathers to put that in writing. He refused.

So, Mr. Aiken, now that the dust has settled after the meeting, what next? Since according to your March 14<sup>th</sup> letter, this was simply going to be a discussion reviewing the results of Smathers "investigation" thus far. I am interested in the results and findings of this "investigation" / Interrogation / Inquisition, since it was not a review after all.

You know, there might be some unintended consequences here for HCC about this matter. Did you ever think that Smathers might have hit a hornets nest with a baseball bat on this one? Did you consider how I would feel after getting slapped with a threatening letter from Smathers about a harassment claim from a HCC employees complaint [re: Dechant] based on a fatally flawed personnel Policy 1.1 and Policy 6.34 that only applies to HCC personnel? Well, based on how things go from here, there could be several options, one being that I would be within my rights to file a defamation of character lawsuit against HCC, specifically naming you and Smathers. Another option would be for you to drop / dismiss this whole thing and jump right into cooperative mode, so that we can all assist the Board of Trustees in finding out what is going on with the FLS solar thermal system and provide some much needed answers.

Let me know.

Sincerely,

Monroe A. Miller, Jr.

cc: Bob Morris  
Tammy Goodson  
Terry Ramey, via USPS (Terry gets a stamp, Smathers does not.)

bcc:

Monroe A. Miller, Jr.  
19 Big Spruce Lane  
Waynesville, NC 28786  
(828) 456-3718  
April 12, 2013

The Grievance Committee  
**The North Carolina State Bar**  
208 Fayetteville Street  
PO Box 25908  
Raleigh, NC 27611  
(919) 828-4620

**Subject:** Complaint against Patrick U. Smathers, Supplement 1

**Re:** Your file number 13G0195

I, the undersigned in my complain against

Patrick U. Smathers  
**Smathers & Smathers**  
118 Main Street, Suite B  
Waynesville, NC 28716  
(828) 648-8240

add the following enclosed documents as a second supplement to my original complaint dated March 11, 2013. I received a **Letter of Capitulation** from Bill Aiken, Interim President of Haywood Community College and co-signed by Pat Smathers dated April 4, 2013, sent to me by USPS Certified Mail, received on April 10, 2013, enclosed (along with a copy of the envelop).

I responded in kind with a simple e-mail acknowledging his letter, also enclosed, copying Bob Morris, Chair, Haywood Community College Board of Trustees, and Tammy Goodson, Secretary to the Board of Trustees.

Aiken's "decision" is, in essence, that he is **requesting** that I have no further contact with Bill Dechant, Director of Campus Development. What ever happened to the "harassment claim" which I never saw, which had no basis to begin with? This was all he could do, even after the "investigation" / Interrogation / Inquisition in his Star Chamber on March 19, 2013. I believe Aiken realized that he and Smathers dug themselves into a hole and this was their only way out.

I want to draw to your attention that Aiken and Smathers are also continuing to defend the concept of a "gatekeeper", the basis for my original Grievance Complaint, when Aiken (with Smathers co-signing) says:

"Please make your requests to the office of Ms. Debbie Davis, Public Information Officer for the College, who works for me as custodian of records".

Please add this letter as a second supplement to my complaint against Pat Smathers.

Thank you,

---

Monroe A. Miller Jr.  
19 Big Spruce Lane  
Waynesville, NC 28786  
(828) 456-3718

April 4, 2013

APR 10 2013

Mr. Monroe Miller  
19 Big Spruce Lane  
Waynesville, NC 28786

Dear Mr. Miller:

Please be advised that I have made my decision in regard to the complaint filed by Mr. Bill Dechant pursuant to Board Policy 6.34.

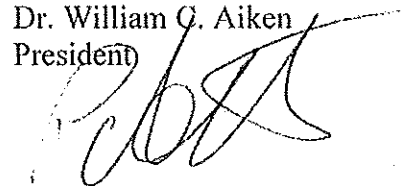
This is to request and inform that you are to have no further contact with Mr. Bill Dechant at Haywood Community College in his employment as Director of Campus Development. This does not, however, prevent you from requesting public records as defined by N.C.G.S. Chapter 132 and the College's policy for obtaining public records. Please make your requests to the office of Ms. Debbie Davis, Public Information Officer for the College, who works for me as custodian of records. Alternatively, you may make your requests directly to my office. Either will be satisfactory as this will enable the College to promptly respond to your requests for documents, as well as monitor your interactions with Mr. Dechant. Please be advised that I have further directed Mr. Dechant that he is not obligated to respond to any of your emails or requests unless directed by me or my office. Your cooperation would be greatly appreciated.

If you have any questions, please feel free to contact me or College attorney, Patrick U. Smathers.

Sincerely,



Dr. William G. Aiken  
President



Patrick U. Smathers  
Attorney for Haywood Community College



COMMUNITY COLLEGE

185 Freedlander Drive • Clyde, North Carolina 28721

President's Office

**CERTIFIED MAIL**<sup>SM</sup>



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Mr. Monroe Miller  
19 Big Spruce Lane  
Waynesville, NC 28786

**Subject:** Your certified letter dated April 4, 2013

**From:** Monroe Miller <monroemillerjr@bellsouth.net>

**Date:** 4/10/2013 4:19 PM

**To:** Bill Aiken <wcaiken@haywood.edu>

**CC:** Tammy Goodson <trgoodson@haywood.edu>, Bob Morris <bmorris@blueridgeglass.com>

**BCC:** Lisa Baldwin <rtbaldwin2@charter.net>, Annette Conger <kindli8203@hotmail.com>

Mr. Aiken,

I am in receipt of your certified letter dated April 4, 2013. I understand that you have requested that I have no further contact with Bill Dechant in his capacity as HCC Director of Campus Development. I was pretty much through with him anyway. You can expect my full cooperation in this matter.

Further requests for public information will be addressed directly with you and your office, and not Ms. Debbie Davis, Public Information Officer.

Regards,

Monroe Miller

# SMATHERS & SMATHERS

ATTORNEYS AT LAW

Patrick U. Smathers  
Zeb L. Smathers

118 Main Street, Suite B  
Canton, NC 28716  
Tel: 828.648.8240  
Fax: 828.648.3869

March 5, 2013

MAR 6 2013

Mr. Monroe A. Miller, Jr.  
19 Big Spruce Lane  
Waynesville, NC 28786

Dear Mr. Miller:

I am writing as attorney for Haywood Community College. I have been asked by the College's Administration to assist in investigating a harassment claim an employee of the College has made against you. The basis of the claim is that you are not following procedures established for requesting public documents, and thereby affecting the employee's ability to carry out his duties and the responsibilities of his employment. My investigation is limited solely as it may affect operations of the College and not any personal action the employee may or may not have against you. I would appreciate the opportunity to meet with you in regard to this claim to determine its merit and address other issues outlined in this letter.

I have also been made aware that in addition to the claim of the employee, that you are making requests of other employees for documents and information, but not following the College's procedure to facilitate you receiving the same. I am enclosing a copy of the College's policy addressing this issue, and requesting that any future requests for documents and information be made through Ms. Debbie Davis in the Public Information Office of the College. For your information, Ms. Davis works directly for the President of the College who is custodian of the records.

Please be advised that unless you follow the procedure, a copy of which is enclosed, the College may not be able to meet your requests. The NC Public Records Act, N.C.G.S. Chapter 132, provides that all documents and other public information are to be provided you; however, it is inappropriate to request employees of the College their opinions of the same or interpretation of the documents. Any such requests are to be made through Ms. Davis, and if of a policy nature, to the Board of Trustees.

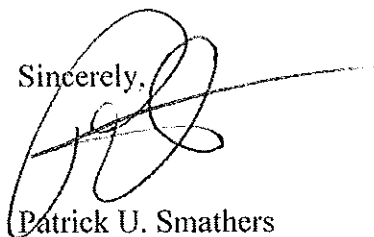
If it is determined that your actions have been made to harass an employee, or interfere with the operations of the College, or otherwise fail to follow the enclosed policy and Chapter 132 of the General Statutes, it may be necessary that the College take appropriate legal action to prevent disruption of the education process. Rest assured, the Trustees and Administration of the College want to fulfill their obligation to you as a citizen and your right to documents and information, but cannot, and will not tolerate actions which are harassing or disruptive to the operation and management of the College.

Mr. Monroe Miller  
Page 2  
March 5, 2013

I would appreciate you contacting me within ten (10) days from the postmarked date of this letter to arrange a meeting between you, myself, and the College's Interim President to address the above issues and any concerns you may have about the same. If you would like to have your attorney present, please feel free to do so. Please contact Tracy of my office who will arrange for an appropriate time to meet with the College's Interim President and myself.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to be 'P. Smathers', written over a horizontal line. The signature is stylized and somewhat cursive.

Patrick U. Smathers

PUS:th

Enclosures

cc: Dr. William Aiken  
Bob Morris



# Policy 1.1: Public Records Policy

## Related Policies & Procedures

MAR 6 2019

### Procedures

- 1 Dissemination of Public Records and Information

**Effective Date:** Tue, Sep 04, 2012

In compliance with NC General Statutes Chapter 132, Haywood Community College maintains and recognizes that public records and information made or received pursuant to NC law or ordinance in connection with the transaction of public business not classified as confidential communications and information are the property of the people. Confidential communications and information as defined by NC General Statutes are not for public dissemination and will be maintained in accordance with these laws. The president of the college shall be deemed the custodian of all public records for the College.

The people may obtain copies of Haywood Community College public records and information free or at the actual cost of reproducing the public record or public information. Actual cost is limited to direct, chargeable costs related to the reproduction of a public record as determined by generally acceptable accounting principles.

All requests for public information are to be presented to the Haywood Community College Marketing and Communications Office. Persons requesting copies of public records may elect to obtain them in any and all media in which the college is routinely capable of providing them. The College may assess different fees for different media as prescribed by law. The Public Information Office will maintain a record of requests for public information and its dissemination of the requested information.

The Marketing and Communications Office shall permit public records to be inspected and examined at reasonable times during its normal working hours and under reasonable supervision of any person and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law. If it is necessary to separate confidential from non-confidential information in order to permit the inspection, examination, or copying of the public records, the College shall bear the cost of such separation.

Some examples (not to be interpreted as a complete listing) of confidential information as defined in NC General Statutes Chapter 132 include:

- Confidential communications by legal counsel
- Minutes of Board of Trustee closed sessions (also referenced in NC General Statute 143)
- Actual address and telephone number of a program participant
- Personally identifiable admissions information
- Electronically captured image of an individual's signature, date of birth, driver's license number, or a portion of an individual's social security number

- College emergency response plans and related records

(NC § Chapters 132 and 143)

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

FILED IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
99 SEP -1 AM 9:58 FILE NO. 99 CVS 03497

PETER DAWES, JAMES D. YELTON  
And MIKE MORGAN,  
d/b/a/ C&T News Service,

BY \_\_\_\_\_

Plaintiffs,

JUDGMENT

vs.

BUNCOMBE COUNTY BOARD OF  
COMMISSIONERS AND WANDA S.  
GREENE, in her capacity as  
Buncombe County Manager,  
Defendants.

AUG 2 2012

THIS CAUSE came before the undersigned Judge on August 18, 1999 on the plaintiff's Petition for Declaratory Judgment and Other Relief; and after reviewing the pleadings, hearing the testimony of witnesses appearing this day in open court, and considering the arguments of counsel, the Court hereby makes the following finding of fact:

1. This case involves a dispute over the defendant's implementation of a Multiple Information Requests Policy which as of July 9, 1999 was enforced against the Plaintiffs so as to require them to make written request to the Buncombe County Manager in order to obtain public records of the County.

BASED UPON THE FOREGOING FINDING OF FACT THE COURT CONCLUDES AS MATTER OF LAW AS FOLLOWS:

1. The North Carolina Public Records Law, General Statute 132-1 et seq., provides that "[e]very 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." General Statute 132-6(a).
2. The law provides that "[t]he public official in charge of an office having public records shall be the custodian thereof." General Statute 132-2.

3. The law by its own express terms does not permit for the interposition of a "gatehouse" or "overseer" between members of the public who desire access to public records and the custodians of public records.
4. Custodians of public records (but not a "gatekeeper") are entitled to develop reasonable rules, applicable to all citizens equally, governing their production of public records; for example, it would be reasonable for a custodian to require citizens having voluminous request for copies (1) to make a written request specifying with particularity the items to be copied, and (2) to make advance payment for such voluminous items to be retrieved.
5. That the term "custodian of public records" as contained in North Carolina General Statutes Section 132-6(a) refers to the individual who in fact has possession of records, and not to the County Manager other than as to those records which she does in fact have personal possession of, and the Defendant Greene cannot therefore legally make herself in effect a "Gatehouse" for access to public records as she has attempted to in the implementation of the County's policy as to these Plaintiffs.
6. That the Defendants are legally entitled to impose reasonable procedures for obtaining copies of public records, including a requirement that such requests be made in writing to the "custodian" of the records, but not to the Defendant Greene other than for records of which she is in fact the "custodian."
7. That custodians of public records in Buncombe County, as elsewhere throughout this State, are entitled to reasonable time in which to assemble records necessary to comply with a request for inspection and/or copying.
8. That the Defendants are entitled to impose reasonable procedures to assure that the actual cost of copying records are paid by those who receive them.
9. That Defendants are entitled within the purview of the statute to impose reasonable measures to protect the County and its employees from disruptive and abusive action.

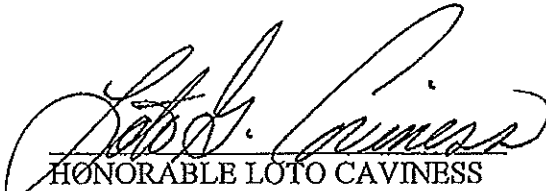
BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That Defendants "Multiple Information Request" policy as applied to these Plaintiffs, to the extent that it requires Plaintiffs to submit requests for access to public information through the County Manager, is hereby declared null and void.
2. That other than as heretofore ordered in the foregoing paragraph 1, the policy of the Defendants is affirmed by this Court as valid and reasonable procedures for

affording access to public records while simultaneously protecting other legitimate interests of the County.

3. It is specifically adjudged and decreed that Defendants may require these Plaintiffs to submit requests for voluminous information in writing to the appropriate custodians of public records.
4. It is further adjudged and decreed that as to any requests made by these Plaintiffs for information, the custodians of Defendants public records shall have reasonable time to comply with the request.
5. That each party shall pay their own cost of this action.

This the 1 day of September, 1999.

  
HONORABLE LOTO CAVINESS  
Judge Presiding



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

**Subject:**Policy 1.1 Public Records Policy vs 99 CVS 03497

**Date:**Wed, 05 Sep 2012 17:44:07 -0400

**From:**Monroe Miller

**To:**Rose Johnson

**CC:**Tammy Goodson , Debbie Davis , Don Yelton , Art Patten , Bob Morris , Jonnie Cure , Terry Ramey

Ms. Johnson,

Thank you for having Tammy Goodson forward my request for public information to Debbie Davis and having her send me your newly revised/approved Public Records Policy (re-attached). That Policy clearly defines **you**, the President, as being deemed the custodian of all public records for the College. (There was confusion in my mind if Tammy Goodson was actually the custodian of all public records for the College, which has now been resolved).

Evidently, neither you nor Pat Smathers decided to pay any attention to Buncombe County Superior Court decision 99 CVS 03497, previously provided and also attached to this e-mail, prior to approving this Public Records Policy. I'd like to remind you that any Superior Court decision certainly trumps any "policy" approved by a community college regarding public records requests.

Since I don't have Pat Smathers e-mail address, can you kindly forward this e-mail with attachments to him, so that he can constipate over it.

Finally, and no disrespect for Debbie Davis, but she has been identified as a "gatekeeper" per 99 CVS 03497 by this policy, so I will be making all future requests for public information to **you**, the President of HCC, the custodian of all public records for the College. Who you decide to have respond to those requests is up to you. Let me know if you have any problem with this.

Thank you,

Monroe Miller

p.s. Don Yelton, on this copy list, was an original plaintiff in Case 99 CVS 03497.

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

**Subject:**Your requests

**Date:**Wed, 5 Sep 2012 18:53:12 +0000

**From:**Debbie Davis

**To:**Monroe Miller

Attached is Policy1.1 Public Records Policy that you requested. The Presidential Search Criteria is not yet available. I will send it to you as soon as it is.

Debra M. Davis  
Director of Marketing and Communications  
Haywood Community College  
185 Freedlander Drive  
Clyde, NC 28721  
[ddavis@haywood.edu](mailto:ddavis@haywood.edu)  
828-627-4521

All e-mail correspondence to and from this address is subject to the North Carolina Public Records Law, which may result in monitoring and disclosure to third parties, including law enforcement.

Monroe A. Miller, Jr.  
19 Big Spruce Lane  
Waynesville, NC 28786  
March 9, 2013

Bob Morris, Chair  
Haywood Community College  
Board of Trustees  
185 Freedlander Drive  
Clyde, NC 28721

Subject: Conflict of Interest - Pat Smathers investigation of me.

Mr. Morris,

A recent threatening letter sent to me by Pat Smathers on March 5, 2013 regarding a harassment claim filed against me by Bill Dechant with HCC can have some unexpected adverse consequences for the Community College, and should be considered.

Smathers wrote in his threatening letter: "The basis of the claim is that you are not following procedures established for requesting public documents, and thereby affecting the employee's ability to carry out his duties and responsibilities of his employment". The procedures Smathers is referring to is **Policy 1.1: Public Records Policy**, Related Policies & Procedures, Effective Date: Tue, Sep 04, 2012, which he had enclosed with his threatening letter.

The problem is that this policy is fatally flawed. That, by the way, means Dechant will have to come up with another basis for his harassment claim.

This policy was one of **Rose Johnson's** last gasp while being a lame duck at HCC. I believe this policy was aimed directly at me. This policy was rammed through the HCC system in a 30 day time period, with no opportunity for public comment (yet another policy), and of course, you know who approved this policy from the legal perspective. That's right, **Pat Smathers**.

You can create all the policies you want to until you are blue in the face, but they had better not overstep North Carolina General Statutes, Superior Court Rulings, or other generally accepted guidelines for Open Meetings and Public Records. Smathers appears to have either been ignorant of these aspects of law, or simply flaunted and defied everyone when he approved this policy.

Now, he is using this fatally flawed policy that he approved as a basis to investigate me! This is the conflict of interest. If (when) he is proved wrong on his having approved this policy, he looks like an idiot.

I don't have to prove Smathers screwed up on this, all I have to do is reference the following:

- Buncombe County Superior Court decision 99 CVS 03497,
- § 132-6. Inspection and examination of records, (a), and
- County and Municipal Government in North Carolina, Article 8, Open Meetings and Public Records, by David M. Lawrence, UNC Chapel Hill School of Government.

Policy 1.1 states, first sentence in the third paragraph: "All requests for public information are to be presented to the Haywood Community College Marketing and Communications Office". That would be Debbie Davis, a "gatekeeper". Further, in Smathers threatening letter to me, he stated that " ... For your information, Ms. Davis works directly for the President of the College who is custodian of the records". Smathers has it correct



that the President of the College is the custodian of the records, and that Davis works for the President, but requiring me to go through Davis to get to the custodian is struck down by Buncombe County Superior Court decision 99 CVS 03497.

Specifically, the ruling made by Judge Loto Caviness in 99 CVS 03497 stated:

5. That the term "custodian of public records" as contained in North Carolina General Statutes Section 132-6(a) refers to the individual who in fact has possession of records, and not to the County Manager other than as to those records which she does in fact have personal possession of, and the Defendant Greene cannot therefore legally make herself in effect a "Gatehouse" for access to public records as she has attempted to in the implementation of the County's policies to these Plaintiffs".

§ 132-6. Inspection and examination of records, states:

(a) 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. As used herein, "custodian" does not mean an agency that holds the public records of other agencies solely for purposes of storage or safekeeping or solely to provide data processing.

From the UNC website, <http://www.sogpubs.unc.edu/cm/g/cm08.pdf>, County and Municipal Government in North Carolina, Article 8, Open Meetings and Public Records, by David M. Lawrence, UNC Chapel Hill School of Government,

#### Records Management

##### The Custodian

G.S. Chapter 132 imposes a number of responsibilities on the *custodian* of public records. This official maintains public records, may bring actions to recover records improperly held by others, and is required to permit public inspection of records and provide copies of records to those who request them. G.S. 132-2 declares that the official in charge of an office that holds public records is the custodian of those records. Thus, the register of deeds is the custodian of records in her office, the sheriff is the custodian of records held by the sheriff's department, the county assessor is the custodian of records in his or her office, and so on.

This certainly presents a problem for HCC with Smathers approval of Policy 1.1. The best case is that Smathers is simply a lawyer that is ignorant of court rulings and NC General Statues, but the worst case is that he intentionally will be to create problems for HCC by having approved this stupid policy. It wasn't as though he was not forewarned about this. I sent Rose Johnson the following e-mail on September 5, 2012:

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

Subject: Policy 1.1 Public Records Policy vs 99 CVS 03497

Date: Wed, 05 Sep 2012 17:44:07 -0400

From: Monroe Miller <monroemillerjr@bellsouth.net>

To: Rose Johnson <rjohnson@haywood.edu>

CC: Tammy Goodson <trgoodson@haywood.edu>, Debbie Davis, Don Yelton, Art Patten, Bob Morris <bmorris@blueridgeglass.com>, Jonnie Cure, Terry Ramey

Ms. Johnson,

Thank you for having Tammy Goodson forward my request for public information to Debbie Davis and having her send me your newly revised/approved Public Records Policy (re-attached). That Policy clearly defines you, the President, as being deemed the custodian of all public records for the College. (There was confusion in my mind if Tammy Goodson was actually the custodian of all public records for the College, which has now been resolved).

Evidently, neither you nor Pat Smathers decided to pay any attention to Buncombe County Superior Court decision 99 CVS 03497, previously provided and also attached to this e-mail, prior to approving this Public Records Policy. I'd like to remind you that any Superior Court decision certainly trumps any "policy" approved by a community college regarding public records requests.

**Since I don't have Pat Smathers e-mail address, can you kindly forward this e-mail with attachments to him, so that he can constipate over it.**

Finally, and no disrespect for Debbie Davis, but she has been identified as a "gatekeeper" per 99 CVS 03497 by this policy, so I will be making all future requests for public information to you, the President of HCC, the custodian of all public records for the College. Who you decide to have respond to those requests is up to you. Let me know if you have any problem with this.

Thank you,

Monroe Miller

p.s. Don Yelton, on this copy list, was an original plaintiff in Case 99 CVS 03497.

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

Subject: Your requests

Date: Wed, 5 Sep 2012 18:53:12 +0000

From: Debbie Davis <ddavis@haywood.edu>

To: Monroe Miller (monroemillerjr@bellsouth.net) <monroemillerjr@bellsouth.net>

Attached is Policy 1.1 Public Records Policy that you requested. The Presidential Search Criteria is not yet available. I will send it to you as soon as it is.

Debra M. Davis  
Director of Marketing and Communications  
Haywood Community College  
185 Freedlander Drive  
Clyde, NC 28721  
ddavis@haywood.edu  
828-627-4521

All e-mail correspondence to and from this address is subject to the North Carolina Public Records Law, which may result in monitoring and disclosure to third parties, including law enforcement.

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Clearly, there was a request to forward this information to Pat Smathers. Either communication is poor at HCC or Smathers chose to ignore this information and throw it in the trash.

In addition, I sent a letter to Bill Aiken on December 5, 2012, the subject of **Policy and Procedural Development and Adoption Procedure**, in which I stated:

“This **Policy 1.1 Public Records Policy** is a bogus, worthless policy, per 99cvs03497. When I now request Public Information from the county, I go directly to the custodian of that information, not David Teague. Prior to Rose Johnson’s departure, I made all requests for public information through her, as the president of HCC is the custodian of all public information, not Debbie Davis. Any future HCC public information requests will be directed to you, as Interim President. You, of course, can designate anyone you choose to respond to the request.”

Evidently, Bill Aiken chose not to forward this information to Pat Smathers and instead, throw it in the trash. Otherwise, this policy would have been canned and could not have been used as a basis for Dechant's harassment claim against me.

**COMES NOW** this threatening letter by Smathers who is now evidently become an investigator, demanding that I attend a meeting with him, Aiken and myself so that he can "investigate" Dechant's harassment claim. By what authority can he investigate anybody? He is a lawyer. It is clear that these two individuals (Smathers and Aiken) are hostile to me, which is why I requested that also Terry Ramey attend this meeting, as effective assistance of counsel. That evidently struck a nerve with Smathers, and he would not allow it, and refused to confirm that in writing. Nor would he allow the meeting to be recorded, something about being a personnel issue.

I have now changed the venue to have the meeting at my home. Smathers indicated that the meeting would focus on two area's, the Policy, and Dechant's claim. I feel that it should also contain a third item, why is all this happening in the first place, i.e., my requesting information relating to the FLS solar thermal system. I feel that the portion of the meeting relating to the Policy should be recorded, and at my discretion, I will turn off the recorder during the review of Dechant's harassment claim.

I have asked for a copy of Dechant's harassment claim and a copy of the HCC Policy that deals with handling harassment claims. I have received neither at this point. I submitted a list of questions to Aiken, which I have not had a response, save that the Agency that has Administrative Oversight with this harassment claim is actually HCC.

The immediate problem is dealing with this conflict of interest with Smathers. As I see it, my first avenue will be addressing the Grievance Committee with the North Carolina State Bar, and have them start looking into violations of the Rules of Professional Conduct and potential unethical behavior. I have already been advised that there are 3-4 issues in Smathers threatening letter that could be addressed, but it seems the conflict of interest rises to the top.

If it will not be possible to have Terry Ramey sit in on this meeting, and I am not convinced that is not possible, I would like to request that you, Mr. Morris, Bill Aiken's boss, sit in on this meeting. Since the Board of Trustees will likely be involved at some point in this harassment claim, let's see what excuse Smathers can come up with to deny this request.

Please forward this letter to all members of the HCC Board of Trustees, as I do not have their e-mail addresses. In addition, please have Tammy Goodson figure out a way to send it to Smathers, as I am tiring of using stamps for this guy.

Sincerely,

Monroe A. Miller Jr.

cc: e-mail copy list.

bcc: (which is becoming extensive)

Monroe A. Miller, Jr.  
19 Big Spruce Lane  
Waynesville, NC 28786  
December 5, 2012

William Aiken, Interim President  
**Haywood Community College**  
185 Freedlander Drive  
Clyde, NC 28721

**Subject: Policy and Procedural Development and Adoption Procedure.**

Mr. Aiken,

You proposed a new **Policy and Procedural Development and Adoption Procedure** as the last subject on your agenda item to the Board of Trustees meeting on December 3<sup>rd</sup>, Interim President's Report. I'm not sure what prompted you to bring this up, but considering the last policy adopted by this board which was rammed through by Rose Johnson (previous president) and Pat Smathers (HCC lawyer), it was a complete fiasco in my view, I agree with you that this whole current policy procedure needs to be revisited.

The most recently adopted HCC policy (as far as I know) was **Policy 1.1 Public Records Policy**. I believe this was specifically created for me, as a similar Public Information Request Policy adopted by the Haywood County Board of County Commissioners, was also created for me. Please see the HCC policy attached to this e-mail:

Policy 1.1 Public Records Policy.pdf

Note the similarity to the County's Public Information Request Policy, also attached:

100907PublicRecordsRequestPolicy.pdf,

and also on my website, [www.haywoodtp.net](http://www.haywoodtp.net),  
<http://haywoodtp.net/pubII/100907PublicRecordsRequestPolicy.pdf>

Both of these policies define a "Gatekeeper". In the instance of HCC, this is currently Debbie Davis, Haywood Community College Marketing and Communications Office, and with the county, it is David Teague, Public Information Officer.

It was brought to my attention that Buncombe County had also instituted a "gatekeeper" policy, requiring citizens to go through the County Manager, Wanda Greene, to access public information. They were sued. The resulting Superior Court ruling, 99cvs03497, struck down the requirement of requesting information through a "gatekeeper" and being able to request public information directly through the custodian of that information. See attached:

120803-99cvs03497.pdf, and also on my website, <http://haywoodtp.net/pubII/120803-99cvs03497.pdf>

On August 6<sup>th</sup>, at the County Commission meeting, I gave the following public comment, reprinted here in it's entirety (and on <http://haywoodtp.net/pubII/120806PublicComment.pdf>)

3 Minute Public Comment

August 6, 2012

I'm going to paraphrase to you a letter I sent to Bob Morris, Chair of the HCC Board of Trustees over the weekend.

Dear Mr. Morris,

I see from the Board Of Trustees agenda for August 6, that you will be considering a Public Records Policy in both the Executive Committee, and again at the regular Board of Trustees Meeting, later in the afternoon. Perhaps I can be of assistance in providing background material for the boards consideration. I would like to offer four (4) items:

First, the North Carolina General Statues § 132 Public Records is the law and must be followed strictly.

Second, the North Carolina Guide to Open Government and Public Records, by Roy Cooper, the Attorney General, provides an easy to understand interpretation of General Statue § 132 on access to Public Records.

Third, the Public Records Request Policy adopted by the County Commissioners on September 7, 2010, was, I believe, primarily directed at me, for my benefit. You will notice that commissioners have inserted "gatekeepers", David Teague, the Public Information Officer, and Marty Stamey, the County Manager. Note the mailing address, who responds to requests, who can deny a request (David Teague), and whom an appeal can be made to (Marty Stamey).

The last item, Case number 99 CVS 03497, an old Superior Court ruling from Buncombe County, was brought to my attention recently, and I made a trip over to the Buncombe County Courthouse to get it. Had to go to archives. It was a lawsuit filed by Buncombe County citizens against the Buncombe County Commissioners and the County Manager in 1999, and it basically said that the Buncombe County Manager cannot act as a "gatekeeper" for Public Records. Rather, citizens can go directly to the custodian of the public information for their requests. This was a Superior Court Ruling, and certainly trumps any Public Records Request Policy adopted by the Haywood County Commissioners, who are using David Teague and Marty Stamey as "gatekeepers". The next time I request public information from the county, for example, it will be directly to a custodian of that public record, not a "gatekeeper". Additionally, I have posted 99 CVS 03497 on my website, [www.haywoodtp.net](http://www.haywoodtp.net).

Please keep these documents in mind when the Board of Trustees considers an official Public Records Policy for HCC, and don't get carried away like David Teague, [David Cotton, who was the current county manager at the time] and the Haywood County Commissioners did when they adopted their September 7, 2010 Public Records Request Policy. Keep it clean.

Sincerely,  
Monroe Miller

**It appears as though your current Public Records Request Policy has been rendered null and void.**

I appreciate your allowing time for me to express my concerns.

Thank you.

Rose Johnson and Pat Smathers were well aware of this, as I had offered information to them similar to what you have been just been presented. But they rammed it through with absolutely no chance for any public comment based on the policy procedure, and the next thing you know, it was on an agenda, and pencil whipped. It was one of the many mistakes Rose Johnson made, which, in part, is why she is not here anymore. I don't believe Smathers will be around much longer either. (Interestingly enough, Smathers sandbagged me at a Haywood County School Board Meeting on August 17<sup>th</sup>, and is heard at the trailing end of a video also posted on my website,

<http://haywoodtp.net/pubII/120817SorrellsVideo.mpg>

regarding Susan Sorrells, who is now up on ethics charges with the NC Ethics Commission anyway).

This **Policy 1.1 Public Records Policy** is a bogus, worthless policy, per 99cvs03497. When I now request Public Information from the county, I go directly to the custodian of that information, not David Teague. Prior to Rose Johnson's departure, I made all requests for public information through her, as the president of HCC is the custodian of all public information, not Debbie Davis. Any future HCC public information requests will be directed to you, as Interim President. You, of course, can designate anyone you choose to respond to the request.

By the way, working on another angle for prying FLS information from Bill Dechant, this time involving interested members of the Board of Trustees. Will bring that request for a meeting out of suspension shortly. Since Teresa Starr's title contains the word "Energy", I hope that you might reconsider allowing her to attend this meeting, as I think everyone ought to have a chance to learn new things.

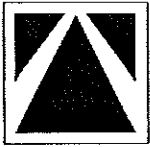
Thank you for your consideration.

Sincerely,

Monroe Miller

cc: See e-mail copy list

bcc:



**The North Carolina State Bar**  
Grievance Committee

John M. Silverstein, Chair  
217 East Edenton Street (27601)  
Post Office Box 25908  
Raleigh, North Carolina 27611  
Telephone (919) 828-4620  
Fax: (919) 834-8156  
Web: www.ncbar.gov

April 21, 2014

APR 24 2014

Mr. Monroe A. Miller, Jr.  
19 Big Spruce Lane  
Waynesville, NC 28786

Re: Grievance against Attorney Patrick U. Smathers  
Our file number: 13G0195

Dear Mr. Miller:

Thank you for submitting the above-captioned grievance to the North Carolina State Bar for review.

Your grievance was reviewed by the Chair of the Grievance Committee and a staff attorney with the State Bar's Office of Counsel. After careful consideration of all of the material provided, it was determined that the available information did not show that the attorney's conduct violated the Rules of Professional Conduct. The grievance was therefore dismissed.

If you have questions about this matter you may contact Susannah Cox, the staff attorney assigned to this file. Again, thank you for writing to the State Bar with your concerns.

Sincerely yours,

John M. Silverstein, Chair  
Grievance Committee

JMS/lb