

STATE OF NORTH CAROLINA

File No.

WAKE County

In The General Court Of Justice
District Superior Court Division

Name And Address Of Plaintiff 1
The News and Observer Publishing Company, Inc.
d/b/a The News & Observer

Name And Address Of Plaintiff 2
The Charlotte Observer Publishing Company
d/b/a The Charlotte Observer, et al

VERSUS

Name Of Defendant 1
Michael F. Easley in his capacity as Governor of North Carolina

Summons Submitted
Yes No

Name Of Defendant 2

Summons Submitted
Yes No

Jury Demanded In Pleading
Complex Litigation

TYPE OF PLEADING

- (check all that apply)
Amended Answer/Reply (AMND-Response)
Amended Complaint (AMND)
Answer/Reply (ANSW-Response)
Complaint (COMP)
Confession of Judgment (CNFJ)
Counterclaim vs. (CTCL)
Crossclaim vs. (List on back) (CRSS)
Extend Statute of Limitations, Rule 9 (ESOL)
Extend Time For Answer (MEOT-Response)
Extend Time For Complaint (EXCO)
Rule 12 Motion In Lieu Of Answer (MDLA)
Third Party Complaint (List Third Party Defendants on Back) (TPCL)
Other: (specify)

NOTE: Small claims are exempt from cover sheets.

Date
April 14, 2008

GENERAL

CIVIL ACTION COVER SHEET
INITIAL FILING SUBSEQUENT FILING

Rule 5(b), Rules of Practice For Superior and District Courts

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

Hugh Stevens & C. Amanda Martin
P.O. Box 911
Raleigh, NC 27602

Telephone No. Cell Telephone No.
919 755 0025

NC Attorney Bar No. Attorney E-Mail Address
4158 & 21186

Initial Appearance in Case Change of Address

Name Of Firm
Everett Gaskins Hancock & Stevens, LLP

FAX No.
919 755 0009

Counsel for
All Plaintiffs All Defendants Only (List party(ies) represented)

Amount in controversy does not exceed \$15,000
Stipulate to arbitration

CLAIMS FOR RELIEF FOR:

- (check all that apply)
Administrative Appeal (ADMA)
Appointment of Receiver (APRC)
Attachment/Garnishment (ATTC)
Claim and Delivery (CLMD)
Collection on Account (ACCT)
Condemnation (CNDM)
Contract (CNTR)
Discovery Scheduling Order (DSCH)
Injunction (INJU)
Medical Malpractice (MDML)
Minor Settlement (MSTL)
Money Owed (MNYO)
Negligence - Motor Vehicle (MVNG)
Negligence - Other (NEGO)
Motor Vehicle Lien G.S. 44A (MVLN)
Limited Driving Privilege - Out-of-State Convictions (PLDP)
Possession of Personal Property (POPP)
Product Liability (PROD)
Real Property (RLPR)
Specific Performance (SPPR)
Other: (specify)
Declaratory Judgment

Signature Of Attorney/Party
Hugh Stevens

NOTE: The initial filing in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a cover sheet or the filing must comply with G.S. 7A-34.1.

NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 08 CVS

THE NEWS AND OBSERVER  
PUBLISHING COMPANY d/b/a *The News  
& Observer*; THE CHARLOTTE  
OBSERVER PUBLISHING COMPANY  
d/b/a *The Charlotte Observer*; THE JOHN  
LOCKE FOUNDATION, INC. d/b/a  
*Carolina Journal, Carolina Journal Weekly  
Report* and *CarolinaJournal.com*;  
FAYETTEVILLE PUBLISHING COMPANY  
d/b/a *The Fayetteville Observer*; THE  
ASSOCIATED PRESS, THE NORTH  
CAROLINA PRESS ASSOCIATION;  
MEDIA GENERAL OPERATIONS, INC.;  
FREEDOM COMMUNICATIONS, INC.;  
FREEDOM EASTERN NORTH  
CAROLINA PUBLICATIONS, INC;  
THE WILSON DAILY TIMES, INC.; and  
BONEY PUBLISHERS, INC.

Plaintiffs,

vs.

MICHAEL F. EASLEY, in his capacity as  
Governor of North Carolina,

Defendant.

## COMPLAINT

Pursuant to Rules 3, 7 and 8 of the North Carolina Rules of Civil Procedure the plaintiffs,  
complaining of the defendant, allege and say:

### Introduction

This is an action pursuant to the North Carolina Public Records Law, Chapter 132 of the  
General Statutes, and the North Carolina Declaratory Judgment Act, N.C. Gen. Stat. §§ 1-253  
*et seq.* As described more specifically in the numbered allegations set out below, the plaintiffs  
seek:

(1) a judgment declaring that various policies and procedures promulgated and implemented by or on behalf of Governor Easley, and certain actions taken by him, violate the Public Records Law;

(2) an order permanently restraining and enjoining the Governor and all persons acting on his behalf or in concert with him from pursuing any policy or procedure determined by the court to be in violation or contravention of the Public Records Law;

(3) an order permanently restraining and enjoining the Governor and all persons acting on his behalf or in concert with him from continuing or repeating any action determined by the court to be in violation or contravention of the Public Records Law;

(4) an order in the nature of a writ of mandamus requiring the defendant and all persons acting at his direction or in concert with him to take all measures available to them to retrieve any public records that they deleted, disposed of, lost or failed to preserve in violation of the Public Records Law;

(5) an order in the nature of a writ of mandamus requiring the defendant and all persons acting at his direction or in concert with him to comply with the Public Records Law including, but not limited to, N.C. Gen. Stat. § 132-6(a);

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

(7) an order awarding the plaintiffs their reasonable attorney fees pursuant to N.C. Gen. Stat. § 132-9(c)(1).

### **The Plaintiffs**

1. The News and Observer Publishing Company is a North Carolina corporation that maintains its principal place of business in Raleigh, Wake County, North Carolina. Among other things, the company publishes *The News & Observer*, a general interest newspaper that is

published in Wake County and distributed throughout the surrounding area of North Carolina. *The News & Observer* also publishes an online edition at [www.newsobserver.com](http://www.newsobserver.com).

2. The Charlotte Observer Publishing Company is a Delaware corporation that maintains its principal place of business in Mecklenburg County, North Carolina. Among other things, the company publishes *The Charlotte Observer*, a general interest newspaper that is published in Mecklenburg County and distributed throughout the surrounding areas of North Carolina and South Carolina. *The Observer* also publishes an online edition at [www.charlotte.com](http://www.charlotte.com).

3. The John Locke Foundation, Inc. is a North Carolina not-for-profit corporation that maintains its principal place of business in Wake County, North Carolina. Among other things, the foundation publishes *Carolina Journal*, a monthly newspaper that focuses its coverage on North Carolina state government and public policy and *Carolina Journal Weekly Report*, a weekly report on politics and government that is distributed to subscribers via e-mail. The Foundation also maintains a web site, [www.CarolinaJournal.com](http://www.CarolinaJournal.com), at which it provides commentaries and news reports, summaries of breaking stories in the state's major media, and links to newspapers, wire services, blogs, and other information resources.

4. Fayetteville Publishing Company is a North Carolina corporation that maintains its principal place of business in Cumberland County, North Carolina. Among other things the company publishes *The Fayetteville Observer*, a daily general interest newspaper that is published in Cumberland County and circulated throughout the surrounding area. The company also publishes an online version of the newspaper at [www.fayobserver.com](http://www.fayobserver.com).

5. The Associated Press is a not-for-profit news cooperative that has its principal place of business in New York, New York, and maintains a North Carolina bureau in Wake County, North Carolina. As the world's largest news-gathering organization, the AP provides coverage of international, national, state and local news in conjunction with more than 1,700 newspapers and 5,000 radio and television outlets. The AP's North Carolina bureau regularly

covers news of interest in all 100 counties of North Carolina, including news about state government and public policy.

6. The North Carolina Press Association is a North Carolina not-for-profit corporation and trade association that maintains its principal place of business in Wake County, North Carolina. The Association's members include approximately 200 daily and non-daily newspapers published throughout North Carolina. The Association has a long history of advocating on behalf of the North Carolina Public Records Law and other laws and policies that enhance openness in government and the public's right to know.

7. Media General Operations, Inc. is a Delaware corporation that has its principal place of business in Richmond, Virginia. The company publishes 10 newspapers in North Carolina: *The Winston-Salem Journal*, the *Statesville Record & Landmark*, the *Hickory Daily Record*, *The Reidsville Review*, *The News Herald* (Morganton), *The Independent Tribune* (Concord/Kannapolis), *The McDowell News* (Marion), *The Messenger* (Madison), the *Mooresville Tribune*, and the *Lake Norman Navigator* (Mooresville). The company also operates two television stations in North Carolina: WNCT-TV in Greenville and WNCN-TV in Raleigh.

8. Both Freedom Communications, Inc. and Freedom Eastern North Carolina Communications, Inc. are Delaware corporations that maintain their principal places of business in Irvine, California. Both own and publish newspapers in North Carolina. Freedom Communications, Inc. owns the *Times-News*, a daily newspaper published in Alamance County; *The Gaston Gazette*, a daily newspaper published in Gaston County; *The Star*, a daily newspaper published in Cleveland County; and the *Havelock News*, a weekly newspaper published in Craven County. Freedom Eastern North Carolina Communications, Inc. owns *The Daily News*, a daily newspaper published in Onslow County; the *Kinston Free Press*, a daily newspaper published in Lenoir County; and the *Sun Journal*, a daily newspaper published in Craven County.

9. The Wilson Daily Times, Inc. is a North Carolina corporation that has its principal place of business in Wilson County, North Carolina. The corporation owns and publishes *The Wilson Daily Times*, a general interest newspaper.

10. Plaintiff Boney Publishers, Inc. is a North Carolina corporation having its principal place of business in Graham, Alamance County, North Carolina. Among other things, Boney Publishers, Inc. publishes and does business as *The Alamance News*, a weekly general interest newspaper.

11. In the course of gathering information about the workings of state and local government for dissemination to their readers and viewers, the plaintiff newspapers and television stations and the North Carolina Press Association's member newspapers regularly make use of and rely on the North Carolina Public Records Law to gain access to government documents, records and information.

#### **The Defendant**

12. Defendant Michael F. Easley is the duly elected and serving Governor of North Carolina and is sued in that official capacity. Pursuant to Article III of the North Carolina Constitution and N.C. Gen. Stat. § 143B-4 the Governor is the chief executive officer of the State. As the State's chief executive the Governor has sole authority and ultimate responsibility for the administrative policies and procedures promulgated and implemented by his own office and by the executive branch "cabinet agencies" of North Carolina state government, which include the departments of Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue and Transportation.

13. The Governor and each of the cabinet agencies is an "agency of North Carolina government" as defined by N.C. Gen. Stat. § 132-1(a); as such, each is subject to the North Carolina Public Records Law.

14. Pursuant to N.C. Gen. Stat. § 132-2 the Governor is the custodian of all public records made or received by his office.

15. Although the Public Records Law vests the Department of Cultural Resources with certain responsibility and authority with respect to the preservation and disposal of public records, the Department's responsibility and authority is limited by, and must be exercised in accordance with, the General Assembly's policies, definitions and mandates as set out in the Law and as interpreted and applied by the courts of this State.

### **The North Carolina Public Records Law**

16. The North Carolina Public Records Law ("the Public Records Law") is codified at N.C. Gen. Stat. §§ 132-1 through 132-10. The public policy underlying the Public Records Law is set out in G.S. § 132-1(b), which provides:

**The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, 'minimal cost' shall mean the actual cost of reproducing the public record or public information.**

17. The Public Records Law provides, in G.S. § 132-1(a), that public records are defined as:

**all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.**

18. The Public Records Law further provides that "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." G.S. §132-6(a).

19. The Public Records Law also provides, in G.S. §132-3(a) that:

**No public official may destroy, sell, loan or otherwise dispose of any public record . . . without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor . . .**

20. The Public Records Law further provides, in G.S. § 132-6.1(a) that:

**[N]o public agency shall purchase, lease, create or otherwise acquire any electronic data-processing system for the storage, manipulation or retrieval of public records unless it first determines that the system will not impair or impede the agency's ability to permit the public inspection and examination, and to provide electronic copies of such records.**

### **Defendant's Violations of the Public Records Law**

#### **Governor's E-mail Directive**

21. The defendant, his staff, and the employees and staffs of the cabinet agencies regularly make and receive public records as defined by G.S. § 132-1(a).

22. The public records made and received by the defendant, his staff and the employees and staffs of the cabinet agencies include e-mail messages sent to and received by them.

23. In recent months certain of the plaintiffs have submitted requests to the Governor's Office and various cabinet agencies, including but not limited to the Department of Health and Human Services, for access to e-mail messages and other public records relating to the funding, delivery and oversight of mental health services. In part this action arises out of the defendant's failure, refusal or inability to provide access to e-mail messages and other public records that were known or believed to be in the defendant's custody.

24. Based on the Affidavit of Ms. Debbie Crane that is attached to this Complaint as Exhibit A and incorporated by reference, and on other information, the plaintiffs are informed and believe that the defendant's failure, refusal or inability to provide access to lawful requests

for access to public records was attributable in part to the systematic deletion, destruction or concealment of e-mail messages sent from or received by the Governor's Office.

25. Based on Ms. Crane's affidavit and other information the plaintiffs are informed and believe that during the defendant's tenure as Governor, members of his staff regularly discouraged the persons responsible for communicating with the Governor's Office from sending e-mail messages to the office in order to avoid creating records that would be subject to disclosure pursuant to the Public Records Law, particularly if the subject matter of the communication was controversial. Members of the defendant's staff also instructed cabinet agency employees that if they did send e-mail messages to the Governor's Office such messages were to be deleted from their computers' "Sent Mail" boxes immediately after they were sent, and that they should then to go to their files for "Trash" or "Deleted Messages" and delete them again. A purpose of this "double delete" procedure was to remove the messages from the employees' personal computers so they would not be recorded and archived by the nightly "back-up" of their computer files.

26. The plaintiffs are informed and believe that the e-mail deletion policy and procedure described above was intended to be comprehensive and to apply to all e-mail messages sent to the Governor's Office, regardless of their subject matter or contents or the value of such information to the people of North Carolina, whose property they are.

27. The defendant either knew, or as a matter of law is deemed to have known, that the policy and procedures described above were promulgated and directed on his behalf and pursuant to his authority.

28. The policy and procedures described above were promulgated and implemented willfully and for the purpose of evading the Public Records Law and depriving the people of North Carolina of access to information and records in violation of the Public Records Law.

29. The policy and procedures described above resulted in the unauthorized removal, alteration and destruction of public records in violation of N.C. Gen. Stat. § 132-3(a).

30. To the extent that the public records requested by the plaintiffs do exist but were not made available for inspection and copying, the defendant's failure or refusal to produce them is in violation of N.C. Gen. Stat. § 132-6, and the plaintiffs are entitled to an order compelling their disclosure and copying pursuant to N. C. Gen. Stat § 132-9.

#### Destruction of Odom Correspondence

31. Plaintiffs are further informed and believe that in early March 2008 the defendant received a hand-written note or message from Ms. Carmen Hooker Odom, former secretary of the North Carolina Department of Health and Human Services.

32. The communication from Ms. Odom was sent and received in connection with the transaction of public business and thus was a public record as defined by N.C. Gen. Stat. § 132-1

33. The defendant personally destroyed the communication in violation of the Public Records Law.

34. On the basis of public statements by the defendant, plaintiffs are further informed and believe that he very likely has personally discarded or destroyed other public records in violation of the Public Records Law.

#### Department of Cultural Resources Guidelines

35. Pursuant to the authority and responsibility vested in it by the Public Records Law, the Department of Cultural Resources has published and disseminated various guidelines concerning the handling, maintenance, storage, disposition, preservation and retrieval of public records. These guidelines include a document directed to state employees and contractors entitled "E-Mail as a Public Record in North Carolina: *Guidelines for Its Retention and Disposition.*" A copy of this publication, which is referred to hereafter as "the DCR E-mail Guidelines," is attached and incorporated by reference as Exhibit B. The DHR E-mail

