

IN THE SUPREME COURT OF OHIO

STATE, ex rel. ESPN, INC.

Petitioner,

- vs -

11-1177

THE OHIO STATE UNIVERSITY

Respondent

AFFIDAVIT OF JUSTINE GUBAR

**John C. Greiner (0005551)
Graydon, Head & Ritchey
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202
(513) 621-6464**

Attorney for Petitioner

RECEIVED
JUL 11 2011
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SUPREME COURT OF OHIO

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JUL 11 2011
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SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

STATE, EX REL. ESPN, INC.
ESPN Plaza
Bristol, CT 06010

CASE NO. _____

vs.

AFFIDAVIT OF JUSTINE GUBAR

THE OHIO STATE UNIVERSITY
Enarson Hall
154 West 12th Avenue
Columbus, Ohio 43210

Affiant, after being duly cautioned and sworn, states as follows:

1. My name is Justine Gubar. I make this affidavit on the basis of my personal knowledge.

2. At all relevant times, I have been employed as a producer for ESPN, Inc. On April 20, 2011, I delivered a request for records via email to The Ohio State University. The request asked for access to and a copy of "[a]ll emails, letters and memos to and from Jim Tressel, Gordon Gee, Doug Archie, and/or Gene Smith with key word Sarniak since March 15, 2007." A true and correct copy of the request for records is attached hereto as Exhibit A.

3. The Ohio State University has not produced the requested records. A true and correct copy of the University's denial of the request is attached hereto as Exhibit B.

FURTHER AFFIANT SAYETH NAUGHT.

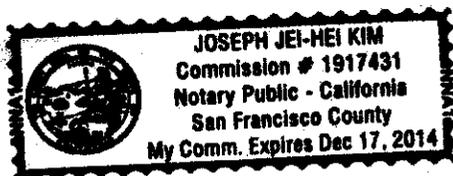


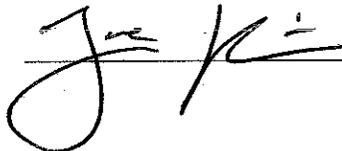
Justine Gubar

STATE OF California)
)
COUNTY OF San Francisco)

ss:

Sworn to and subscribed before me, a Notary Public, this 17 day of June, 2011.

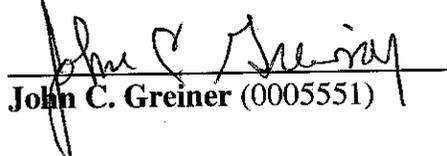




PRAECIPE FOR SERVICE

TO THE CLERK:

Please issue a copy of this Affidavit along with the Summons and Complaint to the Respondent identified in the caption on page one via Certified Mail, return receipt requested.


John C. Greiner (0005551)

From: Gubar, Justine [<mailto:Justine.Gubar@espn.com>]
Sent: Wednesday, April 20, 2011 5:37 PM
To: Hoffman, Shelly
Subject: ESPN Open Records Request

Shelly Hoffman
Assistant Vice President
Office of University Relations
Rm. 08 C Bricker Hall
190 N. Oval Mall
Columbus, Ohio, 43210

Dear Ms. Hoffman,

Pursuant to the state open records law, Ohio Rev. Code Ann. Secs. 149.43 to 149.44 , I write to request access to and a copy of:

Any documents or correspondence, including but not exclusive to letters and emails, between the NCAA, the Ohio State University and its representatives related to the investigation, eligibility and appeals process for student athletes Terrelle Pryor, Devier Posey, Daniel Herron, Mike Adams and Solomon Thomas.

Any internal documents , including but not exclusive to letters and emails, regarding the investigation, eligibility and NCAA appeal for Terrel Pryor, Devier Posey, Daniel Herron, Mike Adams and Solomon Thomas.

All emails from Jim Tressel from January 1, 2010 until April 15, 2011 that includes the term Rife, Cicero, Pryor, Terrelle. DeVier, Posey, and/or tattoo.

All bills, documents or calls logs detailing the incoming and outgoing calls and incoming and outgoing text or written communications for both the office and cellular phone of Jim Tressel from January 1, 2010 to April 15, 2011.

All documents and emails, letters and memos related to NCAA investigations prepared for and/or forwarded to the NCAA since 1/1/2010 related to an investigation of Jim Tressel

All emails and correspondence between Doug Archie, Gene Smith, Gordon Gee, and Jim Tressel between January 1, 2010 to April 15, 2011 with any of the key words Rife, federal investigation, NCAA investigation, Cicero, cars and/or tattoos.

All emails, letters and memos to and from Jim Tressel, Gordon Gee, Doug Archie and /or Gene Smith with key word Sarniak since March 15, 2007

All emails, letters and memos from Gordon Gee from April 1, 2010 until April 15th, 2011 with key word Bowl Championship Series, BCS and/or Sugar Bowl.

EXHIBIT

A

tabbles

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$500. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

I would request your response within ten (10) business days.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Please be advised that I am prepared to pursue whatever legal remedy necessary to obtain access to the requested records. I would note that violation of the open records law can result in the award of court costs and reasonable attorney fees. See Ohio Rev. Code Ann. Sec. 149.43(C).

Thank you for your assistance.

Sincerely,

Justine

Justine Gubar

Producer, ESPN

917-881-0171 (mobile)

<mailto:Justine.Gubar@espn.com>**HYPERLINK**

["mailto:Justine.Gubar@espn.com"](mailto:Justine.Gubar@espn.com)**Justine.Gubar@espn.com**

From: Lynch, Jim <lynch.270@osu.edu>
To: Gubar, Justine
Sent: Fri May 27 13:38:58 2011
Subject: Sarniak

Justine – Do to FERPA, we will not be releasing e-mails from Jim Tressel, Doug Archie or Gene Smith related to Ted Saryniak.

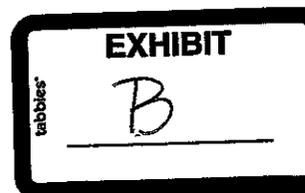
Here is what our Office of Legal Affairs has told me:

Unless specifically permitted, the University has a legal responsibility to ensure that personally identifiable information of a student is not released without the student's specific consent. The high-profile nature of certain of our students, coupled with the analysis set forth by FERPA for determining whether student information is "personally identifiable" (and thus protected from disclosure) requires the University to consider the facts and circumstances attendant to each particular request. Seemingly innocuous information that may constitute "directory" information in certain contexts may be combined with other readily available information in other settings so as to be identifiable to a particular student.

Under FERPA, the University is prohibited from releasing information that can be reasonably linked to an individual by a member of the university community with no special knowledge as well as information requested by an individual that the school reasonably knows could be individually identified because of the requester's special knowledge of the situation. FERPA refers to these types of request for information as "targeted requests." That is, the requestor has direct, personal knowledge of the subject of the case and FERPA holds that university may not release the records even in redacted form because the circumstances indicate that the requester has made a targeted request.

Jim Lynch

*Director of Media Relations
Office of University Communications
370 Bricker Hall
190 North Oval Mall*



Columbus, OH 43210
614-247-4110 (v)

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LynchOSU

Join us in Celebrating Ohio State Alumni, learn more by clicking [Celebrating Alumni](#)

THE OHIO STATE UNIVERSITY