

RESPONDENT'S SUBMISSION OF EVIDENCE – VOLUME I

TABLE OF CONTENTS

- A - Affidavit of Jim Lynch – Exhibits 2 – 10
- B - Affidavit of Diane L. Stemper
- C - Affidavit of Thomas F. Ewing
- D - Affidavit of Sandra Anderson – Exhibit A
- E - Affidavit of James Null
- F - Affidavit of Douglas Archie – Exhibits A & B

In the
Supreme Court of Ohio

STATE ex rel. ESPN, INC.,

Case No. 2011-1177

Petitioner,

Original Action in Mandamus

vs.

THE OHIO STATE UNIVERSITY,

Respondent.

AFFIDAVIT OF JIM LYNCH

I, Jim Lynch having been duly cautioned and sworn, hereby attest to the following:

1. I am over eighteen years of age and am competent to testify to the matters contained in this Affidavit. The facts set forth in this Affidavit are based upon my personal knowledge of the matters asserted.
2. I currently serve as Director of Media Relations at the Ohio State University (University) and have served in this capacity since 2006.
3. My duties as Director of Media Relations include serving as a liaison between the University's colleges and work units and members of the media in responding to requests for information and public records requests.

4. Since February 28, 2011, the University has received more than 100 public records requests relating to its NCAA investigation from more than 38 members of the media from at least 20 different media organizations.

5. ESPN alone has had at least seven different individuals make at least twenty-one different public records requests relating to the Athletic Department since March 8, 2011.

6. In response to these requests, the University has provided ESPN more than 700 pages of responsive documents. True and accurate copies of these documents attached as Exhibit 1 to this affidavit and are contained in Volume II of the Evidence submitted by the University in this case.

7. In response to these requests, the University has also made more than 350 pages of records available to ESPN and the general public at the website <http://www.osu.edu/news/ncaadocs/>.

8. In addition to the requested documents that the University has provided ESPN, as a courtesy, the University has also provided ESPN with more than 4,227 pages of additional records that were requested by, and provided to, other members of the media. These additional records have been provided between March and October of this year.

9. On or about April 20, 2011, a producer for ESPN, made a written public records request to the University. The written request included a request for “[a]ll emails, letters and memos to and from Jim Tressel, Gordon Gee, Doug Archie and/or Gene Smith with the key word Sarniak since March 15, 2007.” This request has been fulfilled with the exception of documents that have been withheld or redacted in accordance with FERPA or some other exception to Ohio’s public records act. The redacted version of those documents are bates numbered 1-640 and 890-990 in Volume II of the evidence submitted by the University.

10. That April 20, 2011 request also asked for “[a]ll documents and emails, letters and memos related to the NCAA investigations prepared for and/or forwarded to the NCAA since 1/1/2010 related to an investigation of Jim Tressel.” In response to this request the University and its counsel has continued to work with ESPN to clarify exactly what records that ESPN is seeking. In a letter dated October 5, 2011, (attached as Exhibit 9) ESPN clarified its request and the University is in the process of providing ESPN with all of the responsive documents that have not already been produced.

11. That April 20, 2011 request also asked for “[a]ny report, email or correspondence between the NCAA and Doug Archie or any other Ohio State athletic department official related to any violation (including secondary violation) of NCAA rules involving the football program since January 1, 2005.” In response to this request, the University provided ESPN with a comprehensive list summarizing all of the NCAA violations that have been reported to the NCAA since January 1, 2005. After receiving that summary, ESPN refined its request to three specific violations. The University has provided ESPN with all records responsive to those three reported violations and therefore considers this request satisfied. It is my understanding that ESPN also considers this request resolved.

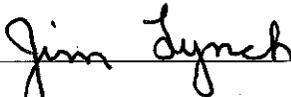
12. On or about May 11, 2011, a correspondent for ESPN, made a written public records request to the University. The written request included a request for “[a]ny and all emails or documents listing people officially barred from student-athlete pass lists (game tickets) since January 1, 2007.” Based on the records the University has provided, ESPN indicated that this portion of the request has been resolved.

13. My public records-related communications to ESPN employees which are attached as Exhibit B and D to the Farrey Affidavit that was attached to the Complaint and as Exhibit B to the Gubar Affidavit that was attached to the Complaint, were only a part of the continuing oral and written communications I had with ESPN in my efforts to work to satisfy its public records requests prior to the filing of this lawsuit. Those communications were snapshots of where the University was in processing the requests, and were by no means intended to be the University’s final word on whether documents would be produced or a request would be denied. At the time those communications were sent, I still viewed the process of responding to the ESPN’s public records requests at issue in this litigation as ongoing.

14. Since July 11, 2011, the date ESPN filed its lawsuit against the University, the University and its counsel have continued to work with ESPN to refine its public records requests and to provide responsive documents related to the requests at issue in the lawsuits. True and accurate copies of these communications are attached as Exhibits 2-10.

15. The University has also provided ESPN with records responsive to public records requests that ESPN submitted to the University subsequent to the filing of this lawsuit.

FURTHER AFFIANT SAYETH NAUGHT.



Jim Lynch

Sworn to before me and subscribed in my presence this 7th day of October 2011.

MICHAEL DAVID LAYISH
Attorney At Law
Notary Public, State of Ohio
My Commission Has No Expiration Date
Section 147.03 R.C.



Notary Public



July 29, 2011

Tom Farrey
ESPN
ESPN Plaza
Bristol Connecticut 06013
Tom.Farrey@espn.com

Via counsel

Justine Gubar
ESPN
ESPN Plaza
Bristol Connecticut 06013
Justine.Grubar@espn.com

Via counsel

Re: Public records requests in *State ex rel. ESPN, Inc. v. The Ohio State University* (Ohio S. Ct.), Case No. 11-1177

Dear Tom and Justine,

I am writing to respond more fully to the public records requests underlying ESPN's lawsuit. More specifically, I want to express Ohio State's surprise at the lawsuit and to provide additional information and responses relating to those requests.

As you know, we have produced thousands of pages of documents in response to ESPN's numerous and evolving requests concerning the football program. As you also know, we have previously provided a number of documents regarding the requests underlying the lawsuit, including documents concerning the Sarniak e-mails (see my e-mail of May 27, 2011), past NCAA violations (see my e-mail of June 6, 2011), and the ongoing NCAA investigation (see the materials posted at <http://www.osu.edu/news/ncaadocs> on June 8, 2011 and <http://www.osu.edu/news/newsitem3199>).

Consistent with our long working relationship and many telephone conversations, we viewed the process of responding to several of those requests as ongoing. The university was unaware that ESPN thought otherwise. Indeed, we regularly interacted

{00141275-1}1

with you and others from ESPN after the OSU-ESPN e-mails highlighted in the lawsuit, and no one from ESPN indicated that they thought these matters had reached deadlock.

Although the university believes that several of the requests as drafted are not consistent with the public records law, we have continued to evaluate your requests and have gathered additional documents that may be of interest to you. Those documents are copied onto the PDF file on the disc accompanying this letter, and relate to the contested requests, as follows:

"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"

This request does not correspond to the manner in which the university's records are organized. We do not track or organize correspondence by a particular word or specific information that may be of interest to a requestor. Nor is there a specific correspondence file at the university named Sarniak. Compliance with your request would thus require us to identify and review any and all correspondence between and among multiple senior university officials. As you know, such action is not required by the public records act. See *State ex rel. Zauderer v. Joseph*, 62 Ohio App. 3d 752, 756 (10th Dist. 1989). See also *State ex rel. Fant v. Tober*, No. 63737, 1993 Ohio App. LEXIS 2591 at *4 (8th Dist. Apr. 28, 1993); *aff'd* 68 Ohio St. 3d 117 (1993); *State ex rel. Thomas v. Ohio State University*, 71 Ohio St. 3d 245 (1994); *State ex rel. Dillery v. Iesman*, 92 Ohio St. 3d 312 (2001).

We have nonetheless made all reasonable effort to respond to your request as drafted. See documents numbered as pp. 1-124 of the PDF file, which include the materials provided to you in my e-mail of May 27, 2011 as referenced above. Please note that personally identifiable information regarding our students was redacted in keeping with the Family Educational Rights and Privacy Act ("FERPA").

Notwithstanding the breadth of your request and the associated compilation difficulties resulting from it, the university believes that the attached documents constitute the complete universe of records that you apparently seek here, with the exception of documents that are being withheld because they are:

- Covered by attorney/client or work product privileges. Such documents are properly withheld under R.C. 149.43(A)(1)(v). See *Squire, Sanders & Dempsey, L.L.P. v. Givaudan*, 127 Ohio St. 3d 161, 2010-Ohio-446; *State ex rel. Toledo Blade Co. v. Toledo-Lucas County Port Authority*, 121 Ohio St. 3d 537, 2009-Ohio-1767.
- Education records the contents of which are so directly related to individual students as to make their entire contents personally identifiable information protected FERPA. See 20 U.S.C. § 1232g(b)(1); 34 C.F.R. § 99.3, "Education Records" subsection (a)(1); "Personally Identifiable Information" subsection (g).

{00141275-1}2

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

This broad request is inconsistent with the manner in which our records are organized. Further, parts of this request would require the complete duplication of a file containing multiple thousands of pages of documents. *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 17; *State ex rel. Warren Newspapers, Inc. v. Hutson* (1994), 70 Ohio St.3d 619, 623; *State ex rel. Zauderer v. Joseph* (10th Dist. 1989), 62 Ohio App. 3d 752, 756.

The University posted a large number of documents responsive to this request on our website shortly before the filing of your lawsuit (<http://www.osu.edu/news/neaadocs> and pp. 125-449 of the PDF file) and we continue to update our website at appropriate junctures on matters related to the ongoing NCAA investigation. (Please note that personally identifiable information regarding our students was redacted from the materials posted on the web in order to comply with FERPA). We suggest that you review these documents on the web and further refine or clarify your request as necessary.

"Any and all emails or documents listing people officially barred from student-athlete pass lists (game tickets) since January 1, 2007"

This request does not correspond to the way the University's records are organized, and hence no record responsive to this request exists. However, in an effort to provide the information you seek, we have compiled a list containing the names of individuals who are either absolutely barred from receiving student athlete passes or whose relationship to the requesting student would have to be scrutinized before passes are issued to those individuals. That list is at pp. 450-466 of the PDF file.

"Any report, email or other correspondence between the NCAA and Doug Archie or any other Ohio State athletic department official related to any violation (including secondary violation) of NCAA rules involving the football program, since January 1, 2005"

Portions of this request improperly seek a complete duplication of the university's voluminous files on these matters. *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, ¶ 17. Further, it is inconsistent with the manner in which the university organizes its files. It is also overbroad in that it requests multiple classes of documents concerning multiple different matters.

Nonetheless, we want to work with ESPN to refine your request. To that end, we are enclosing the documents numbered as pp. 467-493 of the PDF file, which summarize all football related violations going back to January 1, 2005. (Please note that personally identifiable information regarding students was redacted in keeping with FERPA). Please let us know which records, related to which violations, you are interested in.

{00141275-1}3

As indicated above, the university did not intend the e-mails cited in ESPN's lawsuit to be the final word on the company's requests. We were surprised that ESPN chose to proceed with litigation, and we believe that a continuation of our regular and ongoing conversations would have been fruitful in identifying any public records that you may be seeking.

We look forward to continuing to work with ESPN and would be happy to discuss these matters further if you would like to refine or modify your requests after reviewing the documents attached.

Best Regards,



Jim Lynch
Senior Director of Media Relations

{00141275-1}4



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Education Section
Office 614-644-7250
Fax 614-644-7634

30 East Broad Street, 16th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

July 29, 2011

VIA E-MAIL

John C. Greiner, Esq.
Graydon Head & Richey, LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202-3157

RE: *State ex rel. ESPN, Inc. v. The Ohio State University* (Ohio S. Ct.), Case No. 11-1177

Dear Jack,

I am writing to follow up on our telephone conversation of Thursday, July 21, and to forward additional materials from OSU that might resolve the case.

As we discussed, I and several of my colleagues at the Attorney General's Office will be representing OSU. It is our Office's policy to avoid needless disputes and focus on the practical interests and legal issues in a case. Consequently, please do not hesitate to contact me about any ideas or concerns you may have.

As we also discussed, this case came in the midst of OSU's continuing efforts to respond to ESPN's public records requests and hence took OSU by surprise. The university's process of responding to ESPN's requests was still ongoing, and OSU thought ESPN understood that.

OSU nonetheless has continued to gather documents responsive to ESPN's requests. It has collected additional documents and explained the University's position in a letter to the reporters who made the requests. Because litigation has commenced, we are giving that letter to you to forward to the reporters. We ask that you and your client review the enclosed materials to see if they resolve ESPN's outstanding requests, and hence this case.

Best regards,

MIKE DEWINE
Ohio Attorney General

Todd R. Marti
Principal Assistant Attorney General

Enclosures

Lynch Affidavit Ex. 3

GRAYDON HEAD

LEGAL COUNSEL | SINCE 1871

John C. Greiner
Direct: 513.629.2734
jgreiner@graydon.com

August 4, 2011

Todd R. Marti, Esq.
Principal Assistant Attorney General
MIKE DEWINE OHIO ATTORNEY GENERAL
Education Section
30 East Broad Street, 16th Floor
Columbus, OH 43215

Re: State ex rel. ESPN, Inc. v. The Ohio State University
Case No. 11-1177

Dear Todd:

I am writing in response both to your July 29, 2011 letter and the letter addressed to Tom Farrey and Justine Gubar on the same date. ESPN maintains its position that: (1) its record requests were proper in both wording and scope; and (2) FERPA does not apply to the records it has requested. While we appreciate the ongoing nature of responding to public records requests, the volume of documents which Ohio State has provided to ESPN in the past, and those additional documents attached to your letter, Ohio State continues to withhold documents and information on the basis of FERPA and overly broad or improperly drafted requests. This information is the very subject of the current lawsuit.

As described both in ESPN's Complaint and the supporting Memorandum, FERPA does not apply to the requested records. They are not "education records." Therefore, Ohio State's redaction of information based on FERPA is improper. ESPN is entitled to unredacted documents responsive to its requests. Likewise, Ohio State cannot rely on FERPA to withhold entire documents.

Furthermore, ESPN's requests comport with the Public Records Act. They are specific as to the dates and subject matter of the records sought. They are simply not overly broad. Ohio State's reliance on *State ex rel. Glasgow v. Jones* is misplaced. In *Glasgow*, the requestor sought all emails, text messages and written correspondence sent to and received by a state representative regarding any issue at any time she was in office. Here, ESPN seeks specific information from a defined time frame regarding limited topics. Ohio State's use of the "overly broad" exception to curtail or shape its responses to ESPN's properly drafted requests is therefore improper.

Finally, Ohio State contends that many of ESPN's requests are inconsistent with the manner in which it organizes its records. However, the requests used precisely the types of "key word" identifiers as Ohio State Senior Director of Media Relations, Jim Lynch, suggested. Mr. Lynch communicated this requirement to both Tom Farrey and Justine Gubar. Therefore, the requests not only complied with the Public Records Act, they were drafted in the specific manner that Ohio State requested.

Cincinnati at Fountain Square Northern Kentucky at the Chamber Center Butler/Warren at University Pointe

Graydon Head & Ritchey LLP | 1900 Fifth Third Center | 511 Walnut Street | Cincinnati, OH 45202

513.621.6464 Phone | 513.651.3833 Fax
Lynch Affidavit Ex. 4

ESPN's position on each of the disputed requests in light of the July 29th letters is outlined below:

1. *"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"*

Ohio State now contends that the request does not correspond to the manner in which its records are organized. Ohio State claims, "we do not track or organize correspondence by a particular word or specific information that may be of interest to a requestor." However, as noted above, "key word" requests are not only acceptable, but requested by Jim Lynch. Ohio State has denied prior records requests because they *did not* contain key words. Ohio State's response is therefore inconsistent with its own directives to requestors.

While Ohio State provided additional documents responsive to this request (pages 1-124 of the attachment to your letter), it has redacted any personally identifiable information regarding students, citing FERPA. Ohio State also withheld whole documents because they are "education records the contents of which are so directly related to individual students as to make their entire contents personally identifiable information protected under FERPA." Again, the disputed records are not education records, so FERPA does not apply to them. Any redaction is therefore improper. Similarly, Ohio State has no basis to withhold entire documents on the basis of FERPA.

Ohio State also noted that it has withheld documents "covered by attorney-client or work product privileges." To the extent that requested documents are actually privileged, ESPN requests a "privilege log" of those documents, identifying the parties, date, and subject of the interaction.

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

Ohio State contends that this request is inconsistent with the manner in which its records are organized. There is no explanation of this assertion in Jim Lynch's letter. Ohio State also claims the request is overly broad. As discussed above, however, this request is specific in date and subject matter and sufficiently targeted to constitute a proper request. Given ESPN's interest in "the NCAA investigation of Jim Tressel" it is difficult to conjure a more targeted or narrower request to obtain the information ESPN seeks. Even if a proper response to this request amounted to a "complete duplication of a file," that file would represent a finite set of documents related to (and presumably kept as) "the NCAA investigation of Jim Tressel."

The suggestion that ESPN review documents that Ohio State has posted on its website, a "large number" of which are responsive to this request is inconsistent with Ohio State's obligation under the Public Records Act. ESPN made a proper records request and Ohio State must provide all documents responsive to that request.

3. *"Any and all emails or documents listing people officially barred from student-athlete pass lists (game tickets) since January 1, 2007."*

ESPN is still awaiting background documents and details relating to this request. For example, ESPN seeks information regarding Dennis Talbott, who appears on the list produced. Jim Lynch has orally promised to provide this information and has yet to do so.

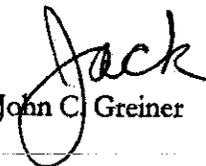
4. *"Any report, email or other correspondence between the NCAA and Doug Archie or any other Ohio State athletic department official related to any violation (including secondary violation) of NCAA rules involving the football program, since January 1, 2005."*

Ohio State again contends that this request is overly broad and inconsistent with the manner in which the records are organized. While Ohio State has provided a summary of football-related violations going back to January 1, 2005, it has redacted student names, citing FERPA. First, this request is sufficiently narrow and targeted. To the extent that the request asks for "multiple classes of documents concerning multiple different matters," ESPN requests "all documents" responsive to the request, regardless of class. Similarly, in response to Ohio State's request that ESPN specify "which records, relating to which violations" it is interested in, ESPN requests "all records" relating to "all violations." Second, the records are not FERPA-protected education records so ESPN is entitled to unredacted copies of these records.

While ESPN appreciates its ongoing relationship with Ohio State, the wrongful assertion of exceptions to the Ohio Public Records Act allows Ohio State to simply pick and choose which information it wants to release and which it wants to conceal. This is inconsistent with the letter and the purpose of the PRA. As such, ESPN seeks the full disclosure of all documents responsive to its requests, as stated in the Complaint. This includes but is not limited to, all documents or information withheld on the basis of FERPA, all documents or information withheld due to allegedly overbroad requests, all documents or information withheld because requests are purportedly inconsistent with the manner in which the information is organized and a summary log of any documents withheld due to attorney client or work product privileges.

Very Truly Yours,

GRAYDON HEAD & RITCHEY LLP


John C. Greiner

JCG/pl

3255176.1

GRAYDON HEAD

LEGAL COUNSEL | SINCE 1871

John C. Greiner
Direct: 513.629.2734
jgreiner@graydon.com

August 15, 2011

Todd R. Marti, Esq.
Principal Assistant Attorney General
MIKE DEWINE OHIO ATTORNEY GENERAL
Education Section
30 East Broad Street, 16th Floor
Columbus, OH 43215

Re: State ex rel. ESPN, Inc. v. The Ohio State University
Case No. 11-1177

Dear Todd:

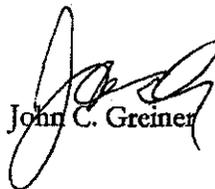
I am writing to follow up on my August 4, 2011 letter as I have not received a response from you.

I assume from your failure to respond that Ohio State does not intend to alter its position, as expressed in its July 29, 2011 letter, on the four outstanding records requests.

Regardless of this position, please advise if Ohio State intends to provide a privilege log. If Ohio State fails to provide a privilege log by week's end, ESPN will make a formal discovery request.

Very Truly Yours,

GRAYDON HEAD & RITCHEY LLP


John C. Greiner

JCG|pl

3272185.1

Cincinnati at Fountain Square Northern Kentucky at the Chamber Center Butler/Warren at University Pointe

Graydon Head & Ritchey LLP | 1900 Fifth Third Center | 511 Walnut Street | Cincinnati, OH 45202

513.621.6464 Phone | 513.651.3836 Fax | www.graydon.com

Lynch Affidavit Ex. 5



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Education Section
Office 614-644-7250
Fax 614-644-7634

30 East Broad Street, 16th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

August 24, 2011

VIA E-MAIL

John C. Greiner, Esq.
Graydon Head & Richey, LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202-3157

RE: *State ex rel. ESPN, Inc. v. The Ohio State University* (Ohio S. Ct.), Case No. 11-1177

Dear Jack,

I am writing in response to your letters of August 4 and 14, 2011. As you know, Ohio State has already provided voluminous records in response to ESPN's requests. Notwithstanding the improper breadth and form of many of these requests, the university has made substantial efforts to provide ESPN the documents it appears to seek.

Several of the requests as drafted, and several of your follow-up requests, remain inconsistent with Ohio public records law and with FERPA. The university, however, remains willing to work with ESPN to refine or modify certain requests so that any additional documents of interest, if there are any, can be identified.

Notwithstanding the improper form of the first request – for “[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” – the university made substantial efforts to comply with this request, as drafted, and believes that the previously disclosed documents constitute the complete universe of records that ESPN seeks. Your letter of August 4 objects to the redaction of personally identifiable student information in certain documents, but these redactions are required by FERPA. While ESPN's interest in these documents may relate only tangentially to students, that does nothing to change the fact that the *documents themselves* relate directly to students and therefore, the students' personally identifiable information must be redacted under FERPA. You have also requested a privilege log for documents that were not disclosed because they are covered by attorney-client or work-product privileges. Although the university is not required to provide a privilege log under Ohio public records law, *State ex rel. Nix v. City of Cleveland* (1998), 83 Ohio St.3d 379, 383, it has nonetheless prepared one relating to this request and an electronic version of the log is attached to the email here.

ESPN's second request seeks “[a]ll documents and emails, letters and memos related to NCAA investigations prepared for and/or forwarded to the NCAA since January 1, 2010 related to an investigation of Jim Tressel.” This broad request remains inconsistent with the manner in which the university's records are organized, and parts of the request would require the complete duplication of a file containing many thousands of pages of documents. As the university therefore

John C. Greiner, Esq.
August 24, 2011
Page 2

explained in its July 29 letter, this is an improper request. Nevertheless, the university has already provided many responsive documents. Many additional documents that might fall within this broad request contain personally identifiable student information that would have to be redacted before they are produced to third parties, and 34 C.F.R. § 99.3, "Personally Identifiable Information" subsection (g), would require that certain documents be withheld. The process of reviewing the voluminous body of documents for those considerations would take months. The university therefore reiterates its suggestion that ESPN refine this request if it is interested in additional documents, and the university remains willing to discuss this request further with ESPN to aid in that process.

As to ESPN's third request – for "[a]ny and all emails or documents listing people officially barred from student-athlete pass lists (game tickets) since January 1, 2007" – the records provided on July 29, 2011, are the only responsive documents. In your letter of August 4, you state that ESPN is still awaiting certain "details" and "information." But Ohio's public records law covers documents, not information. *State ex rel. Morgan v. City of New Lexington* (2006), 112 Ohio St. 3d 33, ¶¶ 30, 33; *Nat'l Fed'n of the Blind of Ohio v. Ohio Rehab. Serv. Comm'n.* (10th Dist.), 2010-Ohio-3384, ¶ 35. While the university has no objection to ESPN's reporters communicating directly with Jim Lynch to clarify if there is additional information they seek, the university has already provided the only documents responsive to this records request.

Finally, ESPN's last request is for "[a]ny report, email or other correspondence between the NCAA and Doug Archie or any other Ohio State athletic department official related to any violation (including secondary violation) of NCAA rules involving the football program, since January 1, 2005." As previously explained, this request is overbroad, and portions of the request improperly seek a complete duplication of voluminous files and are inconsistent with the manner in which the university organizes its files. Nevertheless, the university remains willing to respond to this request. However, responding to the request in its present form will take a significant period of time because there are a large number of documents to be reviewed for FERPA protections and other privileges. The university has already started this review process and includes here the full body of responsive documents for resolved violations for 2009 and 2010. See documents 404 through 640 provided today.

This process can be expedited considerably, though, if ESPN is willing to refine and clarify this request. As explained in our previous letter, the university has provided ESPN a summary of all football-related violations going back to January 1, 2005. We are confident this summary can help ESPN refine its request and that this would enable the university to provide responsive documents sooner. In sum, notwithstanding the improper overbreadth and other deficiencies with this request, the university remains willing to work with ESPN to provide the documents it seeks. So please let us know which records, related to which violations, ESPN is interested in.

John C. Greiner, Esq.
August 24, 2011
Page 3

Best regards,

MIKE DEWINE
Ohio Attorney General

A handwritten signature in black ink, appearing to read "Todd R. Marti". The signature is stylized with a long horizontal stroke and a vertical stroke crossing it.

Todd R. Marti
Principal Assistant Attorney General

GRAYDON HEAD

LEGAL COUNSEL | SINCE 1871

John C. Greiner

Direct: 513.629.2734

jpgreincr@graydon.com

September 16, 2011

Todd R. Marti, Esq.
Principal Assistant Attorney General
MIKE DEWINE OHIO ATTORNEY GENERAL
Education Section
30 East Broad Street, 16th Floor
Columbus, OH 43215

Re: State ex rel. ESPN, Inc. v. The Ohio State University
Case No. 11-1177

Dear Todd:

Sorry for this slow reply to your August 24, 2011 letter. I have had a chance to speak with my client and we have the following response.

With respect to the FERPA defense, we simply disagree, and I believe we will need to have the Supreme Court sort this out.

You've requested that ESPN "refine" its request relating "[a]ll documents and emails, letters and memos related to NCAA investigations prepared for and/or forwarded to the NCAA since January 1, 2010, related to an investigation of Jim Tressel." I am not sure how to refine it exactly. R.C. 149.(B)(2) provides:

If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

Would you please inform me the manner in which Ohio State maintains its records so I can consider "refining" the request in an appropriate manner?

It appears that Ohio State has produced all the records it has that are responsive to "student-athlete" pass lists.

Cincinnati at Fountain Square

Northern Kentucky at the Chamber Center

Butler/Warren at University Pointe

Graydon Head & Ritchey LLP | 1900 Fifth Third Center | 511 Walnut Street | Cincinnati, OH 45202

513.621.6464 Phone | 513.651.3836 Fax | www.graydonhead.com

Lynch Affidavit Ex. 7

Todd R. Marti, Esq.
September 16, 2011
Page 2

You've also asked ESPN to refine its request for "[a]ny report, email or other correspondence between the NCAA and Doug Archie or any other Ohio State Athletic Department official related to any violation (including secondary violation) of NCAA rules involving the football program, since January 1, 2005." You pointed me to some previously produced records to use as a guide. It appears from those records that each "case" is assigned a number. That number appears in the far left column.

Based on this information, please provide the information requested above as it relates to case numbers 443, 447 and 458. In addition, please produce the information requested above for any case initiated since November 1, 2010.

Finally, Rob Hamburg from my office sent you this e-mail on August 24 asking that you add a column to your privilege log showing the "subject of the interaction" covered in the document. We have not gotten a response to you on this. We would appreciate a response. I look forward to your reply. Thank you.

Very Truly Yours,

GRAYDON HEAD & RITCHEY LLP


John C. Greiner

JCG|pl

3322945.1



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Education Section
Office 614-644-7250
Fax 614-644-7634

30 East Broad Street, 16th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

September 22, 2011

John C. Greiner, Esq.
Graydon Head & Richey, LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202-3157

RE: *State ex rel. ESPN, Inc. v. The Ohio State University* (Ohio S. Ct.), Case No. 11-1177

Dear Jack,

Thank you for your letter of September 16. We are happy to continue working with you and ESPN to refine ESPN's requests and to identify any responsive documents.

As to the athletic infractions request, your letter requests copies of the files on NCAA cases 443, 447, and 458. Those files are enclosed here (they are documents 890-990). Personally identifiable student information has been redacted pursuant to FERPA. Your letter also asked the University to produce infractions case files "for any case initiated since November 1, 2010." If you could kindly clarify whether you are seeking only football related cases, or case files relating to all athletic infractions during that period, we will respond accordingly.

You also asked for a revised privilege log showing the "subject of the interaction" covered in the log. As we previously noted, and continue to maintain, the University is not required to produce a privilege log under Ohio public records law, *State ex rel. Nix v. City of Cleveland* (1998) 83 Ohio St.3d 383. Nonetheless, in the interests of moving forward toward a resolution of these matters, we previously provided a privilege log, and in that same spirit, we enclose here a revised log reflecting the general nature of the privileged records.

Finally, with regard to ESPN's request for documents relating to the NCAA's investigation of Jim Tressel, your September 16 letter asks for information regarding the manner in which the University maintains its records. The University will address that request and is currently preparing a description of its recordkeeping on this issue. I expect to have that to you next week.

Best regards,

MIKE DEWINE
Ohio Attorney General

Todd R. Marti
Principal Assistant Attorney General



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Education Section
Office 614-644-7250
Fax 614-644-7634

30 East Broad Street, 16th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

October 4, 2011

John C. Greiner, Esq.
Graydon Head & Richey, LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202-3157

RE: *State ex rel. ESPN, Inc. v. The Ohio State University* (Ohio S. Ct.), Case No. 11-1177

Dear Jack,

I'm following up on my letter of September 22, wherein I outlined the progress on the past violation requests and provided an augmented privilege log. As promised in that letter, I am now writing to describe the records potentially responsive to ESPN's request for documents concerning Jim Tressel and the NCAA.

It is difficult to specifically answer your question about how the requested records are "maintained" because of the ambiguity of your client's request. It seeks documents "related to NCAA investigations prepared for and/or forwarded to the NCAA since 1/1/2010 related to an investigation of Jim Tressel." The set of responsive documents varies depending on the scope of ESPN's request.

In particular, is ESPN seeking records regarding the specific NCAA investigation that led to Coach Tressel leaving the University? Or is ESPN seeking records related to *any* NCAA investigation involving Jim Tressel since January 1, 2010 (*i.e.* investigations of *all* matters, which involved the NCAA and, for which Jim Tressel had some involvement)? That distinction is important because the January 1, 2010, date significantly precedes the investigation that has been ESPN's primary focus. Further, as you can see from the records produced in response to ESPN's past violations request, several investigations since then did examine Coach Tressel's actions in the course of investigating matters completely unrelated to the investigation leading to Tressel's separation from OSU.

If your request has that broader scope Ohio State would need to sift through every single page of every document to determine if Coach Tressel's name appears to determine whether the matter "related to an investigation of Jim Tressel." As you know, the public records law does not require a public entity to make such an effort but we, of course, are willing to work with you.

Should you be more specific as to what ESPN is seeking, Ohio State will have a better opportunity to locate those records that are responsive to your request.

John C. Greiner, Esq.
October 4, 2011
Page 2

In any event, to further assist you, the types of records that we believe you are seeking relate to the following with respect to NCAA investigations:

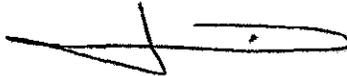
- Telephone records
- Correspondence
- Interviews
- E-mails
- Factual summaries
- Self reports
- Response to Notice of Allegations
- Compliance forms and other related records
- Documents gathered from third parties

Those records are maintained by the Office of Legal Affairs and the Department of Athletics. Many of the documents would have to be reviewed to determine whether appropriate redactions are required.

I hope this is helpful. As I have indicated before, OSU wants to work with ESPN to amicably resolve as much of this case as possible. Please let us know how you would like to proceed from here.

Best regards,

MIKE DEWINE
Ohio Attorney General



Todd R. Marti
Principal Assistant Attorney General

GRAYDON HEAD

LEGAL COUNSEL | SINCE 1871

John C. Greiner
Direct: 513.629.2734
jgreiner@graydon.com

October 5, 2011

Todd R. Marti, Esq.
Principal Assistant Attorney General
MIKE DEWINE OHIO ATTORNEY GENERAL
30 East Broad Street, 16th Floor
Columbus, OH 43215

Re: State ex rel. ESPN, Inc. v. The Ohio State University, Case No. 11-1177

Dear Todd:

Thank you for your October 4 letter. To answer your question, ESPN is seeking records related to any NCAA investigation involving Jim Tressel since January 1, 2010. As to that request, we would like to see the following specific items:

- Correspondence
- Interviews
- E-mails
- Factual Summaries
- Self-Reports
- Response to Notice of Allegations
- Compliance forms and other related records
- Documents gathered from third parties

We are not requiring that you produce telephone records.

Having said that, we would appreciate your giving priority to the records regarding the specific NCAA investigation that led to Coach Tressel leaving the University.

As to the other matters that are pending, I appreciate your clarification on the missing documents. I suspected that the missing documents were the ones subject to the privilege assertion, but it surprised me that they were clustered. I still look forward to your response to my previous question about the privilege designations. I had also asked you to look into some still outstanding document requests. I look forward to your response.

Please call with any questions.

Very Truly Yours,

GRAYDON HEAD & RITCHEY LLP


John C. Greiner

JCG/pl
3351994.1

Cincinnati at Fountain Square Northern Kentucky at the Chamber Center Butler/Warren at University Pointe

Graydon Head & Ritchey LLP | 1900 Fifth Third Center | 511 Walnut Street | Cincinnati, OH 45202

513.621.6464 Phone | 513.651.3836 Fax | www.graydonhead.com

Lynch Affidavit Ex. 10

In the
Supreme Court of Ohio

STATE ex rel. ESPN, INC.,

Case No. 2011-1177

Petitioner,

Original Action in Mandamus

vs.

THE OHIO STATE UNIVERSITY,

Respondent.

AFFIDAVIT OF DIANE L. STEMPER

I, Diane L. Stemper having been duly cautioned and sworn, hereby attest to the following:

1. I am over eighteen years of age and am competent to testify to the matters contained in this Affidavit. The facts set forth in this Affidavit are based upon my personal knowledge of the matters asserted.
2. I currently serve as the Director of Student Financial Aid at The Ohio State University (University).
3. My duties as the Director of Student Financial Aid include oversight of the delivery, management, compliance, and coordination of all student aid at the University, including Title IV and other Federal student aid.

4. For the 2008-2009 academic year, the University received \$390,734,604 in Federal Title IV student aid.

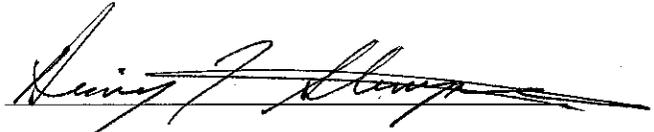
5. For the 2009-2010 academic year, the University received over \$449,094,123 in Federal Title IV student aid.

6. For the 2010-2011 academic year, the University received over \$473,301,218 in Federal Title IV student aid.

7. This amount constitutes approximately 12% of the total operating revenues of the University in 2010-2011.

8. For the 2011-2012 academic year, I anticipate that the University will receive at least the same amount of money in Federal Title IV student aid that it received in Federal Title IV student aid in 2010-2011.

FURTHER AFFIANT SAYETH NAUGHT.



Diane L. Stemper

Sworn to before me and subscribed in my presence this 7th day of October 2011.



Notary Public

MICHAEL DAVID LAYISH
Attorney At Law
Notary Public, State of Ohio
My Commission Has No Expiration Date
Section 147.03 R.C.

5. This amount constitutes approximately 11% of the total operating revenues of the University in 2010.

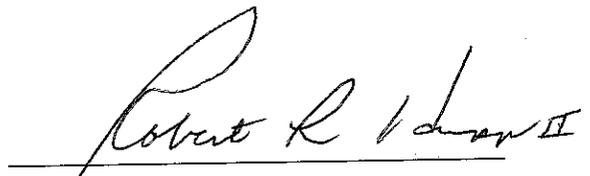
6. For the 2011-2012 academic year, I anticipate that the University will receive at least the same amount of money in Federal research dollars that it received in Federal research dollars in 2010-2011.

FURTHER AFFIANT SAYETH NAUGHT.



Thomas F. Ewing

Sworn to before me and subscribed in my presence this 10th day of October 2011.



Notary Public

ROBERT L. HUPP II
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires 04-25-2012

In the
Supreme Court of Ohio

STATE ex rel. ESPN, INC.,

:

Case No. 2011-1177

:

:

Petitioner,

:

Original Action in Mandamus

:

:

vs.

:

:

THE OHIO STATE UNIVERSITY,

:

Respondent.

AFFIDAVIT OF SANDRA J. ANDERSON

I, Sandra J. Anderson, having been duly cautioned and sworn, hereby attest to the following:

1. I am employed as Associate Vice President and Deputy General Counsel for The Ohio State University's ("OSU") Office of Legal Affairs ("OLA"). I have held that position since August 2010. My duties include managing the operations of OLA and directing the efforts of the attorneys and paralegals employed at OLA in providing legal services to OSU. I have personal knowledge of the matters described in this affidavit.

2. At the request of petitioner's counsel in this matter, OLA prepared and produced a "privilege log" to identify certain documents that were withheld from production in

response to ESPN's request for public records regarding "all e-mails, letters and memos to and from Jim Tressel, Gordon Gee, Doug Archie and/or Gene Smith with the key word Sarniak since March 15, 2007." As described in paragraph 6, below, these documents will be filed under seal with the Court. To assist the Court, this affidavit provides factual background and context, including the identities of authors, senders and recipients whose names appear on these documents, in order to demonstrate that the documents were properly withheld based on attorney-client communication privilege, work product privilege, or other privileges/exemptions from R.C. 149.43.

3. Christopher M. Culley, Julie D. Vannatta, and Jan A. Neiger are employed as attorneys in the OLA. Specifically, Mr. Culley is Senior Vice President and General Counsel; Ms. Vannatta is Senior Assistant General Counsel and Senior Associate Athletic Director; and Mr. Neiger is Associate General Counsel. Kendra Baumann is employed as a paralegal in the OLA.

4. OLA retained the Compliance Group as an expert consultant to assist OLA in providing legal advice and in the defense of OSU and its Department of Athletics with respect to an investigation by the National Collegiate Athletic Association ("NCAA"). The retainer agreement between OLA and the Compliance Group includes a provision for sharing and protecting confidential information, including information regarding student athletes that is protected from disclosure by federal law. The NCAA investigation concerns charges that certain student athletes had improperly sold OSU memorabilia and/or improperly received free or discounted tattoos and that former Coach Jim Tressel had failed to report that activity as required by NCAA rules. ("The Investigation"). Beth Chapman (who is an attorney), Chuck Smrt and Carol Iwaoka are

employees of the Compliance Group. They assisted OLA in evidence gathering for the NCAA investigation, in interviews of witnesses, in advice to the client, including whether any related institutional violations may exist, and in advocacy on behalf of OSU before the NCAA, including at a formal hearing in August 2011.

5. Larry H. James is an attorney and partner with the law firm, Crabbe, Brown & James LLP in Columbus, Ohio. Mr. James and his firm were retained by OSU to represent certain of the student athletes involved in the Investigation. Mr. James and OLA worked jointly on the defense of OSU and the student athletes, where interests were aligned and common positions were taken. Communications between OLA, the Compliance Group and Mr. James for purposes of this joint defense took place with the expectation of confidentiality.

6. The privileged documents that have been withheld are Bates numbered to correspond with the numbering of OSU's responses to ESPN's records requests and will be filed under seal with the Court. A chart of these documents is attached hereto as Exhibit A, for the convenience of the Court. These privileged documents are primarily e-mail communications, several of which include attachments. The content and subject matter of certain portions of e-mail strings and several of the attachments to the privileged e-mail communications are, in and of themselves, unrelated and non-responsive to ESPN's requests as they do not contain the word "Sarniak." Also, certain portions of e-mail strings or certain attachments have otherwise been produced in response to public records requests. Nonetheless, to the extent each privileged document consists of both privileged communication and attachments (whether or not any correspondence in an e-mail string or attachment is related to ESPN's request for

documents containing the word "Sarniak" or has otherwise been produced), the entirety of each document has been included within the documents filed under seal with the Court. The privileged documents under seal have only been made available to OSU staff and employees, individuals or groups retained by OLA for purposes of assisting OSU, and parties with a common interest with OSU and that are aligned with the interests of OSU.

FURTHER AFFIANT SAYETH NAUGHT


Sandra J. Anderson

Sworn to before me and subscribed in my presence this 11th day of October 2011.


Notary Public



Kendra C. Baumann
Notary Public, State of Ohio
My Commission Expires 04-25-2014

Exhibit A Documents containing the word "Sarniak"

Bates Number

**Privileged or Exempt Records (Each
batch of records segregated into a
discrete document)**

641-642

643-646

647-657

658-659

660

661-662

663-664

665-668

669-672

673-674

675-678

679-680

681-682

683-688

689-692

693

694-695

696-699

700-705

706-711

712

713-742

743-745

746-761

762-765

766-770

771-774

775-779

780-783

784-788

789-792

793-806

807

808-813

814

815-818

819-820

821

822-823

824-825

826-828

829-835

836-858

859-863

864-868

869-872

873-875

876-889

991-998

1007-1012 (attached to 660)

1018 (attached to 641)

In the
Supreme Court of Ohio

STATE ex rel. ESPN, INC.,

Case No. 2011-1177

Petitioner,

Original Action in Mandamus

vs.

THE OHIO STATE UNIVERSITY,

Respondent.

AFFIDAVIT OF JAMES NULL

I, James Null, having been duly cautioned and sworn, hereby attest to the following:

1. I am the Director of Information Technology for The Ohio State University's Department of Athletics ("The Department"). I have held that position for approximately 11 years. I have personal knowledge of the matters described in this affidavit as a result of my work in that position.

2. Since 2007 The Department has used the Mimosa Nearpoint System ("Mimosa") to retain copies of all e-mails and attachments thereto sent to or by any person in The Department, including e-mails that were only copied to persons in The

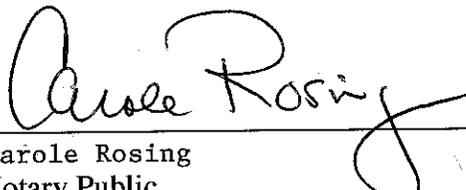
Department. Once captured in Mimosa, e-mails cannot be deleted. Mimosa was put into place in the wake of a NCAA investigation into the basketball program in order to retain copies of records that could become relevant to students' NCAA eligibility and related matters.

3. The Department also retains copies of all documents scanned into electronic records, organized by student athlete.

FURTHER AFFIANT SAYETH NAUGHT


James Null

Sworn to before me and subscribed in my presence this 7th day of October 2011.


Carole Rosing
Notary Public

State of Ohio, County of Franklin
My commission expires 12/18/12
My commission is registered in Delaware County

In the
Supreme Court of Ohio

STATE ex rel. ESPN, INC.,

Case No. 2011-1177

Petitioner,

Original Action in Mandamus

vs.

THE OHIO STATE UNIVERSITY,

Respondent.

AFFIDAVIT OF DOUGLAS ARCHIE

I, Douglas Archie, having been duly cautioned and sworn, hereby attest to the following:

1. I am the Associate Athletic Director in charge of compliance in The Ohio State University's ("OSU") Department of Athletics ("The Department"). I have responsibility for overseeing The Department's efforts to comply with the requirements of the National Collegiate Athletic Association ("NCAA"). I have held that position for five years. I have personal knowledge of the matters described in this affidavit as a result of my work in that position.

2. In conjunction with other University personnel, I am overseeing OSU's response to the investigation of several student athletes who improperly sold bartered OSU memorabilia and/or improperly received tattoos and former coach Jim Tresesel's failure to report that activity ("The Investigation"). The document formally instituting The Investigation is attached to this affidavit.

3. Before The Investigation was formally commenced by the NCAA, and after it was commenced, OSU collected documents requested by the NCAA for eventual forwarding to the NCAA for use in connection with The Investigation. Those documents were copied into electronic records and placed in one of two secure electronic files: the PGP file and the SFPT file ("The Secured Files"). Certain contents of the Secured Files were then forwarded to the NCAA, mostly through the Compliance Group, a consultant retained by OSU's Office of Legal Affairs to assist Legal Affairs in providing legal advice to The Department and to interface with the NCAA in connection with The Investigation. Some documents were sent directly to the NCAA by OSU, but those documents were also included in The Secured Files. No one has had, or currently has, access to The Secured Files except authorized personnel within OSU and The Compliance Group and, indirectly, the NCAA. The contents of The Secured Files are covered by a records retention schedule that requires that they be kept for seven years.

4. The Department retains copies of all records collected/generated in connection with past NCAA investigations that have been concluded. Those files are preserved in secured files and kept under a retention schedule that requires they be maintained for seven years.

5. The reason that OSU is able to give the NCAA access to the files described above without running afoul of the Family Educational Rights and Privacy Act ("FERPA") is that all of the student athletes referenced in those files waived their protections under FERPA with regard to the NCAA. A sample of the waiver form signed by those student athletes is attached to this affidavit.

6. I understand the public records requests underlying this case to seek, among other things:

"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."

and

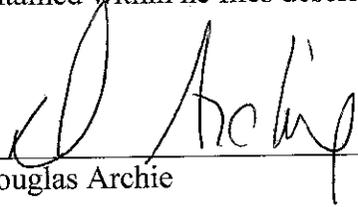
"All documents and emails, letters and memos related to NCAA investigations prepared for and/or forwarded to the NCAA since January 1, 2010 related to an investigation of Jim Tressel"

and

"Any report, email or other correspondence between the NCAA and Doug Archie or any other Ohio State athletic department official related to any violation (including secondary violation) of NCAA rules involving the football program, since January 1, 2005"

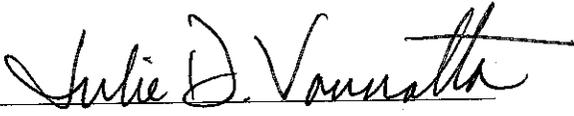
All records responsive to those requests are contained within the files described above.

FURTHER AFFIANT SAYETH NAUGHT



Douglas Archie

Sworn to before me and subscribed in my presence this 10th day of October 2011.



Julie D. Vannatta

Notary Public

Julie D. Vannatta
Attorney At Law
Notary Public, State of Ohio
My Commission Has No Expiration Date
R.C. 147.03

{00149767-1}3



NOTICE OF ALLEGATIONS

to the

President of The Ohio State University

1. [NCAA Bylaws 12.1.2.1.6, 14.11.1, 16.1.4 and 16.11.1.6]

It was reported that between November 2008 and May 2010, football student-athletes

██████████ and then football student-athlete ██████████ received preferential treatment from and, other than ██████████ sold institutionally issued athletics awards, apparel and/or equipment to Edward Rife, owner of a local tattoo parlor, as set forth below:

- a. In April 2009, ██████████ sold his 2008 Big Ten Conference championship ring to Rife for \$1,000. [NCAA Bylaws 12.1.2.1.6 and 16.1.4]
- b. In the summer of 2009, ██████████ sold a 2008 national championship game jersey, a pair of game pants and a pair of game shoes to Rife for a total of \$1,000, and received two free tattoos from Rife's tattoo parlor, valued at \$150 total. [NCAA Bylaws 12.1.2.1.6, 16.1.4 and 16.11.1.6]
- c. In June 2009, ██████████ sold his 2008 Big Ten Conference championship ring to Rife for \$1,200 and received an estimated \$50 discount on a tattoo from Rife's tattoo parlor. [NCAA Bylaws 12.1.2.1.6 and 16.1.4]
- d. In May or June 2009, ██████████ sold his 2008 Big Ten Conference championship ring, his 2008 "gold pants" team award and his ██████████ ██████████ to Rife for a total of \$2,500. [NCAA Bylaws 12.1.2.1.6 and 16.1.4]
- e. Between February and November 2009, ██████████ sold his 2008 Big Ten Conference championship ring (\$1,000) and his 2008 "gold pants" team award (\$350) to Rife for a total of \$1,350, and received an estimated \$155 discount on five tattoos from Rife's tattoo parlor. [NCAA Bylaws 12.1.2.1.6 and 16.1.4]
- f. In the summer of 2009, ██████████ received an estimated \$150 discount on three tattoos from Rife's tattoo parlor. [NCAA Bylaw 12.1.2.1.6]
- g. Between November 2008 and May 2010, ██████████ sold his 2008 Big Ten Conference championship ring (\$1,500), his 2008 and 2009 "gold pants" team award (\$250 each), a game helmet (\$150) and pair of game pants (\$30) from the 2009 contest against University of Michigan, and his 2010 Rose Bowl watch (\$250) to Rife for a total of \$2,430, and received an estimated \$55 discount on two tattoos from Rife's tattoo parlor. Additionally, ██████████ received \$100 for obtaining team autographs on two replica football helmets belonging to Rife, an

NOTICE OF ALLEGATIONS

April 21, 2011

Page No. 2

estimated \$2,420 discount on the purchase of a used vehicle and an \$800 loan for vehicle repairs from Rife. [NCAA Bylaws 12.1.2.1.6, 16.1.4 and 16.11.1.6]

Additionally, Jim Tressel, head football coach, knew or should have known that at least two football student-athletes received preferential treatment from and sold institutionally issued athletics awards, apparel and/or equipment to Rife, but he failed to report the information to athletics administrators and, as a result, permitted football student-athletes to participate in intercollegiate athletics competition while ineligible, as set forth in Allegation No. 2. [NCAA Bylaw 14.11.1]

Please indicate whether this information is substantially correct and whether the institution agrees that violations of NCAA legislation occurred. Submit evidence to support your response. Also, please provide the following:

- a. An overview of the attendance and athletics participation at the institution for the identified student-athletes, including the (1) dates of enrollment at the institution and any other two- or four-year institution, (2) eligibility for practice and competition for each academic year enrolled, (3) amount of athletically related financial aid provided for each academic year, (4) average number of minutes and average number of contests participated in for each season of competition, (5) number of contests started for each season of competition, and (6) number of postseason events participated in for each season of competition.
- b. A statement indicating whether any of the student-athletes identified in the allegation have remaining eligibility issues. Please include copies of all correspondence between the institution and the NCAA student-athlete reinstatement staff concerning the restoration of eligibility for the student-athletes named in the allegation.
- c. A copy of the letter from the United States Department of Justice dated December 7, 2010, concerning Ohio State memorabilia seized during a federal investigation.
- d. A detailed explanation of the institution's valuation of the preferential treatment received by the student-athletes, including the discounted tattoos and the specific dollar amounts for the sale of each athletics award, piece of equipment and apparel item. Please explain any discrepancies between the values reached by the institution and those represented in the letter from the Department of Justice.
- e. A statement describing the "gold pants" team award, including the size, cost and purpose of the award.

NOTICE OF ALLEGATIONS

April 21, 2011

Page No. 3

- f. A detailed description of the institution's review of other football student-athletes' potential involvement in the sale or exchange of athletics awards, apparel and equipment to or receipt of preferential treatment from Rife.
- g. A statement describing NCAA rules education provided to football student-athletes during the 2007-08 through 2010-11 academic years related to the sale of institutionally issued athletics awards, apparel and equipment, as well as the receipt of preferential treatment.
- h. An overview of the institution's compliance procedures during the 2007-08 through 2010-11 academic years for monitoring the sale of institutionally issued athletics awards, apparel and equipment, as well as the receipt of preferential treatment by football student-athletes to ensure compliance with NCAA legislation.
- i. A statement describing Rife's relationship to the institution and its intercollegiate athletics program. In that regard, please indicate whether Rife has (1) participated in or is a member of an agency or organization promoting the institution's intercollegiate athletics program; (2) made financial contributions to the institution, its intercollegiate athletics program or an athletics booster organization; (3) a personal relationship in any manner with any current or former members of the institution's athletics programs; (4) been involved in any manner with the recruitment of a prospective student-athlete; (5) provided benefits in any manner to any enrolled student-athletes, prospective student-athletes or their families; or (6) been involved in any manner in the promotion of the institution's intercollegiate athletics program. Also, please indicate if the institution believes Rife to be a representative of the institution's athletics interests and, if so, the date he became a representative.
- j. A statement indicating the reason the violations occurred in light of NCAA legislation prohibiting the sale by student-athletes of institutionally issued athletics awards, apparel and equipment, and the receipt of preferential treatment.

NOTICE OF ALLEGATIONS

April 21, 2011

Page No. 4

2. [NCAA Bylaw 10.1]

It was reported that Jim Tressel, head football coach, failed to deport himself in accordance with the honesty and integrity normally associated with the conduct and administration of intercollegiate athletics as required by NCAA legislation and violated ethical-conduct legislation when he failed to report information concerning violations of NCAA legislation and permitted football student-athletes to participate in intercollegiate athletics competition while ineligible. Specifically, in April 2010, Tressel received email notification that football student-athletes, including [REDACTED] received preferential treatment from and sold athletics awards, apparel and/or equipment to Edward Rife, owner of a local tattoo parlor; however, Tressel failed to report the information to athletics administrators. Additionally, Tressel withheld the information from April 2010 until the institution discovered the emails in January 2011, including throughout the 2010 football season when he permitted football student-athletes to compete while ineligible and during the institution's investigation of the violations in December 2010. Further, in September 2010, Tressel falsely attested that he reported to the institution any knowledge of NCAA violations when he signed the institution's certification of compliance form, which is required under Bylaw 18.4.2.1.1.4.

Please indicate whether the information is substantially correct and whether the institution agrees that violations of NCAA legislation occurred. Submit evidence to support your response. Also, please provide the following:

- a. A copy of the emails Tressel received in the spring of 2010 concerning the violations, including any replies and forwarded messages, as well as a statement regarding when and how the institution discovered the emails.
- b. A statement identifying Chris Cicero, including his relationship to the institution and degree of contact with Tressel and other members of the football staff.
- c. A statement identifying Ted Sarniak, including his relationship to [REDACTED] and a statement regarding the reason Tressel forwarded him an email concerning violations of NCAA legislation.
- d. A statement regarding any action Tressel took to address the email notification he received concerning NCAA violations.
- e. A copy of the institution's March 8, 2011, self-report to the NCAA enforcement staff concerning violations of NCAA legislation.
- f. A copy of the institution's document titled "Protocol for Reporting of Violations" from the 2009-10 and 2010-11 academic years as well as the certification of compliance form signed by Tressel and dated September 13, 2010.

NOTICE OF ALLEGATIONS

April 21, 2011

Page No. 5

- g. A statement indicating the dates Tressel was interviewed by the institution and/or enforcement staff and those present for each interview.
- h. A copy of the transcript from Tressel's February 8, 2011, interview with the enforcement staff and institution.
- i. A statement describing NCAA rules education provided to the football staff during the 2007-08 through 2010-11 academic years related to the sale by student-athletes of institutionally issued athletics awards, apparel and equipment; the receipt of preferential treatment; and the responsibility to report information concerning violations of NCAA legislation.
- j. The identities of all athletics department staff members involved in or having knowledge of the receipt of the preferential treatment by the football student-athletes. Also, provide a description of this involvement or knowledge prior to, at the time of and subsequent to the receipt of the preferential treatment.
- k. A statement indicating the reasons student-athletes were permitted to participate in intercollegiate athletics competition despite their involvement in NCAA violations.

Requested Information

- 3. Please provide all information concerning other possible violations of NCAA legislation discovered by the institution as a result of its review of this matter. In that regard, please indicate the means by which the information was discovered and the institution's position on whether a violation occurred.
- 4. Please provide a detailed description of any corrective or punitive actions implemented by the institution as a result of the violations acknowledged in this inquiry. In that regard, explain the reasons the institution believes these actions to be appropriate and identify the violations upon which the actions were based. Additionally, indicate the date that any corrective or punitive actions were implemented.
- 5. Please provide a detailed description of all disciplinary actions taken against any current or former athletics department staff members as a result of violations acknowledged in this inquiry. In that regard, explain the reasons that the institution believes these actions to be appropriate and identify the violations upon which the actions were based. Additionally, indicate the date that any disciplinary actions were taken and submit copies of all correspondence from the institution to each individual describing these disciplinary actions.

NOTICE OF ALLEGATIONS

April 21, 2011

Page No. 6

6. Please provide a statement indicating the dates and titles of all positions at the institution held by individuals identified during the inquiry as allegedly having significant involvement in NCAA violations as well as a brief overview of each position. Additionally, provide the dates, title and employer of all positions held by such individual(s) during the five years prior to the dates of the alleged violations. Furthermore, provide a brief review of the previous major infractions case history for the identified individuals.
7. Please provide a short summary of every major infractions case involving the institution. In this summary, provide the date of the infractions report, a description of the violations found by the NCAA Committee on Infractions, the individuals involved, and the penalties and corrective actions. Additionally, please provide a copy of any major infractions reports involving the institution that were issued by the Committee on Infractions.
8. Please provide a chart depicting the institution's reporting history of secondary violations for the past five years. In this chart, please indicate for each academic year the number of total secondary violations reported. Also, please include the applicable bylaws for each violation, and then indicate the number of secondary violations involving the football program for the same five-year time period.
9. Please provide the institution's overall NCAA division and conference affiliation, as well as the total enrollment on campus and the number of men's and women's sports sponsored.
10. Please provide a statement describing the general organization and structure of the institution's intercollegiate athletics department, including the identities of those individuals in the athletics department who were responsible for the supervision of all sport programs during the previous four years, and whether the institution conducts a systematic review of NCAA and institutional regulations for its athletics department employees. If a review is performed, identify the agency, individual or committee responsible for this review, and describe the responsibilities and functions of each identified.
11. Please provide the following information concerning the football program:
 - The average number of initial and total football grants-in-aid that have been awarded during the past four academic years.
 - The number of initial and total football grants-in-aid in effect for the 2010-11 academic year and the number anticipated being in effect for the 2011-12 academic year.

NOTICE OF ALLEGATIONS

April 21, 2011

Page No. 7

- The identities of all football student-athletes anticipated to be on athletically related financial aid as of the first semester of the next academic year who will have four years of remaining eligibility and five years of enrollment (per the NCAA's five-year rule) to complete those four years; the identities of all football student-athletes who have three years of remaining eligibility and four years of remaining enrollment to complete those three years; the identities of all football student-athletes who have two years of remaining eligibility and three years of remaining enrollment to complete those two years; and the identities of all football student-athletes who have one year of remaining eligibility and two years of remaining enrollment to complete that year.
- The average number of football student-athletes during the previous four years who have redshirted and the number who are expected to redshirt during the upcoming academic year.
- The number of football student-athletes in each of the previous four years who were awarded athletically related financial aid but who withdrew from the squad for reasons other than graduation or loss of eligibility.
- A list of the institution's football win-loss record for the past four seasons and the dates and results of all postseason competition in which the institution has participated during those years. If there was postseason competition, please indicate how this was earned (e.g., conference automatic bid, at-large bid).
- The average number of official paid visits provided by the institution to prospective football student-athletes during the past four years.
- The cost of room, board, books and tuition at the institution for the past four academic years.
- Copies of the institution's football squad lists for the past four academic years.
- One copy of the institution's media guides for the past four academic years to be sent to Mr. Shep Cooper, director of the Committees on Infractions, and, if available, the Internet URL(s) for the members of the committee to use to review the same information contained in these media guides. If this information is not available through the Internet, then the provision of one complete set of media guides to Mr. Cooper will suffice.
- A review of the institution's obligations (contractual or otherwise) concerning live telecasts of contests during the next three seasons. These should include, but should not be limited to, contractual agreements negotiated by the institution's conference and opponent or through its sports network affiliations.

NOTICE OF ALLEGATIONS

April 21, 2011

Page No. 8

- A statement indicating whether the provisions of NCAA Bylaws 31.2.2.3 and 31.2.2.4 apply to the institution as a result of the involvement of student-athletes in violations noted in this inquiry.
- A statement indicating whether the provisions of NCAA Bylaw 19.5.2.2-(e) apply to the institution as a result of the involvement of student-athletes in violations noted in this inquiry.

Any additional information or comments regarding this case are welcome.

will further jeopardize your eligibility.

Date of birth:

Age:

By entering my name.# in the box, I indicate my understanding of the information shown and provided on this form, and it is my intent to be signing the record. I certify that my answers are complete and correct and that any fraudulent information may make me ineligible for intercollegiate athletic competition and/or athletically related financial aid at The Ohio State University. I understand that The Ohio State University may share this information with the NCAA and that a photocopy of this authorization shall be as valid as an original.

Student-athlete's name.#:

Permanent Home Address (Street or P.O. Box):

City:

State:

Zip:

Sport(s):

Part II: Buckley Amendment Consent.

By signing this part of the form, you certify that you agree to disclose your education records.

You understand that this entire form and the results of any NCAA drug test you may take are part of your education records. These records are protected by the Family Educational Rights and Privacy Act of 1974 and they may not be disclosed without your consent.

You give your consent to disclose only to authorized representatives of this institution, its athletics conference (if any) and the NCAA, except as permitted in the Drug-Testing Consent form, the following documents:

1. This form;
2. Results of NCAA drug tests and related information and correspondence;
3. Results of positive drug tests administered by a non-NCAA national or international sports governing body;
4. Any transcript from your high school, this institution, or any junior college or any other four-year institution you have attended;
5. Precollege test scores, appropriately related information and correspondence (e.g., testing sites, dates and letters of test-score certification or appeal), and where applicable, information relating to eligibility for or conduct of nonstandard testing;
6. Graduation status;
7. Your social security number and/or student identification number;
8. Race and gender identification;
9. Diagnosis of any education-impact disabilities;
10. Accommodations provided or approved and other information related to any education-impact disabilities in all secondary and postsecondary schools;
11. Records concerning your financial aid; and
12. Any other papers or information pertaining to your NCAA eligibility.

You agree to disclose these records only to determine your eligibility for intercollegiate athletics, your eligibility for athletically related financial aid, for evaluation of school and team academic success, for awards and recognition programs highlighting student-athlete academic success (e.g. Elite 68), for purposes of inclusion in summary institutional information reported to the NCAA (and which may be publicly released by it), for NCAA longitudinal research studies and for activities related to NCAA compliance reviews and athletics certification. You will not be identified by name by the NCAA in any such published or distributed information. This consent shall remain in effect as long as any issues regarding the purposes listed above exist.

You also agree that information regarding any infractions matter in which you may be involved may be published or distributed to third parties as required by NCAA policies, bylaws or procedures.

By entering my name.# in the box, I indicate my understanding of the information shown and provided on this form, and it is my intent to be signing the record. I certify that my answers are complete and correct and that any fraudulent information may make me ineligible for intercollegiate athletic competition and/or athletically related financial aid at The Ohio State University. I understand that The Ohio State University may share this information with the NCAA and that a photocopy of this authorization shall be as valid as an original.

Student-athlete's name.#:

Part III: Affirmation of Status as an Amateur Athlete.

You affirm that you have read and understand the NCAA amateurism rules.

By signing this part of the form, you affirm that, to the best of your knowledge, you have not violated any amateurism rules since you requested a final certification from the NCAA Eligibility Center or since the last time you signed a Division I student-athlete statement, whichever occurred later.

You affirm that since requesting a final certification from the NCAA Eligibility Center, you have not provided false or misleading information concerning your amateur status to the NCAA, the NCAA Eligibility Center and the institution's athletics department, including administrative personnel and the coaching staff.

Name:

By entering my name.# in the box, I indicate my understanding of the information shown and provided on this form, and it is my intent to be signing the record. I certify that my answers are complete and correct and that any fraudulent information may make me ineligible for intercollegiate athletic competition and/or athletically related financial aid at The Ohio State University. I understand that The Ohio State University may share this information with the NCAA and that a photocopy of this authorization shall be as valid as an original.