

STATE OF NORTH CAROLINA

File No. 24CVS 747

Durham County

In The General Court Of Justice
District Superior Court Division

Name And Address Of Plaintiff 1
EMANCIPATE NC, INC
1803 CHAPEL HILL RD, DURHAM, NC 27707

FILED
2024 JAN 17 P 12:46

GENERAL CIVIL ACTION COVER SHEET

INITIAL FILING SUBSEQUENT FILING

Name And Address Of Plaintiff 2

Rule 5(b) of the General Rules of Practice for the Superior and District Courts

VERSUS

Name And Address Of Defendant 1
DURHAM COUNTY SHERIFF'S OFFICE
P.O. BOX 170, DURHAM, NC 27702

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

Elizabeth G. Simpson
UNC School of Law Clinical Programs
102 Ridge Rd, Chapel Hill, NC 27514

Telephone No. 919-682-1149
Cellular Telephone No.

Summons Submitted
Yes No

NC Attorney Bar No. 41596
Attorney Email Address elizabeth@emancipatenc.org

Name And Address Of Defendant 2

Initial Appearance in Case Change of Address

Name Of Firm UNC School of Law Civil Legal Clinic
Fax No.

Summons Submitted
Yes No

Counsel For
All Plaintiffs All Defendants Only: (list party(ies) represented)

Jury Demanded In Pleading Complex Litigation Stipulate to Arbitration

TYPE OF PLEADING

- (check all that apply)
Amend (AMND)
Amended Answer/Reply (AMND-Response)
Amended Complaint (AMND)
Assess Costs (COST)
Answer/Reply (ANSW-Response) (see Note)
Change Venue (CHVN)
Complaint (COMP)
Confession Of Judgment (CNFJ)
Consent Order (CONS)
Consolidate (CNSL)
Contempt (CNTP)
Continue (CNTN)
Compel (CMPL)
Counterclaim (CTCL) Assess Court Costs
Crossclaim (list on back) (CRSS) Assess Court Costs
Dismiss (DISM) Assess Court Costs
Exempt/Waive Mediation (EXMD)
Extend Statute Of Limitations, Rule 9 (ESOL)
Extend Time For Complaint (EXCO)
Failure To Join Necessary Party (FJNP)

- Failure To State A Claim (FASC)
Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
Improper Venue/Division (IMVN)
Including Attorney's Fees (ATTY)
Intervene (INTR)
Interplead (OTHR)
Lack Of Jurisdiction (Person) (LJPN)
Lack Of Jurisdiction (Subject Matter) (LJSM)
Modification Of Child Support In IV-D Actions (MSUP)
Notice Of Dismissal With Or Without Prejudice (VOLD)
Petition To Sue As Indigent (OTHR)
Rule 12 Motion In Lieu Of Answer (MDLA)
Sanctions (SANC)
Set Aside (OTHR)
Show Cause (SHOW)
Transfer (TRFR)
Third Party Complaint (list Third Party Defendants on back) (TPCL)
Vacate/Modify Judgment (VCMD)
Withdraw As Counsel (WDCO)
Other (specify and list each separately)

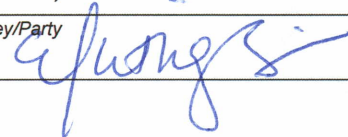
NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include either a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

(Over)

CLAIMS FOR RELIEF

- | | | |
|--|--|---|
| <input type="checkbox"/> Administrative Appeal (ADMA) | <input type="checkbox"/> Limited Driving Privilege - Out-Of-State Convictions (PLDP) | <input type="checkbox"/> Product Liability (PROD) |
| <input type="checkbox"/> Appointment Of Receiver (APRC) | <input type="checkbox"/> Medical Malpractice (MDML) | <input type="checkbox"/> Real Property (RLPR) |
| <input type="checkbox"/> Attachment/Garnishment (ATTC) | <input type="checkbox"/> Minor Settlement (MSTL) | <input type="checkbox"/> Specific Performance (SPPR) |
| <input type="checkbox"/> Claim And Delivery (CLMD) | <input type="checkbox"/> Money Owed (MNYO) | <input checked="" type="checkbox"/> Other (<i>specify and list each separately</i>) |
| <input type="checkbox"/> Collection On Account (ACCT) | <input type="checkbox"/> Negligence - Motor Vehicle (MVNG) | Public Records Act, NCGS 132-9 et seq. |
| <input type="checkbox"/> Condemnation (CNDM) | <input type="checkbox"/> Negligence - Other (NEGO) | |
| <input type="checkbox"/> Contract (CNTR) | <input type="checkbox"/> Motor Vehicle Lien G.S. Chapter 44A (MVLN) | |
| <input type="checkbox"/> Discovery Scheduling Order (DSCH) | <input type="checkbox"/> Possession Of Personal Property (POPP) | |
| <input type="checkbox"/> Injunction (INJU) | | |

Date January 17, 2024

Signature Of Attorney/Party 

FEES IN G.S. 7A-308 APPLY
 Assert Right Of Access (ARAS)
 Substitution Of Trustee (Judicial Foreclosure) (RSOT)
 Supplemental Procedures (SUPR)

PRO HAC VICE FEES APPLY
 Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No.	<input type="checkbox"/> Additional Plaintiff(s)			
No.	<input type="checkbox"/> Additional Defendant(s)	<input type="checkbox"/> Third Party Defendant(s)		Summons Submitted
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

STATE OF NORTH CAROLINA

File No.

24CVS 747

Durham County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff: EMANCIPATE NC, INC
Address: 1803 CHAPEL HILL RD
City, State, Zip: DURHAM, NC 27707
VERSUS
Name Of Defendant(s): DURHAM COUNTY SHERIFF'S OFFICE
ATTN: CLARENCE BIRKHEAD

FILED

2024 JAN 17 12:41

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1: DURHAM COUNTY SHERIFF'S OFFICE
ATTN: CLARENCE BIRKHEAD
P.O. BOX 170, DURHAM, NC 27702

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out!
You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!
Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff): Elizabeth G. Simpson
UNC School of Law Clinical Programs
102 Ridge Rd, Chapel Hill, NC 27514

Date Issued: 1/17/24
Time: 12:47 PM
Signature: Cheryl Murphy
Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement
Time
Signature
Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i>	<input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 1. <input type="checkbox"/> Other: <i>(type or print name)</i>	<i>Date Accepted</i>	<i>Signature</i>

Other manner of service *(specify)*

Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i>	<input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

<input type="checkbox"/> Acceptance of service. Summons and complaint received by: <input type="checkbox"/> Defendant 2. <input type="checkbox"/> Other: <i>(type or print name)</i>	<i>Date Accepted</i>	<i>Signature</i>

Other manner of service *(specify)*

Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i>	<i>Signature Of Deputy Sheriff Making Return</i>
\$	

<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>

<i>Date Of Return</i>	<i>County Of Sheriff</i>

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

FILED
IN THE GENERAL COURT OF JUSTICE

2024 JAN 17 P 12:44

DURHAM CO. CLERK OF SUPERIOR COURT
24CVS 747
cm

Emancipate NC, Inc.,
Plaintiff,

v.

Durham County Sheriff's Office,
Defendant.

COMPLAINT

INTRODUCTION

This is a lawsuit seeking to enforce the public's right to inspect the records of a government agency, the Durham County Sheriff's Office, pursuant to North Carolina's Public Records Act, N.C. Gen. Stat. § 132 *et seq.*, which provides that "public records and public information compiled by the agencies of North Carolina government[] or its subdivisions are the property of the people." N.C. Gen. Stat. § 132-1(b).

Plaintiff, Emancipate NC, a North Carolina nonprofit corporation, sought records from the Sheriff's Office related to the operation of the Durham County Detention Facility ("the Jail"). It did so based on growing concern about conditions of confinement in the Jail and as part of its work to address racialized mass incarceration through community education. Emancipate NC limited its public records request to "all written Durham jail policies" and provided examples. Defendant, Durham County Sheriff's Office ("DCSO"), nominally complied with Plaintiff's public records request but provided its records under heavy redaction, making public inspection of the content fruitless or altogether impossible. Although DCSO claims that the redactions are justified under the "sensitive public security" exemption of N.C. Gen. Stat. § 132-1.7, Plaintiff takes issue with

DCSO's liberal use of what the North Carolina General Assembly intended to be a narrow carve-out from public's right of access. Plaintiff disputes, for example, that policies as benign as the duration of detainees' lunch and dinner times are justifiably deemed "sensitive public security" information. Further, Plaintiff contends that DCSO flouts the narrow exemptions of the Act when it redacts policies in a free-wheeling manner—redacting not only the substance of a record but also its title and headings—so that the public is effectively prevented from determining whether the use of the exemption was warranted in the first place.

The cloak that DCSO throws upon its policies wrongfully immunizes the Sheriff's Office from the public eye and a key tool of the people's self-governance. Plaintiff requests that this Court intervene to compel Defendant to disclose its public records, or, alternatively, provide substantive and specific justification of why its policies constitute "sensitive public security information" that warrant secrecy.

JURISDICTION

1. This Court has jurisdiction over the action pursuant to N.C. Gen. Stat. § 132-9. Plaintiff shall comply with N.C. Gen Stat. § 7A-38.3E(b).
2. Venue is proper in this Court, pursuant to N.C. Gen. Stat. § 1-82, because Plaintiff's primary office is in Durham County, North Carolina.

PARTIES

3. Plaintiff is a North Carolina nonprofit corporation, and a "person" within the meaning of N.C. Gen. Stat. § 1 2-3(6) (the word "person" shall extend and be applied to bodies politic and corporate, as well as to individuals.').
4. Defendant is the Durham County Sheriff's Office. It administers the Durham County Detention Facility. Defendant is the legal custodian of the public records at issue in this

action, and Defendant has designated the Public Information Office (pio@durhamsheriff.org) as the email address to whom public records requests should be directed. Durham County Sheriff's Office is amenable to process in Durham County. Defendant is a subdivision unit of government of the State of North Carolina (i.e., it is a county office led by an elected official). As such, is governed by the public disclosure requirements of the North Carolina Public Records Act, N.C. Gen. Stat. § 132 *et seq.*

BACKGROUND INFORMATION ON CONDITIONS IN JAIL

5. The DSCO has enacted certain rules and policies that regulate the operation of the Jail. The policies are expressed in a series of regulations called Detention Services General Orders (hereinafter "DGO" or "policies"), which are signed by the Sheriff. The policies seek to be comprehensive in scope and aim to ensure that the jail environment is "safe" and "consistent with constitutional and professional standards." *See* DGO 2.01 ("Goals and Objectives").

6. However, not all of the policies are available to the public (or to detained individuals) for inspection. This is because significant portions of the policies are redacted. Accordingly, the full scope and effect of the policies—which seek to regulate the jail—are known only by the jail itself. This complaint alleges, further below, that these redactions are unwarranted under the North Carolina Public Records Act.

7. Moreover, the Jail fails to adequately comply even with the strictures of those policies which are publicly available. This alleged noncompliance is supported by comparing the requirements of the policies with the actual experience of detained individuals, as related to Emancipate NC in interviews and correspondence. Detained individuals broadly convey a jail environment that is dysfunctional and harmful to individuals' well-being and legal rights—stemming in part from inadequate regulation and noncompliance with policy.

8. For example, DGO 5.00 requires that jail staff take significant steps to orient a detained individual upon the individual's initial admission to the jail, in order to ensure "the legality of the inmate's commitment" and to outline procedures that provide for his or her rights and safety. *See* DGO 5.00 ("Inmate Admissions").

9. Pursuant to this policy, jail staff are required to show newly detained individuals an "Orientation Video" prior to being placed in jail population. *See id.* The Orientation Video is supposed to provide detained individuals with a comprehensive review of rules and procedures to which they are subject, a description of programs and services provided in the facility, information on how to access to medical care, and options regarding pretrial release. *See id.* Additionally, jail staff are required to provide newly detained individuals with a "PREA Orientation," both "orally and in writing," which outlines how to report and seek treatment for sexual abuse that occurs in the jail. *See id.*

10. PREA is the abbreviation for the Prison Rape Elimination Act, a federal law with the mission of protecting people in jails, prisons, and detention centers from the risk of sexual violence.

11. However, many detained individuals deny ever being shown the Orientation Video or being briefed on PREA upon their admission to the jail.

12. Such noncompliance is more than a bare procedural violation. It directly affects detained individuals' experience in the jail. One individual, in a letter to Emancipate NC, explained how noncompliance with the orientation policy, specifically, affected him: "The evening I arrived to Durham County Jail, I was just plainly and blankly taken to my cell and door was shut. I felt there was a lack of instructional greeting on the part or behalf of this facility, which I had never been to." The lack of orientation, the individual explained, caused him to be unaware of how to

obtain toilet paper in the jail. When he was not given toilet paper in those “first few days,” he was forced to “use [his] wash cloth . . . to wipe [himself].” Only “[t]hanks to a helpful inmate” did the individual later learn the jail’s procedures for obtaining toiletries, doing laundry, and more.

13. Some detained individuals attribute the Jail’s noncompliance to high staff turnover and poor management. They describe an environment in which their privileges are contingent and are often rescinded without cause.

- a. “[The Jail] is so understaffed, one officer attends to 2 pods at once with 48 detainees in each. The jail is currently packed to capacity and there are days when we don’t come out [of] our cells at all to recreate, shower, [or] use [the] phone due to short staff.”
- b. “We receive 3 hours to walk each day according to policy, sometimes we only get 2.”
- c. “Sometimes the Jail is shut down for reasons they don’t tell inmate so that three hour walk is shut down for that entire day.”
- d. “We hardly come out on the weekends and almost never on any Holidays.”
- e. “You would think a state government facility such as a jail would be well equipped, but on the contrary, they are insufficient and neglectful in their entire operation.”

14. Other individuals note that the Jail, in responding to COVID-19, took steps which limited detainees’ privileges but has not reinstated them. “They took our in-person visits and any pictures that our family sends us [via personal mail] we have to pay to look at them [on a tablet]. Yes, pay! It’s very depressing.”

15. Furthermore, the Jail’s policies and website claim that it offers a range of programs to detained individuals, but detained individuals relate an opposite experience. For example, DGO

7.07 requires that the Jail provides “library services,” entitling detainees access to reading materials, legal resources, and a “setting conducive for creative writing or discussion groups.” *See* DGO 7.07 (“Library Services”). The Jail’s website similarly suggests that it provides a number of programs to detained individuals, such as GED courses, “literacy tutoring,” “religious services,” and more. *See* <https://www.durhamsheriff.com/services/detention-services>.

16. But detained individuals express that no such offerings exist, outside of the limited-access drug rehabilitation program:

- a. “Books are hard to come by unless you can afford to order amazon[.] [The] library never opens.”
- b. “There’s no Library . . . no books being passed out. They want you to have your family to actually buy everything from them – [the] canteen.”
- c. “My life is on hold; I can’t obtain my GED in here. No productive programs at all. Just one and that’s a drug program.”

17. Contrary to the Jail’s claims of productive offerings, detained individuals describe an environment replete with severe and arbitrary forms of punishment.

- a. One individual recounted seeing Jail staff place a detainee in the “Restraint Chair” outside, during winter, for 3-4 hours with no additional clothing beyond standard-issue t-shirts and thermals. (The policy governing the Jail’s use of the Restraint Chair, *see* DGO 4.05, is redacted from public view.)
- b. Other individuals set out the Jail’s not-infrequent use of solitary confinement to reprimand individuals. They note that individuals can be “thrown into the hole” for minor infractions, such as failing to return tablets on time. Once in “the hole,” detained individuals express that they are typically cut off from phone and tablet

privileges, which means that they can no longer communicate with family or counsel. A period of thirty days is “the default,” but many individuals “are in” for “months.” (The policy governing solitary confinement, though it opts for the term “segregation,” is DGO 4.10. The policy is redacted in part, including the “General Guidelines” section.)

18. Detained individuals have attempted to draw media attention to the issues within the Jail, but when reporters came to the facility, detainees maintain that the reporters “were given a false and incorrect narrative of what inmates were experiencing.” Subsequently, the Jail retaliated against the detained individuals for speaking out. “The [former] chief . . . went as far as to address to the inmates to stop sending letters because it’s making him look bad. I know of one inmate whose mail was opened by facility personnel/officers and returned to him because he was speaking on truth that the facility chief did not want uncovered. After that, they put restrictions on his phone calls, tablet suspension, and lost access to the law library.”

19. One individual described the sum effect of the Jail’s noncompliance and general dysfunction as follows: “What I’ve been told by one of the officer[s] is that the conditions are designed for us to take a plea. We try to be a group of systematic people[,] but [it’s] hard being systematic when you get a system that’s filled with discrepancies.”¹

20. Based on these and other reports from detained individuals, alongside its broader involvement in addressing racialized mass incarceration, Emancipate NC grew concerned about conditions in the Durham County Jail and has undertaken an effort to obtain and inspect the Jail’s policies, en route to investigating conditions of confinement in the Jail.

¹ In his letter, the same individual wrote “[p]lease forgive me for my handwriting legibility, we don’t have erasers, so I use the bottom of my slipper . . . to correct any errors.”

FACTUAL ALLEGATIONS

21. Emancipate NC, first submitted a Public Records Request to Durham County Sheriff's Office on April 17, 2023.

22. The Public Records Request sought "copies of all records related to all written Durham jail policies." The request specified that it was seeking policies particularly (though not exclusively) related to "access to programming & education; out-of-cell time, showers, recreation, outdoor time, meals, mail, telephone, video visitation, regular visitation, STG/gang affiliation, PREA compliance, strip searches, handling of contraband, handling of transgender individuals, disciplinary procedures, and grievances."

23. Emancipate NC received confirmation of receipt of the request on May 3, 2023, and informed that it would receive additional updates on the status of the request in the following eight (8) weeks (by June 28, 2023).

24. Emancipate NC received an update on May 15, 2023, informing it that the process would take multiple weeks and that some policies may require redactions due to relevant trade secret and "public security" concerns. Emancipate NC received copies of DGO 1.02, 1.03, and 1.05 on Jun 12, 2023.

25. Next, after a period of inactivity and lack of clarity around the timeline of the request, Emancipate NC requested an update on the state of the request on June 27, 2023, and then again on July 6, 2023, expressing concern that the process was approaching an unreasonable length of time under the Public Records Act.

26. The Jail responded by sharing its policies in a series of email attachments. The Jail shared, and Emancipate NC received, Chapters 2, 3, and 4 on July 14, 2023; Chapters 5, 6, and 8

on August 31, 2023; and Chapters 7, 9, and 10 on October 2, 2023. The policies contained varying—but significant—levels of redaction.

27. During and after this period, Emancipate NC attempted to review, catalog, and analyze the received policies. In parallel, it conducted interviews with individuals detained in the Jail. However, Emancipate NC's efforts were stymied because the policies were significantly redacted.

28. On October 12, 2023, the jail informed Emancipate NC that its public records request was deemed fulfilled and closed.

29. On November 7, 2023, Emancipate NC sent a letter to the Jail, stating that it believed the policies in effect remained “unprovided,” due to the heavy level of redaction and lack of substantive justification under North Carolina public records law. In its letter, Emancipate NC provided the Jail with a specific list of policies and requested that the Jail un-redact the policies or provide a substantive and specific justification for redacting them from public view.

30. On December 7, 2023, DCSO responded to Plaintiff's request for additional information by providing partially unredacted copies of DGO 4.03, 4.05, and 7.03. These policies provided some additional information about restraints used on pregnant detainees, censorship of detainee mail, general restraint policies, and the records of the Detention Response Team.

31. Despite some redactions being removed, the vast majority of the policies remain heavily redacted. Plaintiff objects to many of the remaining redactions.

32. Plaintiff objects to redactions of the following policies on two bases: either (i) the redactions are not substantively justified under the narrow “public security” exception to North Carolina's liberally construed public records law, or (ii) the redactions are so broad (e.g., redacting

entire sections and headings) that the interested public is unable to ascertain the context of the policy and assess whether the redactions are justified under North Carolina law:

	DGO	Part/Subsection	Content
a.	DGO 4.03	Part VI Subsection E	“Assessment”
b.	DGO 4.05	Part IV Subsection A	“Agency Issued Restraining Devices”
c.	DGO 4.05	Part IV Subsection B	“Use of Restraints during Transports or Hospital Security”
d.	DGO 4.05	Part IV Subsection C	“Use of Restraints”
e.	DGO 4.05	Part VI	“Restraint Chair”
f.	DGO 4.06	Part IV Subsection B	“Restraint Devices”
g.	DGO 4.07	Part IV-V	<i>Redacting procedure related to routine facility and detainee searches</i>
h.	DGO 4.08	Part IV Subsection A-F	<i>Unknown Redacted Subsections under “Procedure”</i>
i.	DGO 4.09	Part IV Subsection A, C-G	<i>Unknown Redacted Subsections under “Procedure”</i>
j.	DGO 4.10	Part IV Subsection C	“General Guidelines”
k.	DGO 4.10	Part IV Subsection P(2)	<i>Unknown Redacted Subsection under “Permanent Log”</i>
l.	DGO 5.00	Part IV Subsection E(2-3)	<i>Redacting description of how housing units are assigned after medical screening</i>
m.	DGO 5.06	Part IV Subsection E	“Media Access during the Interview”
n.	DGO 7.03	Part IV Subsection A(1)	<i>Redacting the criteria by which jail personnel determine whether to open otherwise-sealed and privileged mail sent to detainees</i>
o.	DGO 7.11	Part IV Subsection B(2),(4)	<i>Redacting the amount of time allotted to detainees to take meals during meal service</i>
p.	DGO 7.13	Part IV Subsection B(4), C(4)	<i>Redacting information regarding how long detainees are allowed to use tablets or how much time detainees are allowed to spend eating their meals without losing tablet privileges</i>
q.	DGO 8.00	Part IV Subsection A, E	<i>Redacting the staff position(s) or department(s) charged with weekly sanitation inspections and vermin control</i>

r.	DGO 8.00	Part V Subsection A	<i>Redacting the staff position(s) or department(s) charged with maintaining a housekeeping plan “to address cleanliness” and maintenance</i>
s.	DGO 8.03	Part IV Subsection K(1)	<i>Redacting the staff position(s) or department(s) responsible for any general maintenance or repairs done in the facility</i>
t.	DGO 10.00	Part IV Subsection D(1)	<i>Redacting information regarding how jail staff treat detainees who are not able to perform their own basic daily living activities because of a medical or mental health disability</i>
u.	DGO 10.03	Part IV Subsections A-F	<i>Redacting information regarding the jail’s “formal classification process . . . for managing and separating inmates and administering the facility based upon the agency’s mission, classification goals, and inmate custody and program needs”</i>
v.	DGO 10.05	Part IV Subsection B(3)	<i>Redacting information regarding disciplinary actions against detainees</i>

STATUTORY BACKGROUND

33. In North Carolina, under the Public Records Act, “public records and public information compiled by the agencies of North Carolina government[] or its subdivisions are the property of the people.” N.C. Gen. Stat. § 132-1(b). The Public Records Act (“Act”) provides that “the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law.” *Id.*

34. The Act reflects the legislature’s “clear” intent to provide the public with “liberal access to public records.” *News & Observer Publ’g Co. v. State ex rel. Starling*, 312 N.C. 276, 281, 322 S.E.2d 133, 137 (1984). “Public record” is defined broadly, to include any record

“regardless of physical form or characteristics.”² Agency is defined broadly, to include “every public office,” whether “State or local, elected or appointed.”³

35. Under the Act, government agencies are not required to disclose “sensitive public security information,” such as “*specific* security information” or “*detailed* plans, patterns, or practices associated with prison or local confinement facilities operations.” N.C. Gen. Stat. § 132-2(a)(3) (emphasis added). However, such “[e]xceptions and exemptions to the Public Records Act must be construed narrowly.” *DTH Media Corp. v. Folt*, 374 N.C. 292, 301 (2020) (quoting *Carter–Hubbard Publ’g Co. v. WRMC Hosp. Operating Corp.*, 178 N.C. App. 621, 624). Concerns about “public security” must be balanced against “the public’s right of access,” see *Stone v. Univ. of Md.*, 855 F.2d 178, 180 (4th Cir. 1988), and in the absence of clear statutory exemption or exception, documents falling within the definition of “public records” under the Act must be made available for public inspection. *Wilson v. North Carolina Dept. of Commerce*, 2015, 239 N.C.App. 456, 768 S.E.2d 360.

36. North Carolina courts have not had extensive occasion to address the contours of the “sensitive public security” exemption under N.C. Gen. Stat. § 132-1.7. Specifically, the state courts have not addressed the validity of this statutory exemption when used by a government agency to justify partial redactions of its records.

37. However, the North Carolina federal courts have addressed the public security exemption in the context of government litigants’ motions to seal records in court proceedings

² N.C. Gen. Stat. § 132-1 (defining public record or public records to mean “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”).

³ N.C. Gen. Stat. § 132-1 (“Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.”).

based on the contention that the records contained sensitive public security information. *Womic v. Cortez*, No. 3:21-CV-00315-MR, 2023 WL 375375 (W.D.N.C. Jan. 23, 2023), *reconsideration denied*, No. 3:21-CV-00315-MR, 2023 WL 2582617 (W.D.N.C. Mar. 20, 2023); *Musgrove v. Moore*, No. 1:19-CV-164, 2022 WL 19977408 (M.D.N.C. Apr. 20, 2022); *Jordan v. McNemar*, No. 5:18-CV-00143-MR, 2021 WL 665111 (W.D.N.C. Feb. 18, 2021); *Scott v. Bennet*, No. 3:18-CV-00583-FDW, 2020 WL 1249386 (W.D.N.C. Mar. 16, 2020); *McRae v. Harrison*, No. 5:17-CV-23-H, 2018 WL 4345278 (E.D.N.C. Aug. 16, 2018), *report and recommendation adopted*, No. 5:17-CV-23-H, 2018 WL 4339362 (E.D.N.C. Sept. 11, 2018).

38. In such context, North Carolina federal courts have adhered to the intention of the Act by repeatedly construing the public security exemption narrowly and requiring government agencies to act with specificity when seeking to prevent public access based on concerns for public security. *See, e.g., Musgrove*, 2022 WL 19977408, at *1-2 (rejecting prison officials' motion to seal records for failure to explain "why these particular records are covered by the cited statutes and regulations"); *McRae*, 2018 WL 4345278, at *5-6 (rejecting motion to seal on the basis that prison official offered no specific reason why the records at issue comprised "specific security information" and noting that the government agency is in "the best position to review the attachments and identify with particularity any sensitive information").

39. "Any person who is denied access to public records for purposes of inspection and examination" may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying. N.C. Gen. Stat. § 132-9(a). The court shall have jurisdiction to issue such orders if the complainant has satisfied the mandatory mediation provision of N.C. Gen. Stat. 7A-38.3E, which requires that the complainant initiate mediation "no later than 30 days" after the defendant has filed its responsive pleadings. *See* § 132-9; N.C. Gen. Stat. 7A-38.3E(b).

“Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.” *Id.* § 132-9.

FIRST CLAIM FOR RELIEF

40. The allegations stated in the preceding paragraphs are incorporated herein by reference as if fully set forth herein.

41. Exemptions from the North Carolina Public Records Act, N.C. Gen. Stat. § 132 *et seq.*, are construed narrowly and require government agencies to act with specificity when preventing public access to records based on concerns for “public security.” *Id.*

42. However, the Jail, acting as a government agency, defies the narrow confines of the public security exemption when it redacts large swaths of DGO policies from public view without a specific justification for doing so (aside from the boilerplate citation to § 132-1.7 that appears on some policies).

43. The Jail’s redactions are either (i) substantively unwarranted or (ii) applied so broadly and without limits that the public is prevented from determining whether the redactions are warranted in the first place.

44. The Jail has therefore violated the North Carolina Public Records Act, N.C. Gen. Stat. § 132 *et seq.*, and thereby caused Plaintiff to suffer harm which can be remedied only through this Court’s intervention.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

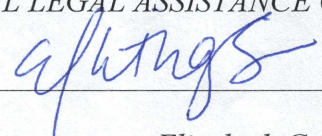
1. Assume jurisdiction over this action;

2. Enter an order, pursuant to N.C. Gen. Stat. § 132-9(a), compelling Defendant to comply fully and without further delay with the North Carolina Public Records Act and to furnish Plaintiff all public records satisfying the description in its requests without unlawful redaction;
3. Award Plaintiff its reasonable attorneys' fees and costs, as authorized by N.C. Gen. Stat. § 132-9(c) and to the extent otherwise permitted by law; and
4. Grant Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted, this 17th day of January, 2024.

UNC CIVIL LEGAL ASSISTANCE CLINIC

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Pursuant to N.C. State Bar Rule,
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