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IN THE CIRCUIT COURT, EIGHTH
JUDICIAL CIRCUIT, IN AND FOR
ALACHUA COUNTY, FLORIDA

CASE NO.: 01-2005-CA-004005
DIVISION: J

CHARLES GRAPSKI,
Plaintiff,

vs.

J. BERNARD MACHEN, in
his official capacity as
President of the
University of Florida,
Defendant.

ORDER

THIS CAUSE came before the Court to be heard on October 20, 2005, pursuant to Section 119.11, Florida Statutes (2005), which provides for an accelerated hearing, and on Defendant J. Bernard Machen's Motion to Deny Relief, to Dismiss the Complaint, and to Award Attorney's Fees. The Court, having considered the evidence provided, and having heard and received argument of counsel for the parties, and upon consideration, finds:

1. On October 5, 2005, Plaintiff Charles Grapski filed a two count Complaint, seeking relief and attorney's fees from

Defendant J. Bernard Machen, in his official capacity as President of the University of Florida, pursuant to Chapter 119, Florida Statutes.

2. Pursuant to Plaintiff Grapski's Motion for Accelerated Hearing, the Court conducted a hearing, and heard evidence and received legal argument from counsel for the parties on October 20, 2005.

3. The allegations of Count I of the Complaint are defective and contrary to Plaintiff's statement of his claim.

A. Plaintiff Grapski alleged in Count I of his Complaint that he made a public records request on June 7, 2005 to Defendant Machen, (Complaint, ¶ 9 and Ex. A), and that Defendant Machen responded on August 10, 2005 that "no such documents existed." (Complaint, ¶ 13 and Ex. B).

B. Faced with the affidavits submitted by Defendant showing that Defendant Machen responded to the June 7, 2005 public records request through his designees on June 13, 2005 and on July 11, 2005 (First Orlando Affidavit ¶¶ 6, 7, 8 and Exs. 1, 2, 3; Second Orlando Affidavit 4 and Ex. 1; Telles-Irvin Affidavit ¶¶ 6, 8 and Ex. 2), Plaintiff

acknowledged that the claim was based on the completeness of the production not on a failure of production.

4. As to Count II, Defendant Machen himself and through his designees responded fully, reasonably, and in good faith to the public records request propounded to him by Plaintiff Grapski on August 10, 2005 at 6:12 p.m. §§ 119.01(2)(f); 119.011(5) and 119.07(1)(a), Fla. Stat. (2005).

A. Plaintiff Grapski testified as to Count II of his Complaint that he made a public records request to Defendant Machen on August 10, 2005 at 6:12 p.m. for a copy of "all emails sent to or from Dr. Bernard Machen acting as President of the University of Florida, on June 2nd, 2005." (Complaint, ¶ 19 and Ex. C). He further testified that Defendant Machen responded through his "agent" Stephen Orlando on August 17, 2005 that "no further documents will be forthcoming." (Complaint, ¶ 23 and Ex. E).

B. Plaintiff Grapski proffered no evidence that the August 17, 2005 e-mail from Mr. Orlando, (Complaint, Ex. E), was Defendant Machen's response to the August 10 request for e-mail documents relating to the specific date, June 2, 2005. (Complaint, Ex. C). The August 17 e-mail from Mr.

Orlando to Plaintiff Grapski was connected to and in response to a different August 10, 2005 request by Plaintiff Grapski entitled "Public Records Request Reminder." (Complaint, Ex. E; First Orlando Affidavit ¶ 9 and Ex. 4).

C. The uncontroverted evidence shows that Defendant Machen does not routinely maintain copies of documents, including e-mail communications, that he forwards to his executive staff for handling, who, as Defendant Machen's designees, are responsible for maintaining any public records in accordance with Florida's Public Records law. (Machen Affidavit ¶ 9; Telles-Irvin Affidavit ¶ 6).

D. Defendant Machen, through his designee, informed Plaintiff Grapski on at least two occasions prior to Plaintiff Grapski's filing this Complaint, that Defendant Machen routinely does not maintain his e-mail communications by date, but rather that the e-mails President Machen saves are printed out and filed by subject, and that they could be located if requested by subject area. (Grapski Testimony; First Orlando Affidavit ¶ 10 and Ex. 5).

E. Plaintiff Grapski proffered no evidence that he ever requested Defendant Machen's June 2, 2005 e-mails by

subject matter instead of by a specific date after being advised to do so by Mr. Orlando.

F. Chapter 119, Florida Statutes, does not require Defendant Machen to maintain e-mail communications by date.

G. Inasmuch as Defendant Machen does not routinely maintain electronic public records by date, as requested by Defendant Grapski, (Complaint, Ex. "C"), Defendant Machen is not required by Chapter 119, Florida Statutes, to provide public records in a medium not routinely used, or to compile information not routinely developed or maintained or that requires a substantial amount of manipulation or programming. § 119.01(2)(f), Fla. Stat. (2005).

Based on the foregoing, it is hereby

ORDERED AND ADJUDGED

1. Count I of Plaintiff Charles Grapski's Complaint is hereby DISMISSED WITHOUT PREJUDICE with leave to amend and re-file within twenty (20) days of the date of this Order;

2. Count II of Plaintiff Grapski's Complaint is hereby DISMISSED WITH PREJUDICE.

DONE AND ORDERED in Chambers, Alachua County Courthouse,
Gainesville, Florida, this 27 day of October, 2005.

ORIGINAL SIGNED BY
ROBERT E. ROUNDTREE, JR.
CIRCUIT JUDGE

Circuit Judge

10/28/05 LKO
Copies to:

Mr. Gary S. Edinger
Mr. John A. DeVault, III