

July 8, 2016

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(via Facsimile (502) 564-6801)
James M. Herrick
Amye L. Bensenhaver
Office of the Attorney General
Commonwealth of Kentucky
700 Capital Avenue
Frankfort, Kentucky 40601

Re: **Open Records Appeals**
Log Number: 201600105 and 201600061

Dear Attorneys Herrick and Bensenhaver:

Please allow this letter to serve as the University of Louisville's (the "University") response to the Attorney General's request, dated June 15, 2016, for additional documentation respecting two open records appeals, log numbers 201600105 and 201600061 (the "Appeals").

The University understands the above-identified Appeals to concern requests by Peter Hasselbacher and Brendan McCarthy (the "Complainants") for specific records regarding the NCAA's investigation into general allegations concerning the University's men's basketball team. In particular, the Appeals concern requests for the following categories of documents:

- (1) Log Number 201600105: All documents, reports, and other information President Ramsey had in hand to cause him to suspend the University men's basketball team from post-season play, and all records used by any administrator or program director in the athletics department to endorse or support this action by President Ramsey (hereinafter referred to as the "Hasselbacher request"); and
- (2) Log Number 201600061: All materials requested by the NCAA from January 1, 2014 through the present date or issued by the University in response to a request by the NCAA from January 1, 2014 through the present date (hereinafter referred to as the "McCarthy request").

The University has fully responded to both of the Appeals. With respect to the Hasselbacher request, the University promptly responded in a letter to the Attorney General's Office on March 8, 2016, stating that the University does not have any records responsive to this request. The University explained, and again emphasizes, that it does not deny that President Ramsey had information available to him in making the decision to impose the post-season ban; it simply denies that there were any *records* used in making that decision. With respect to the McCarthy request, the University provided approximately ninety-five documents responsive to the request.

However, in apparent dissatisfaction with the University's responses to the Appeals, the Attorney General is now seeking *all records* "relating to the NCAA's investigation into the widely reported allegations concerning the men's basketball team and Andre McGee...which led to the decision to forgo post-season play." In addition, the Attorney General requests a description of the "search method used to locate responsive records" with respect to the Hasselbacher request.

The University recognizes that KRS 61.880(2)(C) authorizes the Attorney General to seek additional documentation from the University. Indeed, the University has complied with such a request for additional documentation with respect to both of these Appeals. Specifically, in regards to the Hasselbacher request, the Attorney General requested that the University "describe how it conducted its search for records in President Ramsey's custody, and records in the custody of other parties...that are responsive" to the Hasselbacher request. The University provided a response on March 22, 2016, explaining that President Ramsey, himself, confirmed that he did not have any documents, records or other information in his possession when the decision was made to suspend post-season play.¹ In addition, Chuck Smrt, the University's contracted NCAA investigator, confirmed that he did not provide any written documents, records or other information to President Ramsey.² With regard to the McCarthy request, the Attorney General requested an *in-camera* review of an unredacted copy of the ninety-five responsive documents produced by the University, and the University again promptly cooperated.³

However, the Attorney General's present request for additional documentation falls well outside of the Attorney General's appellate power of review. It is firmly-established under Kentucky law that appellate review is limited to the issues raised in or decided by the trial court. *See, e.g., Commonwealth v. Maricle*, 15 S.W.3d 376, 379-80 (Ky. 2000); *Regional Jail Authority v. Tackett*, 770 S.W.2d 225 (Ky. 1989); *Brown v. Louisville Jefferson County Redevelopment Auth., Inc.*, 310 S.W.3d 221 (Ky. Ct. App. 2010). The purpose of KRS 61.880(2)(C) is for clarification and substantiation of an agency's denial of a specific request to inspect public records. With all due respect, it is not a means by which the Attorney General can "piggyback" to gain access to additional information beyond the scope of the initial request that would otherwise be unavailable to him. In other words, the University submits that the Attorney General's power of review is limited to the Complainants' specific requests, and his ability to seek additional documentation from the University is limited to documentation concerning the Complainants' specific requests. Neither the Hasselbacher request nor the McCarthy request is broad enough

¹ As additional clarification, the University states that President Ramsey did not have any "documents, reports or other information" in his possession at the time of the decision to impose the post-season ban *nor at any time leading up to* the decision to impose the post-season ban.

² As additional clarification, Chuck Smrt did not provide written "documents, reports or other information" to any University "administrator or program director in the athletics department."

³ The University recognizes, as the Attorney General points out, that none of the documents provided in response to the request relate to the current NCAA investigation into the allegations concerning the University's men's basketball team. The University asserts that the NCAA did not request, nor did the University issue in response to a request by the NCAA, any documents relating to the matter under investigation by the NCAA that has led to the suspension of the men's basketball team from post-season play.

to encompass all documents relating to the NCAA's investigation into the allegations concerning the University's men's basketball team.

For this reason, and conscious of the possible implication of doing so, the University thoughtfully and respectfully declines to provide the Attorney General's Office with all records "relating to the NCAA's investigation into the widely reported allegations concerning the men's basketball team and Mr. Andre McGee...which led to the decision to forgo post-season play." However, the University again reiterates that in an effort to locate any documents responsive to the Hasselbacher request, the University spoke to President Ramsey and Chuck Smrt, both of whom confirmed that there were no documents, reports or other information that President Ramsey had in his possession that led him to suspend the University men's basketball team from post-season play, nor were there any such documents, reports or other information used by any other University "administrator or program director in the athletics department."

Please do not hesitate to contact me if you have any questions. Thank you for your attention to this matter.

With warmest regards,

A handwritten signature in black ink that reads "Amy E. Shoemaker". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Amy E. Shoemaker

Cc: Peter Hasselbacher, M.D.
Mr. Brendan McCarthy