

WESTERN MICHIGAN UNIVERSITY



Office of the Vice President for Legal Affairs
and General Counsel

August 16, 2007

Nate Carlisle
Salt Lake Tribune
90 S. 400 West, Suite 700
Salt Lake City, UT 84101

Dear Mr. Carlisle:

Your Freedom of Information Act request was received in this office on August 9, 2007.

This letter will constitute notice extending for 10 business days the period during which Western Michigan University will respond to your request.

Sincerely,

A handwritten signature in blue ink that reads "Carol L.J. Hustoles". The signature is fluid and cursive.

Carol L.J. Hustoles
Freedom of Information Officer

WESTERN MICHIGAN UNIVERSITY

Freedom of Information Act Officer



August 30, 2007

Nate Carlisle
Salt Lake Tribune
90 S. 400 West, Suite 700
Salt Lake City, UT 84101

Dear Mr. Carlisle:

This letter is in response to your request for information and documentation received by this office on August 9, 2007.

Your request for documentation or an accounting of all positive tests is granted and enclosed. Your request for a calendar or other documentation indicating the frequency of drug tests administered to athletes is granted and enclosed. Your request for records related to punishments levied for positive tests is granted; enclosed are copies of Procedures and Regulations Implementing Policy on Drug Education and Random Drug Testing for Student-Athletes, the letter sent out for first strike offenses and the letter sent out for second strike offenses indicating the sanctions involved; however, identifying information on affected student athletes is not being provided per your letter indicating this information could be redacted, and state and federal law restrictions. Your request for copies of contracts or agreements with vendors who have a role in drug testing athletes is granted, and copies are enclosed.

You have also asked for information regarding the budget for or amount of money dedicated to drug testing for fiscal or calendar years, 2004, 2005, 2006, and 2007. With regards to budget, drug testing is included in a budget line of \$10,000. That sum is not dedicated to only drug testing, but includes drug and alcohol educational programming and related expenses, consulting expenses, and other expenses incurred managing the drug testing/drug and alcohol education program

Your requests for documentation regarding audits or reports discussing the drug testing of athletes, excluding standardized information provided by other government agencies or the NCAA and for "all information provided by vendors the last time your institution put drug testing of athletes up for bid or requested proposals" is denied, because a public record under this name given by you or by another name reasonably known to Western Michigan University does not exist, and this letter so certifies this. By way of further explanation, testing has not been bid out.

You may submit to the president of the university a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial as noted above. A copy of Section 10 of the Michigan FOIA is enclosed which further explains your appeal rights.

Fees are waived due to the minimal searching, reviewing, and duplicating costs involved in responding to this request.

Sincerely,

A handwritten signature in blue ink that reads "Carol L.J. Hustoles". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Carol L.J. Hustoles
Freedom of Information Officer

Sec. 10.

(1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing an action in circuit court under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. The circuit court for the county in which the complainant resides or has his or her principal place of business, or the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the circuit court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

History: 1976, Act 442, Eff. Apr. 13, 1977 ;-- Am. 1978, Act 329, Imd. Eff. July 11, 1978 ;-- Am. 1996, Act 553, Eff. Mar. 31, 1997

Popular Name: Act 442

Popular Name: FOIA