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Eagle wins suit over Hunter Health e-mails

BY GABRIELLA DUNN

The Wichita Eagle

Hunter Health Clinic cannot use the state's open records law to block the release of e-mails to The Wichita Eagle, the Kansas Court of Appeals ruled Friday.

The decision is the latest in a two-year legal battle over e-mails sent through Wichita State University's e-mail system by two of the clinic's board members. The Eagle sought the records as part of its reporting on financial difficulties at the clinic, which offers medical services on a

sliding-fee scale.

Hunter Health Clinic sued both The Eagle and WSU to prevent the release of e-mails.

The court ruled that there is no right to bring an action under the Kansas Open Records Act, also called KORA, to prevent the disclosure of records.

"To use a cliched formulation, KORA is a sword to obtain access to the public record, not a shield to prohibit access to private records," the court decision read. "Hunter asked the district court to do

the latter."

The records

In May 2013, an Eagle reporter requested e-mails from two WSU employees, Richard Muma and Jaya Escobar, who both served on the board for Hunter Health Clinic at the time.

The Eagle's records request sought any clinic-related e-mails from Muma and Escobar's WSU e-mail accounts.

Two days after the records

request to WSU, the clinic sued WSU and The Eagle in an attempt to block the release of the e-mails.

The clinic was granted a temporary restraining order in Sedgwick County District Court, arguing that the e-mails were exempt from open records laws because they contained attorney-client communication or personnel and financial information.

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The Eagle argued that the e-mails were connected to a public agency's e-mail system and therefore in the agency's possession and subject to KORA. Wichita State's technology policy states that e-mails on the server could be subject to the Kansas Open Records Act.

The district court ruled in favor of Hunter Health Clinic in February 2014. That decision

was overturned by Kansas Court of Appeals on Friday.

What the case means

Lyndon Vix, an attorney with Fleeson, Goings, Coul-

son & Kitch who represents The Eagle, described the lawsuit as unusual because of the clinic's attempt to invert the law.

Hunter Health tried to use the Kansas Open Records Act to prevent The Eagle from receiving the records. But the court found the intent of the law is to protect those who request records, not those who wish to prevent disclosure.

"To me, that turned KORA on its head," Vix said. "I was encouraged by the fact the court of appeals returned to the roots of KORA and its purpose, which is access to

public records rather than to prevent public access to records."

The appeals court ultimately found that Hunter Health Clinic did not have the legal right to sue under KORA.

In general, governmental records are assumed public, and the government has an onus to cite a specific exceptions to the law that exempts specific documents as being public.

Hunter Health Clinic's lawsuit attempted to flip the law and place the burden on The Eagle to justify its request, Vix said.

"This case was an inversion

of KORA's purpose and procedure in every way possible," Vix said.

Jeremy Schrag, an attorney for Hunter Health Clinic, said he and his client were weighing options, but said it was too early to say what they would do going forward.

The Eagle has not received the requested records from WSU. Hunter Health Clinic has 30 days to ask the Kansas Supreme Court to review the case.

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