

EDUCATION

UK violated public records law twice in records requests about university senate, AG says

BY MONICA KAST

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Sign for one of the entries to University of Kentucky campus is on Rose Street at Maxwell Street. CHARLES BERTRAM cbertram@herald-leader.com

The University of Kentucky violated the state’s Open Records Act twice when it denied releasing public records related to the elimination of the university senate, Kentucky’s attorney general said in two separate appeals.

In March, the Herald-Leader requested multiple public records from UK after a board meeting in which the university announced it would be [examining the role of the university senate](#) as part of an effort called Project Accelerate. At that board meeting, representatives from Deloitte, an international consulting firm, made a presentation which stated that UK’s governance structure was different from other, comparable universities.

After the presentation, university senate leadership said [they had not been interviewed](#) or consulted during Deloitte’s research.

Among the documents requested were the contract between UK and Deloitte, any reports compiled by Deloitte or UK related to findings or interviews done while working on Project Accelerate, along with emails and communication between Deloitte and the board of trustees.

Around the same time, UK professor emeritus Davy Jones requested similar documents from UK.

UK denied documents from both requests, stating the documents were “preliminary” and fell under “attorney-client privilege,” exempting them from the open records law. The only record received by the Herald-Leader was a general contract between UK and Deloitte, which did not detail the work done for Project Accelerate.

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Both the Herald-Leader and Jones appealed the denials to the attorney general’s office, and at the end of June and beginning of July, the attorney general ruled that UK had partially violated the open records law by not properly explaining the reason for denying the requests, and by withholding a “Statement of Work” that qualified as a contract between UK and Deloitte.

“The public is entitled to know the details of how efficiently, or inefficiently, (a private entity) has administered a public contract,” Attorney General Russell Coleman said in his decision. “This cannot be known without public access to the document specifying the details of the work to be performed, whether it is referred to as a ‘contract’ or by some other title.”

However, the attorney general said that some documents did qualify as preliminary and were property of Deloitte, and were covered under attorney-client privilege.

“With the consent of the Board, President Capilouto was operating in secret, while pretending to be transparent,” Jones said in a Friday email to the Herald-Leader. “Sometimes the truth does prevail.”

Jay Blanton, UK spokesperson, said Monday the attorney general’s ruling supports the university’s position on the records and UK would comply with the ruling to release the statement of work.

While UK has not released reports or records from Deloitte, UK has presented the findings from Deloitte publicly at board meetings, Blanton said, which resulted in changing the governance structure of the university.

“Specifically, however, the Attorney General found that records that are the property of a consultant like Deloitte are not public records,” Blanton said.

“Further, records that involve our discussions with Deloitte such as confidential fact-finding interviews about a project prior to a final action should remain private. And, finally, conversations with an attorney are privileged. They are protected — something all clients expect when they have a conversation with their attorney.”

The Herald-Leader requested a copy of the statement of work last week, but has not yet received the records.

“Nothing is more important to Kentucky taxpayers and residents than ensuring the work done by our public officials and institutions, including the University of Kentucky, is shared in the light of day,” said Richard Green, executive editor of the Herald-Leader and kentucky.com.

“We’re grateful for Attorney General Coleman’s ruling,” he added. “I also want to underscore the Herald-Leader’s commitment to vigilantly ensure UK officials understand that public records, often involving either large sums of taxpayers’ money or how the university itself operates, are just that: They belong to all Kentuckians.”

On the same day as the Herald-Leader’s ruling was issued, the [attorney general again ruled](#) UK violated the Open Records Act in an unrelated request. The university broke the law when it denied a request made by the Jewish Student Center for being “unreasonably burdensome.”

ELIMINATION OF UNIVERSITY SENATE

Since that first board meeting, UK and its board of trustees has voted to restructure the university senate, eliminating the existing body and replacing it with an advisory faculty senate. As a result, the faculty senate [voted “no confidence” in President Eli Capilouto](#), citing concerns with the process used to formulate new governing regulations and the new governance structure.

At the June board meeting, UK outlined a process to determine how the new faculty senate will be created, with elections being held no later than Oct. 31.

Until then, a “provisional faculty senate executive committee” led by Provost Robert DiPaola will be in place. It will be composed of 22 members, including the provost as chair, the two faculty trustees and one faculty member from each college, who were [announced last week](#).

Though the university senate will cease to exist, several committees and councils will continue, including the UK Core Education Committee and the faculty Senate Advisory Committee on privilege and tenure.

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