



The University of Texas System

Nine Universities. Six Health Institutions. Unlimited Possibilities.

Office of the Chancellor

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February 1, 2014

The Honorable Dan Flynn

Co-Chair, House Select Committee on Transparency in State Agency Operations

P.O. Box 2910

Austin, TX 78768-2910

The Honorable Carol Alvarado

Co-Chair, House Select Committee on Transparency in State Agency Operations

P.O. Box 2910

Austin, TX 78768-2910

Dear Co-Chairs Flynn and Alvarado:

This letter constitutes the initial report of The University of Texas System ("U.T. System" or "System") in response to your December 20, 2013 letter asking for the periodic provision of seven categories of information to the House Select Committee on Transparency in State Agency Operations ("Select Committee").

We appreciate and applaud your emphasis and that of the Select Committee on transparency and communication. The U.T. System has long been committed to transparency and accountability. We believe transparency is critical to sustaining public trust in our institutions of higher education and all of state government. The U.T. System continues to review, revise, and implement policies and critical initiatives that have gained the System recognition as a national leader in transparency, accountability and efficiency. Some of those initiatives are listed in our responses to requests 6 and 7 below.

For ease of organization, we will restate generally the request made in your December 20 letter. (With respect to the first request, note we are relying on the reframed interpretation of the request as agreed to by staff of the Select Committee following communications with staff in the U.T. System's Office of Governmental Relations.)

The University of Texas at Arlington

The University of Texas at Austin

The University of Texas at Brownsville

The University of Texas at Dallas

The University of Texas at El Paso

The University of Texas—Pan American

The University of Texas
of the Permian Basin

The University of Texas at San Antonio

The University of Texas at Tyler

The University of Texas
Southwestern Medical Center at Dallas

The University of Texas
Medical Branch at Galveston

The University of Texas
Health Science Center at Houston

The University of Texas
Health Science Center at San Antonio

The University of Texas
M.D. Anderson Cancer Center

The University of Texas
Health Science Center at Tyler

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1. A listing of all requests for information made by a regent, or by an employee of the U.T. System for, at the request of, on behalf of, or at the instigation of, a regent, to a System university or institution on or after December 20, 2013.

In response, please see the attached chart (Attachment A), which includes requests made after December 20, 2013, some of which represent the continuation of requests initiated before that date. In developing this chart, we have included requests that require the compilation of written materials or the development of charts or other formats to provide the requested information. We have not included requests that can be answered verbally or that merely result in conversations about various topics, noting the Select Committee's emphasis on the "number of pages of documentation" provided in response to requests.

Note also that although the Select Committee asked for "the requestor's explanation as to the need for and the benefit of the information requested" and a "statement as to whether the Chancellor and the Chairman of the Board of Regents reviewed the request," the individual Regent making the request did not explain the need or benefit when making the request, nor do current Regents' *Rules and Regulations* require any such explanation. Similarly, the existing *Rules and Regulations* do not require a review of requests by the Chancellor and Chairman, but review is routinely made and was done with respect to all the requests reflected in the attached chart.

As more fully described in the response to request 2 below, proposed changes to the Regents' *Rules and Regulations* will impact the manner of compiling information, the process for making requests for information, and the methods of accessing and providing information.

2. A description of any proposed changes to the *Regents' Rules and Regulations*.

Board of Regents Chairman Paul Foster will recommend the attached proposed changes (Attachment B) to the Regents' *Rules and Regulations* to the U. T. System Board of Regents ("Board") for consideration and approval during its meeting on February 6, 2014. The proposed changes have not been reviewed by the full Board and are subject to further modification as part of the Board's deliberations and action at the meeting next week or in a subsequent meeting.

Proposed revisions to Rule 10101 contain clarifications to current language on Board authority and duties, including a new section related to records and information management. This section covers compliance with U.T. System policies on records retention and information management and on encryption, retention, destruction, and release of documents. The provision also mandates related training and the establishment of a U. T. System email address for each Regent. It is recommended that the Board require any email messages sent by a U. T. employee to a Regent on a matter of public policy or U. T. business be sent only to the Regent's U. T. email address.

Proposed changes to Rule 10403 clarify who may speak on behalf of the Board and the System and set the expectation that Regents will coordinate media contacts with the Office of External Relations.

A new Rule 10801 is intended to complement the numerous ongoing U. T. System transparency initiatives, which include enhanced data gathering, data management, and access to data through the U. T. System's electronic Productivity Dashboard.

- a. The proposed new Rule acknowledges the need for a comprehensive plan and the capacity to make voluminous documents and a growing repository of data readily available for review, as appropriate, by all requestors, including the public, representatives of the media, members of the Legislature, and members of the Board of Regents.
- b. The recommended new Rule envisions a plan for significantly improving data management and access with the goals of increasing transparency and accountability while reducing administrative burdens through an orderly and efficient method of records management and production. For members of the Board seeking information, the proposed Rule formalizes a request process that facilitates discussion with the Chairman, the Chancellor, and the requesting Regent to assist in avoiding duplication of efforts and to work together to set the scope and deadlines for production in the context of System strategic priorities. The proposed Rule is not intended to prevent a member of the Board from access to information or data the Regent deems necessary to fulfill his or her official duties but to ultimately make more information and data readily available for all.
- c. The benefits expected from the Rule include providing quicker access to data in a format more conducive to analytical review; making the best information available to decision-makers to fulfill their responsibilities; reducing workload on U. T. System and institutional staff members; providing better access to and use of the increasing amounts of data being collected by the U. T. System Administration and the U. T. System institutions; and allowing researchers to identify important challenges, patterns, and opportunities with these data.
- d. U. T. System Administration and U. T. System institutions currently provide Web access to a listing of all requests made under the Texas Public Information Act ("TPIA") from at least early 2013. The new Rule directs the U. T. System to look to identify improvements to the websites. As one facet of the enhanced access, the U. T. System will pilot a phased program to provide access to the actual documents responsive to each of the requests, to the extent feasible and legally permitted. The existing System Administration website may be accessed at <http://www.utsystem.edu/>. This website is

thought to be the first in the nation for a major university or a major system of higher education.

3. A description and update on the progress of any pending investigations and inquiries conducted by the U.T. System.

The U. T. System routinely conducts, in the regular course of business, numerous reviews, audits, compliance activities, and information technology-related security reviews. Based upon the Select Committee's request and prior questions, we do not believe the Committee wishes to have information concerning such routine inquiries.

The following inquiries are currently being conducted:

- a. Admissions Process Inquiry

Background: At the direction of Chancellor Cigarroa, an inquiry is being conducted into concerns that have arisen regarding possible undue influence by legislators on admissions decisions at The University of Texas at Austin ("U.T. Austin"). This is an inquiry, not an investigation; i.e., a small set of data and information is being studied internally by the System Offices of General Counsel and Academic Affairs, without any external assistance, to determine if a full investigation is required. The focus has been on the U.T. Austin School of Law, but a set of statistical data on undergraduate admissions is also being reviewed. As part of the inquiry, data and information related to student admissions for the School of Law and the undergraduate programs have been requested from the institution.

Status: The inquiry is nearing completion. Should the inquiry lead to a formal investigation involving external assistance, procedures related to advance notice of an investigation will be followed, including notification of the Legislative Budget Board as required by Senate Bill 1, the state's general appropriations act for the 2014-2015 biennium, and the final investigative report will be made available to the public.

Related to the issues that are the subject of this inquiry, but constituting neither an inquiry nor an investigation, Chancellor Cigarroa has tasked U.T. System Academic Affairs staff to meet with admissions directors from across the System, combined with a review and analysis of research from professional associations and other institutions, to develop a report and recommendations on best practices in admissions. This report is nearing completion.

- b. Complaint by Faculty Member at The University of Texas Health Science Center at Houston ("U.T. Health Science Center-Houston")

Background: A complaint was lodged by a faculty member at U.T. Health Science Center-Houston regarding various alleged administrative shortcomings.

Status: The complaint is being investigated jointly by the Office of Systemwide Compliance and the Office of General Counsel. The investigation is expected to conclude in spring 2014.

- c. Malware Concerns at The University of Texas M.D. Anderson Cancer Center ("U.T. M.D. Anderson Cancer Center")

Background: An investigation of potential malware infection of computers in the U.T. M.D. Anderson Cancer Center Faculty Senate Office is being conducted by the Office of Information Security Compliance.

Status: A final report is being drafted. Although the report will indicate that no malware was found, it will also make specific recommendations to change information security within the Faculty Senate Office. The report is expected to be completed by March 2014.

- d. Fair Labor Standards Act Review

Background: A review of U.T. System institutions' procedures to ensure compliance with the overtime and job classification provisions of the federal Fair Labor Standards Act is being conducted by the System Office of Employee Services and Office of General Counsel.

Status: The reviewers continue to gather information.

- e. Review of Travel Gifted to or Accepted on Behalf of U.T. Austin President Bill Powers

Background: A review of compliance with applicable laws and System policies concerning travel gifted to or accepted on behalf of President Powers and provided by a non-family member is being conducted by the System Office of Academic Affairs.

Any number of special circumstances may exist that would bring otherwise personal travel of a university president within the legitimate scope of inquiry of the U.T. System. Examples of such special circumstances include:

- If the president is failing to adequately perform his or her official responsibilities due to personal travel. (*Regents' Rule* 20201 Sections 3 and 4)
- If the personal travel rises to a level of creating a conflict of commitment. (*Regents' Rule* 20201 Sections 3 and 4; *Regents' Rule* 30104 Section 4; UTS 180 Section 5)
- State law requires the annual filing of a Personal Financial Statement (PFS). This statement would require reporting of gifts from non-family members in excess of \$250. If a President were to accept a gift of travel, such travel would be required to be reported on the PFS. Failure to disclose such gifts and comply with state law would be within the legitimate scope of System inquiry. (Chapter 572, Government Code)
- The acceptance of gifts under certain circumstances may constitute a crime under the Penal Code, and allegations or the possibility of criminal activity are within the scope of legitimate inquiry by the System. (Sections 36.02 and 36.08, Penal Code)
- The acceptance of gifts may under certain circumstances constitute a conflict of interest, and a gift of travel in such circumstances would be within the scope of legitimate inquiry by the System. (*Regents' Rule* 30104, UTS 180)
- If university funds were expended for personal travel, such expenditure would violate both U.T. System policy and state law and be within the legitimate scope of inquiry by the System. (*Regents' Rule* 20205 Section 3; Section 39.02, Penal Code)
- If the travel is mixed in purposes between business and personal (where, for example, an employee may stay a few extra days at a particular location after a conference has concluded for personal reasons), further inquiry may be appropriate, as such travel by necessity involves sometimes challenging accounting for personal versus university purposes and subsequent reimbursement issues.

Status: The review is expected to be concluded by the end of February 2014.

f. Review of Procurement of Services from and Deliverables Provided by Accenture

Background: A review of the procurement by U.T. Austin of certain consulting services from Accenture is being conducted by the System Offices of Business

Affairs and Internal Audit. The review will also identify any reports or deliverables provided by Accenture.

Status: The review has just been initiated.

g. Texas Public Information Act Compliance Review

Background: On May 8, 2013, the U.T. System Audit, Compliance, and Management Review Committee ("Audit Committee") recommended that Chancellor Cigarroa explore and provide recommendations on a review of U.T. institutions' compliance with the Texas Public Information Act. Chancellor Cigarroa provided his report and recommendations at the August 21, 2013 Board of Regents meeting. The recommendations were approved by the Audit Committee and then by the full Board. The Chancellor recommended that the U.T. Systemwide Compliance Office direct a targeted compliance review of procedures and applications of the TPIA at U.T. System Administration, U.T. Austin, The University of Texas Southwestern Medical Center ("U.T. Southwestern"), and The University of Texas at San Antonio ("U.T. San Antonio"). Subject matter experts from the Office of General Counsel would conduct the reviews and be accompanied by assistant compliance officers to monitor the review process. It was recommended that after the completion of the reviews, to be no later than October 31, 2013, the U.T. Systemwide Compliance Officer (1) provide a "white paper" outlining best practices for U.T. System Administration and the U.T. System institutions to follow and (2) develop an educational webinar to assist in the training for compliance with the requirements of the TPIA and U.T. System's efforts at providing more transparency to the public. Chairman Foster also requested that the full Board of Regents receive the TPIA webinar training.

Status: The U.T. System public information attorneys and supervisor created the compliance assessment tool in September 2013. The TPIA review was completed at U.T. System Administration in October 2013 as planned. However, the previously scheduled reviews for November and December 2013 at the institutions were postponed so that the public information attorneys could attend to the multiple document requests and legislative subpoena issued by the Select Committee. This situation required that the System-wide Compliance Office and the Office of General Counsel adjust the timeframe for the completion of the TPIA project. Furthermore, two public information attorneys assigned to the project have recently left the System and their replacements have just been hired. In light of this, the revised timeframe for the completion of the review will be:

- March 31, 2014: Completion of the compliance reviews at U.T. Austin, U.T. Southwestern and U.T. San Antonio
- April 30, 2014: Completion of the “white paper” outlining best practices
- May 30, 2014: Completion of webinar training for TPIA, legal, and compliance staffs
- July 31, 2014: Completion of webinar training module for Board of Regents

4. A description of the actions taken by the Board of Regents and the U.T. System to prevent the mishandling of confidential student information.

As background for this response, we would like to restate the following information. During testimony before the Select Committee, some early witnesses implied that the U.T. System has not protected the privacy rights of students, staff, and patients. This is simply not true. To the extent student information may have been released inappropriately, the release was made by U.T. Austin. The U. T. System is very committed to compliance with privacy laws, and in every instance, including those in which U. T. System attorneys conferred with U. T. Austin campus officials and attorneys regarding requests for documents, the protection of the privacy of student information and health information has been a priority.

The U.T. System provides training and has policies and procedures designed to protect sensitive information, including confidential student information. Orientation sessions for new members of the Board have been revised, effective with training conducted in 2013, to provide newly appointed Regents with more training on confidentiality, including federal laws related to personally identifiable student information and personal health information.

At the direction of Chancellor Cigarroa, the U.T. System is taking steps to ensure the implementation of and compliance with revisions to the training, policies, and procedures applicable to all U.T. System officers and employees to strengthen information protection. Copies of the current policies and guidelines are attached (Attachment C), and any revisions to these policies and guidelines will be provided to the Select Committee.

The U.T. System has a robust and effective privacy and security program in place designed to protect the confidentiality of all System records, including student records. System-wide and System Administration policies require the identification of all records subject to state and federal confidentiality laws, including education records subject to the Family Educational Rights and Privacy Act (“FERPA”), and development of office-specific procedures to ensure the integrity and security of all confidential data. System Administration and each System institution have a breach response policy that sets the protocol for each employee to follow in

identifying, reporting and responding to any unauthorized access to confidential records. In addition, each System employee or third party contractor who is provided access to confidential System records, which include all students record subject to FERPA, is required to review and acknowledge the individual's responsibility to comply with these policies as a condition of accessing System records.

U.T. System institutions are required to adopt internal FERPA policies based on the model policy adopted by the Office of General Counsel, which incorporates the recommendations of the U.S. Department of Education for post-secondary institutions. Pursuant to *Regents' Rule* 20201, Section 4.9, these policies are subject to review and approval by the U.T. System General Counsel and by the Executive Vice Chancellor for Academic Affairs or Health Affairs, as appropriate. The model template for all university contracts contains specific provisions that require the identification of any contract that involves outsourcing or other access to education records by the third party contractor and provides mandatory terms to ensure that contractors employ FERPA privacy and security safeguards.

As the result of a comprehensive security evaluation assessment commissioned by the Board of Regents, the U.T. System has also appointed a Senior Attorney within the Office of General Counsel to serve as System Administration's Privacy Officer and Systemwide Privacy Coordinator. This attorney regularly reviews the Notices of Proposed Rulemaking, FERPA regulation amendments, Dear Colleague Letters, and opinion and guidance published by the Family Policy Compliance Office (FPCO), the office within the U.S. Department of Education that interprets and enforces FERPA, as well as the guidance and whitepapers published by the Privacy Technical Assistance Center, another office within the Department of Education that provides guidance on privacy, confidentiality, and security practices in the creation of longitudinal data systems involving student education records. The attorney drafts memoranda and white papers to provide general guidance on FERPA compliance issues, provides consultation to other System attorneys on FERPA-related matters, and provides counsel and training to faculty and staff at System institutions on the specific requirements of FERPA that are applicable to their specific duties and types of records. The attorney is currently developing a specific training program for attorneys and other System employees that respond to Texas Public Information Act requests to equip them to identify and respond effectively to requests that involve student education records. In addition, the Office of General Counsel is currently drafting model policies for both System Administration and U.T. System as a whole that will more specifically guide institutions and System Administration in their FERPA compliance efforts.

5. A description of any actions taken to make electronic communications between Regents and U.T. System employees more transparent to the citizens of Texas.

The changes proposed by Chairman Foster to the *Regents' Rules and Regulations* discussed in response to request 2 above and that are attached will increase transparency through the

strong encouragement for Regents to use U.T. System email accounts for all communications involving state business and the requirement that all communications from U. T. System employees to members of the Board on matters involving state business will be sent to the Regent's U. T. System email address.

Note that during the October Select Committee hearing, an assertion was made by a member of the Select Committee that use of a state email domain by members of the Board of Regents is currently required under state law. After diligent research by U.T. System legal staff, the System can find no state law that mandates use of a *utsystem.edu* email domain or address by members of the Board, nor any law that requires the use of a state or state agency domain or address by members of any other governing board of a state institution of higher education, state agency or the Legislature.

6. A description of any actions taken by the U.T. System to make the internal processes of the System more transparent and accountable to the Select Committee and to the citizens of Texas.

The U. T. System is already an acknowledged national leader among institutions of higher education in the area of transparency and public access to information. The best current example is the Chancellor's Framework for Advancing Excellence, approved by the Board of Regents in 2011. The Framework has been highlighted by educators and policymakers across the country for its vision for higher education. It focuses on initiatives and policy changes that are based on data and the engagement of hundreds of individuals in the process. Transparency is a key element in assuring the accomplishment of the aggressive goals outlined in the Framework.

Listed below are some of the initiatives coming out of the Framework that are currently in place or in the process of implementation within the U. T. System. Some of the policy changes and task force recommendations have gone through several iterations based upon input solicited from faculty, staff and student groups.

- a. As part of the U.T. System's efforts to increase transparency; to measure more effectively productivity, efficiency, and impact; and to demonstrate more clearly accountability, the System developed the Productivity Dashboard ("Dashboard"). The Dashboard is a business intelligence system that includes web-based applications for extracting and analyzing institutional data. Its purpose is to provide current data, trends over time, and comparative benchmarking across a variety of metrics in support of better decision- and policy-making. It provides a rolling 10 years (where available) of data on the performance of all U. T. System institutions and is accessible to the public at data.utsystem.edu. The Dashboard provides important data and metrics concerning students, faculty, research and technology transfer, health care, and productivity and efficiency.

- b. The new System-wide policy on “Conflicts of Interest, Conflicts of Commitment, and Outside Activities” (UTS 180) is intended to protect the credibility and reputation of the U. T. System Administration, of each U. T. institution, and of their employees. The policy provides for a transparent system of disclosure, approval, and documentation of employee outside activities. As part of implementing the policy, a new online application has been developed to create a streamlined electronic request and disclosure process that is the foundation for an online System-wide disclosure database. Public online reporting will include a dashboard with aggregated information on disclosures and an individual report for employees with a managed conflict.
- c. It can be hard to predict exactly how the choices students make today can impact their future. The U.T. System entered into an agreement with the Texas Workforce Commission to share data related to occupational outcomes for students graduating from U.T. institutions. With this data, the U.T. System has developed the *seekUT* website and complementary online tool that allows students to view information by degree major, including first- and fifth-year median earnings, average student loan debt for graduates, and descriptions of the degree majors. This comprehensive online tool will go a long way in helping students and their families plan their future based on a foundation of realistic expectations of potential student loan debt and post-graduation earnings.
- d. In 2012, then Board Chairman Gene Powell established the Advisory Task Force on Best Practices Regarding University-Affiliated Foundation Relationships (“Foundations Task Force”). The work of the Foundations Task Force was guided by several findings and principles, including the understanding that full transparency in the relationship between each university and its university-affiliated foundations is essential. With that in mind, the Foundations Task Force recommended that U. T. System and System institutions and their affiliated foundations work together to implement practices that increase transparency, openness, and disclosure to the supported institution and the public.

Specific recommendations call for each institution and its affiliated foundation(s) to: (1) provide for sharing of financial information, audits, annual IRS filings, and other records with each other and outside parties; (2) adopt a transparency statement oriented specifically to donors, alumni, and outside parties; (3) adopt practices to assure the university is aware of foundation policies regarding gift or administrative fees, including the disclosure to donors or potential donors of any and all fees for endowment or non-endowment gifts, pledges, or bequests; and (4) establish a practice to assure routine reports to donors. The Foundations Task Force also recommended that each institution identify all affiliated foundations on its website, clearly noting their status as separate from the supported institution and similarly that each university-affiliated foundation have a well-developed website that provides public access to information about the

foundation's mission, a list of foundation employees and board members, and clear contact information for the foundation.

The Board of Regents will consider recommended policy changes needed to implement the Foundations Task Force recommendations on February 6, 2014.

- e. The actions of the U.T. System Board of Regents are highly transparent through the posting of information about upcoming meetings of the Board on the System's website and real time web-streaming of all regular meetings of the Board, as well as the creation of searchable, archival records of past Board actions.

Under the leadership of recent Board Chairmen, the U. T. System Office of the Board of Regents has leveraged technology to make historical documents widely available to the public for historical and scholarly purposes. This work is summarized in the attached article from *Trusteeship* magazine (Attachment D), published by the national Association of Governing Boards and Universities and Colleges.

Over a decade ago, the Board Office digitized and published online all Board minutes, dating back to the creation of the University in 1881 (<http://www.utsystem.edu/board-of-regents/meetings>). These minutes are searchable. An excerpt of the minutes from the first Board of Regents meeting held on November 15, 1881, is available online (<http://www.utsystem.edu/board-of-regents/history/utsystem-board-of-regents>).

Board meeting agendas are posted online with the Texas Secretary of State and may be accessed through the Board Office webpage or through the *Texas Register*. Board meetings are webcast, and archived webcasts since 2003 are available online.

Again leveraging technology, the Board now utilizes a board portal for meeting materials, accessible with any computing device with Internet capability, including an iPad.

Over the last two decades, the Regents' *Rules and Regulations*, the governing document for the U. T. System, has been published online with extensive hyperlinks and search capabilities. The *Rules* document is undergoing further online publishing improvements at this time.

In addition, information on current and former Members of the Board is available online. Information on over 230 former Regents includes dates of service, biographies, and photos (http://www.utsystem.edu/bor/former_regents/homepage.htm).

The Board Office utilizes centralized, searchable electronic databases for archival storage of permanent university records and follows the State of Texas Records

Retention Schedule (<http://www.utsystem.edu/documents/docs/information-resources/records-retention-schedule>).

7. Any other information that the U.T. System deems useful to the Select Committee's ongoing investigation and deliberations.

The U. T. System appreciates the opportunity to provide the following additional information to assist the Committee:

- a. The U. T. System Office of General Counsel, outside counsel, and the Office of the Board of Regents have reviewed Regent Hall's information requests in light of the provisions of the Texas Education Code relating to the rights and responsibilities of a member of the governing board of The University of Texas System and find no violations of law or policy. An opinion from Hilder & Associates, P.C., dated January 13, 2014, addressing issues with respect to Regent Hall's activities, including the right of a member of the Board of Regents to have access to student information, was previously provided to the Select Committee. Regent Hall has consistently followed all procedures set by the Chairman of the Board related to the process for requesting information.
- b. Please note that, related to his request to review documents and emails previously compiled by U.T. Austin in response to the requests made by other requestors under the Texas Public Information Act, Regent Hall specifically requested that no personally identifiable student information or information covered by federal health information privacy laws be provided to him. Note also, in what has been a consistently confused and misunderstood fact, Regent Hall did not make 1,200 requests under the TPIA for documents and emails, but only requested information concerning the TPIA requests previously made by others. Regent Hall filed, as a private citizen, five TPIA requests of his own. It has been represented that as many as 800,000 pages of documents were provided to Regent Hall as a result of his requests. System believes a far smaller number of pages were provided, perhaps fewer than 100,000.
- c. At the December 2013 Select Committee hearing, there was significant discussion about the issue of reporting software licenses that are donated to universities, in this case U.T. Austin.

The counting of nonmonetary gifts and grants of software licenses is technical and complex, and the debate on guidelines for counting them extends nationally. In recent years, there has been a proliferation of generous and highly valued software grants to top research institutions around the nation, serving a strong educational and research purpose. Moreover, these grants put our young graduates at a competitive advantage by exposing them to the best research capabilities, and the U.T. System is profoundly grateful to the corporations that make these opportunities available.

The Council for the Support of Education ("CASE") and the Council for Aid to Education ("CAE") are the two philanthropic national standards-setting organizations for higher education institutions across the U.S. They publish standards by which universities should report annual fundraising totals for peer comparison and benchmarking purposes. CASE conducts an annual survey for institutions involved in capital campaigns so it can track and report on campaigns underway nationally. Similarly, CAE conducts an annual survey for universities to track and report national philanthropic results whether or not a university is engaged in a capital campaign. CAE's annual survey has been required for decades for all U.T. System institutions, which complete and submit results through the U.T. System Office of the Comptroller, and is called the Voluntary Support of Education survey. CASE and CAE use the same definition for counting and reporting software grants.

Both CASE and CAE cite the revocability of a gift as the determining factor as to whether a university can count and report the gift in CASE and CAE totals. The donor (in the case of U.T. Austin, Landmark Graphics) must irrevocably transfer ownership of intellectual property to the institution if the property is to be considered a charitable gift and therefore countable by their standards. CASE also cites several additional reasons why many software grants may not be counted in totals.

After a July 2012 request from Regent Hall regarding how U.T. Austin determined valuations for software licensing grants, the System was asked to inquire if CASE acknowledged software licensing agreements as charitable gifts. CASE officials provided written definitions explaining why such grants could not be reported, and notification of the CASE position was provided to U.T. Austin by the System in August 2012. Afterward, U.T. Austin's Office of Legal Affairs conducted its own review and confirmed on August 21, 2012 the opinion that the specific grants from Landmark Graphics did not meet the basic elements of a gift. They further concluded that the grants did not meet the standards of a "charitable contribution" under federal tax law despite the incredible educational value to students. Furthermore, U.T. System conveyed to U.T. Austin in September 2012 that, because Landmark did not completely irrevocably transfer ownership of the software to U.T. Austin, the CASE ruling was correct and the grants were not eligible to be counted as a charitable gift.

With the knowledge and consent of the U.T. System, President Powers opted to have outside counsel look further at the Landmark software gifts made during the course of the capital campaign and to present an argument to CASE, focusing on definitions beyond the "partial interest" definition used by CASE in its current guidelines for software gifts. The 3rd edition of CASE's Reporting Standards and Management Guidelines published in 2006 and the 4th edition published in 2009 both addressed the

issue of software grants as partial interests, and U.T. Austin expressed an interest in offering an alternative viewpoint.

While all U.T. institutions are required to follow CASE and CAE guidelines, consistent with the U.T. System's direction, the System does not preclude any institution from challenging CASE counting guidelines, since CASE's voting member institutions propose and ratify national counting guidelines. The U.T. System concurs with U.T. Austin that Landmark Graphics' license grants offer incomparable educational benefits to students and researchers in the area of geosciences, and U.T. Austin might not be able to provide its students with such exceptional educational tools if not for the generosity of Landmark Graphics and other companies. Any U.T. System institution may present an argument to CASE if it has a justification for doing so, and U.T. Austin leadership felt that it had such justification.

In the fall of 2012, the Board of Regents' Audit, Compliance and Management Review Committee commissioned an audit of all U.T. System institutions to determine whether institutions were accurately recording and reporting development activity information and whether institutions consistently met CASE and CAE counting and reporting standards. Additionally, the audit was intended to determine whether the institutions have adequate documentation of donor intent and appropriate receipting processes in place for those gifts accepted directly by the institution.

Four institutions, including U.T. Austin, U.T. San Antonio, The University of Texas at Arlington ("U.T. Arlington"), and U.T. M.D. Anderson Cancer Center, were asked to restate some gift totals to CAE (and CASE, if the institution was then in a capital campaign), based on a report by the U.T. System Chief Audit Executive. In turn, the U.T. System appropriately restated aggregate System-wide numbers nationally based on campus revisions in order to remain compliant with CASE and CAE guidelines.

In a letter from Chancellor Cigarroa to all U.T. System institution presidents in November 2012, he directed all institutions to continue to comply with CASE and CAE counting and reporting standards. He also voiced strong support for the extraordinary impact of software license grants and expressed his desire for universities to honor and publicize the companies' extraordinary contributions to students and faculty, without submitting the gift totals in campaign totals or to CASE or CAE since neither organization allowed them to be submitted. CASE also encourages institutions to do whatever they desire to announce and celebrate those donations.

With respect to the Select Committee's questions on how U.T. institutions record capital items like the Landmark Graphics software license in their financial statements, they are recorded as Gifts of Capital at the fair market value ("FMV") in accordance with Governmental Accounting Standards Board ("GASB") rules. FMV is typically assigned by

the donor. In this case, it is the U.T. System's understanding that the value of the gift was a negotiation between U.T. Austin's Development Office and Landmark.

The resulting impact is an increase in net assets by the amount of the FMV of the donated assets. However, net assets are reduced as the asset is amortized over its useful life of three years (the term of the license). As the gifts of licenses are amortized, this reduces the net assets until there are no resulting net assets when the items have been fully amortized.

While it was established at the end of 2012 that the gift of the license from Landmark Graphics cannot be included in CAE's annual report, U.T. Austin has been accounting for the gifts of software licenses properly and in accordance with GASB rules and has been audited by Deloitte & Touche. The accounting treatment of such gifts is a very complex issue, and the System would be happy to make staff from its Office of Business Affairs available for further discussions regarding these questions, if the Select Committee so desires.

The U.T. System respectfully offers three clarifications related to President Powers' testimony on CASE.

- (1) While President Powers indicated he was not aware that U.T. System General Counsel to the Board Francie Frederick and Vice Chancellor for External Relations Randa Safady participated in the meeting by phone during the time that Regent Hall, Vinson and Elkins attorneys representing U.T. Austin, and U.T. Austin Vice President for Legal Affairs Patricia Ohlendorf met with CASE officials in Washington, everyone who participated in the Washington meeting was aware of their presence. All parties, including Ms. Frederick and Ms. Safady, were provided with a special call-in number for the conference call, and all individuals, whether in person or on the phone, introduced themselves at the beginning of the meeting. (Since President Powers was not in Washington or on the call, it is understandable that he would not have known of all the participants.)
- (2) President Powers indicated that the U.T. System conducted an audit of U.T. Austin's capital campaign. The U.T. System did not perform an audit of U.T. Austin's campaign, but as described above the System Audit Office conducted a review of all 15 U.T. institutions' practices in counting nonmonetary gifts.
- (3) President Powers testified that he was not told in any way before presenting U.T. Austin's argument to CASE that the institution's position was antithetical to the U.T. System's or Board of Regent's position. U.T. System's consistently expressed position was and has been that System institutions must comply with whatever the national standards-setting organizations use as their guidelines. Neither CASE nor

CAE allow these types of grants to be reported to their organizations in gift totals. The U.T. System instructed U.T. Austin beginning in August 2012 to comply with CASE counting guidelines and to restate gift totals in its CAE report, as U.T. Austin's incorrect counting also impacted the total aggregate amount of gifts counted in U.T. System's annual CASE and CAE reports. These instructions were reiterated several times before the meeting between U.T. Austin's leadership and CASE, which occurred in November 2012. As stated earlier, U.T. System did convey to U.T. Austin that it supported U.T. Austin's leadership in arguing their interpretation to CASE, perhaps resulting in CASE changing its rules. CASE has not changed its rules to date.

Finally, Vice Chancellor Safady has been invited by CASE to co-host a summer summit for university system leaders in philanthropy. When she accepted the invitation, she expressed an interest in having a dialogue on this matter, with the hope that university systems can revisit with CASE the current restrictions on how some nonmonetary gifts and grants are counted, especially now as technological contributions from corporations are even more essential for research universities to carry out their missions.

- d. During early testimony at the Select Committee hearings, confusing statements were made concerning how Regent Hall came into possession of two sets of emails that contained student information thought to be protected by FERPA. Both sets of emails were provided by U.T. Austin, presumably inadvertently, as U.T. Austin had been advised that Regent Hall was not asking to see, and did not wish to see information protected by FERPA or the federal Health Information Portability and Accountability Act ("HIPAA"). While an explanation how the information came to Regent Hall was provided in later testimony, we appreciate the opportunity to restate how Regent Hall received student information, some of which was treated as potentially protected by FERPA.

One of the emails discussed was, in fact, not protected by FERPA, as the individual mentioned was not at that time enrolled in a U.T. System institution. That email dated March 1, 2013, was included in a file compiled by U.T. Austin in response to a TPIA request filed by Reeve Hamilton on March 15, 2013, seeking access to certain emails listed by subject line in a document provided earlier to Mr. Hamilton. Regent Hall requested access to U.T. Austin's files responsive to April 2013 TPIA requests on May 28, 2013, as part of his ongoing review of such files. The files were picked up by U.T. System staff on June 5, 2013 and made available to Regent Hall the same day.

The other set of emails was treated by the System as protected by FERPA. Those emails were dated January 25, 2009, and were included in a file of documents compiled by U.T. Austin in response to a public information act request filed by Morgan Smith on December 9, 2011, seeking correspondence between President Powers and U.T. Austin Law School Dean Larry Sager. The emails were included in a file produced with the

public information act request files requested for the month of January 2012 and delivered to the U. T. System on approximately January 16, 2013. The file was made available to Regent Hall a few days later (approximately January 17 or 18, 2013). Upon learning that Regent Hall was in possession of documents potentially protected by FERPA, appropriate steps were taken. He was asked by the General Counsel to the Board to destroy all copies and he confirmed that he had done so. Copies of the information provided to the Office of the Attorney General by Regent Hall were returned upon request. Regent Hall's private legal counsel returned a copy of the information to the System Vice Chancellor and General Counsel and later confirmed that all copies had been returned or destroyed.

- e. At several points during the hearings, testimony was offered that the personnel file of Carol Longoria, a former U.T. System employee who is now employed by U.T. Austin, was requested by Regent Hall. Regent Hall at no time requested such access nor did he receive or review the personnel file.
- f. During the hearings, it was repeatedly implied that the only source of legal advice for employees at U.T. Austin is the U.T. System Office of General Counsel ("OGC"). This is not true. Patricia Ohlendorf, U.T. Austin's Vice President for Legal Affairs, is an extremely experienced and very highly regarded attorney who has worked for U.T. Austin for more than 30 years, and with whom the System Office of General Counsel has a well-developed and active working relationship. Her office is currently staffed by six additional experienced and highly qualified attorneys. Her office is always available to U.T. Austin staff for legal advice and consults regularly with the OGC.

During the October 2013 Select Committee hearing, it was also claimed that U.T. Austin and its employees had been denied access to outside counsel. There are well-established internal processes for these requests. The U.T. System was not contacted by U.T. Austin until November 22, 2013 with a request to engage outside counsel or seek legal representation from the Office of the Attorney General. This request was approved.

It is possible that one of the references is to an incident in which one of the staff in the open records office at U.T. Austin sent information directly to the Attorney General's Office asking it to consider additional material related to an outstanding brief that had been filed by OGC on behalf of U.T. Austin. This employee was advised that briefing material related to requested open records rulings was to be filed through the Office of the General Counsel, not directly by institution staff; however, no action was taken by OGC. The Attorney General was not asked to return the material or to ignore it, but it was left to the Attorney General to take the material into account as it deemed appropriate. When the Attorney General issued its opinion, it did consider and address

the additional material that U.T. Austin had submitted and rejected U.T. Austin's argument.

- g. Since 2011, The University of Texas System has aggressively pursued a number of major initiatives across all 15 U. T. institutions. The accomplishments emanating from these actions, under the strong leadership of the Board of Regents, System Administration and the 15 presidents, has gained attention from, among others, the national higher education press, the federal government and leaders in higher education throughout the country. A few of these initiatives are described below.
- **Criminal Background Check Policy:** At the direction of the Board of Regents and Chancellor Cigarroa, in the past few years the U.T. System has implemented a wide range of changes in its policies and procedures on criminal background checks in an effort to further enhance the safety of our students, faculty, and staff. This has included ensuring that thorough criminal background checks are conducted for all students, faculty, and staff having any access to vulnerable populations, such as children who may be on our campuses in day care centers or at summer sports camps. The System also has expanded its policies on screening employment applicants for any criminal history and now requires very rigorous review to guard against hiring individuals with a sex offender record who may be a danger to the community.
 - **Relationships Task Force:** Recognizing the ongoing threat that sexual misconduct poses to students, faculty, and staff, in 2013, then Board Chairman Powell charged a task force to carefully review campus policies and practices surrounding these very serious concerns and to look at best practices across the country. The task force was chaired by then Vice Chairman Foster, with members that included university presidents, administrators with years of experience handling such cases, internal and external legal experts, representatives from student affairs and athletics, and a former student Regent. The task force proposed a series of recommendations designed to protect all members of our communities. These include clarifying and strengthening the prohibition against inappropriate sexual relationships between faculty and students or anywhere a real or perceived abuse of power exists and ensuring that our policies and procedures for identifying and handling sexual misconduct allegations are clear, fair, and efficient. The task force also recommended enhanced training across all institutions to ensure the U.T. System has a culture that does not tolerate any form of sexual misconduct.
 - **Student Debt Reduction Task Force:** In early 2012, the Board of Regents, consistent with the Chancellor's Framework for Excellence, charged a task force

of 14 students, administrators and outside experts to provide an accurate assessment of the student loan debt crisis, framing the issue and delivering recommendations that would minimize the increasing number of students being burdened with unmanageable debt upon graduation. The Student Debt Reduction Task Force met monthly over a period of more than six months, gathered and reviewed extensive collections of data, listened to numerous subject matter experts and ultimately produced a report and recommendations to the Board of Regents on December 3, 2012. The 16 recommendations focused on steps that could be taken to enhance degree completion and shorten time to degree, better understand the relationship between college costs and returns, and improve transparency and decision support for students and their families planning and financing their post-secondary educations. Since the task force report was delivered, it has been referenced and reviewed by a number of institutions and states looking at their own student debt issues. The U.T. System and its institutions are currently working to implement a number of the recommendations in the report.

- **Finish@UT:** The U.T. System is advancing its efforts to help adults complete their college degrees through a new program that will also leverage the nation's efforts to have the highest percentage of college graduates in the world. Finish@UT, a new online bachelor's degree completion program, offers students a flexible path to completion of their undergraduate degree through four System institutions, with all coursework to be completed online. Finish@UT is offered through UT Arlington, The University of Texas at Brownsville ("U.T. Brownsville"), The University of Texas at El Paso ("U.T. El Paso") and The University of Texas of the Permian Basin ("U.T. Permian Basin") and will target adult students who have completed 60 semester credit hours or more from any accredited college or university.

The online program offers flexible dates to start classes, making it easier for working adults to pursue a baccalaureate degree. The program was created for students who have earned some college credits as a flexible and affordable path to completion of their undergraduate degree without compromising the quality of their education. The program allows students to combine classes from all four institutions to earn accredited four-year bachelor degrees. With accelerated 7- to 15-week courses, Finish@UT offers adults the ability to take courses during times and at locations convenient for them. Students can earn a bachelor of science in university studies at U.T. Arlington, a bachelor of multidisciplinary studies through U.T. Brownsville, a bachelor of multidisciplinary studies through U.T. El Paso or a bachelor of arts in humanities through U.T. Permian Basin.

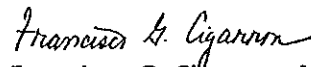
- **Disclosure Agreements with Ph.D. Students:** Starting in fall 2013, students seeking a Ph.D. at U.T. System institutions must sign tailored agreements with their departments that specify when they are expected to graduate and when they are expected to reach required academic milestones. This agreement is an important step in ensuring doctoral students receive their degrees in an efficient and timely manner. The Milestone Agreement Form serves as a standard System-wide template that can be tailored for each doctoral program's unique requirements. The new agreement helps to enhance academic advising for Ph.D. students and emphasizes a considerable responsibility on advisors to guide students through the program.
- **Task Force on Engineering Education for the 21st Century:** The field of engineering enhances the economic vibrancy in Texas, as well as national security and the health and quality of life for all citizens of our State. It is important to determine if the higher education system of the State of Texas has the capacity to produce the number and the right types of educated engineers to support the increased workforce demands of the State's continued economic growth. Success in the field of engineering will better position Texas to address opportunities and challenges throughout our future, which will ultimately benefit the citizens of Texas, our nation and the world. For higher education institutions within the U.T. System to remain a key partner in the State's continued success, we must develop a better understanding of future engineering needs in Texas. Planning aggressively to meet those needs now requires answers to significant questions concerning undergraduate and graduate engineering education and research. A joint task force, appointed by the Chairman of the Board of Regents and Chancellor Cigarroa, reviewed and identified key issues related to demand, capacity, efficiency, supply, and research related to engineering programs in the State of Texas; how these issues impact Texas and the nation; and what the U.T. System can do to be most responsive to the State of Texas' needs.
- **Review of Hazing and Alcohol Issues:** The Hazing and Alcohol Task Force was formed in the spring of 2013 under the direction and support of the Board of Regents, Chancellor Cigarroa, and the Office of Academic Affairs. The task force was charged with developing for the U.T. System campuses an array of evidence-based best practices that target campus student organizations and other university constituencies in an effort to change campus culture concerning hazing and alcohol abuse.

In addition, the task force was asked to formulate recommendations targeting advisors and others who work with student groups to help them proactively

address hazing and alcohol use in their organizations and to intervene when appropriate. Finally, the task force was charged to develop additional recommendations and resources designed to actively engage students in campus programs to help combat high-risk behaviors.

- h. To enable the Select Committee to review and understand more fully the extensive and positive work done by the U. T. System and the U. T. institutions, with the support and leadership of the Board, we are also attaching a booklet (Attachment E) that provides an overview of 2011, 2012 and 2013 and the accomplishments achieved.

With great respect,



Francisco G. Cigarroa, M.D.
Chancellor

Attachments:

- Attachment A - Requests for Information by Members of the UT System Board of Regents to UT System Institutions
- Attachment B - Proposed Regents' Rules
- Attachment C - UT System Policies and Guidelines
- Attachment D - Article from *Trusteeship* magazine
- Attachment E – Major Accomplishments of The University of Texas System

FGC: It