



The University of Texas System

Nine Universities. Six Health Institutions. Unlimited Possibilities.

May 2, 2013

The Honorable Judith Zaffirini
Texas Senate
Post Office Box 12068
Austin, Texas 78711-2068

Dear Madam Chairman:

Thank you for your letter yesterday posing various questions regarding the handling of your requests for the production of information as a legislator and private citizen under the Texas Public Information Act and asking that four members of The University of Texas System staff come to your office for private discussions.

As was discussed last night, we feel the more appropriate members of System staff who can most fully answer your questions, rather than the less senior attorneys you asked for, are Dan Sharphorn, the System's *ad interim* Vice Chancellor and General Counsel, and Francie Frederick, General Counsel to the Board of Regents. As was offered last night, we would be happy for Mr. Sharphorn and Ms. Frederick to come to your office at any time for discussions or to accompany the four staff members you requested, but you conveyed this was not your desire.

To ensure you have the information you are seeking, we have prepared the attached detailed answers to your questions.

We interpret your request and other communications and comments you have made to imply concern on your part that the System is not fully complying with all of the legal requirements of the Texas Public Information Act, as well as questioning whether System legal staff involved in the document production are acting consistent with their professional responsibilities. We believe the best solution to your request would continue to be a meeting with Mr. Sharphorn and Ms. Frederick and their staffs and stand ready to have them come to your office at any time to discuss your concerns.

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
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The University of Texas
Health Science Center at Tyler

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The Honorable Judith Zaffirini

May 2, 2013

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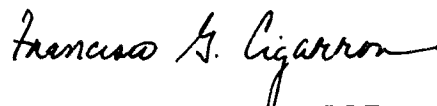
However, with great respect for you and your request, if we cannot resolve this matter more personally we believe the more appropriate forum in which to have your questions answered would be a public hearing of your committee or of another legislative panel, such as the Senate Higher Education Committee or the Joint Select Committee on Higher Education Governance, Excellence and Transparency. A public hearing will provide the most complete transparency in regard to these issues for you, your colleagues in the Texas Legislature, and the public. The System will willingly and voluntarily produce any member of our staff you may wish to question under oath at a time convenient to you and other legislators.

Please let us know how you wish to proceed in this matter. We very much seek to answer all your questions and address all your concerns and to demonstrate to you and others that the U. T. System, as we have always done, is fully satisfying the requirements of Texas law.

With great respect,



Wm. Eugene Powell
Chairman



Francisco G. Cigarroa, M.D.
Chancellor

WEP:FGC:bc
Attachment

OFFICE OF GENERAL COUNSEL
The University of Texas System
201 West 7th Street
Austin, Texas 78701
Telephone (512) 499-4462 Fax (512) 499-4523

MEMORANDUM

DATE: May 2, 2013

TO: Chairman Wm. Eugene "Gene" Powell
Chancellor Francisco G. Cigarroa, M.D.

FROM: Dan Sharphorn, Associate Vice Chancellor and Deputy General Counsel

SUBJECT: Responses to Senator Zaffirini's Letters of May 1, 2013

You have asked me to provide responses to the issues and questions Senator Zaffirini raises in her letters of May 1, 2013, which were sent to the two of you and Francie Frederick.

1. The internal process normally used by the UT System to respond to such requests.

Attached is the process paper developed for the Board of Regents this past December pursuant to a request by certain members of the Board to better understand the process for handling requests made to the System under the Texas Public Information Act (TPIA). The process does not differ for legislative requests, except that with legislative requests, we do not seek rulings from the Attorney General (AG) within the ten-day time frame and, instead, have non-disclosure agreements signed by the legislators and their staffs, per Sec. 552.008 of the TPIA. If a legislator disagrees with what we have marked as confidential, he or she may seek a ruling from the AG. Senator Zaffirini also submitted a public information request as a private citizen, for which we followed the same process we typically do with any TPIA request.

2. The internal process that was used here.

The Office of General Counsel (OGC) followed our usual process for Senator Zaffirini's legislative requests, which is the same process we followed in response to her 2011 legislative request. We followed our usual TPIA process in response to her public information request as a private citizen. These include a review by the Board Office of any documents relating to the Board.

3. Any manner in which the process followed here differed from that normally used.

None.

4. The number of people contacted to deliver documents in responding to the request(s).

First legislative request: Approximately 27.

Second legislative request: Approximately 17.

Public info request as a private citizen: Approximately 19.

5. The total number of pages of documents gathered from those people for review by the reviewing personnel.

For Senator Zaffirini's requests: Approximately 30,000-35,000 pages.

6. The total number of pages delivered to my office after such review.

Approximately 9,000 pages, to date.

7. The total number of documents and pages still under review.

Approximately 21,000-26,000 pages.

8. Whether some documents and pages not produced were sent to someone else, such as the Office of the Attorney General, for any purpose.

None. Any documents that went to the AG for ruling pursuant to Senator Zaffirini's public information request as a private citizen had already been produced to her in response to her nearly identical second legislative request. There is nothing that went to the AG for ruling that Senator Zaffirini has not already received.

9. What reasons existed for such documents and pages being diverted from production.

Not applicable.

10. Where are documents that were gathered but not delivered to me.

For documents gathered but not delivered, we have access to them in electronic form or hard copy. We have yet to go through approximately two-thirds of the total information and mark appropriate documents confidential.

In fulfilling legislative requests, OGC has involved four attorneys, including two whose work has been redirected from their usual work responsibilities. The review of individual documents to determine confidentiality and redact protected information is very time-consuming. We would estimate that in the last six weeks it has taken over 370 hours of attorney time in OGC to provide approximately 9,600 pages to Senator Zaffirini, and 460 hours of attorney time to provide nearly 15,000 total pages of documents in response to all legislative document requests, including

Senator Zaffirini's. This is being accomplished while numerous other TPIA requests continue to flow in, including multiple media requests. We expect that the review of the remaining documents responsive to these legislative requests will take at least as long as these have taken.

The attorneys who work on these matters are experts in this area, are highly ethical, and take their jobs very seriously. They act in good faith in making careful decisions about whether to mark documents confidential in response to a legislative request or to seek a ruling from the AG to withhold documents in response to a TPIA request. These individuals are well aware of the clear and unequivocal requirement to fully comply with the letter and spirit of these laws and they behave accordingly. No document is ever withheld by the Office of the General Counsel outside what is permitted under law.

Please let me know if you have any further questions.

ATTACHMENT

c: Vice Chancellor Barry McBee
General Counsel to the Board Francie Frederick
Managing Attorney Helen Bright

TPIA process at UT System (UTS 139, Chapter 552 of the Texas Government Code)

1. Under the Texas Public Information Act, public information requests can be submitted in one of four ways. They must be in writing and can be sent via e-mail, hand-delivery, fax, or mail.
 - a. If a request is submitted by fax or email, it must be sent directly to the Public Information Officer (Barry Burgdorf), or his designee. TEX. GOV'T CODE Sec. 552.301(c). If received by any other individual within System, it is not a valid request and we are not required to comply with it. When a System employee receives a public information request directly via email or fax, they forward it to OGC who inform the individual on how to submit a valid request. System complies with the request once a valid request is received.
 - b. A request that is hand-delivered or mailed is valid as long as it is submitted to **any employee** at UT System. System employees are required to send any request they receive in this manner to OGC for handling. UTS139, Sec. 7.2.
2. Once a valid request is received, a file is opened in OGC's Legal Tracking database and we calendar the deadlines.¹ After reviewing the request, Neera Chatterjee and Zeena Angadicheril (and where necessary, with input from Barry Burgdorf, Helen Bright, the Office of Public Affairs,² and other relevant offices) may determine that clarification from the Requestor is necessary. If we do seek clarification from the Requestor on all or part of the request, our deadline to respond to the request is tolled and then starts over once clarification is received. TEX GOV'T CODE Sec. 552.222; *City of Dallas v. Abbott*, 304 S.W. 3rd 380, 384 (Tex. 2010).
3. Once the request is reviewed, Zeena and Neera (and where necessary, Barry Burgdorf and Helen Bright) determine the offices that may have responsive information, contact the relevant offices and individuals as soon as possible and ask that all responsive information be provided to them at least several days before our response is due under the Public Information Act. If the request is very broad, Zeena and Neera may ask those who have initially been identified as having potential responsive information whether they believe any other individuals or offices may also have responsive information.³ In certain circumstances

¹ Once the file is created, the status of the request is updated within Legal Tracking.

² See UTS139, Sec. 16 News Media Requests

³ Note, per the Attorney General, e-mails that have been deleted (i.e., they have been put in the trash and then the trash has been emptied) are not 'public information' and need not be produced in response to a public information request. See OR2001-3366 ("To the extent an e-mail...has only been placed in the 'trash bin' or 'recycle bin' of a program, the e-mail is still being 'maintained' by the [governmental body] for purposes of the Act and is still considered 'public information.' However, to the extent an e-mail...has been deleted from the trash bin. . .we believe the e-mail is no longer being 'maintained' by the governmental body and therefore the e-mail is no longer public information").

files within OGC, including those of Neera and Zeena, may be implicated by a public information request. In those instances, Neera and Zeena will gather the responsive information contained within their files.

4. Zeena and Neera (and where necessary, Barry Burgdorf and Helen Bright) review the information provided and determine, in coordination with those who provided the information, whether the information may be released, withheld or some combination thereof. In addition, Zeena and Neera review the information provided to determine if the proprietary interests of a third party are implicated.

- a. If we believe some or all information **should be withheld from disclosure**, we:

- i. Send the Requestor written notice, as required under the Public Information Act, that we are sending the request to the Attorney General for ruling. This correspondence is sent no later than 10 business days from the date the request was originally received. TEX. GOV'T CODE Sec. 552.301(b), (d).
 - ii. Send any affected third party written notice no later than 10 business days from the date the request was originally received (as required under the Public Information Act), to inform the third party that its rights are affected by a public information request submitted to UT System. TEX. GOV'T CODE Sec. 552.305(b). The notice sent to a third party follows a form promulgated by the Attorney General and indicates that we are sending the request to the Attorney General for ruling and explains that the third party may submit comments to the Attorney General in the event that it objects to the disclosure of its information. As required by law, the Requestor receives a copy of the written notice to the third party as well. TEX. GOV'T CODE Sec. 552.305(d)(2)(B).
 - iii. Send a letter to the Attorney General indicating that we are seeking a ruling on a public information request, preserve all exceptions to disclosure and copy the Requestor and any affected third party on this correspondence, as required by the Texas Public Information Act. TEX. GOV'T CODE Sec. 552.301(b), (d); 552.305(d). Within 15 business days, we send substantive briefing to the Attorney General explaining which exceptions to disclosure apply to the information at issue as well as a copy of the documents (or a representative sample
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of the documents at issue with the request). TEX. GOV'T CODE Sec. 552.301(e).

- b. To the extent that we believe some or all of the information **may be released**, within 10 business days of receiving the request, we will:
 - i. Release the information free of charge, typically if there are fewer than 50 pages of releasable information. Often times, the information is released electronically as a .pdf file, via e-mail.⁴ If we do not have an e-mail address for a Requestor, we will mail hard copies of the information to the Requestor, or provide electronic copies via disk that we can mail to the Requestor.
 - ii. Send an invoice to the Requestor per Sec. 552.2615 of the Texas Government Code informing him/her how much it will cost to provide copies of the information if there are more than 50 pages of releasable information. In addition, we inform the Requestor that he or she may choose to inspect the documents to reduce/eliminate cost altogether.
 - iii. Inform the Requestor that there is information that we will make available but that we are unable to do so within the 10-business day time frame and inform the Requestor of a specific date and time when the information will be available, per Sec. 552.221(d) of the Texas Government Code. When that date arrives, we either release the information free of charge or provide an invoice as explained above.
5. Once we submit a request for ruling to the Attorney General, the Attorney General has 45 business days from the date the ruling was requested to issue its ruling. TEX. GOV'T CODE Sec. 552.306. When we receive a ruling from the Attorney General, Zeena and Neera review it and distribute it to those individuals and offices who provided us with the responsive documents so that they are aware of the result and can communicate any concern over the ruling. Typically, Zeena and Neera release any information that is required to be released per the ruling. In rare instances, we file suit against the Attorney General, after consultation with the Executive Offices, if the Attorney General rules that we must release information that we believe is protected from disclosure. In releasing information post-ruling, we will

⁴ If a Requestor wants to receive information in an electronic format, we are required to release it to the individual in this manner, assuming that we: (a) have the technological ability to do so (b) do not have to purchase any hardware or software to accommodate the request, and (c) will not violate any copyright agreement with a third party by providing the Requestor with a copy electronically. TEX. GOV'T CODE Sec. 552.228.

typically either release the information free of charge, if it less than 50 pages or will send an invoice to the Requestor if the information to be released is greater than 50 pages.

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May 2, 2013

MEMORANDUM

TO: Chairman Wm. Eugene "Gene" Powell
Chancellor Francisco G. Cigarroa, M.D.

FROM: Francie Frederick

SUBJECT: Senator Judith Zaffirini's letter of May 1, 2013

You have asked me to describe the process employed by the Office of the Board of Regents for the collection and assembly of documents for purposes of compliance with requests made pursuant to the Texas Public Information Act. I am pleased to describe the process and to respond to Senator Judith Zaffirini's questions as they apply to the Board Office.

Concerning the process normally used by the Board Office to respond to requests and the internal process followed to respond to special legislative requests in 2013:

1. Requests for documents are routed to the Office of General Counsel (OGC) for handling. OGC then advises appropriate offices of the request and any applicable deadlines for the production of documents.
2. Requests sent by OGC to the Board Office are reviewed and processed by Associate General Counsel Karen Rabon. Ms. Rabon immediately advises staff in the Board Office, either named in the request or who might have access to requested records, to compile the requested documents. If the request relates to records that may be held by a member of the Board of Regents, Karen notifies members of the Board of the request and any applicable production deadline.
3. Extensive document searches are performed in the Board office and Karen, often assisted by Assistant General Counsel Kristy Orr, reviews assembled documents to assure they are responsive and complete and do not contain multiple blank pages or unreadable documents prior to providing them to the OGC via a SharePoint site.¹ For unreadable or poorly scanned documents, the Board office seeks a new copy.
4. Prior to delivering responsive information to a requestor, OGC routinely provides the Board Office a copy of any requested materials relating to the Board. On occasion, the Board Office may provide additional background information regarding a document and/or ask OGC whether an Attorney General determination is necessary.
5. For special legislative requests, the process follows this model, with the following exceptions:
 - a. We have involved in the process all Board Office staff with the experience to search for documents.

¹ Due to the volume of responsive information, emailing or printing the information is not a feasible or practical process. Thus, responsive information is uploaded to a SharePoint site, and OGC has immediate access to the information.

- b. We have contracted with two retired former Board Office employees to work 30 hours per week on a temporary basis to assist in the assembly of documents.²
- c. The document production is a very high priority, and employees involved leave this work only to work as necessary on other critical projects at my request or the request of the Chancellor or a member of the Board.
- d. We estimate Board Office staff has spent more than 200 hours searching for and assembling information potentially responsive to legislative requests, with an additional 100 hours of attorney time spent reviewing documents for responsiveness, completeness, and, after review by OGC, a secondary check of confidentiality. This is in addition to similar work done to respond to information requests from the public and the media.
- e. Early in the 2013 process, at Regent Hall's request, the Board Office delivered to him a copy of documents to be delivered in advance of the delivery. That process is no longer being followed.

Senator Zaffirini's letter indicates that documents responsive to her requests may have been intentionally withheld or diverted from production to her by someone at the U. T. System. I am absolutely confident this is not the case for any documents processed by the Office of the Board of Regents or the Office of General Counsel. The professionals in these offices understand the Public Information Act and take their work very seriously.

Please let me know if I can provide further information.

FF/kr

² One of these employees began work on April 30, 2013.