



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 15, 2015

*Via electronic mail*

Chancellor William H. McRaven  
The University of Texas System  
601 Colorado Street  
Austin, Texas 78701-2982

Dear Chancellor McRaven:

On June 2, we received a request to retain outside counsel from Regent Wallace Hall in his official capacity "in connection with his effort to gain access to documents in the possession of the University of Texas System, review of which are necessary for Hall to fulfill his duties as a regent and to exercise an informed judgment on matters entrusted to the regents' decision-making." *See* Wallace L. Hall, Jr., Request To Retain Outside Counsel, June 2, 2015. This letter is to advise you of our granting of the request and our belief that if the System complies with its obligations under state law, a significant portion of this litigation would be not be needed.

First, we granted Regent Hall's request to retain outside counsel. Representation is appropriate because Regent Hall is a member of a governmental body and is claiming the governmental body and other members are obstructing his right under state law to access System records. We are aware of the Board rule that delegates authority from the Board to the Vice Chancellor and General Counsel to execute contracts for legal services "on behalf of the Board." The University of Texas System, Rules and Regulations of the Board of Regents, Rule 10501:2.8. We do not read this rule to require Vice Chancellor and General Counsel to approve Regent Hall's request because he is not requesting representation on behalf of the Board. As to who should represent Regent Hall, in light of our recent attorney general opinion on the matter, Tex. Att'y Gen. Op. KP-0021 (May 12, 2015), as well as our pending representation of the System and its campuses in a variety of matters, we believe it most appropriate for outside counsel to represent him. And because this representation is of Regent Hall in his official capacity, those fees should be paid by the System. Of course, we stand ready to consider your request for representation or request to retain outside counsel in this matter should suit be filed.

Second, and more substantively, we believe if the System and regents complied with the requirements of state law, this litigation would be unnecessary. As we explained in Attorney General Opinion KP-0021, prior Attorney's General Abbott, Cornyn, and Mattox all concluded that "a member of a governing body has an inherent right of access to the records of that body when requested in the member's official capacity and for the member's performance of official duties." *Id.* at 3-4 (quoting Tex. Att'y Gen. Op. Nos. GA-0138 (2004) at 3, JC-0283 (2000) at 3-4, JC-0120 (1999) at 3, JM-119 (1983) at 3). Accordingly, we determined that "unless a state or

federal law requires otherwise, a court would likely conclude that the Board may not prohibit an individual regent from obtaining access to records in the possession of the System that the regent believes are necessary to fulfill his duties as a regent.” *Id.* at 4. The day after we issued KP-0021, the regents amended their rules to require the vote of a majority of the regents to support a regental request for information over which the chancellor or chairman have “concerns”—in direct conflict with the attorney general opinions. The University of Texas System, Rules and Regulations of the Board of Regents, Rule 10801:5.4.5. We believe this rule violates state law by imposing a substantive barrier to a regent’s right to access information he believes necessary to fulfill his regental duties. While reasonable restrictions on timing, copying, and reviewing information are allowable, substantive restrictions such as this rule that go beyond the restrictions in state and federal laws are not. Tex. Att’y Gen. Op. KP-0021 at 4. If there is any lack of clarity in that opinion or its three predecessors as to what state law requires of you and the regents, we hope this letter can resolve it. If the Board removes this substantive barrier, it should narrow the scope of any litigation to whether the System may withhold FERPA-protected information from a regent.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly slanted style.

KEN PAXTON  
Attorney General of Texas

cc. Wallace L. Hall, Jr.