

# McDermott Will & Emery

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Stephen Ryan  
Attorney at Law  
sryan@mwe.com  
+1 202 756 8333

August 15, 2013

The Honorable Carol Alvarado  
Co-Chair, House Select Committee on Transparency in State Agency Operations  
Room E2.810, Capitol Extension  
P.O. Box 2910  
Austin, Texas 78768

The Honorable Dan Flynn  
Co-Chair, House Select Committee on Transparency in State Agency Operations  
Room GN.7, Capitol  
P.O. Box 2910  
Austin, Texas 78768

Re: Regent Wallace L. Hall, Jr.

Dear Co-Chairs Alvarado and Flynn:

My name is Stephen Ryan. I am a partner of McDermott Will & Emery, which has been retained to represent University of Texas System Regent Wallace L. Hall, Jr. in response to your Committee's investigation and consideration of his possible impeachment, pursuant to House Resolution No. 230 and Speaker Straus' Proclamation. I will be working with my colleagues and partners, Mr. Allan Van Fleet, a distinguished member and former Director of the State Bar of Texas and Ms. Anne Marie Turner.

On behalf of Mr. Hall, we are pleased that you both have publicly pledged to conduct a "full and fair investigation" into the matters referred to your Committee. We are impressed that Co-Chair Alvarado vowed that "[t]hese impeachment proceedings will be both thorough and impartial," and that Co-Chair Flynn echoed that "it is important that these proceedings be conducted with decorum and with fair and impartial intent," adding that "[t]ransparency is very important to all Texans."

We are contacting you respectfully to provide our initial input as you consider how to approach this historic assignment.

We believe that Representative Lyle Larson – although not sharing your commitment to impartiality since he has called for Regent Hall to resign before the Committee has heard a single piece of evidence – nevertheless asks the right questions:

*"Exactly what was he looking for and what did he find – and when does it stop?"*

Regent Hall looks forward to the opportunity to tell this Committee exactly what he was looking for, what he found, and what he believes are the next steps on such topics as have animated the members of the Legislature. He will stop only when the University of Texas System (“UT System”) fully shares this Committee’s expressed commitment to transparency to all Texans.

### **Historic Context**

Impeachment under the Texas Constitution and statutes is reserved for “such official delinquencies, wrongs, or malfeasances as justified impeachment by the common law and the practice of the English Parliament and the parliamentary bodies in America. . . . The Constitution, in relation to impeachment, has in mind the protection of the people from official delinquencies or malfeasances.” *Ferguson v. Maddox*, 263 S.W. 888, 892 (Tex. 1924).

In Texas’s most famous example, in 1917, Governor James “Pa” Ferguson was impeached, convicted, and barred from office for misappropriating State funds for his personal use, for inducing a bank to extend loans to him in violation of State banking law limits, and for inducing State banking officials to look the other way.

In Texas’s most recent impeachment, in 1975, Judge O. P. Carrillo, while a sitting judge, was found guilty of committing and concealing fraud in evading personal taxes.

Even Regent Hall’s most vociferous and outspoken critics do not accuse him of abusing his official position for personal gain. Even his worst critics do not accuse him of delinquency in his duties. Indeed, what even his critics implicitly accuse him of is being *too diligent* in performing his duties, bringing to light acts, omissions, misrepresentations, and favoritism within the UT System that some would strongly prefer remain undisclosed.

### **Regent Hall**

Wallace Hall cares deeply about The University of Texas (“UT Austin” or “University”) and the 14 other vital institutions that make up the UT System. He is a proud Longhorn.

He has no political axe to grind. He has never run for public office and has no intention to do so. Although a successful businessman, he is not a regular contributor to political campaigns. His prior public service has been to the Texas secondary and higher education systems.

Regent Hall is dedicated to fulfilling his responsibilities as a Regent to ensure the well-being and advancement of the UT System. The UT System Chancellor and Board of Regents Chairman praise him for his long-term vision, which seeks to expand blended and online learning opportunities and make UT-quality education more available, more affordable, and of a higher quality to more Texans. As Chairman Gene Powell notes, Regent Hall’s “service and dedication and hard work” has “led directly to the U.T. System’s partnership in edX along with Harvard, MIT, and U.C. Berkeley.”

But while advancing UT System's mission to provide a University of the First Class for Texas, Regent Hall has, along with other Regents, discovered areas in which the University falls short in its disclosure and transparency duties, has engaged in secret favoritism in faculty compensation and student admissions, and misreports its gifts and financial condition. We raise some of these issues briefly, so that you may focus upon them more completely in your full and fair investigation.

### **I. Secret Favoritism in Faculty Compensation**

In an anonymous March 17, 2011 letter to Chancellor Francisco Cigarroa, several female faculty members at the UT Law School asked for an investigation of "hidden salary systems that [the law school dean] has used during the last five years to hide salary raises and to discriminate against women and minorities in [the] institution." The letter alleged that law professors who were women and persons of color received substantially less for their work than their white male colleagues, whose public compensation was secretly supplemented by the UT Law School Foundation ("Foundation"). The female faculty members wrote: "the use of 6 million dollars or so to pay mostly white males and a few women who discovered the system and complained is clearly a violation of law." A female law school faculty member who made allegations of gender discrimination was given a forgivable loan by the Foundation and signed a confidentiality agreement as a form of settlement, thereby lending credence to the anonymous allegations.

#### ***Exactly What Was He Looking For?***

Regent Hall "has the legal responsibilities of a fiduciary in the management of funds under the control of institutions subject to the board's control and management." *See* TEX. EDUC. CODE Ann. § 51.352(e) (West 2012). He has been looking for the facts about how the Foundation's secret forgivable loan program operated, who knew about it, and who allowed it to remain undisclosed.

#### ***What Did He Find?***

We now know that Law School Dean Larry Sager was pressured to resign over the secret \$500,000 forgivable loan he took from the Foundation. An October 15, 2012 Report and Recommendations on The Relationship between The University of Texas at Austin School of Law and The University of Texas Law School Foundation detailed many recommended changes for increasing the transparency of that relationship and for ensuring compliance with Texas law forbidding private honorariums to public officers.

The Board of Regents – not just Regent Hall – found the Report insufficient because it failed to investigate who had knowledge (for example, of the forgivable loan program generally, and Dean Sager's loan specifically) and who kept that knowledge secret. The Texas Attorney General's Office has also launched a new investigation of the matter.

Regent Hall's review of UT Austin documents led him to believe based on documents he reviewed that University officials and President Bill Powers knew of Dean Sager's forgivable loan as early as 2009. UT Austin lawyers knew that all faculty compensation had to be

disclosed, but documents reveal that the Foundation's forgivable loan program was actively hidden from the Law School's Budget Committee, Law School faculty, and the public.

When respected figures such as Dean Sager and President Powers are subject to oversight by the Board, and attempts are made to hold them accountable for their decisions, it may be uncomfortable for their strong supporters and friends in this Legislature. But that is not a basis for impeachment.

## **II. Secret Favoritism in Admissions to the University**

It is fully appropriate for members of the Legislature to write recommendations for candidates seeking admission to UT Austin or other parts of the UT System. However, it is inappropriate for legislators or other powerful persons to act outside the normal admissions process, through direct intercession with senior University officials. This can be an abusive and unfair practice, and one that is plainly unfair to all Texans.

You may have read about the "Clout Scandal" at the University of Illinois, in which applicants with well-connected friends and relatives received special consideration for acceptance between 2005 and 2009. An investigation led to the resignation of *every* member of the Board of Trustees, the University President, and others. See Jodi S. Cohen et al., *Clout Goes to College*, CHICAGO TRIBUNE, May 29, 2009, <http://www.chicagotribune.com/news/watchdog/college/chi-070529u-of-i-clout,0,5173000.story>.

This issue is even more critical at UT Austin. This firm is well aware that the University is limited in the number of students it can admit outside the Top Ten Percent Law. We proudly represented The Family of Heman Sweatt as *Amicus Curiae* in support of UT Austin in the recent *Fisher* case before the United States Supreme Court, and we were pleased to receive President Powers' praise and gratitude for our efforts. We hope you will agree it is vitally important that the precious group of admissions over which UT Austin has 'discretion' not be handed out as political favors.

### ***Exactly What Was He Looking For?***

Regent Hall is charged by Texas law to make sure that "campus admission standards [are] consistent with the role and mission" of UT System institutions. See TEX. EDUC. CODE § 51.352(d)(4). In fulfilling that responsibility, he uncovered evidence that certain (but certainly not all) members of the Legislature exerted undue influence over admissions decisions.

### ***What Did He Find?***

He found, unfortunately, that allegations of political influence in the admissions process appear in some instances to be true.

Regent Hall found correspondence on behalf of a Representative inquiring about the admission of the Member's adult son or daughter to a UT Austin graduate school. Although the dean had previously stated the applicant did not meet the school's standards and would need to either retake the graduate admission exam or attend another graduate school first, upon information and

belief, the son or daughter was in fact admitted without retaking the test or attending another school.

Regent Hall found other correspondence in which a Senator sought special consideration for an applicant who had been rejected, but was strongly supported by another Senator. In the communication, the Senator seeking special treatment reminded the UT Austin official of recent legislative action taken to benefit The University. Upon information and belief, the rejected applicant was subsequently admitted to UT Austin.

At the request of Chancellor Cigarroa, the UT System Office of General Counsel has opened a formal inquiry into these matters.

Regent Hall is informed and believes that some in the Legislature seeking his removal either knew that he had seen the relevant documents – or would soon discover them as a result of his diligent inquires.

### **III. Systemic Inflation and Misreporting of Non-Monetary Gifts**

As discussed above, Regent Hall has the responsibilities of a *fiduciary* in the management of funds of the UT System. *See* TEX. EDUC. CODE § 51.352(e). This includes – as he knows as a businessman – ensuring proper financial reporting to prospective students, Texas taxpayers, and this Legislature.

#### ***Exactly What Was He Looking For?***

Regent Hall reviewed UT Austin’s capital campaign totals and uncovered that the University was improperly reporting non-monetary gifts in touting the success of its fundraising efforts.

#### ***What Did He Find?***

Regent Hall found that some reported charitable gifts were inflated or non-existent. Notably, he found a “phantom” donation exceeding \$100 million misreported in the University’s capital campaign. He requested an audit, which led to further discovery of more than \$224 million in improperly reported software grants over a period of six years, as determined by the Council for Advancement and Support of Education (“CASE”). UT Austin was instructed to remove the misrepresented gifts from the totals reported to CASE.

Artificially inflated gifts may produce higher rankings for UT Austin, just as steroids may inflate a slugger’s statistics. These benefits are short lived, but the resulting loss of reputation is not.

Inflating gifted claims could also mislead the Legislature in making appropriations for the UT System. Not only does it give a false impression of the balance sheet, but depreciation – especially accelerated depreciation – of an overvalued asset overstates the institution’s annual operating margin ratio, leading the Legislature (and taxpayers) to believe its operating costs are greater than they really are. This, of course, can lead to misallocation of Texas tax dollars, which is particularly important at a time when universities across the State compete for

desperately needed funding. See Renée C. Lee, *Tuition Revenue Bond Bill Sought To Expand and Upgrade Campus Facilities*, HOUSTON CHRONICLE, August 4, 2013.

#### **IV. Lack of Transparency in Providing Information to Regents and to the Public Under the TEXAS PUBLIC INFORMATION ACT**

##### ***Exactly What Was He Looking For?***

In the course of gathering information to fulfill his duty to oversee the operations of the UT System, including the matters noted above, Regent Hall looked into how UT Austin responds to information requests by Regents and how the University responds to open records requests under the TEXAS PUBLIC INFORMATION ACT (“TPIA”).

##### ***What Did He Find?***

Regent Hall first found that the University’s responses to Regents’ requests for information needed to be improved greatly. He found that in certain instances, UT Austin did not respond to regental requests, or responded slowly and incompletely.

He found that he could get quicker responses to information requests if he made them not as a Regent, but if he (and others) made them as Texas citizens under the TPIA, with its statutory deadlines for compliance.

He further found, by reviewing responses to TPIA requests made by unrelated third parties, systemic noncompliance and inefficiency.

The TPIA provides that:

Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees.

TEX. GOV’T CODE ANN. § 552.001 (West 2012). The TPIA embodies nothing less than the fundamental principle of governmental transparency – the special provenance of this Committee. It is imperative that UT System abide by this law and policy.

By statute, the Board of Regents “may provide for the administration [and] organization [of] The University of Texas System in such a way as will achieve the maximum operating efficiency of such institutions and entities.” TEX. EDUC. CODE ANN. § 65.11 (West 2012).

House Resolution No. 230, as proposed by Representative Jim Pitts asserts that Regent Hall “may have abused [his] office by making numerous unreasonably burdensome, wasteful, and intrusive requests for information of certain University of Texas System institutions as a member of the board of regents as well as on his own behalf.” The Chairman of the Board of Regents –

the person in the best position to judge – disagrees: “Regent Hall’s reviews of records have resulted in suggestions for process improvement and better governance at the U.T. System and at U.T. institutions. He has provided observations about U.T. System and institutional inefficiencies and compliance concerns to Chancellor Cigarroa and to me.” Exhibit A. Chancellor Cigarroa already acted on Regent Hall’s suggestion to allow public online access to TPIA requests made to the UT System and its institutions. More of Regent Hall’s suggestions are currently under consideration by the Chancellor and the Board. Accordingly, Regent Hall’s oversight into the UT System’s noncompliance with the TPIA is hardly “burdensome” or “wasteful”; it is clearly in line with his statutory authority and duty as a Regent. His reviews and suggestions have led to increased government transparency and enhanced compliance with state law.

### **This Is a Case of Historical Significance**

We would like to remind you of the historical importance of an investigation and potential impeachment proceeding on a matter like this. The Texas Constitution does not contain a standard for grounds for impeachment, but Article II, section 4 of the United States Constitution provides: “all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.” We believe such a standard is appropriate and balances the need to remove public officials but also protect them from being removed for policy disagreements. Of equal importance, our country has never had a practice of using impeachment to silence policy critics or members of the opposition party.

In 1804, the United States House of Representatives impeached United States Supreme Court Justice Samuel Chase because of rulings he made in his official duties as a judge. The House impeached Justice Chase because a number of legislators disagreed with his actions, not because his actions were unlawful. In the words of former Supreme Court Chief Justice William Rehnquist, “[h]ad the Senate, which tried and acquitted Chase in 1805, chosen instead to convict him, a long shadow would have been cast over the independence of the judiciary.” See William H. Rehnquist, *Impeachment Clause: A Wild Card in the Constitution*, 85 Nw. U. L. Rev. 903, 904 (1991). As we are sure you are aware, at no point in Texas history has an appointed official in the Executive Branch been successfully impeached by the Legislature.

If the Legislature proceeds with the impeachment process because certain vocal legislators and other critics disagree with Regent Hall’s lawful actions made in the discharge of his official duties as a Regent, “a long shadow would [be] cast over the independence” of the Regents and other members of the Texas executive branch and judiciary. There can be no doubt that there is a direct nexus between Regent Hall’s successful and legitimate work on the Board and the allegations put forward by certain Members of the Legislature who seek to silence Regent Hall and keep these matters out of the public eye.

### **Rules of the Committee’s Proceedings**

We return to our appreciation of your commitment to conduct a “full and fair investigation” of these matters and that the proceedings will be “both thorough and impartial.”

We appreciate your commitment to conduct a “full and fair investigation” of these matters and that the proceedings will be “both thorough and impartial.” This commitment, of course, is fundamental to due process and in keeping with Texas impeachment history.

When the allegations against Governor Ferguson were referred to a House committee, the resolution provided not only that the committee be given authority to employ counsel, but also that:

any officer whose transgressions may be deemed the subject of inquiry shall have the right to be represented by counsel, and shall be entitled to participate in the conduct of the investigation with the same powers, duties and privileges as belong to any attorney-at-law representing parties in any of the courts of this State, and each shall have the right and the duty of said committee, or any individual member thereof, to interrogate any and all witnesses brought before it in such manner and to such an extent as may be necessary to develop the full truth and all the facts related to the matters herein enumerated, and such other matters as said committee may investigate.

HOUSE JOURNAL, REGULAR SESSION, 35<sup>TH</sup> LEGISLATURE, 1917, pp. 1017-18.

To be “full and fair” and “thorough and impartial,” these proceedings must afford Regent Hall the benefit of the same procedures and powers given to those presenting the charges against him. By way of example, the Co-Chairs should assure Regent Hall that he will stand on equal footing with Committee counsel and be able to:

1. Interrogate any and all witnesses called by the Committee, in depositions and hearings;
2. Call additional witnesses, including members of the Legislature;
3. Subpoena witnesses from within the State, including members of the Legislature;
4. Bring witnesses from other states to testify on the duties of college and university trustees and regents;<sup>1</sup>
5. Review all documents considered by the Committee;
6. Submit documents for consideration by the Committee;
7. Request that the Committee subpoena documents relevant to the investigation.

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<sup>1</sup> Representative Martinez Fischer stated his desire for witnesses from various institutions, such as the University of Virginia, “so he could ascertain how they dealt with outside interference into their academic operations.” While disagreeing that oversight by an institution’s governing body is “outside interference,” we agree that the views of others in the academic community, including present and former members of the Association of Governing Boards of Universities and Colleges, is relevant.



The Honorable Dan Flynn

August 15, 2013

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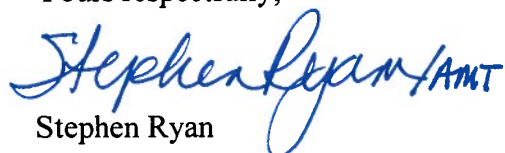
As befits the Committee's name, we are confident that you intend to be transparent in conducting these proceedings. Representative Four Price stated: "I just want to be very mindful as we move through this process that due to the nature of what we do that everything be as public as possible." We agree. We believe Regent Hall and the people of Texas have the right to review the content of all Committee meetings. In keeping with that commitment to transparency, you have our permission to post this letter publicly.

### **Conclusion**

We appreciate your understanding of our concerns and we look forward to an open line of communication with you and the Committee. Please include my partners on any correspondence on this matter sent to me. If you have any questions for any of us, please feel free to contact me at any time by phone at (202) 756-8333 or by email at [sryan@mwe.com](mailto:sryan@mwe.com).

Thank you for your consideration.

Yours respectfully,

A handwritten signature in blue ink that reads "Stephen Ryan" followed by the letters "AMT" in a smaller font.

Stephen Ryan

Enclosures

cc: Allan Van Fleet, Esq.  
Anne Marie Turner, Esq

# **EXHIBIT A**



**The University of Texas System**  
Nine Universities. Six Health Institutions. Unlimited Possibilities.

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Wm. Eugene Powell, Chairman  
U. T. System Board of Regents  
201 West Seventh Street, Suite 820  
Austin, Texas 78701-2981  
Phone: (512) 499-4402 Fax: (512) 499-4425  
[bor@utsystem.edu](mailto:bor@utsystem.edu); [www.utsystem.edu/bor](http://www.utsystem.edu/bor)

July 15, 2013

HAND DELIVERED

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 Honorable Jim Pitts  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Dear Chairman Pitts:

I read, with some concern, your opinion piece about U. T. Regent Wallace Hall published in the *Austin American-Statesman* on July 7, 2013. To the extent the article and your opinion about Regent Hall's service to the U. T. System are based upon misinformation provided by anyone associated with The University of Texas System or a University of Texas institution, I apologize and feel I must take this opportunity to provide you with the facts.

Clearly, Regent Hall's activities are misunderstood and I fear may have been intentionally mischaracterized to you. In addition to the short summary below, I am available at any time to talk with you, in person or by phone.

I would be very pleased to discuss Regent Hall's activities on the Board, including his desire to fully understand the structure and operations of the U. T. System and his very active role in providing insightful input and advice to the System and the Chancellor. Regent Hall's efforts extend to bringing the U. T. System into a competitive position nationally; especially related to offering blended and online learning opportunities to U. T. students. In fact, Regent Hall's chairmanship of the Blended and Online Learning Task Force in 2011 led directly to the formation of the U. T. System Institute for Transformational Learning which in turn led to the U. T. System's partnership in edX along with Harvard, MIT, and UC Berkeley. In addition, I would point out Regent Hall's excellent service to the Board in terms of time and energy. I appreciate his Board service and his dedication and hard work designed to fulfill his fiduciary obligations.

I do not know how many U. T. Austin documents Regent Hall has reviewed. Suffice it to say he has read and reviewed a substantial number. Please know, however, that the vast percentage of these documents are files on Texas Public Information Act (TPIA) requests containing information that would be readily available, upon request, to members of the public, the press, and the Legislature, as well as to any member of the U. T. Board. Regent Hall did not seek information protected by FERPA or HIPAA. Exclusion of this information required attention from the U. T. Austin staff dedicated to responding to TPIA requests, and Regent Hall allowed the U. T. Austin staff significant time to make the redactions. Offers of assistance from the U. T. System Office of General Counsel and the Office of the Board of Regents to Kevin Hegarty, who oversees U. T. Austin's open records office, are well documented. As noted in the *attached* letter from Chancellor Francisco Cigarroa to President William Powers, a copy of which has previously been provided to your office, Mr. Hegarty agreed to help from the Office of General Counsel in June 2013.

[www.utsystem.edu](http://www.utsystem.edu)

I am aware of no instance of Regent Hall inappropriately sharing information that is confidential by law with others outside of the U. T. System and encourage you to identify any specific concerns you may have in this area. Regents may access information that is confidential by law, including any information that is personal and/or sensitive, as may members of the Legislature. Chancellor Cigarroa's attached letter thoroughly addresses this issue as well.

Regent Hall's reviews of records have resulted in suggestions for process improvement and better governance at the U. T. System and at U. T. institutions. He has provided observations about U. T. System and institutional inefficiencies and compliance concerns to Chancellor Cigarroa and to me. At Regent Hall's recommendation, Chancellor Cigarroa directed the implementation of public online access to TPIA requests made to the U. T. System and all U. T. institutions. In addition, based on Regent Hall's research, the Chancellor is evaluating the need for a compliance review of the TPIA response process throughout the System across all 15 institutions. If that review is ultimately deemed necessary by the Chancellor, the review will begin in the Fall of 2013. Regent Hall has encouraged us to be sure that the institutions have support to fully staff the TPIA functions with very qualified individuals and that the U. T. System provides assistance to smaller U. T. institutions that may not have a dedicated open records attorney. The Chancellor agrees and is exploring how this can be accomplished.

A Regent may provide advice or suggestions to the Chancellor and, if the Chancellor concurs that the advice or action is sound, the Chancellor may implement the advice based on his judgment. As noted previously, Regent Hall has provided Chancellor Cigarroa with a number of good ideas and advice based on Regent Hall's research. Several of those ideas ended up in the Framework for Advancing Excellence. The Chancellor is also considering other recommendations from Regent Hall as well as recommendations and advice from other members of the Board of Regents.

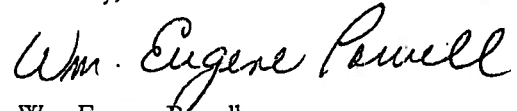
Finally, let me address the review of the relationship between the U. T. Austin School of Law and the U. T. Law School Foundation. As you know, the report prepared by the former Vice Chancellor and General Counsel was set aside by the Board in March 2013, following findings of factual errors in the original report. Several of the errors were identified by Regent Hall as he read contradictory information or information that was more specific in the material found in the U. T. Austin TPIA files. The *attached* March 2011 anonymous letter was not previously known to the Board nor was it mentioned in the original report to the Board. The discovery of this letter was a key factor in the Board's action to seek an investigation outside of the U. T. System. There are other significant concerns with the original report that are best left, at this time, with the Office of the Attorney General as that office is conducting a full review of the relationship. Chairman Pitts, on a personal note, please allow me to assure you that I have read, listened to, reviewed, and considered all the material and information that have come to light since the Board received the original report on the relationship with the Law School Foundation. This review has convinced me that the Board had no other choice than to proceed with the investigation by the Attorney General if we are to uphold our oaths of office.

I hope this letter is of some help to you and will clear up some of the misinformation I am afraid you have been provided. I also want you to know that this letter has been carefully reviewed for accuracy by Chancellor Francisco Cigarroa, U. T. System Vice Chancellor and General Counsel *ad interim* Dan Sharporn, and General Counsel to the Board Francie Frederick. If you should have questions of any of us, we will gladly visit with you.

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July 15, 2013

In closing, please allow me once again to thank you sincerely for your dedication and service to the State of Texas. We truly appreciate your contribution to the success of this great State and to all of us who are fortunate enough to call ourselves Texans.

Sincerely,

A handwritten signature in cursive script that reads "Wm. Eugene Powell".

Wm. Eugene Powell  
Chairman

WEP:em

Attachments

- 1) Chancellor's letter to President Powers
- 2) March 2011 anonymous letter (not previously released to the public)

c: Governor Rick Perry  
Lt. Governor David Dewhurst  
Speaker Joe Straus III  
Chairman Dan Branch  
Chairman Kel Seliger



The University of Texas System  
Nine Universities. Six Health Institutions. Unlimited Possibilities.

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Office of the Chancellor  
601 Colorado Street, Austin, Texas 78701-2982  
Phone: 512 499 4201 Fax: 512 499 4215

July 9, 2013

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

Mr. William C. Powers, Jr.  
President, The University of Texas at Austin  
MAI 400 (G3400)  
CAMPUS MAIL

Dear Bill:

I write to share concerns I have related to a June 30 article in the *Houston Chronicle* entitled, "Regent's demands have led to release of private data" (copy attached). This article, which quoted Kevin Hegarty, has now been cited and quoted by Representative Jim Pitts, Chairman of the House Committee on Appropriations, in an editorial to the *Austin American Statesman* on Sunday, July 7, "Regent abused transparency" (copy attached). We do not know if Mr. Hegarty was misquoted or his statements taken out of context, or if he simply misunderstood what occurred when the U. T. System Office of General Counsel (OGC) assumed responsibility for handling one of Regent Wallace Hall's document requests, but some facts need to be clarified for the record.

As the attached email string shows, Mr. Hegarty and his staff expressed concern that they would not have enough time to comply with the requirements of the Texas Public Information Act (TPIA) if they had to permit Regent Hall, acting as a member of the Board, to review documents that they had gathered in response to Regent Hall's TPIA request made as a private citizen (Iwanski email, June 21, 2013, 6:30 PM, email string attached). To enable Regent Hall to see the documents as requested and ensure that U. T. Austin would be able to fully and timely comply with the TPIA requirements, Dan Sharphorn, Vice Chancellor and General Counsel *ad interim*, offered to lend OGC personnel to assist U. T. Austin in order to make up for any time that was lost while the documents were being reviewed by Regent Hall (Sharphorn email, June 22, 2013, 7:17 PM, email string attached). Ultimately, U. T. Austin asked Mr. Sharphorn to sign a delegation and agreement letter (copy attached) indicating that he would assume full responsibility for producing documents and timely compliance with the TPIA.

The requested agreement was signed and the documents taken to OGC, where they were processed by the OGC open records attorneys in compliance with the TPIA.

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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Mr. William C. Powers, Jr.  
July 9, 2013  
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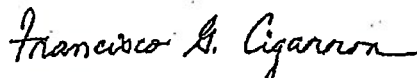
Before Regent Hall was permitted to see any of these documents, they were reviewed by OGC attorneys and all information protected by FERPA or HIPAA was removed or deleted. Other confidential information was also pulled before it was provided to Regent Hall, such as checks that might include bank routing and account numbers. U. T. Austin had also been invited to consult with Mr. Sharphorn regarding any information that it believed should be withheld from Regent Hall (Sharphorn email, June 22, 2013, 2:45 PM, email string attached), but did not identify any additional information to be withheld.

It must be noted that members of the Board of Regents see and have access to a great deal of "confidential" information. Indeed, as you know, some information that one may consider "confidential" is even available to the public under the TPIA. Unless there is a specific statute limiting the ability of officials within a university from seeing certain information, as is the case with FERPA and HIPAA, members of the Board of Regents may see such material. As you also know, individual members of the Legislature have precisely the same authority to request, and be provided with, copies of "confidential" information under Sec. 552.008 of the TPIA.

In addition, Regent Hall has made a number of suggestions to my office for consideration, including improved TPIA websites, and help with enhancing efficiencies in how TPIA requests are handled on our campuses. His suggestions are appreciated and are under review.

I request that you share this with Mr. Hegarty and ask that he let us know if he has any questions. I feel compelled to share these important facts with you for both accuracy and for your understanding of the process.

With respect,



Francisco G. Cigarroa, M.D.  
Chancellor

FGC/jbp  
Attachments

cc: Dr. Pedro Reyes  
Mr. Dan Sharphorn  
Ms. Francie Frederick

HOUSTON CHRONICLE, Sunday, June 30, 2013

"REGENT'S DEMANDS HAVE LED TO RELEASE OF PRIVATE DATA"

PATRCIA KILDAY HART

The custodian of records at the University of Texas at Austin said he has been ordered by lawyers for the UT System to release to Regent Wallace Hall documents that include information protected as confidential by law, including W-4 forms, bank routing numbers and sexual assault complaints. Kevin Hegarty, vice president and chief financial officer for the University of Texas at Austin, said he has been under pressure from the system office to release documents according to arbitrary deadlines set by Hall. The quick turnaround has not allowed time for open records lawyers to redact the private information of staff and employees, he said.

Hegarty said he has protested releasing records from his "chain of custody" because he faces civil and criminal penalties for misusing information in his care.

Despite his objections, UT System officials acting in response to Hall's sweeping demands for documents have not only taken them off the UT- Austin campus for Hall's review, but allowed the Dallas businessman to copy them, Hegarty said.

"They knew good and well it was going to include all that (protected information)," Hegarty said. He cited a May 28 letter from UT System General Counsel Dan Sharporn stating that Hall wished to see "all original file documents, both public and confidential." The letter states that Hall does not want to see information protected by federal privacy law, or HIPAA, the health privacy law, but Hegarty said other laws deem information to be confidential.

Impeachment move

Last week, Hall's "burdensome, wasteful, and intrusive" records requests were cited in a resolution for impeachment filed by Rep. Jim Pitts, R-Waxahachie, and a proclamation of investigation issued by House Speaker Joe Straus.

Pitts' resolution also referred to Hall's admission that he failed to disclose lawsuits against him in his official regent application, alleging that Hall may have obtained office through a misrepresentation of facts. The House Select Committee on Transparency in State Agency Operations has initiated an investigation.

Hegarty's account of the handling of confidential information contradicts a System statement issued last Monday in response to a Houston Chronicle query.

"Regent Hall has been clear that he does not want to see confidential student information, confidential patient information, or other statutorily protected information, which would include Social Security numbers, bank routing numbers, etc," Jenny La-



Coste-Caputo wrote in an email. "If any such information were to be inadvertently provided, it would be promptly returned or destroyed. The attorney for the Board of Regents is aware of one batch of documents that contained FERPA (a federal privacy law) information sent by UT Austin. As soon as the error was discovered, the information was returned to the institution."

#### Concern over access

Hegarty called the statement a surprise and said he did not know to what documents LaCoste-Caputo was referring.

Friday, Caputo said in an email that in one instance, system attorneys "offered to assist" UT-Austin with the "production of documents in response to Regent Hall's requests." In that case, the system took responsibility for "preparing them, including protecting confidentiality as necessary. ..."

Her email did not explain why Sharphorn wrote in his letter that Hall wanted to see "all original file documents, both public and confidential."

Pitts on Friday expressed concern that Hall was accessing confidential documents. "If true, these actions by Regent Hall are troubling to say the least, and would be another example of him abusing the powers of his office under the guise of transparency, when his real aim is to create disruption and to sow discord," he said. "Rather than focusing on improving the UT System and on being the best possible steward of taxpayer dollars, Regent Hall appears to continue his disregard for whatever laws may be inconvenient to him. I urge my colleagues who are on the House Committee on Transparency in State Agency Operations to fully investigate this matter."

Sen. Kel Seliger, R-Amarillo, who chairs the Senate Higher Education Committee said regents are entitled to a broad range of records. "If he is getting anything that is maybe illegal, then that is a problem." He also said he would be concerned if Hall has shared confidential information.

For the past year, Hall has demanded to see all records sought through public open records requests. Pitts and other have characterized the requests as "a witch hunt" aimed at finding an excuse to fire UT-Austin President William C. Powers.

Hall did not return calls to his Dallas office. In an interview with the Texas Tribune, however, he said his "initial review of the pre-existing open records documents was part of an effort to make system-wide improvements in how we manage our TPIA requests. Over time, it has become a very important source of information for the board and the chancellor in our official duties, and this is especially true with regard to the law school, the foundation and the administration. What exists in these files clearly demonstrates to me, other regents and the chancellor that we did not have the full and complete story."

## Officials took control

The university's open records policy states that "when information is confidential, it shouldn't be shared with others, including other university employees, without a legitimate business reason."

Hegarty said, "It was shocking to me to read the argument that he is trying to help us get better." The regent has seen 400,000 documents and not communicated any suggestions for improvements, he said.

When Hall made his first request, Hegarty's office estimated it would take several weeks to comply. He was informed Hall did not want to wait that long and system officials took control.

Hegarty said he was concerned because the records "left our hands and no attorney could verify I was getting back everything I sent over." When Hall made a second request, Hegarty insisted in May that the regent come to his office to view the documents.

In his most recent request, Hall asked to see all correspondence between UT-Austin and any legislator or member of Congress from Jan. 1, 2009, to the present.

## Perry's office comments

A spokesman for Gov. Rick Perry expressed support for Hall and suggested the House investigation was a bid to head off embarrassing revelations about politicians.

"It is as appropriate for a university system's board of regents to demand transparency from member schools, as it is for the Legislature to demand transparency from a board of regents," said Perry spokesman Rich Parsons. "However, if media reports are true that Chairman Pitts' efforts could be motivated by attempts to conceal emails that include information about members of the Legislature requesting admission to the UT law school on behalf of others, this is a very alarming development."

[patti.hart@chron.com](mailto:patti.hart@chron.com) [twitter.com/pattihart](https://twitter.com/pattihart)

AUSTIN AMERICAN STATESMAN, Sunday, July 7, 2013

"REGENT ABUSED TRANSPARENCY"

BY JIM PITTS - TEXAS HOUSE OF REPRESENTATIVES

Transparency in the operations of a public institution — be it a legislative body, city council, or a university system board of regents — empowers taxpayers with facts and information that better allow them to hold public officials accountable.

Transparency, however, can also be exploited. University of Texas System Regent Wallace Hall Jr. has launched repeated inquiries that in reality are burdensome, wasteful and obstructive. And he was anything but transparent when he omitted important information on his application to become a regent. While I believe regents and other executive appointees should have broad latitude to oversee agencies and institutions, I also believe that Hall's behavior on the UT Board demands further scrutiny from the Texas Legislature.

The fact is, Hall has made request after request from the UT System's flagship institution, the University of Texas at Austin claiming that he simply wants to vet the procedures used by the system and its component institutions in responding to public information requests. However, if recent reports are true, Hall has now gone through over 400,000 documents, all from UT-Austin, and has not made one recommendation or suggestion. The tremendous burden that he has placed on the people trying to carry out UT's core mission — educating students — has done nothing to promote or further that mission.

Hall says he wants to ensure that the full story is being told about now-discontinued compensation practices at the UT-Austin law school. This issue was already thoroughly investigated by the general counsel of the UT System, and no wrongdoing was found. Yet Hall and other regents have demanded further investigation, this time from the Texas attorney general. Beyond that, Hall seems to be conducting his own shadow inquiry of the same issue by demanding more and more documents from UT officials.

It appears that Hall is not looking for every side to a story; rather, he is going to look at a story enough times until he finds the side that most suits his purposes. How is that for transparency?

The University of Texas System is one of the nation's largest systems of higher education, with nine academic institutions and six health institutions that educate more than 216,000 students and employ 87,000 faculty and staff. As the governing board of the entire system, the Board of Regents bear a tremendous amount of responsibility. It is perfectly reasonable for an individual regent or the board to seek improvements in the operations of any UT campus.

However, it is not appropriate for someone to gain information through their position as a regent and then share that information with others outside the system. In fact, that would be illegal. The Houston Chronicle has reported that UT System lawyers recently ordered the chief financial officer at UT-Austin to release to Hall documents that include confidential information, including bank routing numbers and sexual assault complaints. The CFO told the Chronicle that the quick turnaround demanded by Hall did not allow him to redact employees' private information, and that Hall has been allowed to take documents off-campus and make copies of them.

This report is troubling and is another example of Hall creating disruption and sowing discord, in the name of transparency. Yet when it came to his own application for one of the most

prestigious appointments in state government, Hall's interest in transparency seemingly dissipated. Earlier this year, the Texas Tribune reported that Hall did not disclose numerous lawsuits — as required — before his appointment to the UT System Board was confirmed by the Texas Senate. Taxpayers expect legislators to ensure that Hall and other appointees provide appropriate leadership for the public institutions and state agencies they oversee. House Speaker Joe Straus granted the House Committee on Transparency in State Agency Operations the authority to investigate matters relating to misconduct, malfeasance, misfeasance, abuse of office, or incompetency of appointed officers such as Regent Hall, and to propose appropriate articles of impeachment against such officers if the committee determines that grounds for impeachment exist.

I encourage the committee to conduct a full investigation in accordance with the authority granted to it by the speaker. Furthermore, if grounds for impeachment are found, I expect that my colleagues in the House will join me in preferring articles of impeachment for the Senate to consider.

Perhaps the committee will conclude that Hall has used his power as a regent to uncover waste, fraud, or abuse in the operations of UT System institutions. However, I worry that they will find he has employed exactly those tactics through his role as a regent to further personal and political agendas, and that UT and the State of Texas have suffered enough because of it.

Let's see what real transparency will uncover. Then we might know whose definition of the word fits best.

Pitts, R-Waxahachie, is chairman of the House Appropriations Committee

EMAIL STRING (In reverse chronological order.)

From: Sharphorn, Dan  
Sent: Monday, June 24, 2013 4:02 PM  
To: Shaunessy, Linda - UT Austin  
Cc: Longoria, Carol A; Iwanski, Margo; Ohlendorf, Patti - UT Austin; Angadicheril, Zeena  
Subject: RE: Document Requests

Thank you Linda. What you say is largely correct, with a few clarifications, see below. I will ask Zeena to give you a call about picking up the documents. Dan

Dan Sharphorn  
Vice Chancellor and General Counsel ad interim The University of Texas System  
201 West 7th Street  
Austin, Texas 78701  
512-499-4462  
[dsharphorn@utsystem.edu](mailto:dsharphorn@utsystem.edu)

-----Original Message-----

From: Shaunessy, Linda I [<mailto:Shaunessy@austin.utexas.edu>]  
Sent: Monday, June 24, 2013 3:22 PM  
To: Sharphorn, Dan  
Cc: Longoria, Carol A; Iwanski, Margo; Ohlendorf, Patti - UT Austin; Angadicheril, Zeena  
Subject: RE: Document Requests

Dear Dan: In Kevin's absence, I would like to respond to your email. I would like to confirm my understanding of what actions you on behalf of UT System are directing UT Austin to take.

1: You have determined that Regent Hall must immediately have access to all records which this University is collecting in response to The Texas Public Information Request dated June 6, 2013, but received on June 7, 2013.

Yes, Regent Hall has asked for access today.

2: On behalf of UT System, you are directing UT Austin to immediately have the open records staff box up all records which are being collected in response to Mr. Hall's Texas Public Information Act request which he made as an individual.

Yes, that is what I am asking.

3: UT Austin must box up all records immediately and produce the records to the UT System.  
Yes.

4: The submitted records will include records which may be confidential under The Texas Public Information Act, HIPAA, FERPA, common law privacy rights, statutory provisions and third party rights.

No, you are not to include FERPA or HIPAA protected records. As you know, Regent Hall has asked that such records not be included. However, if you have not done a FERPA and HIPAA review of the documents, OGC will take responsibility for doing so.

5: UT System attorneys will have custody and control of all records and will fully comply with The Texas Public Information Act and will assert all confidential, privacy, HIPAA and FERPA protections by briefing the Attorney General before the 15th day.

As I have noted, we will promptly return the documents to your office and will assign personnel to assist to make up for any time lost by your having released the documents for review by

Regent Hall. Other than that, the handling of the documents will proceed as normal. I also assume that there may be additional responsive documents that you will continue to retrieve.  
6: You will decide which documents Regent Hall receives as a Regent versus the documents that Mr. Hall can receive as an individual in response to the Texas Public Information Act request which Mr. Hall submitted as an individual.

We have identified which documents he receives as a Regent, and your office and ours will work together on the TPIA request. We will ensure that Regent Hall understands which documents are confidential under the TPIA.

7: UT System has chosen not to wait for a decision from The Attorney General regarding Mr. Hall's Texas Public Information Act request as an individual before providing Mr. Hall the documents in his Regent capacity.

That is correct.

8: UT System will have custody and control of all original records tendered by The University of Texas to UT System.

Correct.

If you agree that what I have stated is correct, then please direct a person from UT System to come to 102Main and pick up the documents in accordance with my understanding.

Sincerely,  
Linda Shaunessy

Linda Shaunessy  
Business Contracts Administrator  
512-471-8200

-----Original Message-----

From: Sharphorn, Dan [<mailto:dsharphorn@utsystem.edu>]  
Sent: Monday, June 24, 2013 3:08 PM  
To: Shaunessy, Linda I  
Cc: Longoria, Carol A; Iwanski, Margo; Ohlendorf, Patricia; Angadicheril, Zeena  
Subject: FW: Document Requests

Linda, FYI. Your prompt response will be greatly appreciated. Dan

Dan Sharphorn  
Vice Chancellor and General Counsel ad interim The University of Texas System  
201 West 7th Street  
Austin, Texas 78701  
512-499-4462  
[dsharphorn@utsystem.edu](mailto:dsharphorn@utsystem.edu)

-----Original Message-----

From: Sharphorn, Dan  
Sent: Monday, June 24, 2013 12:19 PM  
To: Hegarty, Kevin P ([hegartykp@austin.utexas.edu](mailto:hegartykp@austin.utexas.edu)); Ohlendorf, Patti - UT Austin  
Cc: Iwanski, Margo ([Iwanski@austin.utexas.edu](mailto:Iwanski@austin.utexas.edu)); Longoria, Carol A ([C.Longoria@austin.utexas.edu](mailto:C.Longoria@austin.utexas.edu)); Angadicheril, Zeena  
Subject: FW: Document Requests

Greetings Kevin and Patti: I spoke briefly with Carol Longoria and Linda Shaunessy from Kevin's staff about Regent Hall's request to review documents today. They expressed their concern that releasing certain documents to Regent Hall in his capacity as a member of the Board of Regents was somehow illegal, or could put them in jeopardy of acting illegally with respect to Regent Hall's TPIA request. I discussed the matter with them and reviewed it with our open records attorney and am convinced that there are no legal issues barring them from complying with the request. Please have all of the documents, which are identified below and which include all documents collected thus far in response to Regent Hall's TPIA request, ready for pick up asap.

Thank you, Dan

Dan Sharphorn  
Vice Chancellor and General Counsel ad interim The University of Texas System  
201 West 7th Street  
Austin, Texas 78701  
512-499-4462  
[dsharphorn@utsystem.edu](mailto:dsharphorn@utsystem.edu)

-----Original Message-----

From: Sharphorn, Dan  
Sent: Monday, June 24, 2013 8:11 AM  
To: Hegarty, Kevin P ([hegartykp@austin.utexas.edu](mailto:hegartykp@austin.utexas.edu))  
Cc: Ohlendorf, Patti - UT Austin; Iwanski, Margo ([iwanski@austin.utexas.edu](mailto:iwanski@austin.utexas.edu)); Longoria, Carol A ([C.Longoria@austin.utexas.edu](mailto:C.Longoria@austin.utexas.edu)); Angadicheril, Zeena  
Subject: FW: Document Requests

Good morning Kevin. I assume we are set on the "in active use" documents for this morning.  
Thanks, Dan

Dan Sharphorn  
Vice Chancellor and General Counsel ad interim The University of Texas System  
201 West 7th Street  
Austin, Texas 78701  
512-499-4462  
[dsharphorn@utsystem.edu](mailto:dsharphorn@utsystem.edu)

-----Original Message-----

From: Sharphorn, Dan  
Sent: Saturday, June 22, 2013 7:17 PM  
To: 'Hegarty, Kevin P'  
Cc: Ohlendorf, Patti - UT Austin; Iwanski, Margo; Longoria, Carol A; Angadicheril, Zeena  
Subject: RE: Document Requests

Kevin, I am confident that your open records staff is working very hard and is fully committed to compliance with the TPIA. To alleviate the concern that Regent Hall's review on Monday of the documents that Margo notes below as being "in active use" will jeopardize their compliance with the TPIA's time limitations, my office will loan you open records personnel to make up for any time lost by Regent Hall's review of these documents. We also can assure you that Regent Hall will review the documents of concern first and we will return them immediately upon completion

of the review. Please have your staff clearly identify these documents and keep them separate so that their review and handling can be expedited.

Thank you, Dan

Dan Sharphorn  
Vice Chancellor and General Counsel ad interim The University of Texas System  
201 West 7th Street  
Austin, Texas 78701  
512-499-4462  
[dsharphorn@utsystem.edu](mailto:dsharphorn@utsystem.edu)

-----Original Message-----

From: Hegarty, Kevin P [<mailto:hegartykp@austin.utexas.edu>]  
Sent: Saturday, June 22, 2013 5:08 PM  
To: Sharphorn, Dan  
Cc: Ohlendorf, Patti - UT Austin; Iwanski, Margo; Longoria, Carol A; Angadicheril, Zeena  
Subject: Re: Document Requests

Dan,

Compliance with the law trumps all. If certain docs are necessary to meet TPIA requests they will not be provided until the after the TPIA request is met. They will be provided to Regent Hall after the request is fulfilled. Surely Regent Hall would want us to comply with all laws and public requests first?

Kevin

On Jun 22, 2013, at 3:01 PM, "Sharphorn, Dan" <[dsharphorn@utsystem.edu](mailto:dsharphorn@utsystem.edu)> wrote:

> Kevin, I think concern was raised in response to this part of Margo's message below:  
>  
> "At this time, the documents are in active use and it is impossible to make them available in response to a regent request at the same time. These records are needed on campus and time is of the essence in order to comply with the Act."  
>  
> Regent Hall expects to be able to see those documents as well.  
>  
> Thank you, Dan  
>  
> Dan Sharphorn  
> Vice Chancellor and General Counsel ad interim The University of Texas  
> System  
> 201 West 7th Street  
> Austin, Texas 78701  
> 512-499-4462  
> [dsharphorn@utsystem.edu](mailto:dsharphorn@utsystem.edu)  
>  
>  
> -----Original Message-----  
> From: Hegarty, Kevin P [<mailto:hegartykp@austin.utexas.edu>]



> Sent: Saturday, June 22, 2013 4:57 PM  
> To: Sharphorn, Dan  
> Cc: Ohlendorf, Patti - UT Austin; Iwanski, Margo; Longoria, Carol A;  
> Angadicheril, Zeena  
> Subject: Re: Document Requests

>  
> Dan,

>  
> Not sure the reason for all the notes after informing you yesterday of the status. We will have ready on Monday what we have ready. Anything not ready will be made ready as we are able to do so.

>  
> Kevin

>  
> On Jun 22, 2013, at 2:45 PM, "Sharphorn, Dan" <[dsharphorn@utsystem.edu](mailto:dsharphorn@utsystem.edu)> wrote:

>> Dear Kevin and Patti: Please be advised that Regent Hall, in his capacity as a member of the UT Board of Regents, expects to be able to view, on Monday, all documents that have been compiled thus far in response to the TPIA request he submitted on June 6, copy attached. In particular, he expects to be able to review all documents collected that are responsive to request 1.a.-d. in the attached, including any that would be withheld in response to the TPIA request. As he is making this request in his capacity as a member of the Board of Regents, the only information that is to be withheld is that protected by FERPA or HIPAA. Please consult with me if you think there is other information that must be withheld from a member of the Board of Regents acting in the capacity of a member of the Board.

>>

>> If you have any questions at all, please do not hesitate to call me. I can be reached by cell at 512-826-7591 at any time.

>>

>> Thank you,

>>

>> Dan

>>

>> Dan Sharphorn

>> Vice Chancellor and General Counsel ad interim The University of

>> Texas System

>> 201 West 7th Street

>> Austin, Texas 78701

>> 512-499-4462

>> [dsharphorn@utsystem.edu](mailto:dsharphorn@utsystem.edu)

>>

>> From: Iwanski, Margo [<mailto:iwanski@austin.utexas.edu>]

>> Sent: Friday, June 21, 2013 6:30 PM

>> To: Sharphorn, Dan; Hegarty, Kevin P

>> Cc: Longoria, Carol A; Angadicheril, Zeena

>> Subject: RE: Document Requests

>>

>> Dan,

>>

>> On Monday, June 24, UT Austin will make available the original files of all completed open records request for May 2013. Given the limited amount of staff resources available, we have

created a spreadsheet of the pending May 2013 open records requests and provided the current status for each. Note that in order to make these records available, three staff members are currently working tonight to review files for FERPA and HIPPA. Once the process is complete, I will send another email.

>>

>> As for Regent Hall's regental request, UT Austin has been collecting and reviewing thousands of pages of documents in response to the Wallace Hall's request (attached). We have spent many hours sorting these documents into categories of exceptions and identifying the public documents. Today was the 10 day statutory deadline and we had to send 3rd party notifications to all legislative members in both the House and Senate. We need to continue to sort and identify the remaining documents and notify any further 3rd parties. Note that our final brief is due to the AG on Friday, June 28. At this time, the documents are in active use and it is impossible to make them available in response to a regent request at the same time. These records are needed on campus and time is of the essence in order to comply with the Act.

>>

>> Margo

>>

>> From: Sharphorn, Dan [<mailto:dsharphorn@utsystem.edu>]

>> Sent: Friday, June 21, 2013 4:04 PM

>> To: Hegarty, Kevin P

>> Cc: Iwanski, Margo; Longoria, Carol A; Angadicheril, Zeena;

>> Chatterjee, Neera

>> Subject: RE: Document Requests

>>

>> Thanks Kevin.

>>

>> Dan Sharphorn

>> Vice Chancellor and General Counsel ad interim The University of

>> Texas System

>> 201 West 7th Street

>> Austin, Texas 78701

>> 512-499-4462

>> [dsharphorn@utsystem.edu](mailto:dsharphorn@utsystem.edu)<<mailto:dsharphorn@utsystem.edu>>

>>

>> From: Hegarty, Kevin P [<mailto:hegartykp@austin.utexas.edu>]

>> Sent: Friday, June 21, 2013 3:08 PM

>> To: Sharphorn, Dan

>> Cc: Iwanski, Margo; Longoria, Carol A

>> Subject: Re: Document Requests

>>

>> Dan,

>>

>> Certain records will be available, Margo will elaborate the specifics of exactly what will and will not be available.

>>

>> Please let us know who will pick them up and will be the delegated custodian of record so we can prepare the necessary delegation. Also let us know what time you would like to pick them up. Anytime from 9:30 am on would be fine on Monday.

>>

>> Thank you,

>> Kevin

>>

>> On Jun 21, 2013, at 11:51 AM, "Sharphorn, Dan"

<[dsharporn@utsystem.edu](mailto:dsharporn@utsystem.edu)<<mailto:dsharporn@utsystem.edu>>> wrote:

>> Hello Kevin. Helen, our usual document request communicator is out, so you are hearing from me. As you know, Regent Hall has requested, in his capacity as a citizen, the production of certain emails to or from President Powers or Nancy Brazzil (copy attached). He made the same request in his capacity as a member of the Board of Regents. He would like produced, on Monday, June 24, when he is in Austin, all of the documents compiled to date in response to either request. That is, as a member of the Board, he would like to see whatever you have collected to date, regardless of whether it was collected in response to his TPIA request or in response to his request as a member of the Board.

>>

>> Thank you and your staff for your efforts,

>>

>> Dan

>>

>> Dan Sharphorn

>> Vice Chancellor and General Counsel ad interim The University of

>> Texas System

>> 201 West 7th Street

>> Austin, Texas 78701

>> 512-499-4462

>> [dsharporn@utsystem.edu](mailto:dsharporn@utsystem.edu)<<mailto:dsharporn@utsystem.edu>>

>>

MAR 17 2011

UT Austin

FILE OR DISCARD

Dear Chancellor Cigarroa

This letter is written by several female faculty members at the school of law. We write this letter because we ask you to investigate two hidden salary systems that our dean has used during the last five years to hide salary raises and to discriminate against women and minorities in our institution. These raises have been funneled to about one third of the faculty, mostly to white males, and mostly to individuals the dean has installed on his committees. To the extent that women and persons of color have received such "off book" salaries, they are far smaller than those awarded to the white males. Normally, we would expect the president to keep the dean in check, but as far as we know, our dean has managed to receive cooperation from the administration and the trustees of the law school foundation. We learned about this system from a faculty member who hired out of state counsel to threaten a lawsuit against the university. Her lawyers discovered this system and she threatened to disclose this information to the higher education committee. Apparently she settled but before she signed the settlement, she informed us about the "off book" compensation systems.

The first source of hidden compensation comes in the form of "off book" or "off budget" special deals that have been given to approximately 20 faculty. These deals are called, housing allowances, extra summer compensation, stipends, and some have a set duration but many last forever. None of these special deals are disclosed in public documents and as far as we know they were not disclosed to the budget committee. They were raises paid to faculty out of the scrutiny of any review committee or the president's office. These annual amounts range from \$10,000 to \$60,000. These are done intentionally as additional compensation in order to avoid transparency.

The second source of hidden compensation is in the form of signing bonuses paid as a loan and then forgiven over a three or four year period. Some of these are paid to new faculty but many of them were given to existing faculty members. The justification is market demand to retain these faculty members, but such bonuses range from \$100,000 to \$500,000. Few if any of these faculty members had a competing offer. And, as a third benefit, most of these faculty are given leave time that is far more generous than other members of the faculty. They teach the fewest number of students and do not write proportionate more scholarship than others. The shocking part of this compensation is that it has come from the law school foundation. The use of 6 million dollars or so to pay mostly white males and a few women who discovered the system and complained is clearly a violation of law. It is a violation of the public trust. To fail to disclose this information to the sources that public UT compensation is a violation of the open records act.

One could imagine special deals to attract a few superstars. But to pay one third of the faculty on a scale hidden to public view and unavailable to the rest of the faculty is wrong.

We ask you to investigate. Contact the law school accountant (Ms. Biar) and ask for these figures. Although we have only been told by one who threatened a lawsuit and we have not seen the figures, we believe the figures to be shocking. Will we need to threatened gender discrimination litigation to achieve salary parity? How could this happen during the last three years of one of the more significant depressions of our economy? What would happen if this came to the light of the legislature? We trust that you will get to the bottom of this hidden compensation system at your institution.