



November 19, 2021

R. Brooks Moore
Deputy General Counsel
The Texas A&M University System
Connally Building
301 Tarrow Street
6th Floor (Mail Stop 1230)
College Station, Texas 77840

Sent via U.S. Mail and Electronic Mail (RBM@tamus.edu)

Dear Mr. Moore:

This letter is an effort to procure compliance with three requests issued under the Texas Public Information Act (“PIA”) by FIRE¹ to the Texas A&M University System and to Tarleton State University. I trust that you are the appropriate recipient for this letter. If you are not, I respectfully request that you direct this letter to the appropriate individual.

The relevant requests relate to two issues: First, the requests relate to Tarleton State’s response to a frivolous litigation threat issued by a former professor, Michael Landis, over student newspaper *Texan News Service’s* coverage of students’ allegations that Landis sexually harassed them—allegations that culminated in a recommendation that he be terminated. Landis entered into a separation agreement with Tarleton State on September 25, 2018, releasing the Texas A&M University System and waiving “all claims and liabilities associated with or related to his employment.” Despite his waiver and the relevant statute of limitations, Landis retained new counsel some three years later and threatened to sue over articles published in 2018.² Undeterred by the First Amendment, Tarleton State compelled the student newspaper to remove the articles from the internet.

Second, the requests seek documentation related to the governance structure of *Texan News Service*. FIRE understands that the newspaper is currently housed within an academic department, that Tarleton State had considered allowing it to become a student organization, and that—after compelling *Texan News Service* to remove the articles about Landis from the

¹ The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America’s college campuses.

² Letter from Diana R. Warshow, Esq., Nesenoff & Miltenberg, LLP, to Texan News Service, July 27, 2021, available at <https://www.thefire.org/michael-landis-takedown-notice-to-texas-news-service-july-27-2021>.

internet—Tarleton State ultimately decided not only to maintain the newspaper’s current organizational structure, but imposed additional governance restrictions on student editors’ editorial freedom.

On October 5, 2021, FIRE issued three PIA requests:

1. A request to Tarleton State (1) seeking emails and communications mentioning Texan News Service or Landis, (2) notes, memoranda, and other records related to TNS or Landis, (3) Landis’ personnel record, and (4) any disciplinary records or agreements regarding Landis. (“Request 1,” referred to in Tarleton State’s Open Records Portal as F002355-10052, and enclosed as Exhibit A).
2. A request to Tarleton State for (1) “all emails and other communications . . . pertaining to any demand, request, or other correspondence from attorney Diana R. Warshow on behalf of her client Michael Landis,” (2) other records related to Warshow’s demand, and (3) records related to a request for comment on the Landis situation by journalist Nell Gluckman (“Request 2,” referred to in Tarleton’s Open Records Portal as F002356-100521, and enclosed as Exhibit B).
3. A request to the Texas A&M University System substantively reflecting Request 1. (“Request 3,” referred to in Texas A&M’s Open Records Portal as F002439-101521, and enclosed as Exhibit C).

For each of these requests, FIRE elected not to waive the requirement that the responding agency obtain a decision from the Office of the Attorney General before withholding responsive information subject to a discretionary exception.³ Where a governmental body fails to seek an attorney general decision, the requested information “is presumed to be subject to required public disclosure and must be released” in the absence of “compelling” circumstances.⁴ Regarding Requests 1 and 2, Tarleton State did not seek such a decision.

While Tarleton State has produced some records in response to Requests 1 and 2, those records, enclosed as Exhibit D, were incomplete. Tarleton State withheld responsive records in their entirety without explanation.

For example, Tarleton State should have produced, but did not, the September 30, 2021 memo from Tarleton State Provost and Executive Vice President for Academic Affairs to its Dean of the College of Liberal & Fine Arts, related to the governance and editorial independence of *Texan News Service*.⁵ It also failed to produce the March 28, 2018, memorandum issued by Tarleton State’s Associate Vice President for Academic Affairs—a document we know exists because it was published by the Tarleton State student newspaper.⁶

³ TEX. GOV’T CODE § 552.301.

⁴ TEX. GOV’T CODE § 552.302.

⁵ Memo. from Dr. Karen R. Murray, Provost and Vice Pres., Academic Affairs, Tarleton State Univ., to Dr. Eric Morrow, Dean, College of Liberal & Fine Arts, Tarleton State Univ., Sept. 30, 2021 (on file with author).

⁶ Memo. from Dr. Dwayne Snider, Assoc. Vice Pres., Academic Affairs, Tarleton State Univ., to Complainant 2, Student, Tarleton State Univ., Mar. 28, 2018, *available at* <http://texannews.net/wp-content/uploads/2018/03/032818-Decision-to-Complainant2-re-062717-Complaint.pdf>. That the record

These records are presumed to be subject to required disclosure and must be promptly released. The exclusion of specific records FIRE knows to exist leads us to question whether Tarleton State failed to produce other responsive documents of which we are generally aware, such as communications and notes related to the review of the status of *Texan News Service*, which are referenced in the September 30, 2021 memo.

FIRE would prefer to resolve this matter promptly without the need for further action, and we look forward to receiving complete responsive records to Requests 1 and 2 by Tuesday, November 30, 2021. We trust that Tarleton State will take this opportunity to comply with its obligations under the Texas Public Information Act.

Sincerely,



Gabe Walters
Attorney, Foundation for Individual Rights in Education

Cc: Kent Styron, Public Information Officer, Tarleton State University
Elinore T. Tecson, Assistant General Counsel, Tarleton State University

Encl.

has been made public by another entity does not relieve a government body from the obligation to produce it in response to a public records request. The PIA, to the contrary, provides that a body can meet its burden under the PIA by “referring a requestor to an exact Internet location . . . on a website maintained by the governmental body. . . .” TEX. GOV’T CODE § 552.221(b-1). This document instead demonstrates that the requested information would be subject to disclosure even had the government body timely sought an attorney general decision.

Exhibit 1

Additional Information

**Describe in detail the Record(s)
Requested:**

This is a request for records pursuant to the Texas Public Information Act (Gov't Code § 552.001, et seq.). This request seeks records related to the Texas A&M System's involvement in the operations of Texan News Service. RECORDS REQUESTED I request the following records: *All emails and other communications sent or received by Texas A&M System officials, between July 15, 2021 and October 5, 2021 that mention or pertain to "Texan News Service," "TNS," or "Landis." *All notes, memoranda, reports, and other records generated or held by System officials, dated between July 15, 2021 and October 5, 2021 that mention or pertain to "Texan News Service," "TNS," or "Landis." *The personnel file for Michael Landis. *Any record reflecting any disciplinary records, investigation report (including the investigation report issued on or about February 26, 2018, as well as the March 9, 2018, request for clarification made by Dr. Dwayne Snider, and the March 20, 2018, final investigation report), or any agreement concerning Michael Landis. Please note that this request does not seek a search of records held by student publications, including the Texan News Service. These requests should in no way be construed to include a review or search of email accounts, websites, or other forms of data or document retention which are controlled by the Texan News Service or other student media, students, alumni, or faculty members, nor by governmental or advisory bodies controlled by the same. Any search should be limited to documents held by the administration and/or its staff members. Fee waiver request: This request is made on behalf of the Foundation for Individual Rights in Education, a nonprofit and nonpartisan organization that works to preserve civil liberties on college campuses. We request that Texas A&M System waive any fees or costs associated with this request. This request concerns a matter of public interest, namely the First Amendment rights of student media at public universities. The public interest would

be well-served by granting a fee waiver. The request is not being sought for a commercial purpose, but is instead sought by a nonprofit organization with the intent of providing the public with information concerning the conduct of government actors as that conduct pertains to civil liberties in higher education. FIRE has the means to disseminate the information sought to the public through its website, where it regularly publishes news and studies concerning government affairs. Further, pursuant to Gov't Code § 552.275 (l), FIRE may not be required to pay costs for public records requests. Further, FIRE qualifies under Gov't Code § 552.275(j)(1), as FIRE's website is a news medium engaged in the dissemination of news and information to the general public. If a fee waiver is not granted, please apprise me if the estimated costs will exceed \$5.00. Please also provide a W-9 form. Production of records: If possible, I request that responsive records be produced in an electronic format, preferably by email. If it is necessary to send records by mail, my address is: Foundation for Individual Rights in Education Attn: Lindsie Rank 510 Walnut Street Suite 1250 Philadelphia, PA 19106 Request for expedited processing: The records pertain to a matter of public importance and current debate. Providing expedited production of the records will facilitate the public understanding of these matters before they are fully resolved. Any undue delay in production will undermine the purpose of the public records laws, which serve to allow public input and oversight of government affairs. Appeal information: If you deny any portion, or all, of this request, please provide me with a written explanation of the reason(s) for your denial, including a citation to each specific statutory exemption you believe justifies the refusal to release the information and notify me of the appeal procedures available to me under the law. If you conclude that portions of the records that I request are exempt from disclosure, please release the remainder of such records for inspection and copying, redacting

only the portion or portions that you claim are exempt. For any exemptions, please note whether they are discretionary and, if so, the basis for refusing to exercise discretion in favor of granting access. Request for Privilege Log: If any otherwise responsive documents are withheld on the basis that they are privileged or fall within a statutory exemption, please provide a privilege log setting forth (1) the subject matter of the document; (2) the person(s) who sent and received the document; (3) the date the document was created or sent; and (4) the basis on which the Texas A&M System contends it is entitled to withhold the document from production. We're hopeful that the Texas A&M System will provide a timely and complete response. If any part of this request is vague or ambiguous, or if we could otherwise be of assistance in interpreting or narrowing this request, please do not hesitate to contact me by phone or email.

Please be as specific as possible, including dates, names, numbers, or other identifiers that will assist in locating the information you seek.

Preferred Method to Receive Records: Electronic via Records Center

Do you agree to the redaction of information that is subject to mandatory exceptions, provided such redactions are clearly labeled on information you receive?: YES

Do you agree to the redaction of information that is subject to discretionary exceptions, provided such redactions are clearly labeled on information you receive?: NO

Exhibit 2

Additional Information

**Describe in detail the Record(s)
Requested:**

To whom it may concern: This is a request for records pursuant to the Texas Public Information Act (Gov't Code § 552.001, et seq.). This request seeks records related to a demand by attorney Diana R. Warshow that the Texas News Service remove a list of articles from its website. RECORDS REQUESTED I request the following records: *All emails and other communications sent or received by university officials pertaining to any demand, request, or other correspondence from attorney Diana R. Warshow on behalf of her client Michael Landis. This includes, but it is not limited to, any correspondence concerning the Texas News Service. *All notes, memoranda, reports, and other records generated or held by university officials in connection with the aforementioned demand, request, or correspondence. *All notes, memoranda, reports, emails, or other records generated as a result of the request for comment from Nell Gluckman in August 2021 relating to Michael Landis or the Texas News Service. Please note that this request does not seek a search of records held by student publications, including the Texas News Service. These requests should in no way be construed to include a review or search of email accounts, websites, or other forms of data or document retention which are controlled by the Texas News Service or other student media, students, alumni, or faculty members, nor by governmental or advisory bodies controlled by the same. Any search should be limited to documents held by the administration and/or its staff members. Fee waiver request: This request is made on behalf of the Foundation for Individual Rights in Education, a nonprofit and nonpartisan organization that works to preserve civil liberties on college campuses. We request that Tarleton State University waive any fees or costs associated with this request. This request concerns a matter of public interest, namely the First Amendment rights of student media at public universities. The public interest would be well-served by granting a fee waiver. The request is not being sought for a commercial purpose, but is instead

sought by a nonprofit organization with the intent of providing the public with information concerning the conduct of government actors as that conduct pertains to civil liberties in higher education. FIRE has the means to disseminate the information sought to the public through its website, where it regularly publishes news and studies concerning government affairs. Further, pursuant to Gov't Code § 552.275 (l), FIRE may not be required to pay costs for public records requests. Further, FIRE qualifies under Gov't Code § 552.275(j)(1), as FIRE's website is a news medium engaged in the dissemination of news and information to the general public. If a fee waiver is not granted, please apprise me if the estimated costs will exceed \$5.00. Please also provide a W-9 form.

Production of records: If possible, I request that responsive records be produced in an electronic format, preferably by email. If it is necessary to send records by mail, my address is: Foundation for Individual Rights in Education Attn: Lindsie Rank 510 Walnut Street Suite 1250 Philadelphia, PA 19106 Request for expedited processing: The records pertain to a matter of public importance and current debate. Providing expedited production of the records will facilitate the public understanding of these matters before they are fully resolved. Any undue delay in production will undermine the purpose of the public records laws, which serve to allow public input and oversight of government affairs.

Appeal information: If you deny any portion, or all, of this request, please provide me with a written explanation of the reason(s) for your denial, including a citation to each specific statutory exemption you believe justifies the refusal to release the information and notify me of the appeal procedures available to me under the law. If you conclude that portions of the records that I request are exempt from disclosure, please release the remainder of such records for inspection and copying, redacting only the portion or portions that you claim are exempt. For any exemptions, please note whether they are discretionary and, if so, the basis for refusing to exercise discretion in favor of granting access. Request for

Privilege Log: If any otherwise responsive documents are withheld on the basis that they are privileged or fall within a statutory exemption, please provide a privilege log setting forth (1) the subject matter of the document; (2) the person(s) who sent and received the document; (3) the date the document was created or sent; and (4) the basis on which Tarleton State University contends it is entitled to withhold the document from production. We're hopeful that Tarleton State University will provide a timely and complete response. If any part of this request is vague or ambiguous, or if we could otherwise be of assistance in interpreting or narrowing this request, please do not hesitate to contact me by phone or email.

Please be as specific as possible, including dates, names, numbers, or other identifiers that will assist in locating the information you seek.

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YES

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NO

Exhibit 3

Additional Information

**Describe in detail the Record(s)
Requested:**

To whom it may concern: This is a request for records pursuant to the Texas Public Information Act (Gov't Code § 552.001, et seq.). This request seeks records related to the Tarleton State University's involvement in the operations of Texan News Service. RECORDS REQUESTED I request the following records: *All emails and other communications sent or received by university officials, including but not limited to, James Hurley, Amanda Tollett, Karen Murray, Javier Garza, Kim McCuistion, Lori Beaty, Gabriel Cagwin, Kelli Styron, and Eric Murrow —in his capacity as Dean of the College of Liberal and Fine Arts (not in his capacity as a professor), between July 15, 2021 and October 5, 2021 that mention or pertain to "Texan News Service," "TNS," or "Landis." *All notes, memoranda, reports, and other records generated or held by university officials, including but not limited to, James Hurley, Amanda Tollett, Karen Murray, Javier Garza, Kim McCuistion, Lori Beaty, Gabriel Cagwin, Kelli Styron, and Eric Murrow—in his capacity as Dean of the College of Liberal and Fine Arts (not in his capacity as a professor), dated between July 15, 2021 and October 5, 2021 that mention or pertain to "Texan News Service," "TNS," or "Landis." *The personnel file for Michael Landis. *Any record reflecting any disciplinary records, investigation report (including the investigation report issued on or about February 26, 2018, as well as the March 9, 2018, request for clarification made by Dr. Dwayne Snider, and the March 20, 2018, final investigation report), or any agreement concerning Michael Landis. Please note that this request does not seek a search of records held by student publications, including the Texan News Service. These requests should in no way be construed to include a review or search of email accounts, websites, or other forms of data or document retention which are controlled by the Texas News Service or other student media, students, alumni, or faculty members, nor by governmental or advisory bodies controlled by the same. Any search should be limited to documents held by the administration and/or its staff members. Fee waiver

request: This request is made on behalf of the Foundation for Individual Rights in Education, a nonprofit and nonpartisan organization that works to preserve civil liberties on college campuses. We request that Tarleton State University waive any fees or costs associated with this request. This request concerns a matter of public interest, namely the First Amendment rights of student media at public universities. The public interest would be well-served by granting a fee waiver. The request is not being sought for a commercial purpose, but is instead sought by a nonprofit organization with the intent of providing the public with information concerning the conduct of government actors as that conduct pertains to civil liberties in higher education. FIRE has the means to disseminate the information sought to the public through its website, where it regularly publishes news and studies concerning government affairs. Further, pursuant to Gov't Code § 552.275 (l), FIRE may not be required to pay costs for public records requests. Further, FIRE qualifies under Gov't Code § 552.275(j)(1), as FIRE's website is a news medium engaged in the dissemination of news and information to the general public. If a fee waiver is not granted, please apprise me if the estimated costs will exceed \$5.00. Please also provide a W-9 form.

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citation to each specific statutory exemption you believe justifies the refusal to release the information and notify me of the appeal procedures available to me under the law. If you conclude that portions of the records that I request are exempt from disclosure, please release the remainder of such records for inspection and copying, redacting only the portion or portions that you claim are exempt. For any exemptions, please note whether they are discretionary and, if so, the basis for refusing to exercise discretion in favor of granting access.

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YES

Do you agree to the redaction of information that is subject to discretionary exceptions, provided such

NO

redactions are clearly labeled on information you receive?: