

NEWS RELEASE

Senatorial District 21



State Capitol Office
P.O. Box 12068
Austin, Texas 78711
512/463-0121
512/475-3738 FAX

Southern District Office
P.O. Box 627
Laredo, Texas 78042
956/722-2293
956/722-8586 FAX



Senator Judith Zaffirini

FOR IMMEDIATE RELEASE

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Contact: Will Krueger, 512/463-0121

Statement from Senator Judith Zaffirini Responding to Letter from UT Regent Chair Gene Powell to the Attorney General

(AUSTIN) — The letter of April 5 from Gene Powell, Chair of The University of Texas Board of Regents, to the Attorney General confirms my suspicions: He and some of his fellow regents apparently are not responding to open records requests in good faith and deliberately are withholding public information.

I wonder: Have all the regents submitted all the relevant documents through the proper channels? Are they labeling some documents as “confidential” simply because they could prove embarrassing? Did these regents or their designees withhold documents submitted appropriately by system personnel? Did they undergo the required training for regents? Do they understand the law? Why do they think they can get away with refusing to comply with legislative requests for public information?

It is ironic indeed that the very regents whose unreasonable, damaging and distracting demands for what they describe as “accountability” and “transparency” are holding themselves to a double standard. Their secrecy smacks of defiance of our revered Public Information Act and disrespect for the legislators who exercise our legislative right of access to confidential information.

How far will these regents go to avoid disclosing public information? If they are unhappy with the Attorney General's response, will they challenge the law in court? If so, are they prepared to spend their own money in that quest?

At no time since my initial public information requests in 2011 has anyone from the UT Board of Regents or the UT System informed us that they were withholding any documents. They simply withheld them. This is wrong.

While the specific regents and personnel involved in this response process have employed countless delay tactics to date, this one is not only the most innovative, but also the most outrageous. Perhaps they do not understand the difference between "inconvenient" and "confidential."

I hope that their legal experts on this matter truly are advising them not only about the requirements and legislative intent of the Public Information Act, but also about the consequences of non-compliance. Their attorneys' responsibility clearly is to advise their clients and certainly not to acquiesce to any intent to thwart legislators or to be dismissive of our requests. An obvious question is, are these regents following the advice of their general counsel, are they listening to outside forces or are they ignoring sound internal legal advice?

Chair Powell's letter likely will be perceived negatively by advocates of transparency and open records. I assume that it was prompted by my most recent public information request as a public citizen. That started the 10-day clock, requiring them to respond timely and to submit any "confidential" information to the Attorney General. Now Chair Powell is requesting that the Attorney General recognize a new level of confidentiality beyond what has been held to be accessible by the Legislature. An attorney who reviewed the letter said it reminded him of the form of executive privilege asserted by President Richard Nixon during the Watergate scandal. My only conclusion is that they have something to hide.

This is especially true as I have repeatedly signed confidentiality agreements that bind me to nondisclosure of such information, so they should have no fear of submitting attorney-client communications or attorney work product, which the courts have upheld as accessible by legislators under Section 522.008 of the Government Code. Even when I disagreed with their labeling of "confidential" documents, I treated them as such. Eventually I was proven right: The material they submitted confidentially was deemed NOT to be confidential.

I cannot help but wonder if all of the regents knew that Chair Powell was going to send this letter to the Attorney General. An action of this magnitude should be considered by the board in its entirety, not taken by a single regent or small group of regents. I certainly hope that they complied with the Texas Open Meetings Act.

Many of us wonder: Has a minority of rogue regents hijacked the UT Board of Regents? Clearly, the subject of complying with the Public Information Act should be on the agenda for a called teleconference meeting or no later than for the next regular board meeting in May. This subject certainly is more important, has more serious repercussions and merits more attention than other matters that recently caused Chair Powell to call an “emergency” teleconference meeting on Super Bowl Sunday. I urge him to arrange this discussion, especially because I assume that the regents who are not involved in these activities would expect to participate in decisions of this magnitude.

It is timely to repeat my suggestion that the Attorney General provide an overview of the Texas Public Information Act for the UT Board of Regents and appropriate personnel. It is equally timely to add a review of the Texas Open Meetings Act. I specifically urge Chair Powell to comply with legislative requests for information in good faith, to arrange an overview of the Texas Public Information Act and the Texas Open Meetings Act for regents and appropriate personnel and to add the subject to the agenda for the next regular or called meeting of the UT Board of Regents.

The questionable mission at the heart of this current controversy has been described as a “witch hunt” led by some regents, but no witch presides over UT-Austin. Instead, we are blessed by the leadership of President Bill Powers, whose national stature is reflected partly by his serving as President-Elect of the Association of American Universities. He should be honored, not hounded; applauded, not attacked; respected, not disrespected; and he should be encouraged to stay, not to go. The Texas Legislature reflected our appreciation of him, and all of the regents should.

What is most unfortunate about this conflict is its potential of inflicting irreparable damage to our state’s premier national research university and to our state. How will it impact UT’s efforts to recruit and to retain the most outstanding faculty, researchers and students? What will be the impact on UT’s national and international stature and reputation?

Fortunately, many of us are motivated by the beautiful and inspiring words emblazoned on the UT tower: “Ye shall know the truth, and the truth shall set you free.” (John 8:32) We will be relentless in our search for the truth and in our defense of excellence for higher education in general and at The University of Texas at Austin in particular.