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November 16, 2020

Office of the Attorney General  
Open Records Division  
209 W. 14th Street  
Austin, Texas 78701

RE: **Response to Letter from Requestor**  
Collin County Community College: Public Information Act Request,  
October 13, 2020  
(Collin College Reference # CC0010)

Dear Attorney General:

Collin County Community College District n/k/a Collin College (“Collin College” or the “College”) previously requested a decision under the Public Information Act (“the Act”), Chapter 552 of the Texas Government Code, concerning information requested by requested by Mr. Adam Steinbaugh (the “Requestor”) received by the College on October 13, 2020. In a letter dated October 27, 2020, Collin College sought to withhold information under Sections 552.103, 552.107 and Texas Rule of Evidence 503.

Mr. Steinbaugh filed a response to the College’s letter on November 10, 2020. At this time, the College seeks to address the assertions in Mr. Steinbaugh’s letter, specifically those regarding the application of Section 552.103.

**Collin College meets the requirements of Section 552.103 of the Act.**

In this matter, Collin College has met the two requirements of the litigation exception set out in Section 552.103 of the Act. Specifically, the College: (1) reasonably anticipated litigation at the time of the Request given the public statements of the underlying employee at issue; and (2) the requested materials directly relate to the anticipated litigation in accordance with Texas Government Code Section 552.103.

Substantial evidence existed on the date of the Request to demonstrate the College reasonably anticipated litigation. While Mr. Steinbaugh indicates in his letter that the employee’s hiring of an attorney is “a step the professor has not taken” yet, the employee’s own statements on social

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media, in which she is clearly identified, directly contradict this assertion. According to a publicly available Twitter post from October 10, 2020 (three days before the Request), previously submitted as **Exhibit D** in the College's original letter, she states clearly in reference to criticism of her comments, "*All lawyered up.*" Similarly, in another social media post from October 12, 2020 (one day before the Request), the employee references a communication from the College's district president to her stating the following: "*The college President replied to this email (only to me), but I'll spare you all reading that one. It will go to my lawyers.*" She goes on to state that "*This is why you get professional insurance and join @AAUP even if you're not in a collective bargaining state.*" See Updated Social Media Posts, attached as **Exhibit J**. The employee's reference is to the American Association of University Professors (AAUP), a professional membership group, that in some states or locations serves as a collective bargaining representative, which provides legal support and attorney referrals to professors in higher education.

As previously explained, the employee's initial Tweets and ensuing comments led to substantial public reaction on social media and several complaints sent to the College. The College sought to meet, via Zoom, with the employee to discuss her use of a College email system to contact and counterattack several external individuals who responded to her comments on social media. That request was sent to the employee at **7:31 a.m.** on October 13, 2020. See Email Exchange, attached as **Exhibit K**. As previously detailed in the College's Oct. 27<sup>th</sup> letter to the Attorney General's office, at **9:00 a.m.** on October 13, 2020, the employee specifically responded: "*I cannot speak with you without my attorney present (unless I am advised differently).*" See *id.* While Mr. Steinbaugh points out that the College responded that there is "no need to have your lawyer present", that statement only weighs in the College's favor in determining whether litigation was reasonably anticipated by the College since the employee was unequivocally indicating that she sought to bring *her* attorney into this matter, which put the College on notice that legal action could be forthcoming. The fact that the employee's prior multiple statements about retaining legal counsel were, in fact, misleading because she had not actually hired any attorney as of October 13<sup>th</sup> (or as of Mr. Steinbaugh's letter to the Attorney General dated November 9<sup>th</sup>) is immaterial to the analysis under Section 552.103.

When the College received the Request at 1:26 p.m. on October 13<sup>th</sup>, the College reasonably anticipated litigation. The Request came from Mr. Steinbaugh as a Director with the Foundation for Individual Rights in Education ("FIRE"). In addition to advocacy and support for the rights of students and faculty detailed in the Nov. 10<sup>th</sup> letter, the Requestor's organization, FIRE, also provides services through the FIRE Legal Network, the call for submission of cases, and the filing of amicus briefs.<sup>1</sup> FIRE lists its cases by institution of higher education.<sup>2</sup> FIRE has been maintaining a case file under its "Legal" tab directly related to the underlying matter between the employee and the College.<sup>3</sup> Notably, the Request itself included a request for a privilege log in the general style of those requested under Texas Rule of Civil Procedure 193.3 or Federal Rule

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<sup>1</sup> See FIRE Legal tab, available at: <https://www.thefire.org/legal/>.

<sup>2</sup> See FIRE All Cases tab, available at: <https://www.thefire.org/cases/?limit=all>.

<sup>3</sup> See FIRE, Legal, Cases, Free Speech tab, available at: <https://www.thefire.org/cases/collin-college-email-alludes-to-discipline-under-personnel-policies-after-tweets-criticizing-vice-president-pence/>.

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of Civil Procedure Rule 26.5(b)(5)(a). *See* Request with Highlighted Portion, attached as **Exhibit L**. Accordingly, as of the date of the Request, the College reasonably anticipated litigation based on concrete evidence – including the underlying employee’s own statements – that litigation was likely either from the employee, FIRE, or any other source.<sup>4</sup>

Regarding the timing of the October 15<sup>th</sup> demand letter, it should be noted that Mr. Steinbaugh is the author of both the PIA request and the demand letter. Mr. Steinbaugh filed the initial Request and within 72 hours submitted the formal demand letter to the College, and now conveniently asserts that the litigation exception cannot apply. This appears to be nothing more than a strategic maneuver to evade the application of the relevant timeframe noted in Section 552.103.

Regardless, as noted above, direct evidence existed on and before the date of the Request to demonstrate that the College reasonably anticipated litigation. In addition to the employee’s own statements, the letter Mr. Steinbaugh submitted would be interpreted by any reasonable party to be a demand letter from which the College could reasonably anticipate litigation. This is based on the following facts: (1) Mr. Steinbaugh is a licensed attorney who was voicing in the demand letter the particular interests of the employee; (2) he accused the College in the demand letter of purportedly violating the employee’s freedom of expression; (3) he specifically requested three forms of particular relief for the employee, including that the College rescind any warning and reassure the employee that no formal consequences would result from her actions, within the last page of the demand letter. While Mr. Steinbaugh asserts that the employee signed an authorization form stating that no attorney-client relationship was formed, the document he references is merely an authorization form that relates only to a release of various categories of documents, including personnel and disciplinary documents from the College. This fails to address the much larger issue whether an attorney-client relationship may be formed in numerous other ways.

Based on numerous statements from the employee that she was represented by “my” attorneys, the public controversy that ensued from her comments on social media, complaints submitted to the College regarding the employee’s comments, receipt of a demand letter from Requestor who unequivocally represents the employee’s interests, and the active case file maintained by Requestor on his organization’s website, Collin College reasonably anticipated litigation in this matter. In addition, [REDACTED], and thus directly relates to the anticipated litigation.

Thank you for your consideration of this matter. Please do not hesitate to contact me at 940-704-3774 with any questions or concerns.

<sup>4</sup>

[REDACTED] Since this example of the email exchange is responsive to another PIA request upon which the College is currently seeking a ruling, the College is withholding it at this time. If the Attorney General’s office wishes to review this communication, please contact me at [pthompson@clarkhill.com](mailto:pthompson@clarkhill.com) or 940-704-3774.

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Sincerely,

A handwritten signature in black ink, appearing to read "Pete Thompson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Pete Thompson

CC: Requestor (via email)(without enclosures)

Enclosures