

No. CV37178

FOUNDATION FOR INDIVIDUAL	§	IN THE DISTRICT COURT OF
RIGHTS IN EDUCATION,	§	
	§	
Petitioner,	§	
	§	
v.	§	ERATH COUNTY, TEXAS
	§	
TARLETON STATE UNIVERSITY,	§	
	§	
Respondent.	§	266 th Judicial District

ORIGINAL PETITION FOR WRIT OF MANDAMUS

TO THE HONORABLE COURT:

The Foundation for Individual Rights in Education (“FIRE” or “Petitioner”) files this Petition seeking a writ of mandamus to compel Tarleton State University (“Tarleton” or “Respondent”) to disclose public information under the Texas Public Information Act (“PIA”), Texas Government Code §§ 552.001–552.376.

I. Introduction and Nature of the Action

1. Did Tarleton State University censor and seize editorial control over a student newspaper, the *Texan News Service*, in an attempt to cover up a former professor’s inappropriate behavior against female students? To uncover the truth, FIRE—a non-partisan, non-profit organization dedicated to defending and sustaining the individual rights of students and faculty members at America’s colleges and universities—requested public information from Tarleton under the state’s Public Information Act.

2. Instead of disclosing the information as required by law, Tarleton invoked an irrelevant exemption for “student records” and withheld responsive records. FIRE files this action to vindicate the public’s right to know whether a public university in Texas violated the First Amendment and hold Tarleton accountable to its citizens.

II. Discovery Level

3. Discovery in this action should proceed under Level 2. *See* Tex. R. Civ. P. 190.3.

III. Parties

4. Petitioner FIRE is a foreign corporation and a registered 501(c)(3) tax-exempt organization with a mission to defend and sustain the individual rights of students and faculty members at America’s colleges and universities. FIRE is registered with the Texas Secretary of State to conduct business in the State of Texas.

5. Respondent Tarleton is part of the Texas A&M University System and a governmental body under Texas Government Code § 552.003(1)(A)(i).

IV. Jurisdiction and Venue

6. This Court has jurisdiction to issue a writ of mandamus to require a governmental body to produce public information. *See* Tex. Gov’t. Code § 552.321.

7. Petitioner seeks non-monetary relief only, except for an award of litigation costs and attorneys’ fees under the PIA. *See* Tex. R. Civ. P. 47(c); Tex. Gov’t Code § 552.323(a).

8. Venue is proper in Erath County because the main offices of Tarleton are located therein. *See* Tex. Gov't. Code § 552.321(b).

V. Facts

Tarleton Censors Student Publication

9. The *Texan News Service* is a formally editorially independent student newspaper.

10. The *Texan News Service* is housed in Tarleton's department of communications studies.

11. According to its website, TNS delivers news from the Cross Timbers region of Texas.

12. In 2018, TNS published a series of articles about allegations of inappropriate behavior toward female students by then-professor Michael Landis.

13. A university investigation concluded that Landis's behavior had been "highly inappropriate" and recommended his termination.

14. Landis entered into a September 25, 2018, separation agreement with Tarleton, releasing the Texas A&M University System from liability and waiving "all claims or liabilities associated with or related to his employment."

15. On July 27, 2021—roughly three years after TNS reported on the sexual harassment complaints and subsequent investigation—Landis's lawyer sent a demand letter to then-TNS Editor-in-Chief Sierra Dyson, threatening a defamation suit unless specified articles and a video related to the Landis investigation were removed.

16. Any such claim for defamation would have been barred by Texas's one-year statute of limitations.

17. *Texan News Service's* reporting on the Landis complaints and investigation was truthful and accurate.

18. TNS would likely have successfully defended against any suit for defamation, even if not time barred, on the basis of truth, among other defenses it may have had.

19. For the above reasons, Landis's threat of suit for defamation was frivolous.

20. Former TNS Editor-in-Chief Sierra Dyson met with Eric Morrow, Dean of the College of Liberal and Fine Arts at Tarleton, to discuss Landis's demand letter. During the meeting, Morrow told Dyson that if TNS chose not to remove the articles, TNS would risk losing its university funding.

21. Rather than risk losing its university funding, TNS complied and removed all but one article, which discussed Tarleton's faculty-student-relationship policy.

22. Tarleton then undertook a review of the status of the newspaper and stripped it of its independence, placing it under administrative control.

23. On August 30, 2021, FIRE and the Student Press Law Center wrote to Tarleton explaining that its actions violated the First Amendment by censoring an editorially independent student newspaper.

24. In response, Tarleton claimed that TNS was never editorially independent and had therefore always been subject to university oversight.

25. Tarleton's assertion contradicts documentary and testimonial evidence, including the TNS policy handbook; statements from the publication's founder and former faculty adviser, Dan Malone; and TNS' longstanding practice.

FIRE's Public-Records Requests

26. On October 5, 2021, FIRE issued two Public Information Act requests to Tarleton. The first request sought administrative documentation related to Landis, his time at the university, the investigation, and his departure, as well as records relating to TNS. A copy of the first public information request is attached to this Complaint as Exhibit A. The second request sought documents and communications from Landis's attorney and those relating to a request for comment from journalist Nell Gluckman, author of an August 17, 2021, article about Tarleton's censorship published in *The Chronicle of Higher Education*. A copy of the second public information request is attached to this Complaint as Exhibit B.

27. Tarleton produced incomplete responses to the first two requests, failing to produce certain nonexempt responsive records.

28. For example, TNS reported and published a March 28, 2018, memorandum from the Tarleton Associate Vice President of Academic Affairs regarding the Landis investigation. A copy of the March 28, 2018, memorandum is attached to this Complaint as Exhibit C. However, Tarleton did not produce this

responsive and nonexempt memorandum to Petitioner in response to its public information request.

29. For another example, Tarleton did not produce to Petitioner a nonexempt responsive letter, dated September 30, 2021, from the Tarleton Provost to the Dean of the College of Liberal & Fine Arts discussing the editorial independence of TNS. A copy of the September 30, 2021, letter is attached to this Complaint as Exhibit D. Petitioner received a copy of the letter not in response to its public information request, but rather directly from a faculty member at Tarleton.

30. The existence, responsiveness, and nonexempt nature of these two records call into serious doubt both the adequacy of Tarleton's search for records responsive to Petitioner's requests and the lawfulness of its continued withholding of information.

31. On November 19, 2021, Petitioner wrote to the Texas A&M University System's Deputy General Counsel, explaining that Tarleton had failed to fully respond to the public information requests. A copy of Petitioner's November 19, 2021, letter is attached to this Complaint as Exhibit E.

32. In response, the Deputy General Counsel argued that Petitioner had waived the PIA's requirement that, before withholding responsive information under one of the Act's mandatory exceptions, the university must first obtain a decision from the Office of the Attorney General of Texas ("OAG"). A copy of the

Deputy General Counsel's response letter is attached to this Complaint as Exhibit F.

33. On December 3, 2021, Petitioner submitted a further public information request to Tarleton, substantively the same as its October 5th requests, but this time clarifying that it does not consent to withholding any information subject to an exemption under the PIA without Tarleton first obtaining an opinion from the OAG. A copy of the December 3, 2021, request is attached to this Complaint as Exhibit G.

34. On December 17, 2021, Tarleton responded to Petitioner's latest public information request, claiming that any information still withheld is subject to Texas Government Code § 552.114, which exempts student records from disclosure. A copy of Tarleton's December 17, 2021, letter is attached to this Complaint as Exhibit H.

35. Educational institutions may *redact* information related to student records without first obtaining an OAG opinion. Tex. Gov't. Code § 552.114(d).

36. But Tarleton did not redact student information from the records it continues to withhold from Petitioner. Rather, it withholds those records in full.

37. The two records, attached as Exhibits C and D and incorporated herein, do not contain student records as defined by the PIA. Tarleton continues to withhold these two records in full.

38. Any withheld information that directly relates to a student may be redacted and the segregable portions of the documents must be produced. Petitioner

does not object to the redaction of personally identifiable information that relates directly to a student.

VI. Statutory Framework

39. The PIA requires governmental bodies to disclose “public information.” Tex. Gov’t. Code § 552.021.

40. The PIA must be “liberally construed in favor of granting a request for information.” *Id.* § 552.001(b).

41. “Public information” includes “information that is written, produced, collected, assembled or maintained . . . in connection with the transaction of official business: (1) by a governmental body; [or] . . . (3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.” *Id.* § 552.002(a).

42. The PIA exempts from disclosure “student records.” *Id.* § 552.114.

43. Generally, a governmental body must request an opinion from the OAG to withhold otherwise public information under a PIA exemption. *Id.* § 552.301. However, this requirement is waived under the “student records” exemption when the governmental body redacts student information. *Id.* § 552.114(d).

44. Tarleton continues to withhold information from FIRE under Texas Government Code § 552.114, which defines student records by reference to the

definition of “education records” in the Family Educational Rights and Privacy Act of 1974 (“FERPA”), 20 U.S.C. § 1232g(a)(4).

45. Under FERPA, “education records” are “those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 U.S.C. § 1232g(a)(4)(A).

46. The definition of education records excludes “persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person’s capacity as an employee and are not available for use for any other purpose,” among other exclusions. 20 U.S.C. § 1232g(a)(4)(B)(iii).

47. The two records attached as Exhibits C and D and incorporated herein do not include information directly related to a student.

48. Landis was employed by Tarleton, not in attendance there, and records requested by Petitioner relate to him in his non-academic capacity as an employee.

VII. The Requested Information Is Public and No Exemption Justifies Withholding It in Full

49. The records FIRE requested are public information under the PIA because they constitute information that is written, produced, collected, assembled or maintained in connection with the transaction of official business, by Tarleton, a governmental body, or by an individual employee of Tarleton in the employee’s

official capacity, and the requested information pertains to official business of Tarleton.

50. Even assuming the student records exemption applies to some of the information withheld by Tarleton, it does not apply to documents in their entirety. Under Texas Government Code § 552.114, Tarleton may redact information that relates directly to a student and produce segregable portions of the responsive records.

51. Tarleton has not met its obligations under the PIA because it has withheld records in full under the student record exemption, rather than redact them and produce their nonexempt portions.

VIII. Claim: Writ of Mandamus Under Public Information Act

52. FIRE seeks a writ of mandamus under Texas Government Code § 552.321(a) compelling Tarleton to release the requested information or, in the alternative, compelling Tarleton to release all requested information redacted so as to remove only such information as Tarleton proves falls within the student records exemption.

53. FIRE also seeks its costs of litigation and reasonable attorneys' fees under Texas Government Code § 552.323.

IX. Conditions Precedent

54. All conditions precedent have been performed or have occurred. *See* Tex. R. Civ. P. 54.

X. Prayer for Relief

55. Petitioner FIRE prays that this Court issue a writ of mandamus requiring Tarleton to make the requested public information available; awarding FIRE its costs of litigation and reasonable attorneys' fees; and such other and further equitable relief as this Court deems just and proper.

DATED: February 10, 2022

Respectfully submitted,

By: /s/ JT Morris

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**Pro Hac Vice motion forthcoming*

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Associated Case Party: Foundation for Individual Rights in Education

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