



December 18, 2020

Justin Gordon  
Chief, Open Records Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

*Sent via the Public Information Act Electronic Filing System*

**Re: Public Information Request to Collin College**  
Request: October 13, 2020  
Requestor: Adam Steinbaugh /  
Foundation for Individual Rights in Education (FIRE)

Dear Mr. Gordon:

FIRE submits this fourth public comment relative to the above matter to briefly address several arguments advanced by Collin College's December 7, 2020, response.

First, the College's solitary authority is a 2004 Open Records Letter Ruling finding that a governmental body did not violate section 552.103(d)(2) of the Government Code when it failed to share unidentified exhibits with the requestor.<sup>1</sup> That informal finding predates the relevant subsection, 552.103(e-1), which was added the following year and first established the requirement that the governmental body share its "written comments" with the requestor.<sup>2</sup>

This is one reason why subsequent rulings have reached the opposite conclusion: A governmental body falls short of its obligations under 552.103 when it fails to include exhibits accompanying its submissions.<sup>3</sup>

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<sup>1</sup> OR2004-10228 (Dec. 2, 2004).

<sup>2</sup> S.B. No. 727, 79th Leg., Reg. Sess. (Tex. 2005).

<sup>3</sup> OR2011-14407 (governmental body failed to comply with section 552.301(e-1) when it failed to produce an exhibit which "d[id] not disclose or contain the substance of the information requested"). The College cannot omit its discussion by appending it to unproduced documents any more than it could redact that discussion from a formal letter. *See* OR2011-16801 (a college failed to comply with section 552.301(e-1) when it "redacted its

Second, the College’s argument that it satisfied its obligations because its exhibits were “available” to the requestor ignores the governmental body’s affirmative duty to “send a copy” to the requestor. As FIRE has explained repeatedly since its first submission in this matter, the College failed to do so because it omitted “[t]hese additional exhibits” and “copies of the exhibits.” Moreover, FIRE did not have access to “the exhibits” because they contain commentary and argument added by the College, not merely screenshots of publicly-available tweets.

Finally, in rehashing its substantive arguments, the College faults FIRE for not addressing its assertion that some “external party” or “other source” might sue the College. FIRE could not address that issue for a simple reason: The College redacted this argument, set forth in the November 16 letter to the OAG, from the copy of the letter sent to FIRE.<sup>4</sup>

Highlighted here is what was redacted from footnote 4 of that letter:

<sup>4</sup> The College is also concerned about the potential for third-party claims based on the communications the employee shared with external parties using the College’s email system. In at least one email exchange, the employee contacted the external party through a work email address, instead of through the private email address where the email exchange originated. The College reasonably believed that such conduct exposed the College and/or the employee to anticipated legal claims from external parties. 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.

This argument—which FIRE can now address only because it was made available through a request for records held by the OAG—can be readily dispatched:

- (1) The College has presented no “concrete evidence”<sup>5</sup> that this unidentified third party has made “objective steps toward *actually filing* a lawsuit”<sup>6</sup> or even raised the possibility of a lawsuit.
- (2) FIRE’s request seeks communications with elected officials, but there is no indication that the unidentified third party is an elected official. The College bears the burden to “explain or describe how the requested information relates to the pending litigation.”<sup>7</sup>
- (3) The College’s redaction of the foregoing footnote was inappropriate, as the first and third sentence do not “disclose . . . the substance of the information requested.” Even if part of the second sentence were interpreted as disclosing the “substance” of a third

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discussion of the claimed exemption, including information that does not disclose or contain the substance of the information requested”).

<sup>4</sup> Cf. Letter from Pete Thompson, counsel for Collin County Community College District, to the Office of the Attorney General (Nov. 16, 2020) at \*3 *with* Exh. Q at \*11.

<sup>5</sup> ORD No. 452 at 4 (1986).

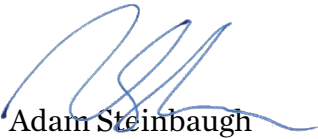
<sup>6</sup> *Id.* at 3 (emphasis in original).

<sup>7</sup> ORD No. 638 at 4 (1996).

party's records request, the Act is limited to redacting the substance of "*the* information requested." For both reasons, the redactions exceed the scope permitted by the Act, providing another basis on which the College waived its claims under section 552.103.

In failing to comply with the procedural requirements of section 552.301, the College has waived its claims under section 552.103, and there is no compelling reason to withhold the information.

Sincerely,

A handwritten signature in blue ink, appearing to read "AS", is written over the printed name "Adam Steinbaugh".

Adam Steinbaugh  
Director, Individual Rights Defense Program

Cc: Pete Thompson, via email