

REQUEST UNDER THE TEXAS PUBLIC INFORMATION ACT

February 3, 2014

Kathryn Symank
Public Information Officer
Texas A&M University
1255 TAMU
College Station, Texas 77843-125

VIA EMAIL: open-records@tamu.edu -- REQUEST FOR PUBLIC RECORDS

Dear President Loftin, via Ms. Symank:

Thank you for your correspondence dated January 28, 2014 regarding our request 14-054. This prompts a follow-on request by the Free Market Environmental Law Clinic (“FMELC”), which respectfully submits this request for public records (“Request”) from Texas A&M University (“A&M”) pursuant to Texas’s Public Information Act, Chapter 552 (§ 552.001, et seq.) of the Texas Government Code, the Attorney General’s Public Information 2012 Handbook, and your Policy Statement on Public Information Act Compliance.

Please produce copies of all electronic mail (email) correspondence sent to or from any account used for Texas A&M-related correspondence by Professor Andrew Dessler over the four-week period **June 17, 2012 through July 15, 2012, inclusive**.

This period covers the approximate time when Mr. Dessler asserts he began destroying work-related emails. As request 14-054 noted, Mr. Dessler boasted of destroying records to explain why he had no correspondence during this same period that was to, from or about “Frontline”: “But this time, Dessler was ready. ‘When they asked for my emails from “Frontline,” there were none. Those were all gone,’ he said.”

The claim that this story attributed to Mr. Dessler, of recently initiating a practice of destroying most of his emails including those plainly related to his work, took pains to communicate that this was done so as to avoid their being produced under a Public Information request.¹

¹ “What he learned was that he can legally delete as many emails as he wants, and after that, they are no longer subject to public records requests. Now, he said, he deletes most of his emails after reading them.” Stephanie Paige Ogburn, “Climate scientists, facing skeptics’ demands for personal [sic] emails, learn how to cope”, E&E News, January 21, 2014, <http://www.eenews.net/climatewire/2014/01/21/stories/1059993161>.

As such this followup request is relevant to the public interest, for the same reasons articulated in our January request to you.

As you have noted:

The content and function of an email message determines whether it is a state record. Only email messages that meet the criteria for being state records are subject to TAMU System and University records retention requirements. An email message is not a state record unless the message uniquely documents University business and is NOT merely a convenience copy.

An electronic mail message that is a state record (and not transitory information) cannot be destroyed or otherwise disposed of unless documented and approved in accordance with University records retention requirements. Approval should be obtained from the University Records Officer prior to deletion or other destruction or disposition.

(emphasis added)

TAMU's response to 14-054 informed us that there were no requests by Andrew Dessler for permission to destroy emails that are state records. The instant request, when satisfied, will help answer this question begged by his public boast, whether he was indeed destroying non-transitory records without obtaining the required permission.

The dates relevant to this request, cited above, approximately correspond to the dates "Frontline" producers sought to arrange a segment detailing the plight of academics under a law passed by Texas' legislature which the academics agreed to as a condition of their position.

Accepting Mr. Dessler's words, we expect few responsive records remain, and therefore believe that satisfying this request cannot constitute an appreciable burden.

FMELC is a tax-exempt, 26 U.S.C. § 501(c)(3), non-profit public interest organization. As such, it does not seek these records for commercial purposes. Rather, FMELC seeks these records to examine whether Professor Dessler and/or the University has properly followed guidelines established pursuant to Texas law with regard to disposition of state records Prof. Dessler publicly claims to have destroyed.

In the interests of expediting the search and processing of this Request, FMELC is willing to pay fees up \$100. Please provide an estimate of anticipated costs in the event that fees for processing this Request will exceed \$100. To keep costs and copying to a minimum **please provide copies of all responsive records in electronic format to the email** used to send this request.

Also, as this matter involves a significant issue of public interest, please produce responsive records as they become available on a rolling basis but consistent with the Public Information Act's prescribed timelines.

In the event that the University's custodian of public records determines that a release of a given record would contain confidential or private information or otherwise seek to withhold information, it has a duty to ask for the opinion of the state's attorney general pursuant to Sec. 552.301(a).

To expedite matters please **direct all other disclosures** to my attention at the following address:

1489 Kinross Lane
Keswick, VA 22947

If you have any questions, or would like to discuss this matter further, do not hesitate to contact me by email.

Thank you for your attention to this matter.

Sincerely,



Christopher C. Horner, Esq.