

Subject **Open records request**
From <[REDACTED]@elliscountycitizen.com>
To <cahlfinger@wisd.org>
Date 2015-05-14 21:48

I would like to request any and all documents and emails relating to complaints, reprimands, investigations, suspensions, firing and resignation regarding Laura Leigh Evans.

If an opinion is sought from the Texas Attorney General regarding the release of any documents, I request the documents where an opinion is not sought to be released prior to and separately from the documents needing an AG opinion.

Thanks,

Dave Vance
[REDACTED]@EllisCountyCitizen.com
Phone: [REDACTED]

[REDACTED]



Waxahachie
Independent School District

411 N. Gibson Street • Waxahachie, TX 75165 • (972) 923-4631 Phone • (972) 923-4658 Fax • www.wisd.org

June 1, 2015

Dave Vance

Via Electronic Mail

Re: Public Information Request – Documents and recordings pertaining to named individual

Dear Mr. Vance:

The requests which you submitted on May 14, 2015, at 9:48 pm and 10:05 pm was received by Waxahachie ISD on the following day on May 15, 2015. Within your request, you sought “all documents and e-mails relating to complaints, reprimands, investigations, suspensions, firing and resignation” pertaining to a named individual and “all documents, notes, audio recordings and video recordings” pertaining to the same named individual’s “departure from Waxahachie ISD.” The purpose of this letter is to inform you that Waxahachie ISD is seeking an opinion of the Texas Attorney General to determine whether an exception may apply under the Texas Public Information Act to the release of some of the requested information. Enclosed herewith is a copy of Waxahachie ISD’s request to the Attorney General, without copy of the requested documents or recordings for which an exception to disclosure may apply.

Please contact me if you have any questions or concerns.

Sincerely,

W. Lee Auvenshine, J.D.
Deputy Superintendent
Human Resources and Legal Services

Enclosure: Copy of request seeking an attorney general decision in this matter

cc: The Honorable Ken Paxton
Texas Attorney General
ATTN: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Via CM/RRR: [REDACTED]



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June 1, 2015

The Honorable Ken Paxton
Texas Attorney General
ATTN: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Via CM/RRR: [REDACTED]

Re: Public Information Request for an Opinion
Requestor – Dave Vance
Date Received – May 15, 2015

Dear Attorney General Paxton:

The public information requests for which an opinion is sought were sent by the requestor via electronic mail to the public information officer for Waxahachie ISD after business hours at 9:48 pm and 10:05 pm on May 14, 2015, and officially received by Waxahachie ISD on the following day on May 15, 2015. The regular business hours of Waxahachie ISD are 8:00 am to 4:00 pm. The offices of Waxahachie ISD were closed in observance of Memorial Day on Monday, May 25, 2015. Accordingly, this request for a decision is submitted on behalf of Waxahachie ISD within ten business days of the date the requests for information were received in accordance with Section 552.301 of the Government Code. Notice of this request and a copy of this letter has been provided to the requestor in accordance with Section 552.301(d).

A copy of the public information requests are enclosed. The requests are related to the same subject matter. Pursuant to the public information requests, the requestor seeks "all documents and e-mails relating to complaints, reprimands, investigations, suspensions, firing and resignation" pertaining to a named individual and "all documents, notes, audio recordings and video recordings" pertaining to the same named individual's "departure from Waxahachie ISD."

Some responsive documents to the requests at issue were a part of a previous request for an opinion which was the subject of Attorney General Letter Ruling OR2015-09262. Portions of these documents were determined by the Attorney General to be confidential and/or subject to an exception to release, while other portions were determined to be subject to release. Much of the remaining responsive documents were the subject of a previous request for an opinion submitted by Waxahachie ISD on April 1, 2015. Waxahachie ISD has not received a response from the

Attorney General in response to that request. Additional responsive information exists which has not been the subject of a previous request for an opinion.

A governmental body need not request an attorney general decision if there has been a previous determination that the requested material falls within one of the exceptions to disclosure. What constitutes a "previous determination" is narrow in scope, and governmental bodies are cautioned against treating most published attorney general decisions as "previous determinations" to avoid the requirements of section 552.301(a). A previous determination of the attorney general pertaining to specific information does not apply to records that are substantially similar to records previously submitted to the attorney general for review, nor does it apply to information that may fall within the same category as any given records on which the attorney general has previously ruled. The first type of previous determination requires that all of the following criteria be met:

1. the information at issue is precisely the same information that was previously submitted to the attorney general pursuant to section 552.301(e)(1)(D) of the Government Code;
2. the governmental body that received the request for the information is the same governmental body that previously requested and received a ruling from the attorney general;
3. the attorney general's prior ruling concluded the precise information is or is not excepted from disclosure under the Act; and
4. the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. Open Records Decision No. 673 (2001).

The employment relationship pertaining to the individual named in the present request has changed since the time of the initial request. Additionally, the scope of the present request is far different from the scope of the initial request for which the prior ruling was determined. Pursuant to page 37 of the 2014 Public Information Handbook issued by the Office of the Attorney General, a governmental body should request a decision from the attorney general if it is unclear to the governmental body whether there has been a change in the law, facts or circumstances on which the prior decision was based.

Here, Waxahachie ISD is requesting an opinion of the Attorney General to determine whether the documents and recordings responsive to the requests may be excepted from disclosure under the Texas Public Information Act. This request includes those documents subject to Attorney General Letter Ruling OR2015-09262.

The documents and recordings for which an opinion is sought will be sent to the Attorney General in accordance with Section 552.301(e) of the Government Code within fifteen business days of the date the request for information was received. In compliance with the directive from the United States Department of Education Family Policy Compliance Office, personally identifiable information regarding students contained within the attached educational records will be redacted pursuant to the Family Educational Rights and Privacy Act of 1974.

Specifically, it is proposed that the documents and recordings may be excepted from disclosure for the following reasons under the Texas Public Information Act:

1. Pursuant to Section 552.101 of the Government Code, it contains information that may be considered to be confidential by law, either constitutional, statutory, or by judicial decision, including constitutional and common law privacy of third parties, under both state and federal law;
2. Pursuant to Section 261.201 (a) of the Texas Family Code, it contains information pertaining to a report of alleged or suspected abuse or neglect of a child, the identity of the person(s) making the report, along with the communications and records related thereto;
3. Pursuant to Section 552.107 of the Government Code, it contains information consisting of confidential attorney client communications and/or attorney client work product as those terms are defined within the Texas Rules of Civil Procedure and the Texas Rules of Evidence;
4. Pursuant to Section 552.111 of the Government Code and the deliberative process privilege, it contains information consisting of intraagency communications consisting of advice, opinion or recommendations on policymaking matters of the governmental body at issue;
5. Pursuant to Section 552.111 of the Government Code and the work product privilege found in Texas Rule of Civil Procedure 192.5, it contains material prepared and mental impressions developed in reasonable anticipation of litigation by an attorney on behalf of a governmental body; and,
6. Pursuant to Chapter 552.137 of the Government Code, it contains e-mail addresses of members of the public which are confidential.

On behalf of Waxahachie ISD, I respectfully request your opinion as to whether the above referenced documents and recordings are excepted from disclosure under the Public Information Act. Pursuant to Section 552.301(e) of the Government Code, Waxahachie ISD will submit the documents and recordings for which an exception may apply, along with written comments stating the reasons why the stated exceptions apply, within fifteen business days of the date the request for information was received. If you need any additional information, please contact W. Lee Auvenshine, Deputy Superintendent of Human Resources and Legal Services, at the Waxahachie ISD Administration Building, 411 N. Gibson Street, Waxahachie, Texas 75165, phone number (972)923-4631.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Lee Auvenshine', with a long horizontal flourish extending to the right.

W. Lee Auvenshine, J.D.
Deputy Superintendent
Human Resources and Legal Services

Enclosure: Copy of Requests
Notice letter to requestor that Waxahachie ISD is seeking an attorney general
decision in this matter

cc: Dave Vance

Via Electronic Mail

Subject **Open records request #2**
From <[REDACTED]@elliscountycitizen.com>
To <cahlfinger@wisd.org>
Date 2015-05-14 22:05

I would like to request all documents, notes, audio recording(s) and video recording(s) of Laura Leigh Evans' departure from Waxahachie ISD.

If a Texas Attorney General's opinion is sought for any of the documents or media, I request the remaining documents and media be released prior to an AG's ruling.

Thanks,

Dave Vance
[REDACTED]@EllisCountyCitizen.com
Phone: [REDACTED]

[REDACTED]



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June 6, 2015

Dave Vance

Via Electronic Mail

Re: Public Information Request – Documents and recordings pertaining to named individual

Dear Mr. Vance:

Enclosed herewith is a copy of Waxahachie ISD's subsequent correspondence to the Texas Attorney General in regard to your request for "all documents and e-mails relating to complaints, reprimands, investigations, suspensions, firing and resignation" pertaining to a named individual and "all documents, notes, audio recordings and video recordings" pertaining to the same named individual's "departure from Waxahachie ISD." As you were previously informed, Waxahachie ISD is seeking an opinion of the Texas Attorney General to determine whether an exception may apply under the Texas Public Information Act to the release of some of the requested information.

Please contact me if you have any questions or concerns.

Sincerely,

W. Lee Auvenshine

Dep. Supt. of Human Resources and Legal Services

Enclosure: Copy of subsequent correspondence regarding request seeking an attorney general decision in this matter (without copy of the requested documents for which an exception to disclosure may apply)

cc: The Honorable Ken Paxton
Texas Attorney General
ATTN: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Via CM/RRR: [REDACTED]



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June 6, 2015

The Honorable Ken Paxton
Texas Attorney General
ATTN: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Via CM/RRR: [REDACTED]

Re: Public Information Brief, with Enclosed Documents
ID No. 574373
Requestor – Dave Vance
Date Received – May 15, 2015
Date Request for an Opinion Sent – June 1, 2015

Dear Attorney General Paxton:

The public information requests for which an opinion is sought were sent by the requestor via electronic mail to the public information officer for Waxahachie ISD after business hours at 9:48 pm and 10:05 pm on May 14, 2015, and officially received by Waxahachie ISD on the following day on May 15, 2015. The regular business hours of Waxahachie ISD are 8:00 am to 4:00 pm. The offices of Waxahachie ISD were closed in observance of Memorial Day on Monday, May 25, 2015. A request for a decision was submitted on behalf of Waxahachie ISD within ten business days of the date the requests for information were received in accordance with Section 552.301 of the Government Code. Notice of this request and a copy of this letter were provided to the requestor in accordance with Section 552.301(d).

A copy of the public information requests are enclosed. The requests are related to the same subject matter. Pursuant to the public information requests, the requestor seeks "all documents and e-mails relating to complaints, reprimands, investigations, suspensions, firing and resignation" pertaining to a named individual and "all documents, notes, audio recordings and video recordings" pertaining to the same named individual's "departure from Waxahachie ISD."

The documents and audio recording for which an opinion is sought are enclosed, in accordance with Section 552.301(e) of the Government Code within fifteen business days of the date the request for information was received. In compliance with the directive from the United States Department of Education Family Policy Compliance Office, personally identifiable

information regarding students contained within responsive educational records has been redacted pursuant to the Family Educational Rights and Privacy Act of 1974.

Specifically, it is proposed that the documents and recordings may be excepted from disclosure for the following reasons under the Texas Public Information Act:

1. Pursuant to Section 552.101 of the Government Code, it contains information that may be considered to be confidential by law, either constitutional, statutory, or by judicial decision, including constitutional and common law privacy of third parties, under both state and federal law;
2. Pursuant to Section 552.102 of the Government Code, it contains personnel information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
3. Pursuant to Section 21.355 of the Education Code, it contains information pertaining to the evaluation of performance of a certified teacher;
4. Pursuant to Section 261.201 (a) of the Texas Family Code, it contains information pertaining to a report of alleged or suspected abuse or neglect of a child, the identity of the person(s) making the report, along with the communications and records related thereto;
5. Pursuant to Section 552.107 of the Government Code, it contains information consisting of confidential attorney client communications and/or attorney client work product as those terms are defined within the Texas Rules of Civil Procedure and the Texas Rules of Evidence;
6. Pursuant to Section 552.111 of the Government Code and the deliberative process privilege, it contains information consisting of intraagency communications consisting of advice, opinion or recommendations on policymaking matters of the governmental body at issue;
7. Pursuant to Section 552.111 of the Government Code and the work product privilege found in Texas Rule of Civil Procedure 192.5, it contains material prepared and mental impressions developed in reasonable anticipation of litigation by an attorney on behalf of a governmental body;
8. Pursuant to Section 552.117 of the Government Code, it contains information pertaining to employees of Waxahachie ISD that relates to the home address, home telephone number, emergency contact information, or social security number of the following person or that reveals whether the person has family members; and,

9. Pursuant to Chapter 552.137 of the Government Code, it contains e-mail addresses of members of the public which are confidential.

Prior Attorney General Letter Ruling

Some responsive documents to the requests at issue were a part of a previous request for an opinion which was the subject of Attorney General Letter Ruling OR2015-09262. Portions of these documents were determined by the Attorney General to be confidential and/or subject to an exception to release, while other portions were determined to subject to release. Much of the remaining responsive documents were the subject of a previous request for an opinion submitted by Waxahachie ISD on April 1, 2015. Waxahachie ISD has not received a response from the Attorney General in response to that request. Additional responsive information exists which has not been the subject of a previous request for an opinion.

A governmental body need not request an attorney general decision if there has been a previous determination that the requested material falls within one of the exceptions to disclosure. What constitutes a "previous determination" is narrow in scope, and governmental bodies are cautioned against treating most published attorney general decisions as "previous determinations" to avoid the requirements of section 552.301(a). A previous determination of the attorney general pertaining to specific information does not apply to records that are substantially similar to records previously submitted to the attorney general for review, nor does it apply to information that may fall within the same category as any given records on which the attorney general has previously ruled. The first type of previous determination requires that all of the following criteria be met:

1. the information at issue is precisely the same information that was previously submitted to the attorney general pursuant to section 552.301(e)(1)(D) of the Government Code;
2. the governmental body that received the request for the information is the same governmental body that previously requested and received a ruling from the attorney general;
3. the attorney general's prior ruling concluded the precise information is or is not excepted from disclosure under the Act; and
4. the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. Open Records Decision No. 673 (2001).

The employment relationship pertaining to the individual named in the present request has changed since the time of the initial request. Additionally, the scope of the present request is far different from the scope of the initial request for which the prior ruling was determined. Pursuant to page 37 of the 2014 Public Information Handbook issued by the Office of the Attorney General, a governmental body should request a decision from the attorney general if it is unclear to the governmental body whether there has been a change in the law, facts or circumstances on which the prior decision was based.

Here, Waxahachie ISD is requesting an opinion of the Attorney General to determine whether the documents and recordings responsive to the requests may be excepted from disclosure under the Texas Public Information Act. This request includes those documents subject to Attorney General Letter Ruling OR2015-09262.

Personnel investigations and related documents

The documentation pertaining to the personnel investigations of a district employee should be exempt from public disclosure pursuant to Sections 552.101 and 552.102 of the Government Code. Section 552.101 applies to information when its disclosure would constitute the common-law tort of invasion of privacy through the disclosure of private facts. To be within this common-law tort, the information must (1) contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) be of no legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

The documentation pertaining to this investigation contains a report of alleged or suspected abuse or neglect of a child, the identity of the person(s) making the report, along with the communications and records related thereto, should be subject to an exemption to disclosure pursuant to Section 261.201 (a) of the Texas Family Code and Sections 552.101 and 552.102 of the Government Code. The documentation is comprised of the report, statements of witnesses, working papers and other communications regarding the investigation. Documentation regarding a report of alleged or suspected abuse or neglect of a child is generally not subject to release absent a court order. Additionally, this documentation includes information regarding third parties and an employee of Waxahachie ISD which would constitute a clearly unwarranted invasion of personal privacy.

The documentation pertaining to this investigation also includes interagency and intraagency communications regarding the investigation and the relevant policies and procedures related thereto. Section 552.111 of the Government Code has been read to incorporate the deliberative process privilege into the Public Information Act for intraagency and interagency communications. The deliberative process privilege, as incorporated into the Public Information Act, protects from disclosure intraagency and interagency communications consisting of advice, opinion or recommendations on policymaking matters of the governmental body at issue. The purpose of withholding advice, opinion or recommendations under section 552.111 is "to encourage frank and open discussion within the agency in connection with its decision-making processes" pertaining to policy matters. *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.).

Additionally, much of the attached documentation includes notes and communications prepared by the undersigned counsel, who performed work during the underlying investigation in the dual role as human resources director and legal counsel for the district. Such documentation is protected from disclosure pursuant to Sections 552.107 and 552.111 of the Government Code.

The undersigned counsel provides wide ranging legal counsel and representation to Waxahachie ISD, specifically including its Superintendent and its administrators. This representation includes the regular issuance of legal advice in the form of memoranda and opinions in response to requests from the above named client representatives. Waxahachie ISD also receives legal services from retained counsel.

The attached documents which have been marked as a confidential attorney-client communications are comprised of communications between the undersigned counsel and the superintendent, campus principal, and other authorized client representatives. The communications were made for the purpose of facilitating the rendition of professional legal services by the undersigned counsel and retained counsel. The communications were made solely between the aforementioned attorneys and client representatives. The attached communications are confidential and have not been intended for disclosure to third persons other than to those whom disclosure was made in furtherance of the rendition of professional legal services to Waxahachie ISD or those reasonably necessary for the transmission of the confidential communication or those entities authorized to conduct lawful investigations. The attached documents have not been publicly disseminated and have not been made available to the requestor.

The documents also contain the work product of the undersigned counsel and retained counsel. This documentation consists of material prepared consisting of the mental impressions of counsel in reasonable anticipation of litigation. At the time the material was prepared, a reasonable person would have concluded from the totality of the circumstances that absent a settlement agreement, there was a substantial chance that litigation would ensue. Additionally, Waxahachie ISD believed in good faith that absent a settlement agreement, there was a substantial chance that litigation would ensue. Such material was prepared for the purpose of preparing for such potential litigation.

The documentation also includes a reference to a third party unrelated to the underlying investigation. The information pertaining to this person may be considered to be confidential by law, either constitutional, statutory, or by judicial decision, including constitutional and common law privacy of third parties, under both state and federal law.

Additionally, the documentation includes potentially nonresponsive information related to personnel matters caused by the absence of the subject of the request at issue.

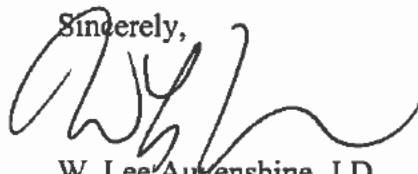
The documentation also includes a prior investigation pertaining to a report of potential misconduct submitted by third parties, along with subsequent notes and memoranda prepared by the former superintendent, human resources director and a former member of the WISD Board of Trustees. The identity of the persons making the complaint, along with the allegations contained therein, may be considered to be confidential by law, either constitutional, statutory, or by judicial decision, including constitutional and common law privacy of third parties, under both state and federal law. Additionally, the notes and memoranda prepared by the aforementioned representatives of Waxahachie ISD may be considered intraagency communications consisting of advice, opinion or recommendations on policymaking matters under section 552.111.

The documentation regarding the prior investigation also includes a document evaluating the performance of a certified educator by her certified administrator. Such documentation is confidential pursuant to Section 21.355 of the Education Code, which provides, "[a] document evaluating the performance of a teacher or administrator is confidential." The Office of the Attorney General has interpreted Section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996).

In addition to the foregoing, the attached documents also contain e-mail addresses of members of the public which are confidential under section 552.137 of the Texas Government Code and information specifically regarding the family members of an employee which is exempt from public disclosure pursuant to Sections 552.117 of the Government Code.

Conclusion

On behalf of Waxahachie ISD, I respectfully request your opinion as to whether the above referenced documents and recordings are excepted from disclosure under the Public Information Act. Pursuant to Section 552.301(e) of the Government Code, Waxahachie ISD will submit the documents and recordings for which an exception may apply, along with written comments stating the reasons why the stated exceptions apply, within fifteen business days of the date the request for information was received. If you need any additional information, please contact W. Lee Auvenshine, Deputy Superintendent of Human Resources and Legal Services, at the Waxahachie ISD Administration Building, 411 N. Gibson Street, Waxahachie, Texas 75165, phone number (972)923-4631.

Sincerely,

W. Lee Auvenshine, J.D.
Deputy Superintendent
Human Resources and Legal Services

Enclosure: Copy of Requests
Notice letter to requestor that Waxahachie ISD is seeking an attorney general decision in this matter

cc: Dave Vance

Via Electronic Mail