

January 23, 2011

Honorable Greg Abbott  
Attorney General  
Open Records Division  
PO Box 12548  
Austin, TX 78711-2548

Re: Ferris, TX request for TAG decision on Aren Cambre's open records request

General Abbott:

On January 20, B. Chase Griffith, attorney representing the City of Ferris, mailed you a letter (exhibit A) asking for an Attorney General decision on an open records request (exhibit B). I am submitting this comment as the open records requestor.

With this letter, I am making two points: 1. Ferris is frustrating access to open records, and 2. in this specific case, Ferris must not deny the request (exhibit B).

### **Section 1: Obstruction of access to open records**

The letter from Mr. Griffith (exhibit A) is part of a series of delays that suggest Ferris is willfully and capriciously frustrating access to public records. In addition to possible violations of statutory requirements on timeliness of response to open records, this substantiates, at a minimum, a lackadaisical attitude about open records requests.

To wit:

**1. Pattern of frustration to legitimate open records requests through delay and incompetence.** A written log of my interaction with Ferris, TX concerning the current and two prior requests is included as exhibit C. This log shows several examples of delay and apparent feigned incompetence.

A specific example: exhibit D is an emailed open records request, from 9-8-2009, aspects of which fall under the Texas Public Information Act (TPIA). (Note: some aspects of this request also fall under Rule 12 of the Texas Rules of Judicial Administration and a common law right of access to case records.)

Ferris's response to exhibit D arrived in the mail on July 23, 2010, **318 calendar days after the request**. Ferris's response is enclosed as exhibit E. Exhibit E substantiates that the request in exhibit D was simple to process. It should have been fulfilled shortly after the request was made.

This 318 days turnaround was despite 13 phone or email contacts about the request, including my initial 9-8-2009 contact:

1. 9-8-2009 (original request was emailed to Ferris)
2. 10-15-2009 (Ferris called me and left message)
3. 10-19-2009 (Ferris is in "transition")
4. 10-28-2009 (Ferris staff member can't get in touch with its own IT staff)

5. 12-9-2009 (Ferris doesn't know if my request is completed)
6. 1-26-2010 (IT still in transition)
7. 3-18-2010 (same "song and dance" about part time IT guy and systems complexity)
8. 3-19-2010 (talked with the IT guy finally)
9. 3-30-2010 (court clerk is out due to surgery)
10. 4-29-2010 (asked IT guy for status update; no response)
11. 6-22-2010 (asked IT guy for status update; no response)
12. 6-30-2010 (all data has been turned over to city manager and his secretary; I need to call other city staff for more details)
13. 7-2-2010 (the other city staff confirmed that some sample data is ready to go to me)

Ferris's response (exhibit E) arrived in the mail on July 23, 2010.

All these contacts are substantiated in exhibit C.

**2. Absurd request to Attorney General.** By invoking all exceptions in Texas Government Code Chapter 552 in exhibit A, Ferris alleges that my open records request would improperly disclose things such as:

- Confidential information held by the state bar (Sec. 552.1176)
- Rare books and original manuscripts (Sec. 552.120)
- The name of applicants to CEO positions for colleges and universities (Sec. 552.123)
- Public power utility competitive matters (Sec. 552.133)

By declining to exercise even a hint of specificity, Ferris lodged an absurd request. Not only does it suggest a lackadaisical attitude towards open records requests, it appears to be a continuance of a pattern of frustrating access to open records with delays and incompetence.

Further, Sec. 552.301(b), Texas Government Code, states "The governmental body must ... state the exceptions that apply..." By including mostly exceptions that cannot apply, Ferris's absurd request mocks the Office of the Attorney General and the open records process.

### **3. Untimely response to request.**

The open records request to which Mr. Griffith desires an Attorney General decision was lodged on January 4, 2011, not January 6 as stated in Mr. Griffith's email. See exhibit B. Mr. Griffith's response was dated and postmarked on January 20, 2011, **11 business days after my request.**

**4. Ferris did not attempt to work with me towards a mutually acceptable response.** Ferris staff did not attempt to determine whether a subset of the requested data would be a mutually acceptable fulfillment of this request.

Twenty four (24) other jurisdictions from which I have requested citation data have 1. complied fully, sometimes with an agreement on use of the data or 2. negotiated a redacted dataset that is acceptable to both them and me. A good example of the former is the Texas Department of Public Safety, with which I filed an Agreement for Access to Personal Information (exhibit F). (Note that this document

references “Texas Government Code, Sec. 730.003.” TxDPS probably meant “Texas **Transportation** Code, Sec. 730.003.”)

## Section 2: Legitimacy of my request

I respectfully request consideration of the following to support the legitimacy of my request, which is for a backup copy of a database that holds traffic ticket information.

**1. The requested database backup appears to only contain traffic citation information.** Exhibit E suggests that:

- A. A MySQL database exists for the primary purpose of managing traffic ticket data. This database appears to contain the data responsive to my request (exhibit E, page 2).
- B. The data in the MySQL database does not constitute case records or judicial records and therefore falls under the Texas Public Information Act:
  - a. Pages 3, 5, 7, 9, and 12 of exhibit E are prints of traffic citation data stored in the MySQL database. The top line of each page shows it’s a record of the Ferris Police Department.
  - b. Each traffic citation print contains no information other that involved in issuing the ticket. I.e., it has no data that would make it a case record.
  - c. Case records appear to be non-computerized and handwritten—therefore not included in the MySQL database or any electronic form—as per:
    - i. Pages 4, 6, 8, 10, and 11 of exhibit E.
    - ii. My 8-27-2009 phone call with Shalonda Nelson (see exhibit C).

Note carefully that the correctness of the above conclusions depend on the accuracy of data supplied by Ferris in exhibit E.

**2. The requested data is for statistical analysis.** I am a doctoral student at Southern Methodist University in Dallas, TX. I am doing statistical analysis on transportation safety. To obtain research data, I have requested all available electronic traffic ticket data from several jurisdictions, including Ferris, TX.

I am aware of certain statutory provisions that permit otherwise exempted disclosures to researchers performing statistical analysis. An example is Texas Transportation Code section 730.007, which states that certain information, normally exempt from disclosure, “may be disclosed to any requestor by an agency if the requestor ... represents that the use of the personal information will be strictly limited to ... use in research or in producing statistical reports, but only if the personal information is not published, redisclosed, or used to contact any individual.”

Exhibit G, a copy of the original, emailed 8-25-2009 request to Pat Bradley, Ferris City Secretary, demonstrates my intent to prudently manage sensitive data. (See highlighted section.)

If desired, my tenured faculty research advisor can provide verification of my research on SMU letterhead.

## Conclusion

My intent with this letter was both to demonstrate Ferris's frustration of access to public records and the legitimacy of my request.

I appreciate your consideration of this letter. Please contact me with any questions.

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