

## Watchdog: Is DART stalling on records request?



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Published: 07 August 2014 10:12 PM

Updated: 07 August 2014 10:24 PM

Let's pretend today that I run my own court. Watchdog Nation's Court of Open Government.

We pretend to prosecute governments who we think violate the spirit of the Texas Public Information Act. (Hey, somebody has to, because in real life it almost never happens.)

You play judge.

Today I unseal a four-count pretend indictment for obstruction of release of public records against Dallas Area Rapid Transit. Yep, I'm throwing a dart at DART.

### Opening statement

Last year, I filed an open records request seeking copies of public complaints about DART's paratransit system from disabled passengers who can't ride on buses or trains. The request covered May through August 2013.

DART appealed to the Texas attorney general on the grounds that the complaints contained personal information and shouldn't be released. An appeal is allowed by state law, but doing so delays the release for months.

The transit agency told the AG: "The release of the complaints to the general public is of no legitimate concern to the public."

Fortunately, the attorney general's office ruled that you have a right to know about DART complaints. After some personal information such as names and email addresses were deleted, DART provided me with the records.

The Watchdog published a summary of complaints in December that showed that vendor MV Transportation provided awful service. Passengers sat in urine. Drivers were unclean. Seat belts didn't work. And on and on. A thousand pages worth.

After that, the company promised to improve. DART's board extended MV Transportation's contract.

Curious about how that's working out, I filed a second request last month seeking complaints covering January to July of this year.

I warned DART in my letter: "This is similar to the request that I made last year. In that request, you went to the attorney general and he ruled that you should turn the information over to me. Therefore, I wish to also request that you do not refer this request to the AG since he has already ruled that the information should be public."

What does DART do? It's the reason we're here. DART files an AG appeal anyway.

Once, I understand. Twice? I will argue that's a deliberate stall.

### Four-count (pretend) indictment

First, wrongful appeal. State law forbids governments from appealing requests to the AG if "the governmental body has previously requested and received a determination from the AG concerning the precise information at issue in a pending request."

I maintain this is precisely the same information, except a different date.

What does DART say? DART Senior Assistant General Counsel Halfreda Anderson-Nelson says, "I don't feel like this is the same information based on the time period . . . . Otherwise, it would be a previous determination."

When I protest, she says, "I think we have a fundamental disagreement."

Second, permission already granted. Anderson-Nelson appeals, saying personal information needs to be kept confidential.

In my request letter sent last month, I write: "I also give you permission to redact personal information that you see fit such as name, email addresses, etc."

This is standard language I use in all my requests. Usually in other governments, it prevents an appeal.

I try to write broadly so they can't block my request on a technicality. In this case I use the phrases "as you see fit" and "etc." on purpose to make it universal.

When I argue this with Anderson-Nelson, she insists: "It didn't say you gave us permission to redact any privacy information."

"It's my point of view," she says, "that I'm going to go to the AG if there is information in there that does not need to be released. This deals with highly sensitive information. Yes, I do go to the AG."

Third, people do care. Anderson-Nelson again argues to the AG that my request for complaints from paratransit passengers is "of no legitimate concern to the public."

Fourth, poor follow-up. I end my letter with the phrase "Please contact me for further information about this request." Often, open records administrators will call and ask about redactions to avoid a delay. Not DART.

**Closing statements**

When governments delay releasing open records, they violate state law that beautifully reminds that public records belong to us; government is merely their custodian.

DART: "It isn't the same information," Anderson-Nelson concludes. "The request is for a different time period that calls for different information. Within that information there are privacy implications if we release it."

So I ask you reader: Your Honor, how do you rule?

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