



Best and quickest way to get info

By Pete Slover

A speaker at the recent FOIFT conference in Austin shared an instructive anecdote about the way the Public Information Act can work—really work—if both sides approach it with a good attitude

Amarillo City Attorney Marcus Norris related how a Panhandle TV station had filed a broad open records request with the city, seeking all documents related to a number of shootings involving police officers. As submitted, the request would have generated hundreds of documents, and required hours of costly city manpower to redact information required or allowed by law to be withheld.

At that point, Norris and his staff could have put together a cost estimate for assembling the records that would have been so high it would likely either killed the request, or launched an adversarial fight over the cost of obtaining the records. Instead, Norris contacted the requestor and offered to provide a less costly alternative, a copy of the mandatory forms generated after each police shooting, which summarized the essential facts of each case. The response satisfied the journalist's needs, without burdening the city or the television station with undue costs.

That happy ending highlights a number of principles for successful open records farming. The outcome in that case turned largely on the actions of a public official—and not all public officials will be so accommodating. But, the episode illustrates several hints requestors can follow to improve their success rate and lessen the costs and frustration of using open records laws.

Here are some tips for requestors (and in some instances, public officials) to grease the open records process:

1. Be civil; and willing to negotiate. Too often, the open records request is treated as a formal,

mechanical device and the first step in a confrontational process. Contact the government agency (in advance, if time allows) to learn who the custodian of records is. Try to learn what records are available and to gauge the overall receptiveness of the agency to public information requests. You may be surprised to find an advocate within the agency, somebody who can help you navigate the process and even to frame your request in a way that will be efficiently filled.

2. Be reasonable. While the Public Information Act assumes that documents are open to your inspection, there are some black-letter exceptions to the law that are not worth challenging. Know the law well enough to avoid wasting time on those areas, and even concede them in your written request, e.g. "I acknowledge that home addresses of peace officers contained in those records are not open to exception, and will not challenge the redactions of those addresses."

3. Be specific. While a shotgun request may be easier ("all records relating to the 25-year-old incumbent mayor,") it may be more productive—and quicker—to tailor your request ("the mayor's expense vouchers for the past 12 months").

4. Think of ways to lessen the burden on the agency. You can speed response time that way. For instance, if a records request involves sifting through boxes of documents to find responsive materials, offer to do the sifting yourself. If the bulk of costs are for copying, you can modify your request to ask for the right to inspect the records instead (consider bringing in your own copier, too). And, in the case of electronic data, it's sometimes cheaper to buy the data in bulk and extract the relevant info yourself, than to ask for the extracted data. That saves you the cost of government computer programmers and processor time.

See information on page four



Making FOIFT better for the public

By **Wanda Garner Cash**
FOIFT President

An old newspaper pal of mine said he stopped attending the FOIFT state conference because the news was always bad. "It's depressing because all we ever heard about was how the government is ratcheting down access," he said.

It's true to some extent that open government advocacy is a good-news bad-news cliché, mired in a climate where often the best news is that there isn't any bad news.

But the Foundation has escaped that era of hand wringing. Thanks to visionary board members, new alliances and an energetic new executive director, the FOI Foundation has plenty of good news to share.

In the past two years we have reinvented the FOIFT to reflect a more positive outlook. We realized that for the Foundation to be a more effective advocate for the public's right to know, the public had to know we existed. So, in January 2002, the Foundation conducted a self-study, identified goals and underwent profound internal and external changes. Here's some good news that resulted from that sharpened focus:

The FOIFT achieved a higher external profile through industry partnerships, special events, a redesigned newsletter and Web site and service projects that heightened public awareness of open government.

Joint ventures with the Texas Press Association established the annual Nancy Monson FOI Award and also created a scholarship for First Amendment Institute tuition.

Working with University of Texas Journalism Chairman Lorraine Branham and Professor George Sylvie, the Foundation helped coordinate a student audit of public record access in Central Texas. Results were published in a special print and online edition of the *Texas Journalist*.

Foundation board members are taking a more active role in legislative outreach and hearing testimony, including working with key lawmakers to preserve access and intervening with the governor's office on vetoes. The attorney general acknowledged the FOIFT's role in helping shape open government policy by agreeing to regular quarterly meetings with Foundation board members for a mutual update on access issues and concerns.

Perhaps the biggest visibility booster was in March 2003 when the FOIFT hosted events commemorating the 30th anniversary of the Texas Open Records Act as well as the 25th anniversary of its own founding.

Activities kicked off with a ceremony on the floor of the Texas Senate chamber, followed by a dinner honoring former Lt. Gov. Bill Hobby and his wife Diana with the 2003 John Henry Faulk Civic Virtue Award. The Foundation co-sponsored an open government symposium at the LBJ School of Public Affairs. Publicity from the double anniversary celebration yielded state and national exposure for the Foundation. Donations on the Hobbys' behalf handsomely enriched our endowment fund. Articles written by Attorney General Greg Abbott, author and *The Dallas Morning News* reporter Howard Swindle and Don Adams, a former state legislator who helped write the first open records act, were distributed to every newspaper in Texas.

Abbott's announcement at the state conference about a new initiative creating litigating authority within the AG's open records division was especially well received. This decision to allocate financial and personnel resources to enhance enforcement efforts underlines the attorney general's commitment to open government. Abbott also pledged to support a statutory change that would give his office concurrent jurisdiction with district attorneys on prosecuting open government violations and one that would allow his office to enforce open records cost limits.

A new and somewhat unexpected alliance was formed at the state conference when Texas Municipal League Executive Director Frank Sturzl agreed to partner with the FOIFT on open government workshops for TML members. Sturzl said he hopes our organizations can become partners instead of adversaries.

The Foundation also had plenty of good news internally, benefiting from Katherine Garner's promotion to executive director and her effective organizational skills. By-laws changes delegated routine business decisions to the executive committee, freeing up quarterly board meetings for outside speakers and stimulating discussion. An orientation process, established to help new board members understand their responsibilities and the history and structure of the Foundation, has inspired quicker and more intensive participation in FOIFT activities.

The governance of the FOIFT is thoughtful and progressive thanks to the board's conscientious, creative dedication. The officers and directors who will assume leadership in January are poised and ambitious to lead the Foundation to greater levels of service. And that's the best news of all.

Wanda Garner Cash, editor and publisher of The Baytown Sun, retires in December after two terms as FOIFT president. She remains on the board of directors as a member of the executive committee.



We realized that for the Foundation to be a more effective advocate for the public's right to know, the public had to know we existed.



He wears two caps—mayor and publisher

Editor's note: Ever feel like giving the mayor of your city a piece of your mind? Or maybe the publisher of your local paper? Here's a man who works both jobs, and has the capacity of looking at both sides. He agreed to explain how he operates as a small town publisher and as mayor of Clifton, Texas.



By W. Leon Smith

The prospect of serving as mayor and simultaneously publishing the local newspaper has the potential, at times, of creating a conflict of interest or at least the perception that there might be a conflict. It is perhaps easier to forgo these problems in a smaller community where the propensity for individuals to run for public office is somewhat limited.

No matter what the city size, however, serving as mayor can be time consuming and is often frustrating, which reduces the stable of potential candidates. Persons in their prime tend to be busy raising families, devoting most of their time to their jobs, and dealing with individual situations which in Clifton has historically resulted in retirees for the most part, seeking the office of mayor.

The reason I ran the first time was to attempt to break that trend, providing that someone deeply involved in active business and raising a young family could indeed also serve as mayor.

My intention was to serve one term. However, when it came time to consider a second term, the city was in the middle of several fairly complicated projects that I wanted to see to fruition. Two years did not seem long enough to fully accomplish some of the goals that had developed during my first term.

When it came to establishing a structure to eliminate the mayor-newspaper conflict, I wanted to protect both, especially the credibility of the newspaper. To accomplish this, we structured the coverage so that I do not cover stories relating to the mayor. Other members of the newspaper staff do that, in the same format that the paper has always used in its reporting of government.

When I am serving as mayor at a function, that's the hat I wear. When I am serving as a newspaper publisher at a function, I change hats. I attempt to keep the two as separate as possible, although there are occasions when one leads to the other, or I might be introduced as both. I do strive to "act" as either one or the other, not both at the same time. I have the ability to turn one mode off and the other on like the flick of a switch.

Most of our city-related news stories are informational and *The Record* has always attempted to tell all sides fairly. But if there is a controversial news story that will

appear in the paper regarding the city or the mayor, it is usually also covered by other area media. *The Record* staff compares the stories that appear in *The Record* to see if ours is similar, to determine if we were fair. On top of this, we ask individuals deeply involved in both sides of a controversial issue if the newspaper account was fair. So far, we are batting 100 percent on this, based on feedback we have been given.

The Record always strives for balance no matter how it makes me or anyone else look. Personally, I usually do not care how I am perceived in print, since sometimes when it appears you lose, you actually win. It's a matter of individual interpretation. The paper runs letters to the editor on any side of the issues, whether or not I personally support them. The paper has always done that.

Helping in defining a distinction between the two functions has been my long-standing relationship with the city. As a publisher and former reporter, I have probably attended more Clifton council meetings than anyone alive today, over many years, so I intimately know how the city functions, plus I have an historical basis to determine what would normally be published. We ask ourselves, for instance, if the former mayor was speaking at this event, would we run his picture? If so, the paper prints mine. If not, then I luck out.

The mayor's position is not funded in our city budget. Although I can be reimbursed for legitimate expenses, I usually foot the bill myself.

Probably the most frequent awkward situation regarding the mayor/publisher mix occurs when I am in discussion with individuals representing other governmental agencies. They often ask whom they are talking to—the mayor or the newspaperman. They sometimes do not want to be quoted in the paper if they are talking to the mayor or if the conversation is designed as a negotiation exercise. When I tell them which one they are talking to, then the conversation goes in its proper direction. Here, I draw the lines very sharply.

Whether one can adequately serve both as mayor and newspaper publisher on a long-term basis is, for me, yet to be determined. At this stage, it is not my intention to perform both duties for the long-haul, but anything is possible. If there is a question or problem that appears might create a conflict of interest, I have plenty of professional advisers to assist me or to defer to. So far, it has worked quite well.

Probably the most difficult adjustment for me upon becoming mayor is the realization that the cogs of government turn very slowly and very deliberately, while running a newspaper is fast paced. I am caught somewhere between the tortoise and the hare and am rooting for them both.



"I am caught somewhere between the tortoise and the hare and am rooting for them both."

--Clifton Mayor W. Leon Smith and publisher of The Record



Another round with Dallas police

TYLER – Trying to get requested information from Dallas police is worst than pulling teeth, according to reporter Jacque Hilburn of the *Tyler Morning Telegraph*.

Her problems began with a call to Dallas police with a request for the date, time and location of offenses by a man held in Dallas and also wanted by Tyler police.

Dallas police told her to submit a written request and send it to the police Open Records Department. Eight days later, she called back and was told her request was “in the legal department, under review.”

She learned later that even if the request were approved, there was the matter of payment. That, police said, would be \$1.50 total for about 15 pages of information. The reporter explained she had a deadline and could the whole thing be handled by telephone.

The officer said he would need a written request explaining she wanted to handle the matter by phone. After

doing this, the reporter got a two-page letter faxed by a Dallas city attorney that her request had been denied and the Texas Attorney General’s office was being asked for an opinion.

Later, the reporter got a call from the AG’s office, advising her that Dallas had been told to quit fooling around and release the information immediately, as required by law. The requested information arrived a few days later, following payment of the copying costs.

But the story doesn’t end there. Dallas Mayor Laura Miller learned about the problems, and as a former reporter herself, instructed then Dallas Police Chief Terrell Bolton to write a letter of apology and explanation to the Tyler reporter. The letter arrived 13 days later, from an assistant chief, explaining the need to review any requested information to determine if any needed to be protected from disclosure.



In many cases, governmental bodies, especially local ones, have a line item in their budget for projected revenue from open records.

--Hadassah Schloss, open records administrator, Texas Building and Procurement Commission



Cost authority lists her two main problems

Editor’s note: Hadassah Schloss, open records administrator, Texas Building and Procurement Commission, was asked her two biggest problems in dealing with open records questions. This is her response.

By Hadassah Schloss

My two biggest problems dealing with the Open Records questions I get are:

1. Governmental bodies that view the fact that the allowable charges are a revenue source. In many cases, governmental bodies, especially local ones, have a line item in their budget for projected revenue from open records. I consider that a mistake for several reasons.

First, there is no guarantee that there will be the same number of requests as in previous years, so the projection may be way off. **Second**, when they don’t collect what they thought they would, they run a deficit, so closer to the end of the fiscal year they are more likely to inflate the charges. **Third**, their projections tend to be more optimistic than warranted. My advice would be if they must have a line item for open records, to keep it as conservative as possible.

2. Requestors who believe that “public information” means “free information.” Though this is true in many cases, requestors tend to be unrealistic as to the capabilities of governmental bodies to run ad hoc reports or give them the information requested in a specific format.

Most governmental bodies in the state are local governments, and the vast majority is quite small and not very technologically advanced. Additionally, governmental bodies, whether large or small, keep their records in accordance with statutes, ordinances and rules that are meant to make their job more efficient. This may not necessarily make the records easier for the public to request in special formats, and some requestors have a problem understanding this reality.

For example, our purchase orders are kept in sequential order. I am able to produce an ad hoc report for a specific agency, for a specific commodity code, and even for a specific vendor if I have the 13-digit tax code, but I can’t produce such a report for the location where the goods were delivered. It is not something

that is of use to us in our daily work, it would not add efficiency to our processes, and it would be costly to develop a program to capture that information.

Information tips

Continued from page one

5. If you get a cost estimate that seems unreasonable, ask for a breakdown, and contact the Texas Building and Procurement Commission if it appears unjustified. The law requires agencies to show their charges are legally permissible.

6. Be ready for the worst, but don’t assume the worst. Civil communications don’t require you to waver in your resolve. Know your rights, and be willing to politely remind the requestor of them (“I’m sure you’re aware that the 10-day period allowed for response is a maximum, and that your agency is legally bound to provide them as soon as possible.”) *Pete Slover is a staff writer in The Dallas Morning News Austin Bureau.*

Longtime *FOI Focus* editor retires

When Ralph Langer asked a new board member to be editor of the *FOI Focus*, Langer was hoping Jud Dixon would keep the job for three years or so. Eighteen years, a Katie Award, and two redesigns later, Dixon has announced his second retirement.

"Jud has been incredibly dedicated to the FOI Foundation and generous with his time," said Langer, a director and past president of the FOI Foundation. "I admire him greatly for his work and all of us in the Foundation are in his debt."

Dixon first retired in 1985 from United Press International as Operations Manager for its Southwest Division, ending a 41-year career that began with the wire service at Denver, CO., in 1944.

FOI Director Tommy Thomason said, "Jud's a journalist's journalist. He's not just the editor who produces the *FOI Focus* — his entire career has been committed to open government as the basis of solid reporting of the issues and events important to his readers. It will be hard to replace someone of his experience and insight into FOI issues."

Shortly after his retirement from the wire service, Dixon became a director of the Freedom of Information Foundation of Texas and has served as editor of its newsletter since.

"Jud has been a mainstay for the Foundation," said Wanda Cash, president of FOIFT. "Over the years, the breadth and depth of his knowledge have provided both literal and figurative focus to our efforts."

"Jud has rendered extremely valuable service to the FOIFT all through the time of my association with the Foundation," said Rob Wiley, immediate past president of the Foundation. "When I was president he was most helpful in getting out the message that we wanted to convey to the public about the importance of open government and the work of the Foundation."

Under Dixon's direction, the newsletter has become the communication centerpiece for the Foundation, and in 1991 won a Katie Award from the

Press Club of Dallas.

"During his long tenure he also went from a computer neophyte to a knowledgeable and expert producer of text and layouts and winning a Katie Award attested to the content and appearance," Langer said.

"Jud Dixon has been tireless in his service to the FOI Foundation. His dedication and professional skills as an editor have spread our message across Texas and the nation in award-winning style," said Paul Watler, FOIFT director and past president. "Although Jud is best

known for his work on the newsletter, he has volunteered countless other hours at board meetings and Foundation functions. He has done it all in good humor and quiet efficiency."

The Foundation also honored Dixon by presenting him with its James Madison Award in 1995.

"Jud has been incredibly thorough and diligent in keeping our members informed about important FOI news around the state and the country," said Tom Leatherbury, director and past president of the Foundation.

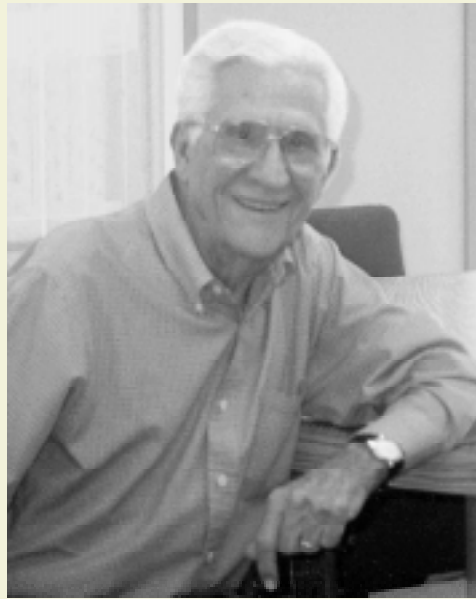
Prior to his joining UPI, Dixon worked on newspapers in Joplin and Springfield, MO. While with the wire service, he worked in Colorado, Wyoming, New Mexico and Fort Worth and Dallas bureaus.

"Jud is one of the true gentlemen in our industry," said Randy Sanders, FOIFT director. "His work on the *Focus* has been largely unsung, but all of those interested in Freedom of Information issues owe him a debt of gratitude that we can never repay."

"I think FOIFT has just been very fortunate to have someone of Jud's conscientiousness and professional skills to do our newsletter," said Cathy Martindale, FOIFT director and past president.

Dixon was filing the UPI broadcast wire in Dallas at the time of the assassination of President Kennedy in the city, and transmitted the Flash on the regional wire.

"Working with Jud and learning from him through the years has been a terrific experience and an honor," FOIFT Executive Director Katherine Garner said.



"Jud is one of the true gentlemen in our industry. His work on the Focus has been largely unsung, but all of those interested in Freedom of Information issues owe him a debt of gratitude that we can never repay."

*--FOIFT Director
Randy Sanders,*





From the AG. . .

By Greg Abbott

In a previous issue of *FOI Focus*, I emphasized my commitment to the enforcement of the Public Information Act. Recent events in Llano County should serve to illustrate the extent of my intentions.

On Aug. 28, 2003, the superintendent of the Llano Independent School District was convicted of criminal non-compliance with the act. He was found guilty, under section 552.353 of the act, of having failed or refused to provide access to information requested by the editor of the *Llano Buzz and County Journal*. The superintendent was assessed a \$1,000 fine and a six-month probated jail sentence.

This conviction marks the first known prosecution of a public official under section 552-353. Under this section, an officer for public information or the officer's agent commits an offense if, with criminal negligence, the officer or the officer's agent fails or refuses to provide access to public information, or to permit or provide copying of information, in response to a written request.

Section 6.03 of the Penal Code states that a person acts with criminal negligence with respect to circumstances surrounding or resulting from the person's conduct when the person ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the person's failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances.

The criminal liability of the school superintendent under section 552.353 is clear. The requested information related to the use of school district credit cards and reimbursements for travel expenses. Such records are among the most public of all information. Nevertheless, the superintendent refused to comply with the request. The newspaper filed a complaint with the Llano County district attorney who asked this office for assistance.

Assistant Attorney General Angela Goodwin obtained the grand jury indictment and tried the case, serving as assistant district attorney by appointment. Following the superintendent's conviction, the school board voted to suspend him from his position without pay. At this writing, he remains subject to other criminal charges that relate to his conduct as school superintendent.

Only an elected prosecutor (or this office, at the request of the prosecutor) can pursue criminal charges under section 552.353. Nevertheless, civil remedies are directly available to any member of the public who believes that the act has been violated. Section 552.321 authorizes both a requestor and this office to seek a writ of mandamus against a governmental body that refuses to request an attorney general decision or release information that either is or has been held to be public. Section 552.3215 enables this office and a district or county attorney to sue for a declaratory judgment or an injunction on behalf of a victim of a violation of the act. Under section 552.323, litigation costs and attorney fees may be awarded to a plaintiff who substantially prevails in an action under sections 552.321 or 552.3215.

In keeping with my commitment to pursue these remedies, I am creating a new prosecutorial section in the Open Records Division. I will not tolerate non-compliance with the act. Should you require assistance, contact the Open Government Hotline at 1-877-OPEN TEX.

AG getting tough on PIA violators

Attorney General Greg Abbott says the conviction of a Texas school district superintendent on charges of withholding public information could change the thinking of other government officials.

Abbott referred to the finding by a Blanco County jury that Jack Patton was guilty of withholding information on district funds from the *Llano Buzz* newspaper. Patton was fined \$1,000 and given six months of probation with a possibility of jail time if he violates his probation.

Abbott said other government officials in Texas could be thinking differently when they realize there really are consequences for failure to comply with open government laws.

The AG spoke at the FOIFT state conference in Austin, and said he will work with local prosecutors to crack down on local breaches of open record laws.

Public concerned about freedom

WASHINGTON – Freedom has become more of a concern to Americans, according to a recent poll by The Associated Press.

Most Americans do not think their individual freedom has been lessened by laws to combat terrorism. However, the survey said two-thirds of the respondents said they are somewhat or very concerned about the possible loss of freedom from such measures.

The survey found sharply partisan differences on how people view Attorney General John Ashcroft, who has been a strong supporter of anti-terrorism laws. He says they have been instrumental in preventing another attack against the United States.



I will not tolerate non-compliance with the Act.

--Attorney General Greg Abbott



Lumpkin named regional vice president of AP

John Lumpkin, a director of the Freedom of Information Foundation of Texas Inc. almost from its beginning, has been named regional vice president of The Associated Press.

Lumpkin joined the AP in Dallas in 1971. He served in other bureaus before becoming chief of bureau in 1982. In his new job, Lumpkin will be responsible for AP operations in the South, but will remain based in Dallas.

Through more than 20 years on the foundation board, Lumpkin has been a leader in finance and fundraising for the foundation. An endowment of nearly \$1 million has been raised to support future foundation activities.

The Texas Associated Press Managing Editors presented Lumpkin the *Jack Douglas Award* for outstanding service to Texas journalism.

Dale Leach, chief of bureau for the AP in Washington state, is the new chief of bureau for Texas.

Paul Watler honored by Texas broadcasters

Dallas attorney Paul Watler, a past president of the Freedom of Information Foundation of Texas, was honored by the Texas Association of Broadcasters which named him the 2003 Associate Member of the Year at its Austin convention.

Watler, a media law specialist and shareholder at Jenkens & Gilchrist, was recognized for his legal contributions to open government in Texas.

Executive Director Ann Arnold of the broadcasters association said Watler “lives and breathes open government.” She said there “is no stronger or more ardent defender of the public media’s right to know before the Texas Legislature and Texas courts.”



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Lt. Gov. supports open government

Victories and defeats in the Texas Legislature and how they affected open government occupied panelists and audiences in discussion of local and state problems at the annual Freedom of Information Foundation of Texas conference held at Austin in September.

Lt. Gov. David Dewhurst said he supports government in the sunshine. “The last thing we want is the perception that decisions are being made in smoke-filled rooms,” he told the conference.

The “good, the bad and the ugly bills” of the Legislature were highlighted by one of the panels, which concluded that the results weren’t as bad as expected.

“The outcome isn’t perfect, but it could have been much worse,” is the way Ann Arnold, executive director of the Association of Broadcasters, put it.

One legislative bill that open government supporters disliked permits county commissioners in counties of more than 400,000 people to conduct closed meetings to discuss contract negotiations.

City pays up for violation of open records act

GARLAND – Settlement of a 10-year-old Open Records suit was announced when the city of Garland agreed to pay *The Dallas Morning News* \$99,000, rather than go to court a third time in refusing to release public information about reassignment of a city official.

Two judges and a jury had awarded the newspaper more than \$200,000 in attorney fees, but the final figure was lowered to \$99,000 during a settlement discussion in which the *The News*’ pledged to give \$10,000 to charity. The documents had been released in 2000 after a ruling by the Texas Supreme Court.

District Judge Ted Akin ruled in 1994 that the

records should have been made public. He also awarded *The News* \$43,000 in attorney fees, and the City of Garland was granted a new trial on appeal.

Two years ago, a district court jury ruled in favor of the Dallas newspaper and awarded an additional \$160,000 in attorney fees.

Garland won a third appeal, but the city then decided it would be too expensive to go through a third trial.

The final outcome drew praise from the executive director of the Freedom of Information Foundation of Texas, Katherine Garner, who said: “It shows government officials can’t withhold whatever records they feel like.”



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