

**Eanes Independent School District
Texas Public Information Act Report
August 26, 2005**

Introduction

This report is provided to the Board of Trustees for the following reasons:

- To outline the basic requirements of the Texas Public Information Act (TPIA),
- To explain how EISD handles requests it receives for public information, and
- To illustrate several of the difficulties that challenge school district staff in responding to these requests.

The District is committed to open government, open records, and full compliance with the TPIA. Public information requests and compliance with the TPIA have been topics of interest and discussion in the last several years as the volume and complexity of requests received by the District have increased. It is this volume and the broad scope and complexity of the requests that challenge the district by requiring a significant amount of staff and financial resources to remain in compliance with the law. District staff has provided and will continue to provide the public with our full commitment to handling requests in a timely and efficient manner in full compliance with the Act. In fact, the Board's approval to hire a full-time Records Management Coordinator as part of the 2004-05 budget demonstrates the commitment of the District to complying with the law and providing the best service to our constituents.

Most of the requests received and the broadest and most complex of the requests have come from a small group of individuals. While this does not change the level of commitment from the District in complying with the law, it does compromise the level of service that the District can provide to the majority of its constituents, since an inordinate amount of resources is focused on responding to this small group. Specifically, at a minimum, it slows the District's response time for requests. It also limits the attention and time that can be given to better organization, retention and proper destruction of documents and to the training of district staff in the requirements of the law.

The Texas Public Information Act

The Texas Public Information Act was adopted by the legislature in 1973. Some of the important requirements related to the Act are summarized below. The District is required to:

- Establish reasonable procedures for inspecting or copying public information and inform requestors of these procedures;
- Treat all requestors uniformly and give to the requestor all reasonable comfort and facility, including accommodation in accordance with ADA requirements;
- Be informed about open record laws and educate employees on the requirements of those laws;
- Inform requestors of the estimated charges greater than \$40 and any changes in the estimates above 20 percent of the original estimate, and confirm that the requestor accepts the charges, has amended the request, or has sent a complaint of overcharges to the Texas Building and Procurement Commission, in writing, before finalizing the request;
- Inform the requestor if the information cannot be provided promptly and set a date and time to provide it within a reasonable time;
- Request a ruling from the Office of the Attorney General (OAG) regarding any information the governmental body believes should be withheld, and send a copy of the request for ruling, or a redacted copy, to the requestor.

Handling of EISD Open Record Requests

When EISD receives an open records request, the Records Management Coordinator is usually able to review the request within two business days to assess the following:

- Is the request clear and not too vague or broad in scope? Is clarification of the request needed from the requestor?
- Will it be necessary to seek a decision from the OAG? If so, is it possible and is the requestor agreeable to modifying the request in order to receive the documents without further delay?
- Which departments and/or campuses will need to assist with filling the request?
- Can the request be filled within ten business days?

After initially reviewing the request, the process of locating and compiling all responsive documents begins. If a request is very specific and does not require a ruling from the OAG, it may be filled very quickly. Good examples of this are the common requests for student data lists of directory information and requests for the Annual Financial Report which usually can be filled within three business days. Timelines may vary, however, depending on a variety of factors including the amount of pending requests at a certain time, the number and length of appointments scheduled to view documents, and other factors.

EISD generally has ten business days to fill a request for public information. By the 10th business day, EISD must make an appointment with the requestor to release the information or send a request to the OAG for a ruling. If EISD cannot complete a request within ten business days, EISD may send a letter to the requestor stating a date and time the District anticipates having the documents ready.

When a request needs to be forwarded to another department or campus, the Records Management Coordinator will provide a deadline of when the response to the request is due. Each department or campus should fill their portion of the request within 3-5 days and forward all responsive documents to the Records Management Coordinator. All documents are then compiled and reviewed to ensure that confidential information is not contained in any of the documents. Usually, by the 10th business day, the Records Management Coordinator will contact the requestor and set up a date and time that the records may be viewed or picked up. If the documents contain confidential information, the requestor can modify their request or the documents will be forwarded to EISD's attorney, and a request for a decision from the OAG will be submitted.

Issues in Handling Certain Requests

In the following sections specific issues are addressed which illustrate the district's challenges in responding to TPIA requests in an efficient and cost-effective manner. The issues include:

- Broad and all-inclusive requests
- Time-consuming requests for which no documents are maintained
- Requests for rulings from the OAG
- Legal fees
- Limited ability to charge the requestor
- Time required for viewing of documents

Broad and All-Inclusive Requests

Requests that are broad in scope and do not list specific documents that the requestor wishes to view take longer to complete. Often a request will include statements such as “any and all”, “show or reflect” or “including but not limited to”. These statements require EISD to include all documents that relate to the particular topic the requestor has included in their request. The search from several different campuses/departments for documents which meet such all-encompassing requests are difficult and time-consuming.

Some requests have even stated that they wish to view any and all emails to or from all EISD employees. EISD does not have the capability of searching all employee emails from a central location. This requires EISD to determine which employees might have responsive emails. Each employee then must perform a search of all emails and forward all responsive documents to the Records Management Coordinator.

Time-Consuming Requests for Which No Documents are Maintained

In recent months, EISD has received an increased number of requests for documents that show compliance with certain board policies. For example, EISD received a request to view documents that show compliance with a portion of Board Policy CDG (Local) which states “The Westlake High School Booster Club [PTO] shall operate the concession stand, within Board-approved guidelines, in a manner which shall give other parent support groups the opportunity to share in the proceeds of the concessions.” The District is not required to and does not retain specific documents that document or demonstrate compliance with this or other specific policies. Regardless, thorough searches of the District’s records are required each time a request of this nature is received. The District attempts to locate all documents that relate to the particular board policy requested. These searches often involve several department/campus personnel, are time consuming, and most often do not result in responsive documents being found.

Requests for Rulings from the Office of the Attorney General (OAG)

The TPIA requires a governmental body to request a ruling from the Attorney General if it receives a written request for records that it believes to be within an exception set out in subchapter C of the Act. There are two types of exceptions - mandatory and permissive.

According to the 2004 Texas Public Information Handbook, mandatory exceptions protect information deemed confidential by law, and a governmental body is prohibited from releasing this information. Permissive exceptions are defined as those which grant the governmental body the discretion to either release or withhold information. Regardless of which type of exception applies to a document, EISD is required to seek a ruling from the OAG before withholding information from the public unless the requestor agrees to modify their request to exclude the documents that contain confidential information or agrees to allow EISD to redact the information and agrees to pay the redaction fee associated with redacting the information. According to the rules of the Texas Public Information Act, if a governmental entity wishes to redact information, it must ask the Attorney General for a decision except in very limited circumstances. For example, a governmental entity may redact student names without asking the Attorney General for a decision. Under a newly effective rule, a governmental entity may redact social security numbers without asking the Attorney General for a decision. Other than specific student information and social security numbers, any information that EISD views as confidential and wishes to withhold from the public, must be sent to the OAG for a decision. EISD is required to seek a decision from the OAG before releasing any confidential information in whole or in part.

The OAG often allows the District to withhold information that meets the mandatory exception criteria. With permissive exceptions, the District must prove that a permissive exception applies

to the documents from which we wish to withhold the information. The requests that are submitted to the OAG are presented in the form of a legal brief which results in legal expenses. Table 1 below shows specific examples of both mandatory and permissive exceptions.

Table 1

Mandatory or Permissive	Exception	Examples
Mandatory	552.102 Personnel Information	<ul style="list-style-type: none"> • Transcripts maintained in a personnel file of a professional school employee
Mandatory	552.114 Student Records	<ul style="list-style-type: none"> • Cheerleading scores
Mandatory	552.117 Certain addresses, telephone numbers, social security numbers and personal family information	<ul style="list-style-type: none"> • Information on employees that have signed a form requesting that the District not release their personal information
Mandatory	552.136 Confidentiality of credit card, debit card, charge card and access device numbers	<ul style="list-style-type: none"> • Receipts containing credit card numbers for employees that are reimbursed through petty cash • Copies of District checks that have the bank account number and routing number on the bottom of the check
Permissive	552.103 Litigation or Settlement Negotiations	<ul style="list-style-type: none"> • Requests received to view information relating to an employee that also relates to pending litigation such as a lawsuit or State Board of Educator Certification (SBEC) complaint
Permissive	552.122 Test Items	<ul style="list-style-type: none"> • Tests administered to students - EISD does not release any tests administered to students.
Permissive	Rule 503 of the Texas Rules of Evidence - Attorney Client Privilege	<ul style="list-style-type: none"> • Certain information contained in legal bills may be withheld • Certain information related to Special Education proceedings may be withheld

Legal Fees

There are several reasons why the legal fees associated with open records have increased over the past two years. In an abundance of caution, EISD frequently consults with an attorney regarding pending open record requests. EISD uses this same law firm to file all requests to the OAG for rulings regarding confidential information. In many instances, EISD has made requests for rulings from the OAG and the ruling was returned in the District's favor. Subsequently, the requestor modified the request to exclude the documents that the OAG ruled could be redacted, or withdrew the entire request. In other words, after expending the legal fees to determine what information may or must be redacted, the requestor changed his/her mind and decided he/she no longer wanted the information.

For example, a recent requestor asked to "observe the check register for EISD for the past two years." Within two business days, the requestor was notified by EISD staff that, "the check register contains our bank account number on every page." We informed the requestor that if we sent the request to the OAG and the OAG determined, as they have in the past regarding other bank account numbers, that we must withhold it, then the requestor would be responsible for paying the redaction fees. We asked how the requestor would like us to proceed and the response

was, "EISD has a right to release this information to me without filing for an AG opinion." The requestor's response was not an answer to the question that was sent. EISD did not respond to the requestor but rather determined the request must be sent to the OAG for a decision. The Attorney General ruled that the information must be redacted. After incurring the legal expense of requesting a ruling from the OAG, we sent the requestor notice of the charges for redaction for \$45.00. The requestor initially accepted the charges and then stated the next day, "Please hold on redacting the responsive documents for this request. I have ideas about alternative ways of obtaining this information."

Limited Ability to Charge the Requestor

Texas Building and Procurement Commission has adopted reasonable cost rules that governmental bodies must follow when charging requestors to view or obtain copies of documents.¹ The vast majority of the requests that EISD receives are to view documents rather than to obtain copies. Listed below are the most common charges for viewing or receiving copies of documents;

- \$.10 per page for documents that must be redacted under a mandatory exception
- \$.10 per page for copies of documents
- Labor (\$15.00 per hour) and overhead charges (20% of labor)
These charges only apply if more than 50 pages are copied after the requestor views the documents. The labor and overhead charges are applied to the percentage of documents that the requestor receives of the total documents included in the request. For example, if 1,000 pages are viewed and 100 pages are copied, ten percent of the total labor and overhead charges would be applied.
- \$1.00 per cassette tape

The following examples illustrate common situations related to charging for open records requests.

If a request is to view 200 pages of documents that must be redacted pursuant to a mandatory exception, the requestor pays \$20.00 in redaction fees to view the documents. After viewing the documents, the requestor decides to take forty-eight pages of the 200 pages. No additional fees are charged for labor and overhead until more than fifty pages are received.

Using the same example, if after viewing the documents the requestor wishes to take copies of all 200 pages, labor charges of \$15.00 per hour (one hour for redacting) and overhead of 20% of the labor, is charged. The requestor owes an additional \$18.00 in fees.

If a request is to view documents, and it takes EISD thirty hours to locate and compile three full boxes of documents from various departments and/or campuses, with no requirement to redact information, the requestor pays nothing to view the documents. The requestor would only pay \$.10 per page if they choose to request copies of specific documents. Labor and overhead would only be charged if copies of more than 50 pages are required.

Time Required for Viewing of Documents

EISD is currently in the process of reviewing procedures and guidelines regarding specific issues that arise during the viewing of open records requests. Each requestor is notified when the

¹ Beginning September 1, 2005, this responsibility is transferred to the Office of the Attorney General.
EISD Texas Public Information Act Report 9/6/2005

documents responsive to his/her request have been compiled and are ready for viewing. The requestor is then required to set an appointment at a mutually agreeable time to view the documents at the EISD Administration Building. One to two hours is allotted for each appointment, depending on the size of the requests.

Recently there have been unusually long delays in the reviewing of documents due to requestors wishing to take photographs of the documents provided for their review, cellular phone conversations during the meeting and an endless array of questions from the requestor(s) to EISD staff regarding the documents they are viewing. In some instances the requestors bring one or more visitors with them to review documents as a group. Often this leads to increased discussion between the requestor and their guest, lengthening the amount of time it takes to review the documents.

EISD anticipates that the implementation of specific procedures and guidelines for viewing documents will assist in expediting the viewing of open records requests and further allow us to treat all requestors equally.

Example Illustrating Difficult Requests

The following example of a recent request illustrates specific issues and concerns with adequately responding to the requestor and maintaining compliance with the TPIA within reasonable timelines and resources.

The request was to view “any and all documents that show or reflect any and all expenses for all athletic programs at Westlake High School for the 03-04 school year. These documents should include but are not limited to:

1. petty cash disbursements
2. professional training of athletic staff
3. equipment and uniforms
4. travel
5. fundraising
6. correspondence and reports, including but not limited to emails, regarding cost per sport and/or cost per athlete and/or efforts to reduce expenses in these programs, fundraisers, and any other report regarding athletic program expenses in EISD.”

Since the request indicated “any and all documents,” EISD is required to search for, compile and make available all documents related to athletic expenses. EISD spoke with the requestor to seek clarification and to attempt to narrow the scope of the request. EISD responded to the requestor with the following: “After speaking with you January 12, 2005, and after reviewing the request below, EISD is interpreting your request to mean that you wish to have access to view all checks, invoices, purchase orders and back-up documents associated with each check, invoice and purchase order for all accounts.” The requestor had also notified EISD that they wished to work with the district to avoid EISD from having to request a ruling from the OAG regarding the disclosure of certain information such as social security numbers, bank account numbers, and credit card numbers. EISD sent the following interpretation of the requestor’s open record request. “We have recently discussed that you wish to work with EISD to avoid EISD from having to seek an Attorney General decision regarding the Open Records Request that you submitted. EISD is asking that we be allowed to either redact the following information at a cost of \$.10 per page or withhold those pages that contain the following information from being viewed: social security numbers, addresses of employees, credit card account numbers, bank account numbers, student information and non employee email addresses.”

The response from the requestor was, “regarding this specific request, I am agreeing to allow EISD to redact (as described above) rather than incur the expense of seeking an AG opinion, if EISD will agree not to charge me a redaction fee. I don’t wish to see student names unless the names are directory information and as such, public information.”

The next day, before the Records Management Coordinator could respond, EISD received a second response from the requestor. “If EISD does not agree to waive the redaction fees, then I will not agree to exempt the documents without an AG opinion. Further, I do not wish to incur any redaction expenses at all. If it is helpful in this process, I will agree to review the PO’s [purchase orders] and let you know if I need to see any of the invoices or backup documents for the PO’s.”

EISD responded back to the requestor with the following: “EISD is not willing to waive the redaction fees due to the massive amount of documents that are at issue. At this point, EISD is going to modify your request to be that you wish to view any and all purchase orders from September 03-August 04. There are approximately 7,450 pages of documents that will need to be printed. This information will be available five business days from the date that EISD receives your confirmation that we clearly understand what you are requesting.”

The requestor responded back. “I don’t wish to limit my request to include only purchase orders from September 03-August 04. I want to view any and all documents that are relative to the 03-04 school year, as I requested...it would be acceptable to view only the purchase orders and checks and let you know if I wish to see further information on specific additional documentation such as invoices or backup information, as necessary.”

EISD explained to the requestor that “[EISD] can not provide you access to the checks. It has an account number on it....The data you are requesting to view is not available electronically and it would take entirely too much time to make a copy of each purchase order. It is quicker for EISD to just reprint every one of them.”

EISD received another response from the requestor, “I offered to review the PO’s, and then the backup documents that are responsive to my request, as necessary. However, I am now requesting that EISD honor my request fully and promptly.”

EISD provided the requestor with a notice of charges. Under the TPIA a requestor is required to accept the charges, modify the request or send a complaint to Texas Building and Procurement alleging that they have been overcharged for being provided access to public information. The requestor sent a response stating, “I will agree to narrow this specific request to exclude documents such as purchase orders, invoices and checks.”

EISD made a reasonable search and review of the Districts documents and found that all responsive documents had been provided to the requestor in previous open record requests and that no documents existed regarding the remaining portions of the requestor’s request.

A separate request was submitted by the same requestor for the same documents in the request that was outlined above except that this new request was for the 04-05 school year. EISD did not attempt to clarify the request or have the requestor modify the request in any way. The request was sent to OAG for a ruling regarding disclosure of bank account numbers on checks and other confidential information contained in responsive documents. The ruling required us to withhold the confidential information. The requestor was sent a charge notice which explained what information would have to be redacted and how much the requestor would be required to pay to

view the responsive documents. The requestor responded by stating "...I want to observe those responsive documents that do not require redaction." At this point, EISD had already incurred all the legal expense of obtaining a ruling from the OAG. After getting further clarification that the requestor wanted to indeed modify the original request, all responsive documents were provided to the requestor within three business days at no cost to the requestor because the requestor only wanted to view the documents.

Conclusion

Currently, the District receives as many or more requests than districts that are 5 to 8 times the size of Eanes ISD. Since September 2004, EISD has received approximately 253 open records requests, and approximately 20% of those requests required a decision from the OAG. Table 2 below summarizes the number of Open Record Requests received by individuals/ groups each school year.

Table 2

Name of Requestor/Type of Request	02-03 # Requested ²	03-04 # Requested	04-05 # Requested
Susan Bushart (EISD parent)	288	215	88
Dianna Pharr (EISD parent)	97	148	52
Data Lists – (Multiple Requestors)	12	48	44
All Other Requestors	3	38	37
Peyton Wolcott (Horseshoe Bay, Tx)	--	--	17
Sami Webb Moran (EISD parent)	--	1	10
Julie Greenberg (EISD parent)	--	10	--
Austin American Statesman (media)	--	3	4
Total	400	456	253

Although there has been a reduction in the total number of requests over the past year, the volume of information requested has not changed. In past years, separate requests were submitted for similar documents for each month or for individual campuses. For example, in 2003-04 legal expenses may have been requested 12 times, once for each month of the year. In 2003-04 separate requests were made for athletic expenses at the middle schools and the high school. In 2004-05, similar requests that were previously separated into individual requests were combined into one request. So, while the overall number of requests has decreased, the volume and complexity have not.

The majority of the requests received are challenging due to the broad and all-inclusive nature of the requests, the volume of responsive documents, the difficulty in working with some requestors to limit the necessity for redaction or OAG opinions, and the inability to charge for the amount of total time involved compiling and responding to certain requests. The Office of the Attorney General has informed EISD that administrative burden or inconvenience cannot be grounds for not complying with a request. Specifically, in a recent decision, the Attorney General stated, "If the information requested is not clear, or if a large amount of information is requested, a governmental body may communicate with the requestor for the purpose of clarifying or narrowing the request..." But, a governmental body may not refuse to comply with a request on the grounds of administrative inconvenience. EISD staff will continue to work to limit the

² 02-03 School year statistics are from 6/18/03-8/31/03, which is when EISD started keep track of incoming open record requests.

impact that the abundance and complexity of open record requests has on campus and district staff and on the District's financial resources while maintaining full compliance with the law.