

JESSICA OLIVAREZ

PAUL ANDERSON

Vs.

NACOGDOCHES COUNTY

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§

IN THE DISTRICT COURT

*Of*

NACOGDOCHES COUNTY, TEXAS

**SUIT FOR WRIT OF MANDAMUS**

1. Now Comes Paul Anderson through the undersigned Counsel and files this Original Petition for Mandamus and would respectfully show the Court:

The tax-paying citizens of Nacogdoches County have a right to know where and how their taxes are being spent. The tax-paying citizens of Nacogdoches County have a right to know how much they are paying for insurance coverage of county employees, including, the number of denied claims, accepted claims, payments for claims, and deductions for claims as a result of the conduct of Nacogdoches County employees.

The tax-paying citizens of Nacogdoches County have a right to know how much they are paying for claims based on assaults by Nacogdoches County employees on inmates and citizens.

The County of Nacogdoches, by and through its attorney, John Fleming, is refusing to provide this information.

**VENUE and JURISDICTION**

Venue and jurisdiction are proper in the District Court of Nacogdoches County under Sec. 552.321(b) where “a suit filed by a requestor under this section must be filed in a district court for the county in which the main offices of the governmental body are located.”

**PARTIES**

Paul Anderson was the requestor in this suit under the Texas Public Information Act (TPIA). The law firm of Paul Anderson PLLC, represents Paul Anderson.

Nacogdoches County is a defendant pursuant to TPIA section 552.321 as the governmental body refusing to provide the public information requested by Plaintiff. Pursuant to Tex. Prac. & Rem. Code 17.024(b) the County of Nacogdoches can be served through its County Judge, Greg Sowell.

### **FACTS**

Nacogdoches County is a member of the Texas Association of Counties (TAC). The Texas Association of Counties is a non-profit 501(c)3 that provides insurance coverage for employees and property to Nacogdoches County through its Risk Management Pool (RMP). The County of Nacogdoches annually purchases insurance through TAC's RMP using taxpayer money. This insurance includes coverage for claims of law enforcement abuse by the Nacogdoches County Sheriff's Office and Nacogdoches County jailers.

On February 15<sup>th</sup>, 2022, a TPIA request was made for a "true and accurate copy of all payments to the Texas Association of Counties – Risk Management Pool from January 1<sup>st</sup>, 2020 through date of the request." *See attached Exhibit "A"* – PIA Request Letter February 15<sup>th</sup>, 2022.

On March 1<sup>st</sup>, 2022, outside counsel for Nacogdoches County, Robert Davis, sought a Texas Attorney General's opinion claiming that the information sought was subject to litigation, attorney-client work-product or confidential. *See attached Exhibit "B"* – March 1<sup>st</sup>, 2022 letter from Robert Davis.

Mr. Davis and his law firm, Flowers Davis, PLLC, are compensated by the Texas Association of Counties Risk Management Pool. Mr. Davis' and his law firm Flowers Davis, PLLC's compensation is approved by the RMP Board of Directors, which include John Fleming.

These records sought exist, have been created, and are available. On March 11<sup>th</sup>, 2022, Jessica Corley, Nacogdoches County Auditor, stated that she had "provided the records to the County Attorney's office regarding the PIA request."

Public Information Act, specifically Tex. Gov't. Code Section 552.221(a) ("An officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer . . . "

The requested information is within the definition of "public information" in the TPIA (Tex. Gov't Code) section 552.002.

### **CAUSE OF ACTION FOR MANDAMUS**

The County of Nacogdoches refuses to provide information about the use of public tax dollars to purchase insurance products, specifically details about insurance policies, deductibles, aggregate limits, run/loss rates, claims and premiums. Pursuant to TPIA section 552.321, Plaintiff Paul Anderson, seeks a writ of mandamus from the Court to compel the County of Nacogdoches to produce the public information requested by Paul Anderson for the benefit of the tax-paying citizens of Nacogdoches County.

### **CONDITIONS PRECEDENT**

All condition precedent to this claim have been performed or have occurred.

### **ATTORNEY FEES**

Plaintiff was required to engage and use the services of the law firm of Paul Anderson, PLLC. TPIA (Tex, Gov't Code 552.323) provides that plaintiffs are entitled to an award of reasonable attorney's fees and the costs of litigation. Plaintiff seeks his costs and reasonable attorney fees.

### **REQUEST FOR DISCLOSURE**

Under Texas Rules of Civil Procedure 194, Plaintiff requests that Defendant Nacogdoches County disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

**SPECIAL EXCEPTIONS**  
**CONFLICTS OF INTEREST**

A 12-member Board of Directors govern the Texas Association of Counties Risk Management Pool.

See [https://imis.county.org/iMIS/TACMember/Directories/RMP\\_Directory.aspx](https://imis.county.org/iMIS/TACMember/Directories/RMP_Directory.aspx).

Nacogdoches County Attorney, John Fleming, is a current member of the Texas Association of Counties Risk Management Pool Board of Directors. John Fleming has an active role in determining the policies, conduct and guidelines for the members of the TAC RMP, including the denial or defense of Texas Public Information Act requests.

The wife of Nacogdoches County Attorney John Fleming is the Clerk of the 145<sup>th</sup> District Court of Nacogdoches County, the Honorable Jeffrey Davis presiding. The 145<sup>th</sup> Judicial District Court will (likely) be the court of assignment for this lawsuit.

This is an adversarial lawsuit seeking records that may implicate improper or unlawful conduct by Nacogdoches County Attorney John Fleming. Not only does this lawsuit allege that Nacogdoches County Attorney John Fleming has unlawfully denied access to public records, but the denial of these particular records is done so as to protect the self-serving interests of John Fleming as a current Board Member of TAC RMP.

The information sought from Nacogdoches County Attorney John Fleming may implicate John Fleming as having acted improperly or unlawfully in the denial of the public records sought.

The County of Nacogdoches is treating the records sought as though the records are secret.

*"Government ought to be all outside and no inside . . . Everybody knows corruption thrives in secret places, and avoids public places, and we believe it is a fair assumption that secrecy means impropriety. "*  
*--Woodrow Wilson.*

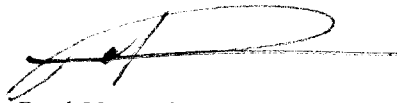
## **PRAYER**

Plaintiff asks the Court to make a finding that records sought through this lawsuit are public information and should be released.

Plaintiff asks the Court to order by final judgment the County of Nacogdoches to provide all information related to the payment of premiums and deductibles, information on the number of claims, policy limits and aggregates, as well as all other information regarding Nacogdoches County's insurance policy and coverage through Texas Association of Counties Risk Management Pool.

Respectfully submitted,

PAUL ANDERSON, PLLC

A handwritten signature in black ink, appearing to read 'Paul V. Anderson', with a long horizontal line extending to the right.

Paul V. Anderson  
SBOT №. 24089964  
paul@paulandersonlaw.com  
601 North Street  
Nacogdoches, Texas 75961  
Tel. 936.305.5600  
Fax 936.236.6242

# PAUL ANDERSON, PLLC

## ATTORNEY AT LAW

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601 North Street | Nacogdoches, TX 75961 | 936.305.5600(o) | 936.236.6242 (fax)

February 15<sup>th</sup>, 2022

Ms. Jessica Corley  
County Auditor  
Nacogdoches County  
101 W. Main Street, Ste 140  
Nacogdoches, Texas 75961

*jcorley@co.nacogdoches.tx.us*

### PUBLIC INFORMATION ACT REQUEST

**RE:** Nacogdoches County payment records to Texas Association of Counties-Risk Management Pool.

This Texas Public Information Act Request Seeks the following records:

A true and accurate copy of all payments to the Texas Associations of Counties – Risk Management Pool from January 1, 2020, thru date of request. Please include claim numbers for each payment, date the claim was filed, and all parties involved in each claim (if possible).

My office will, of course, reimburse you for all cost of this request.

Thank you,

Respectfully,

A handwritten signature in black ink, appearing to be 'PA', with a horizontal line extending to the right.

PAUL ANDERSON

# FLOWERS ♡ DAVIS, P.L.L.C.

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WILLIAM R. KNIGHT, JR.  
J. SCOTT MILLER  
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March 1, 2022

**Via Email: paul@paulanderson.law**

Paul Anderson  
Attorney at Law  
601 North Street  
Nacogdoches, TX 75961

Re: Nacogdoches County's Requested Exceptions to the Public Information Act  
Request from Paul Anderson dated 2/15/2022

Dear Mr. Anderson:

Please be advised that this law firm represents Nacogdoches County regarding your Public Information Act Request that was received by email on February 15, 2022. After reviewing your request regarding "all payments to the Texas Associations of Counties – Risk Management Pool from January 1, 2020, thru date of request", we determined that the information requested falls under exceptions to the Texas Public Information Act. Our request was sent to the Attorney General on March 1, 2022. You will receive a copy by certified mail.

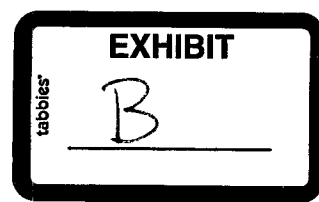
Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Robert S. Davis

RSD/rho/rlo



# FLOWERS ♦ DAVIS, P.L.L.C.

**CELIA C. FLOWERS**  
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March 1, 2022

**Via CM/RRR: 7014 2120 0001 7708 3737**

Texas Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: Nacogdoches County's Requested Exceptions to the Public Information Act  
Request from Paul Anderson dated 2/15/2022

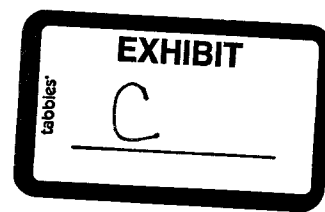
Dear Attorney General Paxton:

Please be advised that this law firm represents Nacogdoches County regarding the above-referenced Public Information Act request which was received by email on February 15, 2022, from Attorney Paul Anderson. See Exhibit A. Please allow this letter to serve as Nacogdoches County's request for an Attorney General Opinion tendered within 10 business days of the request. Nacogdoches County will submit its brief and supporting documentation within 15 business days of the request. The subject matter of this request also concerns the interests of Texas Association of Counties, and they have been notified of this request. See Exhibit B.

In the open records request, Attorney Anderson requests:

A true and accurate copy of all payments to the Texas Associations of Counties – Risk Management Pool from January 1, 2020, thru date of request. Please include claim numbers for each payment, date the claim was filed, and all parties involved in each claim (if possible).

See Exhibit A.



First, the Texas Public Information Act does not require a governmental body to prepare answers to questions or perform research. Furthermore, the information sought by Attorney Anderson is excepted from the Public Information Act on the following grounds:

1. The "litigation exception" as set forth in Texas Government Code § 552.103.
2. Information within the attorney-client privilege or the work-product privilege - See Tex. Gov't Code § 552.107(1), 552.111.
3. Information constituting work product pursuant to Texas Government Code § 552.111.
4. "Information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including attorney-client privileged information and work product. Tex. Gov't Code § 552.101; Tex. R. Evid. 503; Tex. R. Civ. P. 192.3(e), 192.5.
5. Information made confidential by "other law," including attorney-client privileged information and work product. Tex. Gov't Code § 552.022(a); Tex. R. Evid. 503; Tex. R. Civ. P. 192.3(e), 192.5.
6. Access and routing numbers protected pursuant to Texas Government Code § 552.136.

Thank you in advance for your consideration of this important issue.

Very truly yours,



Robert S. Davis

RSD/rho/rlo  
Enclosures

cc: Paul Anderson (Requestor) ✓  
Attorney at Law  
601 North Street  
Nacogdoches, TX 75961  
(Via CM/RRR: 7014 2120 0001 7708 3553, w/o enclosures)

Texas Association of Counties  
c/o Mike Thompson  
PO Box 2131  
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(Via Email: [miket@county.org](mailto:miket@county.org), w/o enclosures)

### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Paul Anderson on behalf of Paul Anderson  
Bar No. 24089964  
paul@paulanderson.law  
Envelope ID: 63409109  
Status as of 4/8/2022 2:28 PM CST

#### Case Contacts

| Name                   | BarNumber | Email                     | TimestampSubmitted  | Status |
|------------------------|-----------|---------------------------|---------------------|--------|
| E-Filing Anderson PLLC |           | efile@paulandersonlaw.com | 4/8/2022 2:08:59 PM | SENT   |