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## Lubbock court hears arguments in lawsuit over Leach firing records

By Gabriel Monte / A-J Media

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A Lubbock judge heard arguments Wednesday on whether he can issue a declaration over an open records dispute between Texas Tech and a Houston-based investigator seeking information about former head football coach Mike Leach's termination.

Judge Bill Sowder in the 99th District Court said he would make a ruling at a later date on the Texas Attorney General's motion to dismiss a portion of Wayne Dolcefino's lawsuit on grounds that his court lacks jurisdiction.

The Attorney General's Office is representing Tech in the lawsuit that alleges school officials failed to comply with the Texas Public Information Act by withholding public records that Dolcefino believes will show Leach was fired in 2009 because of pressure from the father of a former football player Leach is accused of mistreating.

After his firing, Leach sued the school for money he believed the school owed him because he was fired without cause. Tech invoked its sovereign immunity to shield it from paying and the Texas Supreme Court ruled in its favor.

Leach hired Dolcefino to investigate his termination, hoping to find proof his firing was improper. To that end, Dolcefino filed more than 40 records requests from Tech under the state's Public Information Act. Tech responded to more than a dozen requests with a bill for more than \$18,000.

Dolcefino sued the school in January, asking the court to order Tech to produce the requested information and make a declaration that the information he seeks are public and not exempted from disclosure, that Tech has a duty to release the information and the charges Tech requests in exchange for the record are unauthorized.

In court, Anne Hartley with the AG's office denied that Tech was refusing to comply with the law. She said she believes Dolcefino was using the open records law as a "sideshow to some other underlying dispute," and is hoping to use the declaratory judgement to shame the university.

"The plaintiff is asking court to tell (Tech) how to do its job," she said. "The law does not authorize that."

She said Tech is protected by its sovereign immunity from declaratory relief. And the state's laws governing public information does not allow declaratory judgements as reliefs in lawsuits.

She asked the court to dismiss 16 requests cited in Dolcefino's lawsuit, saying they were automatically withdrawn when Dolcefino failed to respond to the cost estimate Tech sent him for the records.

She said Dolcefino could have filed a complaint with the Attorney General's Office, which presides over disputes on open records requests.

With other requests, the documents Dolcefino seeks, including a report on the investigation into the allegations that led to Leach's firing, do not exist.

"Texas Tech does not have to prove the information requested does not exist," she said.

Michael Hurst, a lawyer representing Dolcefino, argued that email records will show Dolcefino was working with Tech to negotiate the records cost, and his requests are not withdrawn.

He stated emails Tech officials sent Dolcefino indicate they are withholding information that he requested. Hurst cited an e-mail Tech's Associate General Counsel Ronny Wall sent Dolcefino indicated that "TTU does not have a completed investigation report regarding Leach's mistreatment of Adam James as the completion of the report was interrupted by the litigation ensuing upon Coach Leach's termination."

"That is critical information they have not produced," Hurst said. "That is the subject of our request."

Hartley said Dolcefino's specific request for a completed report does not apply to the record Wall mentioned.

Sowder said the justification doesn't pass the "smell test" on whether Tech is complying with the law. He asked Hartley if she was word picking, since the investigation happened nine years ago and is not ongoing.

"To me, 'not completed' would mean there's still ongoing work ... I would be disappointed if there's an investigative report, and nothing's been happening for nine years," Sowder said.