

# TEXAS ETHICS COMMISSION

P.O. Box 12070, Capitol Station  
Austin, Texas 78711-2070

Steven D. Wolens  
Chair

Chad M. Craycraft  
Vice Chair

Ian Steusloff  
Interim Executive Director



Commissioners

Randall H. Erben  
Chris Flood

Mary K. "Katie" Kennedy  
Patrick W. Mizell  
Richard S. Schmidt  
Joseph O. Slovacek

July 9, 2019

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

## RE: Request for Decision Under Public Information Act

On July 8, 2019, the Texas Ethics Commission ("Commission") received a notice from the Office of the Attorney General ("OAG") stating that it received a complaint from \_\_\_\_\_ alleging that the Commission had failed to respond to a request for information. The complaint was assigned ID# 776415.

Included with the notice was what appeared to be an email from \_\_\_\_\_, requesting copies of personal financial statements ("PFSs") from Mr. David Slayton, the administrative director of the Office of Court Administration of the Texas Judicial System. The email was addressed to a Commission employee, who was at the time the Interim Executive Director and General Counsel. A review of Commission records shows that the Commission received an email from \_\_\_\_\_ on Saturday, April 27, 2019, at that employee's email address. However, the Commission maintains a separate email address that is expressly designated on the Commission's website as the proper email address for submitting a request for public information ("openrecords@ethics.state.tx.us"), and that email address is monitored daily for such requests so that they are promptly processed. We have no record of any additional communications with the requestor regarding this matter. Nevertheless, in an effort to provide public information as promptly as possible, and to ensure compliance with the Public Information Act, we are submitting this request for a ruling for your consideration. A copy of the open records request is included with this letter and marked as **Exhibit A**. A representative sample of the documents responsive to the request is marked as **Exhibit B**. The completed certification form is also included, without labeling as an exhibit.

We believe that the PFSs include information that must be redacted by the Commission before providing it to the requestor pursuant to sections 572.032 and 552.101 of the Government Code. The Commission respectfully requests your opinion concerning the application of this statute to the information and requests a ruling that the Commission may rely upon as a previous determination regarding any request for similar information in the future so that future determination requests under section 552.301 of the

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Promoting Public Confidence in Government

Government Code are unnecessary. We are providing to the requestor copies of the responsive information with the portions redacted that we believe are confidential under the Public Information Act, as described below.

## **Background**

The Commission is a state agency created by article III, section 24a, of the Texas Constitution. The duties and powers of the Commission are prescribed by chapter 571 of the Government Code and include the administration and enforcement of laws and regulations concerning personal financial disclosure of public officials under chapter 572 of the Government Code. Gov't Code §571.061(1). Section 572.021 of the Government Code requires a state officer to file with the Commission a verified financial statement complying with sections 572.022 through 572.0252. A state officer includes an appointed officer of a major state agency, which includes the administrative director of the Office of Court Administration of the Texas Judicial System. *Id.* §§572.002(12), .003(b)(2).

## **Section 572.032, Government Code**

A financial statement filed under chapter 572 of the Government Code is filed on a form prescribed by the Commission and called a "Personal Financial Statement" or "PFS." The form is required to be filed electronically, but an individual appointed to office may file on paper. Gov't Code §572.0291.

Section 572.032(a) of the Government Code provides that PFSs are public records. However, section 572.032(a-1) was amended in 2017 by House Bill 776 to state:

The commission shall remove the home address, the telephone number, and the names of the dependent children of an individual from a financial statement filed by the individual under this subchapter before:

- (1) permitting a member of the public to view the statement;
- (2) providing a copy of the statement to a member of the public; or
- (3) making the statement available to the public on the commission's Internet website, if the commission makes statements under this subchapter available on its website.

Acts 2017, 85th Leg., R.S., Ch. 983 (H.B. 776), §1. House Bill 776 applies to a PFS filed under subchapter B, chapter 572, of the Government Code, regardless of whether it was required to be filed before, on, or after the effective date of the bill. *Id.* §2.

Additionally, section 572.032(a-1) of the Government Code was amended in 2017 by Senate Bill 1576 to state:

Before permitting a member of the public to view a financial statement filed under this subchapter or providing a copy of the statement to a member of the public, the commission

shall remove from the statement, if applicable, the home address of:

- (1) a judge or justice; or
- (2) a member of the governing board or executive head of the Texas Civil Commitment Office.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), §15.<sup>1</sup>

A PFS must include certain information, including the addresses of certain persons or properties, a filer's telephone number, and the name of a filer's dependent child if information regarding the child is disclosed on the PFS. In order to determine which addresses disclosed on a PFS are a filer's home address, the Commission has provided check-boxes on the PFS form for a filer to identify an address as a home address. That information is used by Commission staff to identify home addresses and redact them accordingly before providing a member of the public with a copy of a PFS or an opportunity to view a PFS. Copies of PFSs are not made available on the Commission's Internet website.

### **Responsive Information**

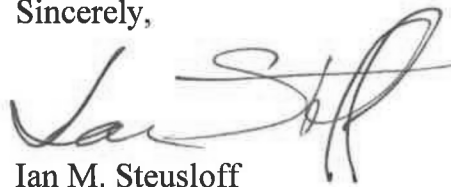
The documents responsive to the request include eight PFSs filed by one individual, one filed during each year from 2012 to 2019. Each PFS includes an address that has been identified by the filer as the filer's home address, the filer's telephone number, and/or names of the filer's dependent children. The Commission believes that section 572.032(a-1) of the Government Code prohibits the Commission from making the PFSs available to the requestor without redacting that information. While chapter 572 of the Government Code does not specifically describe that information as "confidential," it appears that the intent of the Legislature is that the Commission treat the information as confidential by restricting public access. Accordingly, it appears that section 552.101 of the Government Code excepts that information from public disclosure under the Public Information Act because it is considered to be confidential by law.

A representative sample of the responsive PFSs, with the sections subject to redaction marked in brackets "[ ]," is included with this letter for your determination and labeled **Exhibit B**. To the extent that you determine that the request submitted by \_\_\_\_\_ is a properly submitted public information request that is subject to the Public Information Act, the Commission respectfully requests a ruling regarding whether the information may, or is required to be, withheld under the Public Information Act. Additionally, the Commission expects to receive similar requests to disclose PFSs in the future, and that some requestors may not agree to tailor their requests to exclude home addresses, telephone numbers, and names of dependent children from their requests. In the interests of efficiency, and in light of the fact that these types of information are easily identifiable in a PFS, the Commission respectfully requests a determination upon which the Commission can rely to withhold these types of information in response to future requests for public information without being required to submit a request for a ruling under section 552.301(a) of the Government Code.

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<sup>1</sup> See also, Gov't Code §572.035 (requiring the Commission to remove or redact the residence address of a federal judge, state judge, or spouse of a federal or state judge from a PFS on receiving notice from the Office of Court Administration of the Texas Judicial System of the judge's qualification for the judge's office).

Sincerely,

A handwritten signature in black ink, appearing to read 'Ian Steusloff', with a stylized flourish at the end.

Ian M. Steusloff  
Interim Executive Director/General Counsel

c:

Enclosures: Exhibits A, B  
Public Information Act Request Certification From Governmental Body

TEC Ref: ID# 37284

July 10<sup>th</sup>, 2019

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

**Re: Complaint ID# R001238**

I am writing your office pursuant to section 552.304 as the Texas Ethics Commission ["Commission"] is seeking to redact information from me through an untimely decision request to the Office of the Attorney General ["AG"]. Moreover, the Commission has failed to disclose facts to the AG to give the appearance that my public records request to the Commission was somehow deficient. This is a blatant misrepresentation by the Commission and they have further failed to disclose that they have removed and added portions of their website to manipulate the AG into thinking my records request was deficient. Further, I am not required under the PIA to give them additional communication unless they request a clarification. Here, the Commission did not request clarification as they just ignored my request for over two months and not until the AG acted has the Commission responded.

Open Records Decision No. 654 (1997) held the Public Information Act did not require a governmental body to respond to a request for information sent by electronic mail. However, the 75th Legislature amended section 552.301 by defining a written request for information to include "a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission." Gov't Code § 552.301(c). Therefore, Open Records Decision No. 654 (1997) is superseded by the 1997 amendment of section 552.301. Generally, a request for information need not name the Act or be addressed to the officer for public information. See Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974). An overly technical reading of the Act does not effectuate the purpose of the Act; a written communication that reasonably can be judged to be a request for public information is a request for information under the Public Information Act. Open Records Decision No. 44 at 2 (1974). However, a request made by electronic mail or facsimile transmission must be sent to the officer for public information or the officer's designee. See Gov't Code § 552.301(c).

The Commission has failed to tell the AG is that their own website listed Ian Steusloff as the officer for public information. I have attached a copy of their website [*Exhibit A*] that states Ian Steusloff is their officer for public information that was printed off on May 8<sup>th</sup>, 2019. Further, the Commission has admitted that they received my records request on April 27<sup>th</sup>, 2019 yet they don't state why the records request was ignored. Their assertion that it "appears" I sent them an email is laughable. Since I submitted my records request and presumably since the Commission received the complaint from the AG, they have since removed the web page from May 8<sup>th</sup>, 2019 [*Exhibit A*] and replaced it with a site that specifies the open records email address in their untimely request. I do not have an exact date it was removed but it surely was after my records request. The Commission then submits an untimely ruling request and then they try to make it sound like my public records request was deficient while failing to tell the AG that they deleted and added portions of their site to support their misplaced theory. Here, the requester followed all rules and codes under the PIA yet the Commission failed to respond in a timely manner and now they want an unlawful "do over". Moreover, the Commission has failed to specify neither any Open Records Decision nor any case law nor any Gov't Codes to support their untimely ruling request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342,350 (Tex. App.-Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379,381 (Tex. App.-Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). Here, the Commission doesn't allege that another governmental body is requesting the data be redacted. Further, the Commission hasn't given a compelling reason as to why they were untimely besides the fact that they ignored my public records request. Based on the Commission's actions, any governmental body who fails to follow the PIA, could change the public records officer and/or email address once a complaint is lodged and then simply change their website from the old information to the new and then blame the requester. This is exactly what the Commission has done here to try to fix their deficiencies.

Based on the forgoing, I am requesting that you deny the Commission's request as untimely thus deeming their arguments to withhold as moot.

Regards,

*Enclosed:* Exhibit A [Print out from May 8<sup>th</sup>, 2019 from the now deleted website at <https://www.ethics.state.tx.us/tec/pia.htm>]

*Sent:* First Class USPS to the AG

*cc:* Ms. Amy Padilla and Mr. Ian Steusloff via email

## **Public Information Act**

Texas Government Code, Chapter 552, gives you the right to access government records; and an officer for public information and the officer's agent may not ask why you want them. All government information is presumed to be available to the public. Certain exceptions may apply to the disclosure of the information. Governmental bodies shall promptly release requested information that is not confidential by law, either constitutional, statutory, or by judicial decision, or information for which an exception to disclosure has not been sought.

### **Rights of Requestors**

You have the right to:

- Prompt access to information that is not confidential or otherwise protected;
- Receive treatment equal to all other requestors, including accommodation in accordance with the Americans with Disabilities Act (ADA) requirements;
- Receive certain kinds of information without exceptions, like the voting record of public officials, and other information;
- Receive a written itemized statement of estimated charges, when charges will exceed \$40, in advance of work being started and opportunity to modify the request in response to the itemized statement;
- Choose whether to inspect the requested information (most often at no charge), receive copies of the information or both;
- A waiver or reduction of charges if the governmental body determines that access to the information primarily benefits the general public;
- Receive a copy of the communication from the governmental body asking the Office of the Attorney General for a ruling on whether the information can be withheld under one of the accepted exceptions, or if the communication discloses the requested information, a redacted copy;
- Lodge a written complaint about overcharges for public information with the Texas Building and Procurement Commission. Complaints of other possible violations may be filed with the county or district attorney of the county where the governmental body, other than a state agency, is located. If the complaint is against the county or district attorney, the complaint must be filed with the Office of the Attorney General.

### **Responsibilities of Governmental Bodies**

All governmental bodies responding to information requests have the responsibility to:

- Establish reasonable procedures for inspecting or copying public information and inform requestors of these procedures;
- Treat all requestors uniformly and shall give to the requestor all reasonable comfort and facility, including accommodation in accordance with ADA requirements;
- Be informed about open records 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, or has amended the request, 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 regarding any information the governmental body wishes to withhold, and send a copy of the request for ruling, or a redacted copy, to the requestor;
- Segregate public information from information that may be withheld and provide that public information promptly;
- Make a good faith attempt to inform third parties when their proprietary information is being requested from the governmental body;
- Respond in writing to all written communications from the Texas Building and Procurement Commission regarding charges for the information. Respond to the Office of the Attorney General regarding complaints about violations of the Act.

### **Procedures to Obtain Information**

- Submit a request by mail, fax, email or in person according to a governmental body's reasonable procedures.
- Include enough description and detail about the information requested to enable the governmental body to accurately identify and locate the information requested.
- Cooperate with the governmental body's reasonable efforts to clarify the type or amount of information requested.

### **Information To Be Released**

- You may review it promptly, and if it cannot be produced within 10 working days the public information officer will notify you in writing of the reasonable date and time when it will be available.
- Keep all appointments to inspect records and to pick up copies. Failure to keep appointments may result in losing the opportunity to inspect the information at the time requested.

### **Cost of Records**

- You must respond to any written estimate of charges within 10 days of the date the governmental body sent it or the request is considered automatically withdrawn.
- If estimated costs exceed \$100.00 (or \$50.00 if a governmental body has fewer than 16 full time employees) the governmental body may require a bond, prepayment or deposit.
- You may ask the governmental body to determine whether providing the information primarily benefits the general public, resulting in a waiver or reduction of charges.
- Make a timely payment for all mutually agreed charges. A governmental body can demand payment of overdue balances exceeding \$100.00, or obtain a security deposit, before processing additional requests from you.

### **Information That May Be Withheld Due To An Exception**

By the 10th business day after a governmental body receives your written request, a governmental body must:

- request an Attorney General opinion and state which exceptions apply;



- notify the requestor of the referral to the Attorney General; and
- notify third parties if the request involves their proprietary information.

Failure to request an Attorney General opinion and notify the requestor within 10 business days will result in a presumption that the information is open unless there is a compelling reason to withhold it.

Requestors may send a letter to the Attorney General arguing for release, and may review arguments made by the governmental body. If the arguments disclose the requested information, the requestor may obtain a redacted copy.

The Attorney General must issue a decision no later than the 45th working day from the day after the attorney general received the request for a decision. The attorney general may request an additional 10 working day extension.

Governmental bodies may not ask the Attorney General to "reconsider" an opinion.

**To obtain information from this governmental body, please submit a request:**

By mail to — Ian Steusloff, Texas Ethics Commission, PO Box 12070, Austin, TX 78711-2070

By fax to — Ian Steusloff, (512) 463-5777

In person at — 201 E. 14th St., Sam Houston Bldg., 10th Floor, Austin, Texas

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**For complaints regarding failure to release public information,** please contact your local County or District Attorney at: Travis County District Attorney, (512) 473-9400.

You may also contact the Office of the Attorney General, Open Records Hotline, at 512-478-6736 or toll-free at 1-877-673-6839.

**For complaints regarding overcharges,** please contact the Texas Building and Procurement Commission at 512-475-2497.

If you need special accommodation pursuant to the Americans With Disabilities Act (ADA), please contact our ADA coordinator, Margie Castellanos at (512) 463-5800, or RELAY TEXAS (800) 735-2989.

*Last Revision: December 8, 2010*

# TEXAS ETHICS COMMISSION

P.O. Box 12070, Capitol Station  
Austin, Texas 78711-2070

Steven D. Wolens  
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Richard S. Schmidt  
Joseph O. Slovacek

July 12, 2019

Mr. David Slayton  
Office of Court Administration  
205 West 14th Street  
Austin, Texas 78701

By email: [david.slayton@txcourts.gov](mailto:david.slayton@txcourts.gov)

Dear Mr. Slayton:

We have received a formal request to inspect or copy some of our files. A copy of the request for information is enclosed. The requested files include records we received from you or from your company. The Office of the Attorney General is reviewing this matter, and they will issue a decision on whether Texas law requires us to release your records. Generally, the Public Information Act (the "Act") requires the release of requested information, but there are exceptions. As described below, you have the right to object to the release of your records by submitting written arguments to the attorney general that one or more exceptions apply to your records. You are not required to submit arguments to the attorney general, but if you decide not to submit arguments, the Office of the Attorney General will presume that you have no interest in withholding your records from disclosure. In other words, if you fail to take timely action, the attorney general will more than likely rule that your records must be released to the public. If you decide to submit arguments, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit arguments to the attorney general, you must:

- a) identify the legal exceptions that apply,
- b) identify the specific parts of each document that are covered by each exception, and
- c) explain why each exception applies.

Gov't Code § 552.305(d). A claim that an exception applies without further explanation will not suffice. Attorney General Opinion H-436 (1974). You may contact this office to review the information at issue in order to make your arguments. We will provide the attorney general with a copy of the request for information and a copy of the requested information, along with other material required by the Act. The attorney general is generally required to issue a decision within 45 business days.

Please send your written comments to the Office of the Attorney General at the following address:

[www.ethics.state.tx.us](http://www.ethics.state.tx.us)  
(512) 463-5800 • TDD (800) 735-2989  
*Promoting Public Confidence in Government*

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

If you wish to submit your written comments electronically, you may only do so via the Office of the Attorney General's eFiling System. An administrative convenience charge will be assessed for use of the eFiling System. No other method of electronic submission is available. Please visit the attorney general's website at <http://www.texasattorneygeneral.gov> for more information.

**In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General.** Gov't Code § 552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Gov't Code § 552.305(e).

### **Commonly Raised Exceptions**

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. We have listed the most commonly claimed exceptions in the Government Code concerning proprietary information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

#### **Section 552.101: Information Made Confidential by Law**

Open Records Decision No. 652 (1997).

#### **Section 552.104: Confidentiality of Information Relating to Competition**

*Boeing Co. v. Paxton*, 466 S.W. 3d 831 (Tex. 2015).

#### **Section 552.110: Confidentiality of Trade Secrets and Commercial or Financial Information**

Trade Secrets:

*In re Bass*, 113 S.W.3d 735 (Tex. 2003).

*Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

Open Records Decision No. 552 (1990).

Commercial or Financial Information:

*Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, *pet. filed*) (construing previous version of section 552.110), *abrogated by In re Bass*, 113 S.W.3d 735 (Tex. 2003).

Open Records Decision No. 639 (1996).

Open Records Decision No. 661 (1999).

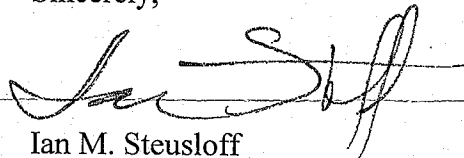
#### **Section 552.113: Confidentiality of Geological or Geophysical Information**

Open Records Decision No. 627 (1994).

**Section 552.131: Confidentiality of Certain Economic Development Negotiation Information**

If you have questions about this notice or release of information under the Act, please refer to the *Public Information Handbook* published by the Office of the Attorney General, or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To access the *Public Information Handbook* or Attorney General Opinions, including those listed above, please visit the attorney general's website at <http://www.texasattorneygeneral.gov>.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ian M. Steusloff', written over a horizontal line.

Ian M. Steusloff  
Interim Executive Director/General Counsel

Enclosures: Copy of request for information  
Copy of request for ruling

cc:

Open Records Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548  
(w/o enclosures)

Ref: ID# 37284

# TEXAS ETHICS COMMISSION

P.O. Box 12070, Capitol Station  
Austin, Texas 78711-2070

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Joseph O. Slovacek

July 17, 2019

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

## **RE: Supplement to Request for Decision Under Public Information Act**

This letter supplements the Texas Ethics Commission ("Commission") letter dated July 9, 2019, requesting a ruling from the Office of the Attorney General ("OAG") in response to a request for public information that is the subject of complaint ID# 776415 ("the request"), filed by the person who requested the information ("the requestor"). It has been brought to our attention that, at the time the public information request was submitted to the Commission, the Commission's website contained a webpage with information regarding the Public Information Act ("the Act"), which replicates the "Public Information Act Poster" disseminated by the OAG, that specified that to obtain information from the Commission, a person should submit a request by mail to Ian Steusloff at a specified mailing address, by fax to Ian Steusloff at a specified fax number, or in person at a specified physical address for the Commission. Also at that time, the Commission's website was in the process of being completely redesigned, and a "test" version of the website was accessible via a publicly available link that was posted separately to the Commission's regular website for testing. That "test" version of the website contained an updated webpage regarding the Act, which specified that a request for public information should be submitted to the email address "openrecords@ethics.state.tx.us" or in person at the Commission's physical address, which can also be used for mail delivery. The "test" version of the website, including the updated webpage regarding the Act, ultimately replaced the original website, but not until after this particular public information request was received. We apologize for the error in our previous letter, but we appreciate the opportunity for correction.

In light of this, we provide further explanation regarding our request for a ruling.<sup>1</sup> As stated in our

<sup>1</sup> This letter is sent within 10 business days after both the date of the notice of the complaint (July 3, 2019) and the date on which it was received by the Commission (July 8, 2019). The Commission was closed on July 4, 2019, in observance of a national holiday.

prior letter requesting a ruling, House Bill 776 amended subsection 572.032(a-1)<sup>2</sup> in 2017:

The commission shall remove the home address, the telephone number, and the names of the dependent children of an individual from a financial statement filed by the individual under this subchapter before:

- (1) permitting a member of the public to view the statement;
- (2) providing a copy of the statement to a member of the public; or
- (3) making the statement available to the public on the commission's Internet website, if the commission makes statements under this subchapter available on its website.

Acts 2017, 85th Leg., R.S., Ch. 983 (H.B. 776), §1. As amended, the statute applies to a personal financial statement ("PFS") filed under subchapter B, chapter 572, of the Government Code, regardless of whether it was required to be filed before, on, or after the effective date of the bill. *Id.* §2.

To the extent that the OAG determines that a deadline to request a ruling provided by section 552.301 of the Government Code was missed, section 552.302 of the Government Code provides that information is subject to withholding if there is a compelling reason. The requirement to safeguard the information identified in subsection 572.032(a-1) of the Government Code constitutes a compelling reason, as requiring disclosure would be contrary to an express statutory directive. *See also* Tex. Att'y Gen. Op. Nos. KP-0069, at 3 (2016) (cautioning that a school district board of trustees should withhold information contained in a PFSs that is confidential or otherwise protected by other law) (citing Gov't Code §552.117); KP-0151, at 4-5 (2017) (subsection 572.032(a-1), as added by a 2007 amendment, requires the Commission to remove the home address of a judge or justice from a PFS).<sup>3</sup> Subsection 572.032(a-1) falls within the scope of "law" for purposes of section 552.101 of the Government Code, which is also a compelling reason to withhold the information. *See, e.g.*, Open Records Ruling No. OR2009-05415, n.1 (Apr. 23, 2009). The Act contemplates that the legislature can provide exceptions to the general requirement that governmental entities disclose public information, and subsection 572.032(a-1) is another exception.

Prior open records rulings have held that there is a compelling reason to withhold home addresses, telephone numbers, and information regarding family members pursuant to sections 552.117 and 552.1175 of the Government Code. *See, e.g.*, OR2018-03852, at 3 (Feb. 20, 2018), OR2017-28821, n.2 (Dec. 19, 2017).<sup>4</sup> Although those statutes do not apply in this instance, it appears that the reason to exempt the same

<sup>2</sup> Unless stated otherwise in this ruling request, a reference to subsection 572.032(a-1) is a reference to the subsection added by House Bill 776 during the regular session of the 85th Legislature. Subsection 572.032(a-1) that was added by Senate Bill 1576 in that same legislative session is not applicable in this instance, but may indicate the importance that the legislature places on protecting the home address of certain judicial officers from public disclosure.

<sup>3</sup> Opinion KP-0151 also held that section 552.1175 of the Government Code would not require the Commission to redact certain information contained in campaign finance reports and PFSs. The reasoning in that opinion does not apply in this instance because subsection 572.032(a-1) is an exception to disclosure not contained within the Act and is a specific exception to the general requirement that PFSs be made available to the public.

<sup>4</sup> Subsection 572.032(a-1) of the Government Code does not contain the terms "confidential" or "confidentiality," but the absence of those terms does not necessarily exclude the statute from the application of section 552.101, as indicated by the OAG's interpretation that section

types of information contained in a PFS from disclosure is equally compelling.

Additionally, disclosing a PFS containing the types of information at issue may implicate the privacy and security interests of a third party, particularly the privacy and security of a person who files the PFS and his or her family members. Subsection 572.032(a-1) of the Government Code was first added to chapter 572 of the Government Code in 2007 by House Bill 842 and required the Commission to remove the home address of a judge or justice from a PFS before permitting a member of the public to view the statement or providing a copy of the statement to a member of the public. Acts 2007, 80th Leg., R.S., Ch. 638 (H.B. 842) §1. The statements of intent filed for the bill observed that judicial officers are faced with threats and that their safety was a “grave concern,” requiring the preservation of their security. Senate Comm. on State Affairs, Bill Analysis, Tex. H.B. 842, 80th Leg., R.S. (May 10, 2007); House Comm. on State Affairs, Bill Analysis, Tex. H.B. 842, 80th Leg., R.S. (2007). House Bill 776 amended the section in 2017 to its current form and a bill analysis filed for the bill noted that “[c]oncerns have been raised about the availability of home address information” in PFSs. House Comm. on Administration, Bill Analysis, H.B. 776, 85th Leg., R.S., (May 22, 2017). The legislature has also required a county clerk or the Commission, as applicable, to remove the home address and names of dependent children from PFSs filed by candidates for or holders of certain county judicial offices and from records derived from the PFSs. *See* Local Gov’t Code §159.055(b); Acts 2019, 86th Leg., H.B. 1872, §2 (effective May 23, 2019).<sup>5</sup> The Act also allows for the withholding of public information in some cases for the safety of public officials. *See* Open Records Decision No. 169 (1977).

Lastly, we are aware of sections 552.117 and 552.1175 of the Government Code, which exempt from public disclosure certain home addresses, home telephone numbers, and information regarding family members. Section 552.117 does not appear to apply in this instance because the Commission does not hold the PFSs as an employer. Section 552.1175 does not appear to apply in this instance because the Commission has not received a notice for purposes of subsection 552.1175(b) and is not advised as to whether the filer of the PFSs at issue qualifies under subsection 552.1175(a). The opinion KP-0151 further indicates that these provisions generally do not apply to information contained within a PFS because of the requirement of subsection 572.032(a) to make PFSs available to the public. Nevertheless, we do not foreclose the possibility that the information is exempt from disclosure pursuant to other law as contemplated by section 552.101.

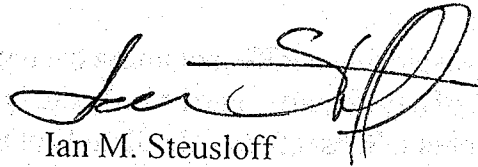
The Commission respectfully requests a ruling regarding whether the information we have identified in the PFSs is subject to withholding in response to the request. The Commission also respectfully requests a determination upon which the Commission can rely to withhold these types of information in response to future requests for copies of PFSs without being required to submit a request for a ruling under section 552.301 of the Government Code.

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552.117 imposes a confidentiality requirement despite the absence of those terms from the body of the statute. *See also* Gov’t Code §311.024 (heading of a section does not limit or expand the meaning of a statute).

<sup>5</sup> The analysis for the bill also stated the intent of the bill was to ensure enhanced security and privacy for all Texas judges. Senate Comm. on State Affairs, Bill Analysis, Tex. H.B. 1872, 86th Leg., R.S. (April 23, 2019).

Sincerely,



Ian M. Steusloff

Interim Executive Director/General Counsel

c:13

TEC Ref: ID# 37284



July 15<sup>th</sup>, 2019

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

**Re: Complaint ID# R001238**

I am writing your office in response to the Texas Ethics Commission's ["Commission"] letter dated July 12<sup>th</sup>, 2019 sent to Mr. David Slayton giving him a chance to object to the records being released. I do not understand the Commission's logic as they have seem to taken the stance that my public records request date has somehow been extended to the date that the Attorney General ["AG"] sent the Commission an informal complaint for their failure to respond to my original request. These action defy and completely rewrite the Texas Public Information Act ["PIA"], the Texas Statues, and PIA case law that was enacted to make sure that agencies, like the Commission, respond timely to public records requests. As in my letter dated July 10<sup>th</sup>, 2019, I provided the AG with documentation that shows that Ian Steusloff is listed as the contact for public records on the date I submitted my public records request. The email did not bounce and the email I sent in response to the Commission's request for decision to Mr. Steusloff did not bounce as well. The Texas Bar lists Mr. Steusloff as a lawyer so presumably he knows Texas law and presumably he knows the PIA since he was listed as their contact for public records. The Commission has taken the position that their failure to respond in a timely manner, pursuant to the PIA, is somehow my issue.

The Commission states that Mr. Slayton has a chance to respond pursuant to Gov't Code § 552.305(d); however, the Commission has failed to read Gov't Code § 552.305(d)(1) which states that:

(1) be in writing and sent within a reasonable time not later than the 10th business day after the date the governmental body receives the request for the information;

Here, I submitted my request on April 27<sup>th</sup>, 2019 and their letter dated July 12<sup>th</sup>, 2019 is well past the 10 days (52 work days to be exact) pursuant to Gov't Code § 552.305(d)(1); therefore, I am requesting that Mr. Slayton's objections not to be taken into consideration. Moreover, I am not sure why the Commission is sending the letter to Mr. Slayton to the Open Records Division as this is neither required nor authorized under Texas Code. Due to the Commission's failure to respond promptly, they can file a Writ of Mandamus pursuant to Gov't Code § 552.321.

Regards,

*Sent:* First Class USPS to the AG

*cc:* Ms. Amy Padilla and Mr. Ian Steusloff via email

July 17<sup>th</sup>, 2019

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

**Re: Complaint ID# R001238**

I am writing your office in response to the Texas Ethics Commission's ["Commission"] "supplement" letter dated July 17<sup>th</sup>, 2019 sent to the Attorney General ["AG"]. I am not sure why the Commission is continuing to supplement their response as this is their second submission to the AG since their untimely ruling request. Yet again, the Commission is running afoul of the Gov't Codes that outline the Texas Public Information Act ["PIA"]. The Commission is reading my responses and then trying to cure it's deficiencies by sending the AG "supplemental" responses that fall outside the PIA. Gov't § 552.304 deals with "submission of **public** [Emphasis added] comments. The Commission is not a part of the "public" thus § 552.304 is not a proper vehicle for them to supplement their responses. Moreover, the AG hasn't requested any additional response pursuant to 552.303 since the AG would have to send me a copy as well and as of today I haven't received any correspondence from the AG.

Fortunately, I saved a copy of their website as I anticipated them trying to make "changes" to get around their failure to respond pursuant to the PIA. In the Commission's July 17<sup>th</sup> letter, they offer the following:

"Also at that time, the Commission's website was in the process of being completely redesigned, and a "test" version of the website was accessible via a publicly available link that was posted separately to the Commission's regular website for testing. That "test" version of the website contained an updated webpage [sic] regarding the Act, which specified that a request for public information should be submitted to the email address "openrecords@ethics.state.tx.us" or in person at the Commission's physical address, which can also be used for mail delivery. The "test" version of the website, including the updated webpage [sic] regarding the Act, ultimately replaced the original website, but not until after this particular public information request was received."

These sentences do not make any sense. It appears that the Commission is somehow suggesting I am a beta tester and I should have used their "test" site that was buried somewhere via a link on the Commission's publicly available site. I have never heard of a government agency requiring the public to decipher between a test site and their current site. Again, I do not understand their logic.

The Commission received my request on April 27<sup>th</sup>, 2019 and they have admitted such in their untimely decision request. *See* Gov't Code § 552.301(e-1)(C). Thus as a matter of law the documents must be released. Moreover, the AG sent my informal complaint to Ian Steusloff as the "Assistant General Counsel" and not under his current title so presumably the AG has him as the Commission's officer for public records. Furthermore, presumably Mr. Steusloff had to complete "PIA Training" pursuant to section 552.012 and again presumably he received a "Certificate" and now he's trying these red herring arguments to justify his failure to follow the response requirements in the PIA.

In *Paxton v. City of Dallas*, the Texas Supreme Court determined (1) the failure of a governmental body to timely seek a ruling from the AG to withhold information subject to the attorney-client privilege does not constitute a waiver of the privilege, and (2) the attorney-client privilege constitutes a compelling reason to withhold information under section 552.302 of the Government Code.

The supreme court's decision overrules a long line of attorney general decisions discussing the burden a governmental body must meet in order to overcome the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. However, notwithstanding *Paxton v. City of Dallas*, the section 552.302 presumption of openness is triggered as soon as the governmental body fails to meet any of the requisite deadlines for submissions or notification set out in section 552.301. Governmental bodies should review the determination in *Paxton v. City of Dallas* when considering the consequences of failing to comply with the procedures set out in section 552.301. Here, the Commission has not implied that the documents are attorney-client confidential thus under *Paxton v. City of Dallas* the Commission has failed to provide a compelling reason why their untimely response has overcome the legal presumption that the requested information is public. Obviously, Mr. Steusloff knew of the consequences of not responding timely yet he chose not to respond until my informal complaint was received.

Based on the foregoing, I am requesting that the documents be released. Due to the Commission's failure to respond promptly, they can file a Writ of Mandamus pursuant to Gov't Code § 552.321.

Regards,

*Sent:* First Class USPS to the AG

*cc:* Ms. Amy Padilla and Mr. Ian Steusloff via email

July 10<sup>th</sup>, 2019

Ms. Tamara R Smith  
Office of the Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

**Re: Complaint ID# R001238, Untimely Decision Request number ID #776415**

Dear Ms. Smith:

I am writing your office in response to your letter dated August 27<sup>th</sup>, 2019. You have assigned an "ID" to the Ethics Commission untimely decision request a mere two weeks before you are making your final decision. I have sent you numerous responses to the Commission's untimely decision request under your complaint ID number. Based on your letter, I am under the impression that you never read or looked at my responses and you'll be basing your decision on the Commission's untimely request. Again, the Commission received my record's request on **April 27<sup>th</sup>, 2019** and they never responded to the request and they didn't respond to the request until the AG filed a complaint against them which flies in the face of the PIA. Further, they have not given any logical response as to why they never responded. All they have done is delete portions of their website and added new portions to justify their unlawful failure to respond to my properly filed public records request.

Based on the forgoing, I am requesting that you deny the Commission's request as untimely thus deeming their arguments to withhold as moot.

Regards,

*Sent:* First Class USPS to the AG

*cc:* Ms. Amy Padilla and Mr. Ian Steusloff, Mr Justin Gordon via email



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## Public Records request

1 message


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Sat, Apr 27, 2019 at 9:43 PM

To: [ian.steusloff@ethics.state.tx.us](mailto:ian.steusloff@ethics.state.tx.us)

I attempted to send via fax but your fax did not pickup.

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83K