

TEXAS ETHICS COMMISSION

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Austin, Texas 78711-2070

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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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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), §15.¹

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 [redacted] 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.

¹ 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 blue ink, appearing to read 'Ian Steusloff', with a stylized flourish at the end.

Ian M. Steusloff
Interim Executive Director/General Counsel

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

TEC Ref: ID# 37284