

k

July 10th, 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 Therefore, Open Records Decision No. 654 (1997) is superseded by the 1997 amendment of section 552.301.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 8th, 2019. Further, the Commission has admitted that they received my records request on April 27th, 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 8th, 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 8th, 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