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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