

TEXAS ETHICS COMMISSION

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ML-48116-12
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December 15, 2016

RQ-0144-KP

The Honorable Ken Paxton
Attorney General of Texas
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

By e-mail: opinion.committee@oag.texas.gov

Dear General Paxton:

The Texas Ethics Commission (commission) requests a written opinion on the application of section 552.1175 of the Government Code, which makes confidential certain personal information for covered individuals who notify a governmental body that they choose to restrict public access to that information. We ask how that section applies to various reports filed with the commission and the extent to which the information covered by that statute must be redacted from reports when making them available to the public, and related questions.

Background

The commission administers and enforces Title 15 of the Election Code, Chapters 302, 303, 305 and 572 of the Government Code, among other laws. Gov't Code § 571.061. These laws require certain persons to file campaign finance reports, lobby reports, and financial statements with the commission. The commission is required to make these reports available to the public. Elec. Code §§ 254.0401, .0402; Gov't Code §§ 302.016(a), 303.005(e), 305.009, 571.066(b)(2), 572.032.

Recently, state district judges requested that the commission redact the judges' home mailing address from campaign finance reports filed with the commission due to safety concerns. One judge has also requested redaction of a previous home address. We have complied with the requests. In doing so, however, we want to ensure that we are also in compliance with the disclosure laws under our jurisdiction. The laws under the commission's jurisdiction do not provide a means by which the commission may withhold a

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judge's home mailing address from a campaign finance report.¹ However, section 552.1175(b) of the Government Code, a provision in the Public Information Act ("the Act"), states in part:

Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public ... if the individual to whom the information relates: (1) chooses to restrict public access to the information; and (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). That section applies to thirteen identified groups of individuals ("covered individuals"), including federal judges and state judges as defined by section 13.0021 of the Election Code. *Id.* § 552.1175(a).² The confidentiality does not appear to be limited by the manner in which a governmental entity holds the information ("covered information").³ Thus, section 552.1175 of the Government Code appears to be in conflict with the commission's statutory requirements to make information in reports filed with the commission available to the public, including on the Internet.⁴ Due to the legitimate safety concerns at issue, and the simultaneous requirement that the commission make its reports available to the public, this request seeks your opinion regarding this apparent conflict.

Covered Information May Appear in Many Forms

Covered information may appear on one or more campaign finance reports, lobby reports, financial statements, or other reports filed with the commission. The information, such as a covered individual's home address (including the street name and number, city, state, and ZIP code), may appear on the individual's own report. For example, certain candidates and officeholders are required to file campaign finance reports and personal financial statements with the commission, and a covered individual's home address may appear in either report. Covered information may also appear in a report filed by another person, as explained below. Additionally, covered information may appear in a report that has no clear association with a covered individual, but may instead appear in a report filed by another person that discloses a piece of information with the name of the individual's family member or a completely unrelated individual or entity. Similarly, filers often use abbreviations or make typographical errors when entering names, addresses, or other information on reports. Covered information may also appear on their own

¹ Compare to section 572.032(a-1) of the Government Code, imposing an affirmative duty on the commission to remove the home address of a judge or justice from a personal financial statement filed with the commission prior to permitting a member of the public to view the statement or providing a statement to a member of the public. GOV'T CODE § 572.032(a-1).

² Section 13.0021 of the Election Code defines a "state judge" to include "a judge, former judge, or retired judge of an appellate court, a district court," in addition to other current, retired, or former judges. Section 13.0021(a)(2), Election Code.

³ The Public Information Handbook published by the Office of the Attorney General states that section 552.1175 "affords the listed persons the opportunity to withhold personal information contained in records maintained by any governmental body in any capacity." Office of the Attorney General, *Public Information Handbook* 143 (2016). See also Tex. Att'y Gen. Op. No. ORD-678 (2003) (confidentiality provided by section 552.1175 applies to certain information in voter registration lists held by a county registrar and a state master file held by the secretary of state).

⁴ See Elec. Code § 254.0401.

personal financial statement because the individual is required to publicly disclose certain financial activity related to the individual's spouse or dependent children. In some cases, filers include information in a report when it is not legally required. Below is a detailed explanation of the specific section of law that may require the covered information.

Campaign Finance Reports

The types of information specified in section 552.1175 ("covered information") may appear in various sections of a campaign treasurer appointment or campaign finance report filed with the commission, including appointments or reports filed by persons other than the individual to whom the information relates.⁵ A campaign treasurer appointment must be filed by any candidate for public office, including judicial offices. Elec. Code §§ 252.001, 253.031. A political committee is also required to file a campaign treasurer appointment before exceeding \$500 in political contributions or \$500 in political expenditures. *Id.* A campaign treasurer appointment must include certain information specified by law. *Id.* §§ 252.002-.0032; 1 Tex. Admin. Code §§ 20.205, .309, .411. Under those requirements, a campaign treasurer appointment may include an individual's name, address, or telephone number, as either a candidate or campaign treasurer.⁶

Covered information may also appear in a campaign finance report. Candidates and officeholders (including judicial candidates and officeholders), campaign treasurers of political committees, political parties, other persons making over \$100 in direct campaign expenditures from their own property, and legislative caucuses are required to file reports with the commission. *See generally*, chapter 254, Election Code. A campaign finance report must include certain information specified by law. *See, e.g.*, Elec. Code §§ 254.031(a), .0311(b), .038, .039, .0391(c), .061, .0611(a), .091, .0911, .121, .1211, .151, .202(c), .205(c); 257.003.

Similar to a campaign treasurer appointment, the cover sheet of a campaign finance report may include an individual's name, address, or telephone number, as either a candidate, officeholder, campaign treasurer, or other filer. Additionally, the form for each report includes various schedules that must be used to itemize certain activities, including political contributions, political expenditures, nonpolitical expenditures made from political contributions, loans, and returned political contributions. Covered information may appear in those schedules and include the name and address of:

1. A person from whom political contributions or loans are accepted.
2. A person to whom certain expenditures are made.
3. A person from whom political contributions are returned.

When a contribution or expenditure is required to be itemized, the information must include the address of the contributor or payee, and that address may be a home address. The names and addresses of covered individuals, including current and former candidates and officeholders, may thus appear in campaign finance reports as contributors or payees, such as when a political committee discloses accepting

⁵ Campaign finance reports must be filed with the commission electronically unless the filer qualifies to file on paper. Paper copies of the forms may be viewed on the commission's website at <https://www.ethics.state.tx.us/main/forms.htm>.

⁶ A candidate is not prohibited from being his or her own campaign treasurer. Elec. Code § 252.004.

a political contribution from a covered individual or making a political contribution to a covered individual.⁷ Additionally, when a candidate or officeholder uses their own political contributions to reimburse himself or herself for political expenditures they made from personal funds, the filer may disclose their own home address when itemizing that expenditure. Furthermore, a filer could make an expenditure to a business or non-profit organization that is located at the same address as a covered individual and disclose the name of the entity and its address. A filer could also accept a political contribution from a person located at a covered individual's address, such as a covered individual's family member or other resident. In these various cases, it is unclear whether section 552.1175 would apply to a covered individual's address.

Candidates for or holders of a judicial office, and specific-purpose committees for supporting or opposing them, are required to include additional covered information in their reports regarding an individual from whom a filer accepts political contributions that in the aggregate exceed \$50 in the reporting period, specifically:

The full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any; or if the individual is a child, the full name of the law firm of which either the individual's parents is a member, if any.

Id. §§ 254.0611(a)(2); .0911. Thus, reports filed by judicial candidates and officeholders, and specific-purpose committees supporting or opposing them, may include information that would reveal whether a contributor has family members. The report form includes spaces designated for disclosing the name of the law firm of a contributor's spouse and, if the contributor is a child, the name of the law firm of the contributor's parent(s). Such information appears to be covered by section 552.1175.

As detailed above, campaign treasurer appointments or campaign finance reports filed with the commission often include information that is potentially covered by section 552.1175. Those documents are public information and are frequently requested from the commission and campaign finance reports are freely obtained from the commission's Internet website. The commission is required to make each electronically filed campaign finance report available to the public on its Internet website not later than the second business day after the date the report is filed. *Id.* §§ 254.0401(a), .0402. Before making a campaign finance report available on the Internet, the commission is required to remove the address of each contributor, other than the contributor's city, state, and zip code. *Id.* § 254.0401(e). However, the contributor's address information remains available to the public in printed form. *Id.* § 254.0401(d); *see also* Tex. Att'y Gen. Op. No. JC-0198 (construing section 254.0401(e) of the Election Code to preclude the commission from making contributor address information, other than city, state, and zip code, available by any electronic means).

Lobby Reports

Certain individuals who directly communicate with members of the legislative or executive branch of state government in order to influence legislation or administrative action are required to register and file periodic reports with the commission. Gov't Code §§ 305.003, .005, .006, 0061; 1 Tex. Admin Code

⁷ The Judicial Campaign Fairness Act includes some restrictions on political contributions made to persons covered by the Act. *See generally*, subchapter F, chapter 253, Election Code.

§§ 34.41, .43. The commission makes lobby activity reports and lists of registered lobbyists and their clients available on its Internet website and in printed form upon request. *See* Gov't Code §§ 305.009, .011.

A registration or lobby activities report is required to include the full names, addresses, and phone numbers of certain persons, including the registrant. Gov't Code § 305.005(f), (i), (m); .006.⁸ A lobby activities report must also include certain information regarding lobby expenditures made to members of the legislative or executive branch or others, including the names and addresses of persons from whom lodging, entertainment, or food and beverages is purchased. *Id.* §§ 305.0061(a)(2), (b)(2).

It is possible for a registered lobbyist, or a payee of certain expenditures for which the address of the payee is required, to be a covered individual whose home address or telephone number appearing in a registration or report is confidential under section 552.1175. It is also possible for a covered individual's home address to appear in a registration or report when the disclosed information bears no clear relation to the covered individual, such as where a registrant merely resides (or resided at a separate time) at the same address as a covered individual.

Financial Statements

Certain state officers and employees are required to file financial statements (PFSs) with the commission. Gov't Code § 572.021. A PFS must include certain information required by law, including certain sources of income, holdings, financial liabilities, gifts received, and beneficial interests in real property that must include, if available, the street address of the property. *Id.* §§ 572.022, .023. Real property can also be described by the number of lots or number of acres, as applicable, in each county, and the name of the county, if the street address is not available. *Id.* § 572.022(c). The cover sheet of the PFS form also must include the filer's name, address, and telephone number.

PFSs filed with the commission are public information and are provided to the public upon request. *Id.* § 572.032(a); *see also* Tex. Att'y Gen. Op. No. KP-0069 (2016). The commission must remove the home address of a judge or justice from a PFS filed with the commission before permitting a member of the public to view the PFS or providing a copy of the PFS to a member of the public. Gov't Code § 572.032(a-1).⁹ Additionally, on the written request of a county judicial officer or candidate, the commission is required to redact the names of dependent children from a financial statement filed by the county judicial officer or candidate before the statement is made available to the public. Loc. Gov't Code § 159.055(b). However, the plain language of those provisions applies only to narrow types of filers.

Additionally, other types of covered information are required to be disclosed on a PFS. For example, a filer must disclose certain financial activity relating to the filer's spouse and dependent children. *Id.* § 572.023; 1 Tex. Admin Code § 40.2 (clarifying that a PFS must include information regarding community property and, in some cases, the financial activity of the filer's spouse and dependent children). Thus, a PFS may contain information required to be disclosed under section 572.023 of the Government Code that

⁸ Registrations and lobby activities reports are required to be filed electronically. However, paper copies of the forms may be viewed on the commission's website at <https://www.ethics.state.tx.us/filinginfo/lobfrm.htm>.

⁹ An ancillary question is whether section 572.032(a-1) of the Government Code requires the commission to remove the home address from a financial statement filed by a person who is a former judge or justice.

reveals whether a covered individual has family members. The form itself, which must be filed with the commission electronically, includes spaces on the cover sheet to disclose the names of a spouse and any dependent children if their information is disclosed on the form.¹⁰ Additionally, the various parts of the form used to disclose the information include boxes that must be checked by a filer to disclose that the particular information relates to the filer, the filer's spouse, or a dependent child.

It appears that the names of a covered individual's spouse and dependent children, as well as indications on the form that the information relates to a spouse or dependent child, are covered by section 552.1175 and would therefore be confidential if the covered individual properly submits to the commission a request to restrict public access to information that reveals whether the individual has family members. Such information may be substantial, including financial holdings or liabilities of a filer's family members that the legislature has required to be disclosed. The legislature has stated the following policy:

- (a) It is the policy of this state that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.
- (b) To implement this policy and to strengthen the faith and confidence of the people of this state in state government, this chapter provides standards of conduct and disclosure requirements to be observed by persons owing a responsibility to the people and government of this state in the performance of their official duties.

Gov't Code § 572.001.

As with other types of reports, covered information may be found in a PFS filed not only by a covered person, but also by others who are not covered. For example, a PFS filed by a covered individual would include information that clearly relates to that individual, including the street address of real property in which the individual holds a beneficial interest. Also, if a covered individual or the covered individual's spouse gives a gift valued over \$250 to a PFS filer, that filer must disclose the name and address of the person who gave the gift (unless a statutory exception applies).

Other Reports and Documents

Covered information, such as a person's name and address, can also appear in reports filed under chapters 302 (speaker reports) and 303 (governor for a day and speaker's reunion day reports) of the Government Code.¹¹ Those reports are required to include names and addresses of certain contributors and payees. Gov't Code §§ 302.014, .0201(d); 303.005(a). A declaration of speaker candidacy must also include the candidate's name, residence or business street address, and telephone number. *Id.* § 302.0121(b). The cover sheet of each report must also include certain identifying information, including the filer's name,

¹⁰ A paper copy of the form may be viewed on the commission's website at <https://www.ethics.state.tx.us/forms/pfs16.pdf>.

¹¹ Paper copies of the forms may be viewed on the commission's website at <https://www.ethics.state.tx.us/filinginfo/spkfrm.html> and https://www.ethics.state.tx.us/filinginfo/governor_day.htm.

mailing address, and telephone number. Covered information may also appear in a disclosure of interested parties form, which is required to include certain address information for each interested party identified in the form. Gov't Code § 2252.908; 1 Tex. Admin. Code § 46.5.¹² In those cases, it appears that the confidentiality provided by section 552.1175 would apply if the individual to whom the information relates properly requests that the commission restrict public access to that information.

The commission is also required to post on its Internet website the name and address of each candidate (who is required to file campaign finance reports with the commission) who has failed to pay a civil penalty imposed by the commission for failure to file with the commission a required campaign finance report or financial statement, in addition to the amount of the penalty imposed ("delinquent filer list"). Gov't Code § 571.079. Additionally, as soon as practicable following a preliminary review, preliminary review hearing, or formal hearing at which the commission determines that a person has committed a violation within the commission's jurisdiction, the commission shall make available on the Internet a copy of the commission's order stating the determination or a summary of the commission's order. *Id.* § 571.141. Covered information, including information revealing whether a covered individual has family members, may appear in the delinquent filer list or in an open order posted to the commission's website, and it appears that the confidentiality provided by section 552.1175 would apply to that information if the individual to whom the information relates properly requests that the commission restrict public access to that information.

Questions Presented

In Open Records Decision ORD-678, the Office of the Attorney General considered whether the confidentiality afforded by section 552.1175 applied to certain personal information in lists of registered voters held by a county voter registrar and to certain personal information in a master file held by the secretary of state. Tex. Att'y Gen. Op. No. ORD-678 (2003). At issue were two separate statutes in the Election Code that required disclosure, upon request, of certain information that could include a covered individual's home address. *Id.* at 3, 5. The relevant statutes in the Election Code required the information to be released upon request, and the opinion held that the statutes were therefore in irreconcilable conflict with section 552.1175, but that section 552.1175 prevailed because it held a later date of enactment with respect to each other statute. *Id.* at 3, 5. The opinion concluded that the confidentiality afforded by section 552.1175 applies to a covered individual's home address when the individual satisfies the criteria of section 552.1175 and that the home address could not be disclosed to the public. *Id.* at 3, 5.

It appears that section 552.1175 is in conflict with the statutory directives that the commission make available to the public reports filed with the commission. Most notably, section 254.0401 of the Election Code requires copies of electronically filed reports to be posted to the commission's Internet website, but Title 15 of the Election Code grants no clear authority to redact covered information from reports. As detailed above, the statutes governing the reports filed with the commission make the reports public information (in addition to section 552.002 of the Government Code) and require the commission to make them available to the public. The policies stated in the commission's enabling legislation also direct the commission, in part, to "disclose fully information related to expenditures and contributions for elections

¹² The disclosure of interested parties form is referred to as a "Form 1295," which House Bill 1295 in the 2015 legislative session required the commission to prescribe. Copies of acknowledged Form 1295 certificates are available on the commission's Internet website at https://www.ethics.state.tx.us/dfs/search_1295.htm.

and for petitioning the government.” Gov’t Code § 571.001. Pursuant to those directives, the commission posts additional information to its website for the public to view without submitting a specific request for the information, such as information from lobby registrations and reports.

As previously detailed, however, it is clear that the law restricts public access to certain types of information contained in reports filed with the commission, including electronic access to street addresses of contributors in electronically filed reports. Nevertheless, covered personal information can appear in various types of reports and in various circumstances, and there is no direct guidance regarding how the commission can comply with its directives to make information available to the public while maintaining confidentiality of covered information.¹³

We are aware that a governmental body may redact information that must be withheld under section 552.1175(b) from any information disclosed under section 552.021 of the Government Code without the necessity of requesting a decision from the Office of the Attorney General. Gov’t Code § 552.1175(f). However, the commission makes a significant amount of information freely available on its Internet website, in some cases as required by law, without receiving a written request under the Act. Therefore, permission to redact covered information without requesting a decision under the Act does not resolve this matter or address the various circumstances in which covered information can appear in a report filed with the commission.

Based on the foregoing, the commission asks whether section 552.1175 of the Government Code requires the commission to redact, from the reports or documents described above, covered information related to an individual who has submitted a request to restrict public access to the covered information before making the covered information available to the public, either by posting the information to the commission’s Internet website or by providing the information in response to a request (written or otherwise), in the following circumstances:

1. When the covered information appears in a report filed by the covered individual.
2. When the covered information appears in a report filed by a person other than the covered individual.
3. When the covered information appears in a report but is not clearly associated with the covered individual’s name in the report.
 - a. For example, a covered individual’s home address appears in a report but the report itself indicates that the address is for someone else, such as the covered individual’s spouse, dependent child, business, or other person, such as a former resident at the address.
4. When the covered information is financial activity of a covered individual’s spouse or dependent children on a PFS.

¹³ We also note that section 552.352 of the Government Code prohibits the distribution of information considered confidential under the Public Information Act.

5. When a covered individual discloses in a PFS a beneficial interest in real property and identifies the property by the number of lots or acres and the name of the county in which it is located.
6. When the covered information relates to an unpaid civil penalty required to be posted to the commission's Internet website under section 571.079 of the Government Code.
7. When the covered information appears in an order issued by the commission required to be available on the commission's Internet website under section 571.141 of the Government Code.
8. When the covered information is no longer current, such as when a covered individual changes a home address or telephone number.

Additionally, the commission asks whether a home address under section 552.1175 of the Government Code includes a city, state, and ZIP code and a post office box. The commission also asks whether it is required to redact only the exact address or home telephone number covered by section 552.1175 of the Government Code. The commission also asks whether it is required to give the notice described by section 552.1175(h) of the Government Code if the commission withholds, as required, covered information from a report that is made available on its Internet website. As a related matter, the commission asks whether a covered individual, when submitting a request to restrict public access to covered information, must identify the covered information, such as the individual's home address or telephone number, and whether a covered individual must notify a governmental body of a change in that information. Lastly, the commission asks whether the requirement to remove a home address from a financial statement of a judge or justice under section 572.032(a-1) of the Government Code applies to the home address of a former judge or justice or to a former home address.

If you have any questions about this opinion request, please contact our General Counsel, Ian M. Steusloff, at 512-463-5800.

Sincerely,



Chase Untermeyer
Chair
Texas Ethics Commission