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November 3, 2023

The Hon. Ken Paxton
Attorney General of Texas
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711Via email: opinion.committee@oag.texas.gov

Attorney General Paxton:

The Texas Ethics Commission requests a written opinion under Section 402.042 of the Government Code on whether the TEC may release confidential sworn complaint information that is exempted from the Texas Public Information Act upon request from an individual member of the Legislature pursuant to Section 552.008 of the Government Code, or other law.

Chapter 571 of the Government Code tasks the Commission with administering and enforcing specific chapters in the Government Code, the Local Government Code, and the Election Code. See *id.* § 571.061(a). Any Texas resident may file a sworn complaint with the Commission "alleging that a person subject to a law administered and enforced by the commission has violated a rule adopted by or a law administered and enforced by the commission." *Id.* § 571.122(a).

Chapter 571 makes confidential "a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint." Tex. Gov't Code § 571.140(a). The TEC may not disclose such information unless it is "entered into the record of a formal hearing or a judicial proceeding." *Id.*; *But see id.* §§ 571.140(b) (final orders finding a non-technical or *de minimis* violation are not confidential); 571.171(a)-(c) (authorizing the TEC to refer a matter to a prosecuting attorney in certain circumstances and in such referral to disclose confidential information).

The consequences for a TEC employee's unauthorized disclosure are severe. A TEC employee who violates Section 571.140 would be subject to mandatory termination, a civil liability of \$10,000 or more, and possible criminal prosecution. *Id.* § 571.140(c), (d), (e).

Chapter 552 of the Government Code ("the Texas Public Information Act") reflects "the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and

employees.” *Id.* § 552.001. Section 552.008 provides additional authority to individual members, agencies, and committees of the Legislature to seek and receive public information—including otherwise confidential information—for legislative purposes. *Id.* § 552.008(b). In response to a request for confidential information under section 552.008, a governmental body may require the requesting entity to sign a confidentiality agreement that, among other things, requires the information to be kept securely. *Id.*

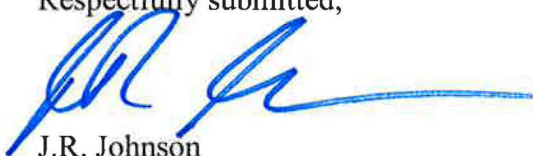
However, to further protect the confidentiality of the Texas Ethics Commission’s sworn complaint process, the Legislature expressly exempted most information relating to a sworn complaint from the Texas Public Information Act. Except for orders determining a non-technical or *de minimis* violation occurred, “Chapter 552 does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion.” Tex. Gov’t Code § 571.139(a). As a letter ruling from your office recently held “this information is not subject to the [Public Information] Act and the commission need not release it” Tex. Att’y Gen. Open Records Letter Ruling OR2022-11436 (2022).

Section 552.008 is codified in Chapter 552 of the Government Code, and “Chapter 552 does not apply” to most information related to sworn complaints. Tex. Gov’t Code § 571.139(a). Therefore, the specific authorization for an individual member of the Legislature to receive otherwise confidential information for a legislative purpose under the Public Information Act “does not apply” to confidential sworn complaint documents covered by Section 571.139(a). Nor does Section 552.008’s provision regarding the execution of a confidentiality agreement protecting the disclosure of confidential information in connection with a legislative request.

The TEC is not aware of an express authorization to release confidential sworn complaint information to an individual member of the Legislature. “Given the Legislature’s enumeration of the instances in which a sworn complaint and related information lose their confidential character, the Legislature made it clear that it did not intend to remove the confidential nature of this information outside of those express circumstances” Tex. Att’y Gen. Op. No. KP-0152 (2017) (*citing Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981) (recognizing that in statutory construction “every word of a statute must be presumed to have been used for a purpose” and that “every word excluded from a statute must also be presumed to have been excluded for a purpose”)). Absent such an express authorization, the TEC does not believe it may release confidential sworn complaint information to an individual legislator without violating Section 571.140.¹

Based on the foregoing, TEC asks whether it is authorized to release confidential sworn complaint information upon request by an individual legislator for a legislative purpose.

Respectfully submitted,



J.R. Johnson
Executive Director
Texas Ethics Commission

¹ *Cf.*, Tex. Gov’t Code § 325.019(b) (granting the Sunset Commission access to agency records, documents, and files); Tex. Gov’t Code § 301.020 (regarding the powers and duties of legislative general investigating committees).