

# COMPLAINT RULES AND PROCEDURES



## MONTGOMERY COUNTY ETHICS COMMISSION

**Adopted: October 25, 2021**  
**Effective: February 1, 2022**  
**Amended: September 25, 2023**

## I. PREAMBLE

A suspected violation of the Montgomery County Code of Ethics (the “Code of Ethics”) may be reported to the Montgomery County Ethics Commission (the “Ethics Commission” or “Commission”) by submitting a sworn complaint. These rules and procedures govern the process to initiate and resolve complaints submitted to the Ethics Commission.

## II. GENERAL RULES

The failure of the County, any employee of the County, or the Ethics Commission, to abide by the time requirements in these Complaint Rules and Procedures does not constitute a violation of these rules that would entitle the complainant or anyone else to any additional right of action. The Commission or any subcommittee provided for herein may extend any deadline as determined necessary and appropriate. The Commission may not consider a complaint or vote to investigate a matter outside of the Commission’s jurisdiction or investigate any matter except in response to a sworn complaint.

## III. DEFINITIONS

The terms used herein shall have the same meanings as defined in the Montgomery County, Texas, Code of Ethics (hereafter sometimes referred to as “Code of Ethics”). Additionally, the following terms and definitions apply to these Complaint Rules and Procedures:

1. **Complainant** means an individual who files a sworn complaint with the Ethics Commission on a form prescribed by the Ethics Commission alleging that a person has violated the Code of Ethics.
2. **Complaint** means an original complaint, amended complaint or supplemental complaint filed with the Ethics Commission on a form prescribed by the Ethics Commission alleging that a person has violated the Code of Ethics.
3. **Respondent** means a person subject to the Code of Ethics against whom the complaint is made.
4. **Review Officer** means a practicing attorney (including a current Commission member) or former judge, designated to serve on the standing preliminary review committee.
5. **Commission Agent** means an employee of the Montgomery County Human Resources Department or such other person or entity included on the Complaint Form authorized by The Commission, that is designated to receive, seal, and deliver a Complaint to the Standing Preliminary Review Committee under the processes outlined under Section IV. Submission of Complaint.

#### **IV. SUBMISSION OF COMPLAINT**

Upon a good faith belief that the Code of Ethics has been violated, an individual may file a sworn Complaint with the Commission, on a form prescribed by the Commission, alleging that a person has violated the Code of Ethics. The Commission shall make the complaint form available on the Commission's website.

The Complainant shall deliver the Complaint to the Commission Agent by any means authorized on the Complaint form, to the appropriate address as specified on the Complaint form. Nothing herein prohibits a Complainant from designating any alternate person to deliver the Complaint to the Commission Agent, and in such event, the alternate person shall be treated as the Complainant for purposes of this section.

Any Commission Agent being presented with a hand-delivered Complaint shall not take possession of the Complaint until it is sealed by the Complainant inside an envelope promulgated by the Commission to secure the confidentiality of the Complaint (hereafter sometimes referred to as "a Complaint envelope"). A Commission Agent shall provide the Complainant presenting a hand-delivered Complaint with a Complaint envelope to use to seal and secure the confidentiality of the Complaint until it is received by the Standing Preliminary Review Committee.

Any Commission Agent receiving an identifiable Complaint by any authorized means other than hand-delivery, shall seal the Complaint inside a Complaint envelope to secure the confidentiality of the Complaint until it is received by the Standing Preliminary Review Committee.

Any Commission Agent receiving a Complaint by any authorized means other than hand-delivery, that is not obviously a Complaint, shall perform a cursory examination of the instrument for the limited purpose of identifying the instrument, and once determined by the Commission Agent that the instrument is a Complaint, shall seal the Complaint inside a Complaint envelope to secure the confidentiality of the Complaint until it is received by the Standing Preliminary Review Committee.

At the time a Complaint is received by a Commission Agent and is sealed in a Complaint envelope, the Commission Agent shall immediately assign a file number to the Complaint in the manner directed by the Commission, and note on a Complaint log promulgated by the Commission but maintained by the Commission Agent at the direction and for the sole benefit of, the Commission, and directly afterwards, note on the Complaint envelope, the following information:

- a. the file number assigned to the Complaint;
- b. the date, time, and manner of receipt of the Complaint by the Commission Agent; and,
- c. a statement of whether or not the Commission Agent performed any cursory examination of the Complaint and reasons therefore.

The Commission Agent initially receiving a Complaint shall sign the seal of the Complaint envelope, to ensure the Complaint remains confidential until review by the Standing Preliminary Review Committee.

Each Commission Agent in possession of or handling any Complaint or Complaint envelope, for any purpose or period of time, shall note on the Complaint Log and directly afterwards on the Complaint envelope, the name of the Commission Agent, and the date, time, manner and purpose of

possession or handling of the Complaint, at the time of possession or handling the Complaint or Complaint envelope.

Once the Complaint log and Complaint envelope have been noted with the required information in accordance with this section, the sealed Complaint shall be stored by the Commission Agent receiving the Complaint, in a secure location approved by the Commission until delivery of the sealed Complaint to the Standing Preliminary Review Committee.

The Standing Preliminary Review Committee shall provide written notice to the Commission Agent of its active members and contact information within 3 business days of any change to the members assigned to the Standing Preliminary Review Committee.

The Commission Agent shall deliver the sealed Complaint to the Standing Preliminary Review Committee within 2 business days of receipt of the Complaint or as otherwise detailed by the Standing Preliminary Review Committee. Delivery of the sealed Complaint to the Standing Preliminary Review Committee occurs at the time the Commission Agent sends an electronic communication to each current member of the Standing Preliminary Review Committee, including the file number, and date, time, and manner of receipt of a Complaint, stating that the sealed Complaint is available for pick up from the designated secured location. Any current member of the Standing Preliminary Review Committee shall be entitled to take possession of the sealed Complaint from the designated secured location. The current member of the Standing Preliminary Review Committee taking possession of the sealed Complaint from the Commission Agent shall note on the Complaint log and directly afterwards on the Complaint envelope, the name of the Standing Preliminary Review Committee member taking possession of the sealed Complaint, and the date and time the Standing Preliminary Review Committee member took actual possession of the sealed Complaint.

The Commission Agent shall only communicate with current members of the Standing Preliminary Review Committee regarding a Complaint. Except as specifically authorized for the limited purposes stated above to receive, identify, log and secure a Complaint, during any period the Commission Agent is in possession or control of the Complaint, the Commission Agent shall not view, inspect, or copy the Complaint or permit any other person to view, inspect, copy or take possession of the Complaint, except for a current member of the Standing Preliminary Review Committee. During any period the Commission Agent is in possession or control of the Complaint, the Commission Agent shall not disseminate or permit any other person to disseminate, any part of any Complaint.

Except for the limited purpose of delivery of the Complaint to the Standing Preliminary Review Committee, until a Complaint alleging a violation of the Code of Ethics is resolved in accordance with these Complaint Rules and Procedures, and until that Complaint or that Complaint process is no longer deemed confidential under the terms and provisions of these Complaint Rules and Procedures, neither a member of the Commission (or Commission Agent), nor any other person, shall discuss the Complaint with anyone.

Any unauthorized viewing, copying, communication, inspection, or dissemination of any portion of a Complaint or sealed Complaint received by the Commission Agent, to also include any part of any confidential process regarding a Complaint or sealed Complaint, shall be a Category Two violation of the Montgomery County Code of Ethics.

## COMPLAINT FORM AND MINIMUM REQUIREMENTS

- A. A Complaint filed under this section must be in writing, on a form prescribed by the Commission, under oath and must set forth in simple, concise, and direct statements the following:
1. the name of the Complainant;
  2. the street or mailing address of the Complainant;
  3. the name of each Respondent;
  4. the position or title of each Respondent;
  5. the nature of the alleged violation, including if possible the specific rule or provision of the Code of Ethics alleged to have been violated;
  6. a statement of the facts constituting the alleged violation including the dates or period of time in which the alleged violation occurred; and
  7. all documents or other materials available to the Complainant that are relevant to the allegation including a list of all documents or other materials within the knowledge of and available to the Complainant that are relevant to the allegation but are not in the possession of the Complainant the location of said documents, if known, and a list of all documents or other material within the knowledge of the Complainant that are unavailable to the Complainant and that are relevant to the Complaint, including the location of the documents, if known.
- B. The Complaint must be accompanied by an affidavit stating either that the information contained in the Complaint is correct or that the Complainant has good reason to believe and does believe that the violation occurred. If the Complaint is based on information and belief, the Complaint shall state the source and basis of the information and belief. The Complainant shall swear to the facts under oath, before either a notary public or other authorized official.
- C. The Complaint must state on its face an allegation that, if true, constitutes a violation of the Code of Ethics.

## V. STANDING PRELIMINARY REVIEW COMMITTEE

The Standing Preliminary Review Committee (hereafter sometimes referred to as the “Committee”) shall consist of two members of the Commission and a review officer selected and retained by the Commission. The review officer must be a practicing attorney or former judge. A commission member may serve as the review officer. The Committee shall perform the actions prescribed by this subchapter in conducting a preliminary review of each sworn Complaint filed with the Commission. All three members of the Standing Preliminary Review Committee must be present to constitute a quorum. A majority vote of the Committee shall be sufficient for all actions.

## VI. PROCESSING OF COMPLAINT

- A. The Committee shall determine whether a sworn Complaint filed with the Commission complies with the form requirements of the Complaint Rules and Procedures.
- B. No later than the 14th day after the date a Complaint is filed, the Committee shall send written notice to the Complainant and the Respondent. The notice must state whether the Complaint complies with the form requirements of, and includes the information required by the Complaint Rules and Procedures. In addition, if the Complaint complies with the form requirements, the notice shall further indicate either:
- 1) That the Commission has jurisdiction over the violation of the Code of Ethics provision alleged in a sworn Complaint and,
    - a) a statement of whether the Complaint will be processed as a Category One violation or a Category Two violation of the Montgomery County, Texas, Code of Ethics (note: an allegation listed as a Category One shall be treated as a Category Two if the commission at any time determines the allegations meet the reclassification requirements as provided for in Local Government Code § 161.154).
    - b) a copy of the Complaint and the Montgomery County Ethics Commission Complaint Rules and Procedures;
    - c) the date by which the Respondent is required to respond to the notice;
    - d) a statement of the rights of the Respondent;
    - e) a statement inviting the Respondent to provide to the Commission any information relevant to the Complaint; and
    - f) a statement that a failure to timely respond to the notice will be treated as a separate violation. Or,
  - 2) That the Commission does not have jurisdiction over the violation alleged in the Complaint, and the Committee shall:
    - a) dismiss the Complaint; and
    - b) not later than the 14<sup>th</sup> day after the date of the dismissal, send written notice to the Complainant and the Respondent of the dismissal and the grounds for the dismissal.
- C. If the Committee determines that the Complaint does not comply with the form requirements, the Committee shall send the Complaint to the Complainant and to the respondent with the written notice, a statement explaining how the Complaint fails to comply, and a copy of the Complaint Rules and Procedures. The Complainant may resubmit the Complaint not later than the 14th day after the date the notice under Subsection (b) is mailed. If the Committee determines that the Complaint is not resubmitted within the 14-day period, the Committee shall:

1. dismiss the Complaint; and
  2. not later than the 14th day after the date of the dismissal, send written notice to the Complainant and the Respondent of the dismissal and the grounds for dismissal.
- D. If the Committee determines that a Complaint is resubmitted under Subsection (C) within the 14-day period, but is not in proper form, the Committee shall send the notice required under Subsection (C), and the Complainant may resubmit the Complaint under that subsection.
- E. If the Committee determines that a Complaint returned to the Complainant under Subsection (C) or (D) is resubmitted within the 14-day period and still does not comply with the form requirements, the Complaint shall be dismissed and notice provided as outlined in Subsection (B)(2).
- F. If the Committee determines that a complaint returned to the Complainant under Subsection (C) or (D) is resubmitted within the 14-day period and complies with the form requirements, the Committee shall send the written notice under Subsection (B)(1).
- G. If a Complaint filed with the Commission is within the jurisdiction of the Commission, and may also be brought under the provisions of a collective bargaining agreement authorized by Chapter 174, a civil service rule under Section 158.0025, or a rule of the sheriff's department, the Commission shall defer jurisdiction over the Complaint to the sheriff for disposition. The sheriff may return a Complaint deferred under this subsection to the Commission for additional proceedings as the Commission determines appropriate if the sheriff determines that the conduct alleged in the Complaint is not within the scope of the collective bargaining agreement, civil service rule, or sheriff's department rule. The sheriff may not return a complaint deferred under this section if:
1. the sheriff disciplines the employee under the collective bargaining agreement, civil service rule, or sheriff's department rule for the conduct alleged in the sworn complaint; or
  2. the sheriff determines that the employee did not commit the conduct alleged in the sworn complaint.

## **VII. PRELIMINARY REVIEW: RESPONDENT'S RESPONSE**

- A. Respondent must provide a written response to the Complaint no later than 14th day after the date the Respondent receives notice of the Complaint.
- B. A Respondent's failure to timely respond to the Complaint shall be deemed an additional Category One violation.
- C. The response by Respondent must include any challenge the Respondent seeks to raise to the Commission's exercise of jurisdiction. In addition, the Respondent may:
1. acknowledge the occurrence or Commission of a violation;
  2. deny the allegations contained in the Complaint and provide evidence supporting

- the denial; or
3. agree to enter into an assurance of voluntary compliance or other agreed order, which may include an agreement to immediately cease and desist.

#### **VIII. PRELIMINARY REVIEW: WRITTEN QUESTIONS**

- A. During a preliminary review, the Committee may submit to the Complainant or Respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation. All questions shall be responded to in writing within seventy-two (72) hours of receipt.

#### **IX. FAILURE TO DISMISS OR RESOLVE COMPLAINT BY RESOLUTION**

- A. If the matter is not dismissed by the Committee or resolved by agreement before the 30th day after the date the Committee receives the Respondent's response, the Committee shall set the matter for a preliminary review hearing to be held at the next Committee meeting.
- B. The Respondent during the preliminary review may request a preliminary review hearing in writing.
- C. If the matter is set for a preliminary review hearing, the Committee shall promptly send written notice to the Complainant and the Respondent of the date, time, and place of the preliminary review hearing.

#### **X. PRELIMINARY REVIEW HEARING AND RESOLUTION**

- A. The Committee shall provide written notice to the Complainant and the Respondent of the date, time, and place where the preliminary review hearing will be held. The preliminary review hearing shall not be scheduled upon less than seventy-two (72) hours' notice to the Complainant and the Respondent. The notice may include written questions to either the Complainant and/or the Respondent to be answered under oath and include the deadline by which they shall be returned. Prior to the preliminary review hearing, the Committee shall provide both the questions and answers submitted by the Complainant to the Respondent. Nothing herein shall be construed to require a person to give evidence that violates the person's right against self-incrimination under the Texas or United States Constitutions.
- B. On request of the Respondent, the Commission shall request that any information in the possession or control of the Complainant, including exculpatory information that is directly related to the Complaint be provided to the Respondent and the Committee.
- C. The Committee shall review the answers provided in response to the written questions to determine if they resolve the Complaint. If the Committee finds that the responses to the written questions resolve the Complaint, they shall notify the Complainant and the Respondent regarding its findings and cancel the preliminary hearing.



D. The only evidence that will be considered by the Committee during the preliminary review hearing, in its determination whether sufficient credible evidence exists that a violation has occurred, will be the Complaint, sworn written answers to written questions, affidavits and other documentary and testimonial evidence presented by the Respondent, if any, voluntarily or subject to a subpoena. During a preliminary review hearing the Respondent may appear before the Committee with the assistance of counsel. All preliminary review hearings shall be recorded by the Committee.

E. Preliminary Review Hearing Decision. After considering the evidence, the Committee shall vote to issue one of the following decisions:

1. There is sufficient credible evidence that a violation of the Code of Ethics has occurred within the jurisdiction of the Commission and whether the violation is technical or de minimis (of minimal importance);
2. That a violation of the code has not occurred and that the Complaint shall be dismissed; or
3. There is insufficient credible evidence for the Committee to determine whether a violation has occurred.

F. Procedure If Violation Has Occurred

1. If there is a determination that there is sufficient credible evidence that a violation has occurred, the Committee shall then attempt to resolve and settle the Complaint. If the Complaint is resolved, then the Committee shall send a copy of the Preliminary Review Committee Order and the Notice and Terms of Resolution to the Complainant and Respondent by the 14th day following the final resolution.
2. If resolution is not possible, the Committee shall order a formal hearing to be held before the Commission. By the 14th day following the order for formal hearing the Committee shall send the Complainant and Respondent the following:
  - a) copy of the order;
  - b) written notice of date, time, and location of formal hearing;
  - c) a statement of the alleged offense;
  - d) a description of the evidence of the alleged violation;
  - e) a copy of the Complaint;
  - f) a copy of the Commission procedural rules; and
  - g) a statement of the Respondent's rights.

G. Procedure If Violation Has Not Occurred

If the Committee determines that a violation of the code has not occurred, the Committee shall dismiss the Complaint, and within 10 days after date of dismissal, send a copy of the determination, written notice of dismissal, and the grounds for dismissal to the Complainant and the Respondent.

G. Procedure If Insufficient Credible Evidence Determined

If it is determined that there is insufficient credible evidence to determine whether a violation has occurred, the Committee shall send notice within ten (10) days of to the Complainant and Respondent, with a copy of the decision and written notice of the grounds for the decision referring the matter to the Commission.

The Committee shall then refer the Complaint to the Commission at its next meeting to determine whether the Complaint shall be dismissed based on lack of credible evidence or whether a formal hearing shall be held.

H. Preliminary Review Committee Hold Over

In the event the term of a preliminary review Committee expires during the preliminary review process of any Complaint, the Committee shall holdover and complete the preliminary review process for all Complaints pending before it.

**XI. FORMAL HEARINGS**

A. Formal Hearing Process

Formal Hearings will be set for the next available regular Ethics Commission meeting that is at least twenty-one (21) days after the date the determination is made for the need of a formal hearing.

When the Respondent requests a continuance of the formal hearing, he shall file a written request to the Ethics Commission setting forth the grounds upon which such request is made. The continuance shall be granted upon determination of good cause by the Commission, with reasonable notice to the Complainant and Respondent.

The Chair will be responsible for the orderly conduct of the hearing.

1. Notice of Formal Hearing.

Unless previously provided by the Committee, by the 14th day following the order for formal hearing, the Commission shall send to the Complainant and Respondent the following:

- a) copy of the order;
- b) written notice of date, time, and location of formal hearing;
- c) a statement of the alleged offense;
- d) a description of the evidence of the alleged violation;
- e) a copy of the complaint;
- f) a copy of the Commission procedural rules; and
- g) a statement of the Respondent's rights.
- h)

2. Information Provided to Respondent.

No later than the 10th day prior to the date of the scheduled hearing or on the granting of a motion for discovery by the Respondent, the Commission shall provide to the Respondent:

- (a) a list of proposed witnesses;
- (b) copies of all documents expected to be introduced as exhibits; and
- (c) a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

3. Discovery by Respondent.

Any motion for discovery for information by Respondent must be received by the Commission no later than the 20th day prior to the date of the scheduled hearing. The Commission shall rule on the motion and provide to Respondent any granted discovery no later than the 10<sup>th</sup> day prior to the date of the scheduled hearing.

4. Designation of Witnesses from Respondent.

No later than the 10th day prior of the date of the scheduled hearing, the Respondent shall provide to the Commission a list of proposed witnesses with the names of each witness to be called, a summary of their expected testimony, and a copy of each document, record, or exhibit to be introduced at the hearing. The Respondent is responsible for notifying the witness(es) and requesting the presence of his own witness(es). If the Respondent is unable to secure the presence of his witness(es), he may file a request for a subpoena of witnesses at least seven (7) days prior to the hearing.

The chairperson has the authority for the issuance of a subpoena.

B. Formal Hearing Rules

The formal hearing shall be conducted under the following rules:

1. Six (6) members of the Commission must be present at a formal hearing. A member of the Commission, who is not in attendance at the hearing, may not deliberate, vote, or participate in a matter concerning the Complaint.
2. Unless overruled by majority vote of the Commission members present at the formal hearing, the Commission Chair or his designee shall issue rulings on objections regarding:
  - a) admissibility of evidence;
  - b) discovery issues; and
  - c) irrelevant, immaterial, and unduly repetitious testimony.
  - d)

3. The Texas Rules of Evidence as applied in a nonjury civil case in a district court shall apply including the exclusion of witnesses pursuant to Rule 614. However, evidence inadmissible under those rules may be admitted if the evidence is necessary to ascertain facts not reasonably susceptible for proof under those rules, not precluded by statute, and of a type of which a reasonably prudent person commonly relies on the conduct of the person's affairs. Objections to any evidence may be made and shall be noted in the record.
4. Evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded by the Commission.
5. The Commission shall give effect to testimonial privileges recognized by Texas law.
6. All witnesses shall give their testimony under oath.
7. A Respondent may conduct cross-examination of any witness appearing before the Commission.
8. The Respondent may not be compelled to give evidence or testimony that violates the Respondent's right against self-incrimination under the Texas or United States Constitution.
9. Discovery shall be as prescribed in the Texas Administrative Procedures Act, Title 10, Chapter 2001, Texas Government Code, Sections 2001.091-103.
10. The Commission shall determine by a preponderance of the evidence whether a violation within the jurisdiction of the Commission has occurred.
11. The Commission may deliberate in closed session, but must decide and render its ruling in an open meeting.

#### C. Formal Hearing Ruling

1. At the conclusion of a formal hearing, or no later than the 40th day after the date of a formal hearing, the Commission shall convene a meeting and by motion shall issue a final decision stating the resolution of the formal hearing and include all findings of fact and conclusions of law, as well as the imposition of a civil penalty, if any.
2. The Commission's written order may include:
  - a) a cease and desist order to stop a violation;
  - b) an affirmative order requiring compliance with laws administered and enforced by the Commission;
  - c) an order of public censure; and
  - d) a civil penalty.
3. No later than the 14th day after the date the Commission issues an order, the Commission shall:

- a) send a copy of the order to the Complainant and Respondent; and
- b) make a copy of the order available to the public during reasonable business hours.

#### D. Formal Hearing Penalties and Sanctions

1. The Commission may impose the following Civil penalties:
  - a) Not more than \$4,000.00 for a violation of the Code of Ethics; and
  - b) Not more than \$500.00 for each delay in complying with a Commission order.
2. The penalties imposed are in addition to other sanctions available to the Commission.
3. All penalties paid shall be deposited in the general fund of Montgomery County, Texas.
4. The Commission may notify a regulatory or supervisory authority to include any agency, including the State Bar of Texas of a violation of the Code of Ethics.

#### E. Factors Applicable To the Assessment of Sanctions

The Commission shall consider the following factors in assessing a sanction:

1. the seriousness of the violation including the nature, circumstances, consequences, extent and gravity of the violation;
2. any previous history of violations by the Respondent;
3. Respondent's good faith efforts to rectify the consequences of the violation;
4. the appropriateness of a penalty to deter future violations; and
5. any other information that justice may require.

#### F. Reconsideration of Sanctions

1. A Respondent who has had a civil penalty imposed upon them may request to appear before the Commission and submit an affidavit stating the reason(s) why they are seeking a waiver or reduction of a civil penalty. The Commission shall consider the following before acting to waive or reduce a civil penalty:
  - a. The facts and circumstances supporting the person's request for a waiver of reductions;
  - b. The seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation, as well as the amount of the penalty;
  - c. Any history of previous violations by the person;
  - d. The demonstrated good faith of the person, including actions taken to rectify the consequences of the violation;
  - e. The penalty necessary to deter future violations; and
  - f. Any other matter that justice may require.
2. After hearing the waiver or reduction request, the Commission may affirm, reduce, or waive the penalty.

#### G. Collections

The Montgomery County Attorney may collect a fine or other penalties imposed by the Commission.

### **XII. APPEALS**

- A. An appeal may be taken by a Respondent by filing a petition in a district court in Montgomery County, Texas, within thirty (30) days after the issuance of an order in a formal hearing.
- B. The legal action in the district court shall be a trial de novo.
- C. The Respondent is entitled to demand a jury trial.
- D. If the Respondent is a County Employee and the judgment of the district court is favorable to the County Employee, the district court may order reinstatement of the county employee, payment of back-pay, to include reimbursement of court costs and attorney's fees or other relief if appropriate.
- E. The Commission shall file the original or a certified copy of the entire record of the ethics complaint proceedings with the clerk of the district court once the Commission has been served with the petition filed by the Respondent in a district court. The court may require or permit later corrections or additions to the record.
- F. The Commission may require the Respondent to pay one-half (1/2) of the cost of preparation of the original or certified copy of the record required to be sent to the district court. The cost paid by the party filing the petition (petitioner) is a court cost to be assessed by the district court.

### **XIII. SUBPOENAS AND WITNESSES**

- A. A subpoena or other request to testify shall be served sufficiently in advance of the scheduled appearance at either a preliminary review, preliminary review hearings, or a formal hearing to allow a reasonable period, as determined by the Commission, for the person subpoenaed to prepare for the hearing and to employ counsel if desired.
- B. In connection with a formal hearing, the commission, as authorized by this chapter, may subpoena and examine witnesses and documents that directly relate to a sworn complaint.
- C. In connection with a preliminary review, the Commission, for good cause and as authorized by this chapter, may subpoena documents and witnesses by application and motion adopted by a vote of at least five (5) members of the Commission, for the purpose of attempting to obtain specifically identified information, if the Commission reasonably believes that the specifically identified information:

1. is likely to be determinative as to whether the subject of an investigation has violated a provision of the Code of Ethics;
  2. can be determined from the documents or is known by the witnesses; and
  3. is not reasonably available through a less intrusive means.
- D. Except as provided by Texas Local Government Code Section 161.166(a)(1), the Commission may order that a person may not, except as specifically authorized by the presiding officer, make public the name of a witness subpoenaed by the Commission before the date of that witness's scheduled appearance.
- E. A witness may read a written statement or present a brief oral opening statement at a formal hearing, subject to the rules of evidence applicable to a contested case under Government Code Section 2001.018.
- F. A person whose name is mentioned or who is identified or referred to in testimony or in statements made by a Commission member, Commission Staff member, or witness and who reasonably believes that the statement tends to adversely affect the person's reputation may:
1. request to personally appear before the Commission to testify in the person's own behalf; or
  2. file a sworn statement of facts relevant to the testimony or statement that the person believes adversely affects the person's reputation.
- G. A witness who testifies at a formal hearing must give an oath or affirmation of sworn testimony.
- H. Section 2001.089, Government Code, applies to a subpoena issued under this subchapter. On the request of the Respondent, the Commission shall subpoena any information in the possession or control of any person identified in the request, including exculpatory information, that is directly related to the Complaint and provide the information to the Respondent.
- I. A copy of a subpoena must be delivered to the Respondent.
- J. At the written request of at least five (5) members of the Commission, a peace officer shall serve a subpoena of the Commission in the manner prescribed for service of a district court subpoena.
- K. If a person to whom a subpoena is directed refuses to appear, refuses to answer inquiries, or fails or refuses to produce books, records, or other documents that were under the person's control when the Complaint was made, the Commission shall report that fact to a district court in the county. The district court shall enforce the subpoena by attachment proceedings for contempt in the same manner as the court enforces a subpoena issued by the court.
- L. A respondent has the right to quash a subpoena in a district court in the county as provided by law.

- M. A subpoenaed witness who attends a Commission hearing is entitled to the same mileage and per diem payments as a witness who appears before a grand jury. A person who provides subpoenaed documents to the Commission is entitled to reimbursement from the Commission for the person's reasonable cost of producing the documents.

#### **XIV. RECORDKEEPING/STATUS OF COMPLAINT:**

- A. The Commission shall keep an information file regarding each sworn Complaint or other Complaint filed with the Commission which shall include the following information:
  - 1. Name of Complainant;
  - 2. Date of receipt of Complaint by the Commission;
  - 3. The subject matter of the Complaint;
  - 4. The name of each person contacted in relation to the Complaint;
  - 5. A summary of the results of the review or investigation of the Complaint; and
  - 6. An explanation regarding the reason for the closure of a file, if the Commission closed the file without taking action other than the investigation of the Complaint.
- B. The Commission shall provide to the person filing the Complaint and to each person who is a subject of the Complaint a copy of the Commission's policies and procedures relating to Complaint investigation and resolution.
- C. In addition to the notice required by Texas Local Government Code Sections 161.56 and 161.167, the Commission, at least quarterly until final disposition of a Complaint, shall notify the person who filed the Complaint and each person who is a subject of the Complaint of the status of the sworn Complaint.
- D. The Commission shall resolve a Complaint within three (3) months of its receipt unless it makes a determination that additional time is required to resolve the matter. On a determination that additional time is required, the Commission may extend the investigation in three-month increments. Each extension requires separate approval by the Commission.
- E. If the Commission does not resolve the matter within three (3) months or within an authorized extension, the Complaint shall be deemed to have been dismissed without prejudice.
- F. Records Retention - Records of the Commission will be kept in accordance with the law, and are generally kept for three (3) years following the last action in each matter.
- G. As soon as practicable, following a preliminary review, preliminary review hearing, or formal hearing at which the Commission determines a person has committed a violation that is not technical or de minimis within the Commission's jurisdiction, the Commission shall make available a copy of the order on the Internet stating the determination or a summary of the Commission's order.



## **XV. NOTIFICATION OF REGULATORY OR SUPERVISORY ENTITY**

The Commission may notify the appropriate regulatory or supervisory entity, including any agency, the State Commission on Judicial Conduct, or the State Bar of Texas, of a violation of the Code of Ethics adopted by the Commission.

## **XVI. STATUS OF COMPLAINANT**

The Complainant is not a party to a preliminary review, preliminary review hearing, or formal hearing under this subchapter.

## **XVII. EXTENSION OF DEADLINE**

The Commission may, on its own motion or on the reasonable request of a Respondent, extend any deadline for action relating to a sworn Complaint, preliminary review hearing, or formal hearing.

## **XVIII. APPLICABILITY OF OTHER ACTS**

- A. Except as provided by Section 161.173(b), Chapter 552, Government Code, does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn Complaint.
- B. Chapter 551, Government Code, does not apply to the processing, preliminary review, preliminary review hearing, or resolution of a sworn Complaint, but does apply to the conduct of a formal hearing under section 161.164-161.167. Chapter 551, Government Code, does not apply to the deliberation by the Commission regarding a contested Complaint following the conclusion of a formal hearing, but does apply to the meeting at which the Commission issues a final decision stating the resolution of the final hearing.
- C. Subchapters C-H, Chapter 2001, Government Code, apply only to a formal hearing under this subchapter, the resolution of a formal hearing, and the appeal of a final order of the commission, and only to the extent consistent with this chapter.

## **XIX. CONFIDENTIALITY: OFFENSE**

- A. Except as provided by Subsection (B), (C), or (M) below, proceedings at a preliminary review hearing performed by the Committee, a sworn Complaint, documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn Complaint are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding. A document or statement that was previously public information remains public information.

- B. An order issued by the Committee after the completion of a preliminary review or hearing determining that a violation, other than a technical or de minimis violation, has occurred is not confidential.
- C. Commission Staff may, for the purpose of investigating a sworn complaint, disclose to the Complainant, the Respondent, or a witness information that is otherwise confidential and relates to the sworn complaint if:
1. the employee makes a good faith determination that the disclosure is necessary to conduct the investigation;
  2. the employee's determination under Subdivision (1) is objectively reasonable;
  3. the Commission specifically authorizes the disclosure; and
  4. the employee discloses only the information necessary to conduct the investigation.
- D. A person commits an offense if the person intentionally:
1. destroys, mutilates, or alters information obtained under this chapter; or
  2. removes information obtained under this chapter without permission as provided by this chapter.
- E. An offense under Subsection D above is a misdemeanor punishable by:
1. a fine of not less than \$25.00 or more than \$4,000.00;
  2. confinement in the county jail for not less than three (3) days or more than three (3) months; or
  3. both the fine and confinement.
- F. A person commits an offense if the person distributes information considered confidential under the terms of this chapter.
- G. A person who obtains access to confidential information under this chapter commits an offense if that person knowingly:
1. uses the confidential information for a purpose other than the purpose for which the information was received or for a purpose unrelated to this chapter, including Solicitation of political contributions or Solicitation of clients;
  2. permits inspection of the confidential information by a person who is not authorized to inspect the information; or
  3. discloses the confidential information to a person who is not authorized to receive the information.
- H. An offense under Subsection F or G above is a misdemeanor punishable by:
1. a fine of not more than \$1,000.00;
  2. confinement in the county jail for not more than six (6) months; or
  3. both the fine and confinement.

- I. If conduct that constitutes an offense under this section also constitutes an offense under the Penal Code, including under Section 37.10 or 39.06 of that code, the person may be prosecuted under this section or the Penal Code, as applicable.
- J. A violation under this section constitutes official misconduct.
- K. In addition to other penalties, the Respondent may commence a civil action for damages on the Respondent's own behalf against any person who is alleged to have disclosed information made confidential by this subchapter. Any action under this chapter must be brought in a district court in the county. The court may award costs and attorney's fees.
- L. A County Employee is subject to discipline, including termination of employment, for disclosing confidential information under this chapter.
- M. The Commission may disclose confidential information in making a referral to a prosecuting attorney concerning an offense under this section.
- N. A County Employee who discloses confidential information in compliance with Subsection C or M above is not subject to Subsections D(1) above.

**XX. CIVIL PENALTY FOR FRIVOLOUS OR BAD-FAITH COMPLAINT**

- A. The commission may impose a civil penalty of not more than \$4,000 for the filing of a frivolous or bad-faith complaint. In this subsection, "frivolous complaint" means a complaint that is groundless and brought in bad faith or is groundless and brought for the purpose of harassment.
- B. In addition to other penalties, the respondent may commence a civil action on the respondent's own behalf against any person who filed a frivolous complaint against the respondent. Any action under this chapter shall be brought in a district court in the county. The court may award costs and attorney's fees.
- C. A person may file a sworn complaint with the commission, in accordance with Section 161.155, alleging that a complaint relating to that person filed with the commission is frivolous or brought in bad faith. A complaint may be filed under this subsection without regard to whether the complaint alleged to be frivolous or brought in bad faith is pending before the commission or has been resolved. The commission shall act on a complaint made under this subsection as provided by Chapter 161, Subchapter D.

**XXI. RETALIATION AGAINST COUNTY EMPLOYEES REPORTING VIOLATIONS OF THE CODE OF ETHICS PROHIBITED**

- A. A County Public Servant may not suspend or terminate the employment of or take other adverse action against a County Employee who in good faith files a Complaint or otherwise reports to the Commission, Commission Staff, or another law enforcement authority a violation of the Code of Ethics by a person subject to the Code of Ethics.

- B. A County Public Servant may not suspend or terminate the employment of or take other adverse action against a County Employee who in good faith participates in the Complaint processing, preliminary review, hearing, or any other aspect of the investigation and resolution by the Commission of an alleged violation of the Code of Ethics by a person subject to the Code of Ethics.
- C. The Ethics Commission is a part of the “local governmental entity” for purposes of Section 554.002, Government Code.
- D. The Code of Ethics adopted by the Ethics Commission is a “law” as defined by Section 554.001, Government Code.