



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

**NOTICE TO CEASE AND DESIST FROM SHARING
PRIVILEGED OR CONFIDENTIAL INFORMATION FROM STATE RECORDS**

Delivered via civil process server

June 3, 2016

John W. Owens

Dear Mr. Owens:

As an attorney, you have agreed to “maintain the highest standards of ethical conduct,” including to “keep in confidence information relating to representation of a client.”¹ This letter concerns your potential breach of that duty, as well as several state laws, by apparently divulging privileged and confidential information obtained from your employment with this agency.

Although your employment with this agency ended with your retirement in 2011, your duties to comply with state law and the Texas Disciplinary Rules of Professional Conduct applicable to all licensed attorneys in Texas endure. The information now publicly available that you disclosed contains both privileged and confidential information. As the Texas Supreme Court observed, a fiduciary such as a lawyer “is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.’ Accordingly, a lawyer must conduct his or her business with inveterate honesty and loyalty, always keeping the client’s best interest in mind.”² A disclosure of such information likely violated the following provisions:

- Government Code § 552.352: A person commits a misdemeanor by distributing confidential information. The memorandum released to the media contained information made confidential under section 17.61(f) of the Business and Commerce Code.
- Penal Code §§ 37.10(a)(4), (6): A person commits a felony or misdemeanor by possessing a governmental record knowing it was unlawfully obtained or with

¹ Texas Disciplinary Rule of Professional Conduct Preamble at ¶¶ 1, 3.

² *Lopez v. Hokema & Reed, L.L.P.*, 22 S.W.3d 857, 866–67 (Tex. 2000) (quoting *Meinhard c. Salmon*, 249 N.Y. 458 (1928)).

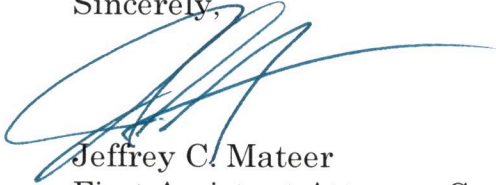
intent that it be used unlawfully.

- Penal Code § 39.02(a)(2): A public servant commits a felony or misdemeanor by knowingly misusing government property that has come into his possession by virtue of his public employment if he intends to obtain a benefit or harm or defraud another.
- Penal Code § 39.06(b): A public servant commits a felony by disclosing information for a nongovernmental purpose that he has access to by means of his employment and has not been made public if he intends to obtain a benefit or harm or defraud another.
- Texas Business and Commerce Code § 17.61(f): Materials produced in response to a civil investigative demand may not be disclosed to any person other than the authorized employee of the Office of the Attorney General without the consent of the producer of the materials.
- Texas Disciplinary Rule of Professional Conduct 1.05(b): A lawyer shall not reveal a former client's confidential information to anyone other than the client, the client's representatives, or the employees of the lawyer's law firm. A ruling from the Open Records Division that pre-dated your disclosure of a particular memorandum held that the memorandum contained information protected by the attorney-client privilege. Tex. Att'y Gen. OR2016-10415, at 3 (May 9, 2016).

Your conduct could have violated other applicable laws and rules as well.³

In light of these provisions, we ask that you immediately cease and desist from disclosing any privileged or confidential information obtained from your employment with this agency. Please contact Henry de la Garza, Chief Employment Counsel and Ethics Advisor, in Human Resources at Henry.DeLaGarza@texasattorneygeneral.gov to confirm your compliance with this demand and all applicable laws and rules.

Sincerely,



Jeffrey C. Mateer
First Assistant Attorney General

³ Of course, this disclosure also violates policies of the Office of the Attorney General that prohibit agency employees from disclosing confidential or privileged information, including information “protected by the attorney-client privilege” or “considered confidential by law.”