

TEXAS FORENSIC SCIENCE COMMISSION

FINAL REPORT ON SELF-DISCLOSURE NO.
26.18; DEPARTMENT OF PUBLIC SAFETY WACO
(FORENSIC BIOLOGY/DNA)

JULY 31, 2026



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I. BACKGROUND

A. History and Mission of the Texas Forensic Science Commission

The Texas Forensic Science Commission (Commission) was created during the 79th Legislative Session in 2005 with the passage of HB-1068. The Act amended the Code of Criminal Procedure to add Article 38.01, which describes the composition and authority of the Commission. During subsequent legislative sessions, the Texas Legislature further amended the Code of Criminal Procedure to clarify and expand the Commission's jurisdictional responsibilities and authority.¹

The Commission has nine members appointed by the Governor of Texas.² Seven of the nine commissioners are scientists or medical doctors and two are attorneys (one prosecutor nominated by the Texas District and County Attorney's Association and one criminal defense attorney nominated by the Texas Criminal Defense Lawyer's Association).³ The Commission's Presiding Officer is Jeffrey Barnard, MD.

B. Commission Jurisdiction

1. Investigations of Professional Negligence and Professional Misconduct Resulting from Laboratory Self-Disclosures

Texas law requires the Commission to "investigate in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory."⁴ The term "forensic analysis" is defined as a medical, chemical, toxicological, ballistic, or other examination or test

¹ See e.g., Acts 2013, 83rd Leg. ch. 782 (S.B. 1238) §§ 1-4 (2013); Acts 2015, 84th Leg. ch. 1276 (S.B. 1287) §§ 1-7 (2015), Acts 2023, 88th Leg. ch. 742 (H.B. 3506) §§ 1-2 (2023), Acts 2023, 88th Leg. ch. 1149 (S.B. 0991) § 1 (2023).

² TEX. CODE CRIM. PROC. art. 38.01 § 3.

³ *Id.*

⁴ TEX. CODE CRIM. PROC. art. 38.01 § 4(a)(3)(A).

performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action.⁵

Crime laboratories must self-report professional negligence or professional misconduct to the Commission.⁶ The statute does not define the terms “professional negligence” and “professional misconduct.” The Commission defined those terms in its administrative rules.⁷

“Professional misconduct” means the forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis.

“Professional negligence” means the forensic analyst or crime laboratory, through a material act or omission, negligently failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the negligent act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was negligent if the forensic analyst or crime laboratory should have been but was not aware of an accepted standard of practice.

2. Accreditation Jurisdiction

The Commission is charged with accrediting crime laboratories and other entities that conduct forensic analyses of physical evidence.⁸ The term “crime laboratory” includes a public or private laboratory or other entity that conducts a forensic analysis subject to article 38.35 of the Code of Criminal Procedure.⁹

⁵ TEX. CODE CRIM. PROC. art. 38.35(a)(4).

⁶ *Id.* at art. 38.01 § 4(a)(1)-(2) (2019); *See also*, 37 Tex. Admin. Code § 651.219(c)(5) (2026).

(Pursuant to the Forensic Analyst Licensing Program Code of Professional Responsibility, members of crime laboratory management shall make timely and full disclosure to the Texas Forensic Science Commission of any non-conformance that may rise to the level of professional negligence or professional misconduct).

⁷ 37 Tex. Admin. Code § 651.302 (7), (8), and (10) (2020). The term “would substantially affect the integrity of the results of a forensic analysis” does not necessarily require that a criminal case be impacted or a report be issued to a customer in error. The term includes acts or omissions that would call into question the integrity of the forensic analysis, the forensic analyst or analysts, or the crime laboratory as a whole regardless of the ultimate outcome in the underlying criminal case.

⁸ TEX. CODE CRIM. PROC. art. 38.01 § 4-d(b).

⁹ *Id.* at art. 38.35(a)(1).

3. Licensing Jurisdiction

Under Texas law, a person may not act or offer to act as a forensic analyst unless the person holds a forensic analyst license issued by the Commission.¹⁰ While accreditation is granted to entities that perform forensic analysis, licensing is a credential obtained by individuals who practice forensic analysis. The Texas forensic licensing program took effect on January 1, 2019.

The law defines the term “forensic analyst” as “a person who on behalf of a crime laboratory [accredited by the Commission] technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory.”¹¹

Pursuant to its licensing authority, the Commission may take disciplinary action against a license holder or applicant for a license on a determination by the Commission that a license holder or applicant for a license committed professional negligence or professional misconduct or violated the code of professional responsibility under Article 38.01 of the Texas Code of Criminal Procedure or otherwise violated Texas Code of Criminal Procedure Article 38.01 or an administrative rule or other order by the Commission.¹² If the Commission determines a license holder committed professional negligence or professional misconduct or violated the code of professional responsibility under Article 38.01 of the Texas Code of Criminal Procedure or otherwise violated Texas Code of Criminal Procedure Article 38.01 or violated an administrative rule or order by the Commission, the Commission may: (1) revoke or suspend the person’s license; (2) refuse to renew the person’s license; (3) reprimand the license holder; or (4) deny the person a license.¹³ The Commission may place on probation a person whose license is

¹⁰ *Id.* at art. 38.01 § 4-a(b); 37 Tex. Admin. Code § 651.201(c) (2018).

¹¹ *Id.* at art. 38.01 § 4-a(a)(2).

¹² *Id.* at art. 38.01 § 4-c; 37 Tex. Admin Code § 651.216(a) (2026).

¹³ 37 Tex. Admin Code § 651.216(a)(1)-(4) (2026).

suspended.¹⁴ Disciplinary proceedings and the process for appealing a disciplinary action by the Commission are governed by the Judicial Branch Certification Commission.¹⁵

4. Jurisdiction Applicable to the Disclosure

The disclosing crime laboratory, the Texas Department of Public Safety—Waco Regional Crime Laboratory (DPS–Waco) is accredited by the Commission and the ANSI National Accreditation Board (ANAB) under International Organization for Standardization (ISO) standard 17025: 2017 and falls within the Commission’s jurisdiction.¹⁶ The individual who is the subject of the disclosure, Amy Stewart (formerly Amy Powell), was employed as a Forensic Biology/DNA analyst at the time of the events described in the disclosure. She subsequently worked at Othram, Inc. (Othram) from October 30, 2022, through June 29, 2025. She is currently employed at the Southwestern Institute of Forensic Sciences (SWIFS) as a Forensic Biology/DNA Analyst. Her employment at SWIFS began on June 30, 2025. She has been licensed by the Commission in the Forensic Biology/DNA discipline since October 23, 2018. Her current Analyst licenses will expire on October 29, 2026.

C. Investigative Process

The Commission’s administrative rules set forth the process by which it determines whether to accept a self-disclosure for investigation as well as the process used to conduct the investigation.¹⁷ The Commission’s rules also describe the process for appealing final investigative reports by the Commission including possible disciplinary actions against a license holder or applicant.¹⁸

¹⁴ *Id.* at (b).

¹⁵ TEX. CODE CRIM. PROC. art. 38.01 § 4-c(e); 37 Tex. Admin. Code § 651.216(d) (2026).

¹⁶ See, <https://fsc.txcourts.gov/AccreditedLabPublic#> for a list of accredited laboratories.

¹⁷ 37 Tex. Admin. Code § 651.304-307 (2024).

¹⁸ 37 Tex. Admin. Code § 651.401 (2024).

D. Limitations of this Report

The Commission's authority contains important limitations. For example, no finding by the Commission constitutes a comment upon the guilt or innocence of any individual.¹⁹ The Commission's written reports are not admissible in civil or criminal actions.²⁰ The Commission does not have the authority to subpoena documents or testimony; information received during any investigation is dependent on the willingness of affected parties to submit relevant documents and respond to questions posed. Information gathered in this report was not subjected to standards for the admission of evidence in a courtroom. For example, no individual testified under oath, was limited by either the Texas or Federal Rules of Evidence (*e.g.*, against the admission of hearsay) or was subject to cross-examination under a judge's supervision.

II. SUMMARY OF THE SELF-DISCLOSURE

In June 2022, analysts in the DPS—Waco DNA section raised concerns regarding the accuracy of the Analyst's time reporting on weekly written timesheets. The timesheet entries are also recorded into the Centralized Accounting and Payroll/Personnel System (CAPPS), which is the time and leave reporting system for all state employees. DPS—Waco management reviewed the timekeeping concerns and finding merit to the allegations, reported the issue to laboratory system leadership at DPS headquarters in Austin. In July 2022, laboratory system leadership reported the issue to the DPS Office of Inspector General (OIG) for an administrative investigation. In a meeting with management on July 25, 2022, the Analyst resigned her position, effective August 10, 2022.

On September 21, 2022, the OIG issued a report finding sufficient information to sustain the allegation of improper time reporting by the Analyst. On December 2, 2022, DPS—Waco

¹⁹ TEX. CODE CRIM. PROC. art. 38.01 § 4(g).

²⁰ *Id.* at § 11.

laboratory management sent an email to the Analyst at her subsequent employer (Othram) attaching her updated DPS Disclosure Form. The Disclosure Form confirmed a “sustained allegation of inaccurate time reporting,” and characterized the event as the “falsification of government records or conduct involving dishonesty or contrary to community standards of justice, honesty, or good morals.”

In late March 2026, a member of the DPS—Waco DNA section informed Commission staff that she recently learned the Analyst was in training at SWIFS where she had been hired a few months prior. She was concerned that SWIFS management may not be aware of the OIG’s sustained finding, and that the Analyst may not have been forthcoming regarding the results of the OIG investigation during the hiring process. The Analyst was signed off for independent casework by SWIFS in March 2026—before SWIFS management was aware of the issues described in this report—but she has not testified in any SWIFS cases.

A. Notice and Investigative Decision

On April 2, 2026, the Analyst submitted an email explanation to the Commission after SWIFS management spoke with her about the OIG investigation and findings. On April 3, 2026, the Commission sent a letter to the Analyst acknowledging receipt of the information and informing the Analyst a determination would be made at the Commission’s April 24, 2026, quarterly meeting regarding whether the matter would be investigated. On April 8, 2026, the Analyst submitted an additional response via email. Commission staff requested additional information (such as the OIG report and supporting material) from DPS.

On April 24, 2026, the Commission voted to accept the updated disclosure for investigation by Commission staff. Staff notified the Analyst of the investigation on June 13, 2026. The notice of investigation informed the Analyst the Commission would investigate (1) whether the findings

of the OIG were supported by the supplemental information provided; (2) whether the Analyst disclosed the results of the OIG investigation to subsequent employing laboratories; and (3) whether the Analyst provided accurate information to the Commission during the forensic analyst licensing application process. The Analyst submitted another response on June 17, 2026.

B. Staff Investigation

Commission staff reviewed the OIG report and supporting documentation, written statements, and recorded interviews. Staff also obtained and reviewed emails between the Analyst and personnel at Othram as well as the Analyst's TFSC license renewal application submitted on October 11, 2024. Staff interviewed the Analyst on June 30, 2026, and her former supervisor at DPS Waco on July 1, 2026. Staff also interviewed the Senior Scientific Advisor at Othram (the Analyst's former supervisor) on July 8, 2026.

III. COMMISSION OBSERVATIONS AND FINDINGS

A. Background Facts

On June 27, 2022, several analysts at DPS Waco, who shared an office with the Analyst, advised the DNA Team Leader the Analyst may not be accurately reporting her time. The Team Leader compared certain physical daily sign-in sheets to the paper timesheets that had been turned in for approval (and ultimately entered into CAPPS). The Team Leader noticed discrepancies between the printed timesheet and the daily sign in sheet. She advised the DNA Section Supervisor/Technical Leader. The DNA Section Supervisor advised the Waco Regional Lab Manager, and they along with the Team Leader met with the Analyst (by phone) on July 12, 2022. The Analyst explained the time entries were mistakes that could have come from reusing the same prepopulated time sheet and not changing the times each week. The next day, the four met again and explained to the Analyst they would be submitting a memo and supporting documentation to

the DPS chain of command for the shortage of time. The Analyst advised the mistakes were due to stress, health issues, and difficulties with co-workers.

Management compared the time reported in the timesheets (used to verify the time entered into CAPPs) with the laboratory daily sign-in/sign-out sheets (used to document time in and out of the lab) and the time scanned into the system by the card key system (used to enter and exit the laboratory). They found many noticeable discrepancies and generated a spreadsheet comparing the information.

B. Analyst Resignation

On July 25, 2022, management met with the Analyst again and advised her that the OIG accepted the laboratory's request for an administrative investigation and that the Texas Rangers would also be reviewing the information to determine if the matter merited a possible criminal referral.

During the meeting on July 25, 2022, the Regional Laboratory Manager shared her experience regarding what might happen under various investigative scenarios. She told the Analyst that in her experience when similar allegations regarding timekeeping have been sustained by the OIG, it usually leads to termination. She also explained that she had seen other people resign before an investigation, in which case their employment history in CAPPs would indicate "resign." Finally, she explained that were the Analyst to resign during the middle of or close to the end of the investigation, her employment history might state "resign in lieu of termination" instead of "resign," though the Manager qualified the statement by saying she was "not sure" what would happen. The Regional Laboratory Manager explained she wanted the Analyst to know her options when considering the timing of her decision. The Analyst resigned her position on July 25, 2022, with an effective date of August 10, 2022.

C. Subsequent Employment at Othram

Emails between the Analyst and personnel at Othram show the Analyst had been exploring an open position at Othram before the timekeeping issue emerged at DPS. In May 2022, an Othram employee emailed the Analyst indicating that if the Analyst was “still interested” in a position at Othram, she would try to set up a phone interview. The parties exchanged emails over the next three weeks. On June 3, 2022, Othram advised the Analyst they had decided to hire someone else for the position, but they would keep her resume on file.

On August 16, 2022, six days after the Analyst’s resignation from Waco DPS became effective, Othram again emailed the Analyst asking if she was still interested in a position and instructing her to send her resume for review by Othram management. After multiple email exchanges, the Analyst was interviewed in person at Othram. She began working there on October 11, 2022.

D. Conflicting Information Regarding Whether Analyst Informed Othram of OIG Investigation

In her written communications with the Commission and in her interview, the Analyst maintained that she advised Othram of the timekeeping issue during telephone conversations with her supervisor before she started at the laboratory. In her written correspondence, she asserts that she “disclosed the timekeeping investigation with Othram prior to receiving an offer of employment. At no time did I attempt to conceal the existence of the investigation from my employer.”

The DNA Section Supervisor at DPS Waco informed Othram of the timekeeping issues that led to the Analyst’s departure from DPS when Othram contacted him for a reference check. He recalls explaining that the timekeeping issues were significant. The Othram Senior Scientific Advisor also recalls the discussion but shared her impression that the Analyst had “taken long

lunches,” which she understood to have been resolved internally. She does not recall discussing the OIG investigation with DPS. The Othram Senior Scientific Advisor also maintains that at no point did the Analyst make anyone at Othram aware she had issues with timekeeping while at DPS or that she was under investigation by the OIG before she was hired by Othram.

E. OIG Report and Sustained Finding

The OIG Report was issued on September 21, 2022. The report was based on written statements and recorded interviews of the Analyst, the DNA Section Supervisor, and the Regional Laboratory Manager, as well as the spreadsheet and other documentation regarding the timekeeping issue. The report observes that, between March 8, 2021, and July 8, 2022, there was a 279-hour discrepancy between the Analyst’s claimed work hours and the hours reflected on daily sign-in sheets and magnetic key card readers. The Analyst reported these hours on her written time sheets and in CAPPS despite not being present at work. Additionally, between March 3, 2021, and June 25, 2022, the Analyst received payment for 96 requested overtime hours during the period.

The report provides examples of how the discrepancies occurred. For example, on July 6, 2022, the Analyst reported having arrived to work at 7:30am but the magnetic key card access reader showed she arrived at 8:00am. During her lunch break that day, she reported a 30-minute break, but the magnetic key card access reader and daily sign-in sheet showed 2 hours. She reported leaving at 5:00pm, but the magnetic key card access reader and daily sign-in sheet showed she left at 4:28pm. At the end of the day, the Analyst claimed to have worked 9 hours, but she only worked 6.5 hours. The OIG report observed a similar pattern throughout the investigated timeframe.

The Analyst was interviewed twice during the OIG investigation, once on August 4, 2022, and again on August 9, 2022 (one day before her resignation became effective). She did not seriously dispute the timekeeping errors but claimed they were unintentional. She described the

errors as a product of poor recordkeeping and a lack of care caused by difficulties with co-workers and management inaction regarding her complaints about the work environment.

At the end of her August 9, 2022, interview with the OIG investigator, the Analyst asked what she should expect since “tomorrow” would be her last day. The OIG investigator informed her that he would follow up with interviews of crime laboratory personnel and would send his report to the OIG setting forth the outcome of the investigation. He explained the report would not include any recommendations given her resignation, and that he really did not know what would happen afterwards. He suggested it was a question for crime laboratory management.

F. Analyst Notification of OIG Findings

After receiving the OIG report, DPS completed a Disclosure Form for the Analyst that was reviewed by the Waco Regional Crime Laboratory Manager. The Disclosure Form describes the incident as a “sustained allegation of inaccurate time reporting,” and characterizes the disclosure event as “falsification of government records or conduct involving dishonesty or contrary to community standards of justice, honesty, or good morals.” (*See, Exhibit X: Disclosure Form*).

On January 2, 2023, the DNA Section Supervisor/Technical Lead emailed the Disclosure Form to the Analyst at her Othram work email address. On January 10, 2023, the DPS Crime Laboratory Division Chief sent a letter to the Analyst informing her that the OIG investigation was closed with a sustained finding. The letter was sent to her address in Waco, Texas; the Analyst contends she never received this letter. On January 26, 2023, DPS issued a letter to the affected District and County Attorney’s Offices along with a copy of the Disclosure Form. DPS also provided the same form and letter to the Commission, but at the time it was perceived as an administrative issue that was cured by the analyst’s separation from the laboratory.

G. Non-Disclosure to Subsequent Employing Laboratories

The Analyst concedes that she did not disclose the results of the OIG investigation or share a copy of the DPS Disclosure Form with either Othram or SWIFS.

H. TFSC License Renewal Application

On October 11, 2024, the Analyst submitted her TFSC License Renewal application. One of the questions on the application asked her “reason for leaving” her prior employment at Waco DPS. The Analyst answered the question with three words: “New Job Opportunity.” There was no mention of any timekeeping issue or the OIG Investigation.

I. No Professional Misconduct Finding

“Professional misconduct” means the forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis.

In this case, the Analyst’s timekeeping and reporting issues were separate from any forensic analysis or related testimony by the Analyst. The definition of “professional misconduct” is focused on acts or omissions that would substantially affect the integrity of the results of a forensic analysis. The OIG’s sustained findings of improper time reporting do not fall within the definition of “professional misconduct,” given they are distinct from “forensic analysis” and related testimony. Every supervisor the Commission spoke with described the quality of the Analyst’s work as high. However, the responsibilities of forensic analysts are not simply to avoid professional misconduct as it relates to the physical testing of evidence. They also are responsible for complying with the Code of Professional Responsibility.

J. The Analyst Violated the Texas Code of Professional Responsibility (Provisions 16 and 17) when She Failed to Disclose the Results of the OIG Investigation to Subsequent Employing Laboratories

The Texas Code of Professional Responsibility for Forensic Analysts provides that each person licensed by the Commission shall document and notify management or quality assurance personnel of adverse events, such as an unintended mistake or breach of ethical, legal, scientific standards, or questionable conduct.²¹ The Code also provides the analyst shall ensure reporting, through proper management channels, to all impacted scientific and legal parties of any adverse event that affects a previously issued report or testimony.²² Together, these provisions are intended to facilitate compliance with legal disclosure requirements designed to ensure the rights of criminal defendants to receive information that is exculpatory, mitigating, or impeaching under *Brady v. Maryland* and its progeny as well as the Texas Michael Morton Act, Article 39.14(h) of the Texas Code of Criminal Procedure.

The Commission finds the Analyst received notification of the results of the OIG investigation on January 2, 2023, via the DPS Disclosure Form delivered to her Othram email address. Her immediate and ongoing obligation was to notify management or quality assurance personnel at Othram of this adverse event and ensure the reporting of the event to impacted scientific and legal parties. She was further obligated to inform SWIFS management or quality assurance personnel of these matters because the *Brady* and Michael Morton Act obligations are ongoing. Fortunately, the Analyst did not testify during her employment with either Othram or SWIFS, but the end-users of forensic work product she was involved with should be notified of

²¹ 37 Tex. Admin. Code § 651.219(b)(16) (2026).

²² Id. at 651.219(b)(17) (2026).

the OIG findings. The significance (or lack thereof) of the information in any particular criminal case is a separate question, but the notification should be made.

IV. The Analyst Provided Incorrect or Incomplete Information on her TFSC License Renewal Application.

As noted above, when asked her reason for leaving the DPS—Waco laboratory, the Analyst stated: “New Job Opportunity.” In her interview with Commission staff, the Analyst indicated she was referring to Othram in the response. This answer conflicts with the timeline of events. The Analyst offered her resignation in a meeting with management regarding the OIG investigation and a possible review by the Texas Rangers. On that date, July 25, 2022, there was no job opportunity available with Othram. The Othram position she eventually filled was first brought to her attention on August 16, 2022. In her interview with the Commission, the Analyst acknowledged the answer on her renewal application was an incomplete response.

V. DISCIPLINARY ACTION

A. Remedies and Applicable Factors

On a determination by the Commission that a license holder has committed professional negligence or professional misconduct or violated the code of professional responsibility under Article 38.01 of the Texas Code of Criminal Procedure or otherwise violated Article 38.01 of the Texas Code of Criminal Procedure or violated and administrative rule or order of the Commission, the Commission may: (1) revoke or suspend the person’s license; (2) refuse to renew the person’s license; (3) reprimand the license holder; or (4) deny the person a license.²³

Factors considered in determining the appropriate disciplinary action against a license holder may include: (1) the seriousness of the violation; (2) the prevalence of misconduct by the individual; (3) the person’s conduct history, including any investigative history by

²³ 37 Tex. Admin. Code § 615.216(a)(1)-(4) (2024).

the Commission; (4) the harm or potential harm to the laboratory or criminal justice system as a whole; (5) attempts to conceal the act by the individual; and (6) any other relevant factors.²⁴

The Commission also may decide one or more of the following factors warrants less severe or less restrictive disciplinary action in a particular investigation: (1) candor in addressing the violation, including self-reported and voluntary admissions of the misconduct or violation; (2) acknowledgement of wrongdoing and willingness to cooperate with the Commission; (3) changes made by the individual to ensure compliance and prevent future misconduct; (4) rehabilitative potential; (5) other relevant circumstances reducing the seriousness of the misconduct; or (6) other relevant circumstances lessening responsibility for the misconduct.²⁵ The license holder has the burden to present evidence regarding any mitigating factor that may apply.²⁶

B. Application of Disciplinary Factors to Facts of Disclosure

The violation being addressed in this report is the Analyst's failure to disclose the results of the OIG investigation to Othram and SWIFS. The Analyst made a poor decision when she failed to notify the laboratories that impeachment material existed once she received the results of the OIG investigation on January 2, 2023. Because she conceded having received actual notice of the OIG's findings, the Commission finds she was either indifferent to the information provided by the DPS Waco DNA Section Supervisor via email, or she actively decided against revealing it to Othram and SWIFS. The Commission trains analysts on the principles of *Brady v. Maryland* and the Michael Morton Act as they apply in the forensic context, and the training emphasizes the need to disclose impeachment information on an ongoing basis. The Analyst has taken the training at least twice, in addition to any in-house training provided by DPS, Othram, and SWIFS.

²⁴ *Id.* at § 651.216(c)(1)(A)-(E) (2024).

²⁵ *Id.* at § 651.216(c)(2)(A)-(F) (2024).

²⁶ *Id.* at § 651.216(c)(3) (2024).

The Commission finds the Analyst's failure to disclose the results of the OIG investigation to Othram and SWIFS to be a violation that compounds the previous poor judgment displayed by the Analyst with respect to her timekeeping. The harm or potential harm to the laboratory or the criminal justice system of the failure to disclose is difficult to quantify because the Analyst did not testify during her employment at Othram or SWIFS.²⁷ Had she testified without disclosing the issue, the potential harm to the criminal justice system could have been a violation of the constitutional rights of an accused which can carry significant downstream adverse consequences.

C. Mitigating Factors

The Analyst has no prior conduct history with the Commission. The Analyst did not argue with Commission staff or conceal her failure to disclose when she interviewed and expressed deep contrition. During the Analyst's interview with the OIG and her subsequent interview with the Commission, she accepted responsibility for her timekeeping failures. She claimed to have informed her Othram supervisor of the timekeeping issue before she was formally offered a job. While her supervisor has no recollection of this, assuming the Analyst's description to be true, this would have been the appropriate disclosure to make at that time.

We accept at face value the Analyst's assertion that she was under the impression if she resigned from DPS, the OIG investigation would "go away." However, this was a misunderstanding that should have been corrected on January 2, 2023, when she received the results of the OIG investigation. At that point, she had a duty to recognize the information as disclosable and provide it to her laboratory management at Othram, as well as subsequently to SWIFS management when she was hired.

²⁷ In a criminal trial in Ellis County in 2024, DPS Waco management was questioned about the Analyst's timekeeping issues because she had performed some of the forensic work in the case that was being tried. While we acknowledge the Analyst was not aware this occurred, it does serve as an example of the potential impeachment value of the information.

By all accounts, there were no issues with the Analyst's casework. Indeed, she was described by management in all labs as a skilled and hardworking analyst.

D. Disciplinary Action

The Analyst's current forensic analyst license expires on October 29, 2026. Based on the factors described above, the Commission suspends the Analyst's license for the remainder of the current licensing term. If the Analyst applies to renew her forensic analyst license after the suspension concludes, the Commission recommends the Analyst document the successful completion of remedial training in legal disclosure compliance. The Analyst will also need to be trained on how to discuss the issues in this report in a forthcoming manner with scientific and legal stakeholders.

VI. APPEALS PROCESS

Any finding by the Commission that includes disciplinary action against a license holder (revocation, suspension, probation, etc.) may be appealed to the Judicial Branch Certification Commission (JBCC).²⁸ A written request for a hearing before the JBCC must be received by the Commission or by the JBCC within twenty (20) days after the date the notice of the disciplinary action is received, or the Commission's decision becomes final and is not subject to further review by the JBCC or the Commission.²⁹

VII. RECOMMENDATIONS

Laboratories should consider reviewing their hiring processes to facilitate more thorough screening for potential disclosure issues that may not be covered by the standard county, city, state, or other applications. The Commission has revised its own license application question to prompt

²⁸ *Id.* at § 651.402(c) (2024).

²⁹ *Id.*

more comprehensive responses. The relevant application questions answered by the Analyst in this case were:

- Were you terminated or permitted to resign in lieu of termination?
- Have you ever been disciplined or resigned in lieu of potential disciplinary action because of an incident involving professional misconduct?
- Has any professional association or employer outside of the Texas Forensic Science Commission, sustained a complaint against you or otherwise made a finding adverse to you involving professional misconduct?

As previously discussed, the Analyst answered “No” to these questions. The Commission has revised its licensing application to include the following question:

- Are you aware of any pending or completed investigation against you for professional negligence or professional misconduct or a violation of the Code of Professional Responsibility or a violation of any current or former employer’s policies or procedures?

The Commission is also in the process of amending the Texas Code of Professional Responsibility, specifically 37 Tex. Admin. Code §651.219 (b)(15), to include the Texas Forensic Science Commission as a party with whom licensees must communicate honestly and fully.

Finally, the TACLD should consider whether a model supplemental application for forensic analysts would be helpful to share among the laboratories, so that potential legal disclosure issues may be understood and vetted from the outset of the hiring process.³⁰ Efforts to enhance communication between laboratories with respect to lateral hires should also be considered among the laboratories in cooperation with the relevant legal and human resource authorities.

³⁰ For example, DPS has added the following supplemental question:” Is there anything you or the DPS Crime Laboratory may be required to disclose about you in accordance with *Brady*, *Giglio*, or Michael Morton requirements pursuant to Texas Code of Criminal Procedure article 39.14(h)?”

EXHIBIT A



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Disclosure Form

LAB-302 LIMS Rev.01a (09/2021) p.1 Issued by: SQM

Date of separation 8/10/22

JM 12/9/22

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TxDPS 09.20.2021

The information included on this document is required by Texas DPS Crime Laboratory policy published online at <https://www.dps.texas.gov/section/crime-laboratory/publications>, specifically in the Crime Laboratory Division Manual. The information disclosed is provided in accordance with Brady, Giglio, and Michael Morton Act and is intended for prosecutor evaluation.

Any events requiring disclosure for the indicated employee are listed below. If there are no disclosure-required events, this will be indicated by listing "None".

Name: Powell, Amy

Title: Forensic Scientist III

Date: 8/2/2021 to 7/19/2022

Disclosure Event: Falsification of government records or conduct involving dishonesty or contrary to community standards of justice, honesty or good morals.

Tracking Number: OIG2022-0272

Description of Incident: OIG2022-0272 Sustained allegation of inaccurate time reporting

Reviewed by Copeland, Starla on 12/02/2022
