



City of Chicago  
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Board of Ethics

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PRELIMINARY REPORT OF INVESTIGATION  
CASE NO. 92028.I  
FIDUCIARY DUTY

C O N F I D E N T I A L

Date: October 14, 1992

This office received a written complaint in July that Mr. [redacted], a City [redacted], used his [redacted] title and status to try to obtain information about the complainant, Mr. [redacted], and may have used City time and resources in the pursuit of information about Mr. [redacted]. The complaint alleged that [redacted] was seeking this information for private political reasons.

If the allegations had been borne out, this would have been a violation of the [redacted]'s fiduciary duty to the City, set forth in the Governmental Ethics Ordinance, § 2-156-020.

It does not appear that the Complaint is sustained by the evidence.

This Preliminary Report of Investigation sets forth: (1) the specific allegations; (2) the history and scope of the investigation; (3) the facts and evidence; (4) the application of the Governmental Ethics Ordinance to the facts; and (5) a recommendation that the Board (a) dismiss the Complaint and terminate the investigation, (b) inform Mr. [redacted] that the Complaint has been dismissed (see proposed letter, attached), and (c) advise Mr. [redacted] about how to avoid misunderstandings in the future (see proposed letter, attached).

**ALLEGATIONS:** Mr. [redacted] alleges in a letter dated July 28, 1992 and received by this office July 30, that [redacted] used his status as a [redacted] to try to obtain information about Mr. [redacted] for personal, political reasons. Specifically, Mr. [redacted] alleges that [redacted], identifying himself as Inspector [redacted], called three different people, whom Mr. [redacted] named, in an attempt to obtain information about [redacted], and led the recipients of the calls to believe that Mr. [redacted] was conducting a investigation of Mr. [redacted]. Mr. [redacted].



alleges that Mr. [redacted] used his office telephone number as a contact.

**HISTORY OF THE INVESTIGATION:** On July 30, 1992, this office received the Complaint dated July 28, 1992. Staff spoke to the complainant and to the Freedom of Information Officer from the City, and received some conflicting information. At its August meeting, the Board determined that there was reasonable cause to proceed and initiated an investigation pursuant to § 2-156-380(a); the Board determined that the investigation should be conducted under the auspices of the [redacted] Department,

[redacted] Division, if that Division could proceed in a way consistent with the rules and procedures of the Board of Ethics. The investigative rules of the [redacted] Department conflicted with requirements of the Board of Ethics, so the staff proceeded with the investigation.

Staff interviewed the other two alleged recipients of Mr. [redacted]'s Freedom of Information requests, and on September 21, notified Mr. [redacted], by both certified and regular mail, of the investigation, and sought information from him concerning the use of his office and other City resources. Staff also asked whether he took any measures to ensure that recipients of Freedom of Information Act (FOIA) requests to whom he gave his office number would understand that he was seeking the information for private reasons, not in his capacity as a [redacted]. Mr. [redacted] called this office on September 23, and spoke to staff. He followed that call with a letter dated September 23 and received by this office September 28, responding to the questions and enclosing copies of several FOIA requests he made about Mr. [redacted] and responses by various offices to them. He also enclosed a copy of a letter he sent to the [redacted] informing him of the investigation. Staff talked to Mr. [redacted] (Inspector) [redacted], whom Mr. [redacted] has asked that we interview; Mr. [redacted] shares an office with Mr. [redacted], and sits in a desk opposite him.

**FACTS AND EVIDENCE:** All three people whom Mr. [redacted] was alleged to have called stated that Mr. [redacted] made a written, not telephoned, Freedom of Information Act request for personnel records, and did not use any [redacted] title or indication of his status as a [redacted] in the written request. They said that Mr. [redacted] gave a telephone number at his office where he could be reached during the daytime until 3:00 p.m. Each stated that the requests were unusually broad, seeking information that is not available under the FOIA.

One recipient of a request said that he believed that Mr. [redacted] was an [redacted] from other contacts he had had with [redacted]. He said that he has a policy of informing the person about whom a Freedom of Information Act request is made, as a matter of courtesy.

A second recipient of a request said that he or someone from his office called Mr. [redacted] about the request, and in that way learned that he was a [redacted].

A third recipient of a request said that when a FOIA request is very broad or ambiguous, he follows the practice of calling the person requesting the information to see what the person really wants and whether the request can be narrowed. When he did call, he learned that he was calling the [redacted], and Mr. [redacted] answered his telephone with his [redacted] title, as "Inspector [redacted]." As a result, this person believed that the request might be part of a [redacted] investigation, so he made inquiries through the [redacted] Department and learned that it was not an official [redacted] investigation. (This is confirmed by Mr. [redacted]'s reporting that he was asked by Department personnel whether he was engaged in a investigation of Mr. [redacted].) This third person said that he can release personnel information sought under the FOIA if the subject waives the restriction against its release; he said he followed the usual procedure and called Mr. [redacted] to ask whether he was willing to waive the restriction and allow his personnel records to be released, which he was not.

The copies of the FOIA requests show that Mr. [redacted] did not use his [redacted] title or address, but did use only his office telephone number as the number where he could be contacted.

Mr. [redacted] said that he prepared the FOIA requests at home, on his home typewriter, and mailed them with stamps from his home. He and Mr. [redacted] say that he did receive telephone calls at his office about them. Mr. [redacted] said that he normally answers the telephone at that number, and that there was considerable "telephone tag" about the FOIA requests. Mr. [redacted] said he thought it necessary to give a work telephone number, because the Freedom of Information Officers are at work during those hours that Mr. [redacted] is also at work. He said it is policy to answer the telephone with the [redacted] title. Further, he said he did not believe anyone would think he was pursuing an official investigation, because he had not indicated in any way that the investigation was an official one.

LAW: If the facts alleged had been true, Mr. [redacted] would have breached his fiduciary duty to the City, and would have been in violation of the of the Governmental Ethics Ordinance:

Section 2-156-020: Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.

This section establishes an obligation for City officials and employees to use their City positions responsibly and in the best interest of the public. Within lawful limits, a City employee must give undivided loyalty to the City of Chicago in the discharge of his or her public duties. This section also precludes the use of City time and City resources to obtain a personal benefit or to promote a purely private interest.

Use of [redacted] title when obtaining information to promote a private interest would be the misuse of a City position. Further, the use of City time and resources to carry out a purely private interest would also constitute a breach of the fiduciary duty.

CONCLUSION: The investigation does not bear out the complaint that he used his [redacted] title to obtain information for a private purpose. Staff recommends that the Board find that the complaint is not sustained, and that it terminate the investigation and so inform Mr. [redacted]. The proposed letter to Mr. [redacted] is attached.

However, providing his number of his work at the Department as the number where he could be reached, and not expressly explaining to the recipients of the FOIA requests who called that he was not conducting an investigation in his official capacity, led at least one caller to reasonably believe that he was conducting an investigation in his official capacity as a [redacted].

Staff recommends that the Board advise Mr. [redacted] (in the letter, attached) that to avoid such a misunderstanding in the future, and to avoid the appearance of using his official status [redacted] for private purposes, in any similar situation in the future, he should expressly state that he is engaging in a private matter, not a [redacted] matter. When he is acting for private purposes, and there is a reasonable possibility that a person may believe he is acting with [redacted] authority, he should make clear that his action is purely private.

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With respect to his receiving a telephone call for private purposes during his hours of employment for the City, staff recommends that Mr. \_\_\_\_\_ be informed that it is recognized that some private telephone calls during work hours cannot be avoided, because it may be the only time when a business or government with which one needs to make contact is open. However, he should be advised that it is a breach of fiduciary duty to the City to use City time and resources for private ends. It should be recommended to him that on personal matters, he should provide a personal telephone number, and state a preference for receiving calls at home.

Under § 2-156-400 of the Governmental Ethics Ordinance all complaints to and investigations by the Board of Ethics are confidential "except as necessary to carry out the powers and duties of the Board or to enable another person or agency to consider and act upon the notices and recommendations of the Board." Under § 2-156-390(b), if a complaint is not sustained, the Board must so inform any person whom the Board has informed of the investigation.

Staff recommends that, following the rules of confidentiality when a complaint has not been sustained, the Board should provide no copies of the letter to Mr \_\_\_\_\_ except to the Corporation Counsel, and the Preliminary Report of Investigation should remain in our files, with copies to none. Staff will notify all those whom it informed of the investigation, to say that the complaint has been dismissed.





October 28, 1992

C O N F I D E N T I A L

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Richard M. Daley, Mayor

Avenue  
Chicago, IL 60613

Board of Ethics

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Re: Case No. 92028.I

BY CERTIFIED MAIL

Dear Mr. ,

You were informed by certified mail dated September 21, 1992 that the Board of Ethics initiated an investigation pursuant to § 2-156-380(a) on the basis of a complaint that alleged you may have violated the Governmental Ethics Ordinance, Chapter 2-156 of the Municipal Code of Chicago. The Board has concluded, after investigation, that the Complaint is not sustained, and the investigation is terminated; but the Board advises you to follow procedures discussed below to avoid misunderstandings in the future.

The complaint alleged that you misused your position as a by leading people to believe that you were conducting a investigation when you were seeking personnel information about for personal, political reasons. It specifically alleged that that you introduced yourself by your title as "Inspector" to people from whom you were seeking information about Mr. , leading those people to believe you were conducting a investigation. You were alleged further to have used City time and resources to carry out this investigation.

On receipt of our September 21 notice of investigation, you responded by telephone and in writing, and provided written copies of a number of your Freedom of Information Act (FOIA) requests about Mr. and the responses you received to those requests; you also provided written answers to the Board's questions, and the name of a witness to be contacted.



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The provision of the ordinance that is relevant to this case is § 2-156-020:

**Section 2-156-020: Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.**

This section establishes an obligation for City officials and employees to use their City positions responsibly and in the best interest of the public. Within lawful limits, a City employee must give undivided loyalty to the City of Chicago in the discharge of his or her public duties. This section also precludes the use of City time and City resources to obtain a personal benefit or to promote a purely private interest.

After reviewing the facts resulting from the investigation, the Board has determined that no violation of the Governmental Ethics Ordinance has occurred. However, your course of conduct did lead to a misunderstanding; at least one person reasonably believed that you were engaged in a investigation because you gave your telephone number as a contact, and, after answering with your title, did not expressly state that your request for information was for personal purposes. Indeed, you acknowledged that more than one agency representative expressly asked you whether you were engaged in a investigation.

Please be advised that § 2-156-400 of the Governmental Ethics Ordinance provides that all complaints to and investigations by the Board of Ethics are confidential "except as necessary to carry out the powers and duties of the Board or to enable another person or agency to consider and act upon the notices and recommendations of the Board." In addition, under § 2-156-390(b), the Board notifies corporation counsel, and, if a Complaint is not sustained, the Board must so inform any person whom the Board has informed of the investigation. This is to advise you that the Board will promptly notify all people whom the Board has informed of the investigation, that the Board has found no violation of the Governmental Ethics Ordinance, and that the complaint is dismissed and the investigation terminated.

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If you have any questions concerning this, please do not  
hesitate to contact us.

Sincerely,

*Catherine M. Ryan*  
Catherine M. Ryan  
Chair

cc. Kelly Welsh, Corporation Counsel ✓

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