

Executive Director's Report February 5, 2024

Amendments to the City's Ethics Laws

The Board's own proposals. Our proposals were submitted to the full City Council by the Chair of the City Council's Committee on Ethics and Government Oversight, 47th Ward Ald. Matt Martin, on January 24. It is designated O2024-0007359 and is posted on the City Clerk's website here:

<https://occpstoragev1.blob.core.usgovcloudapi.net/matterattachmentspublic/78f11f46-552f-4b49-b357-cdb7b2f130ec.pdf>

We will meet with the Mayor's IGA team next week to discuss these further. We hope something will be enacted in April or May. These proposals: i) would impose tighter regulation of City Council independent contractors; ii) address the use of photographs of City property (such as Chicago Police or Fire Department insignia, badges, uniforms, or equipment) in electioneering communications by, among other things, subjecting political fundraising committees to the Ordinance's restrictions, thereby granting the Board and Inspector General jurisdiction over such committees in this respect; iii) address improper coercive electioneering communications addressed to City employees or officials, and impose a "stand by your ad" requirement that candidates for City office certify that they have reviewed all electioneering communications disseminated by their authorized political fundraising committees; iv) clarify the political activity prohibitions; and v) address closing a gap in the City's campaign contribution limitations law, realizing that work is being done on a public financing law, which, if enacted, could moot this recommendation.

Lobbying Law Revisions. Substantial revisions to the City's lobbying laws were passed into law by the City Council on December 13, 2024. We posted them here: https://www.chicago.gov/content/dam/city/depts/ethics/supp_info/GEO-2019-color%20through%20July%202024.pdf. Board legal staff worked closely with representatives from the City Council's Committee on Ethics and Government Oversight, Mayor's Office, Law Department, and the philanthropic and public charity communities on these amendments, and on behalf of the Board, I extend my thanks and congratulations to all who were involved in this effort, especially to the Chair of the City Council's Committee on Ethics and Government Oversight, 47th Ward Alderperson Matt Martin, and his amazing staff. The new laws take effect on July 1, 2024.

By way of highlight, the amendments: i) re-impose thresholds for all individuals that must be met before they would be required to register as lobbyists (more than 20 hours in lobbying as defined, or expending or being compensated more than \$1,250 for lobbying as defined, per calendar quarter); ii) exempt individuals who lobby solely on behalf of any nonprofit with an operating budget or a net assets or fund balances of less than \$5 million dollars; capping all lobbying fines at \$20,000 per violation; iii) add a "self-defense communication" exemption from lobbying for non-profits; iv) codify Board opinions from late 2019-early 2020 that nonprofit personnel who serve on advisory committees at the City's request are not thereby lobbying unless they advocate for new resources or programs for their own nonprofit; and v) clarify which actions constitute "administrative action" and "legislative action."

Until the law takes effect, the Board is working closely with the Committee to engage in education and outreach efforts.

Note that, as of December 2023, 122 individuals from the non-profit community were already registered with the Board.

2024 Statements of Financial Interests

We have contacted all departments, Ward offices, City Council committees, and the Mayor's IGA team to compile the list of all those City employees and officials who will be required to complete these Statements for 2024. Then, on February 29/March 1, as required by law, we will notify an anticipated 3,925 City employees and officials required to file 2024 Statements of Financial Interests ("FIS forms") of their requirement to file before May 1, 2024, with the link to file electronically.

All filed 2023 forms are posted and viewable here, where they stay for seven (7) years after they are filed:

<https://webapps1.chicago.gov/efis/search>

Education

On-line Training

For all employees and officials. On January 17, we determined that 188 City employees and officials had violated the Ordinance for failure to complete their 2023 online training on time; that number has since been revised down to 162, after we were informed by various departments of individuals are no longer employed by the City. As required by law, we posted the revised of their names and fine information here:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/EnforcementMatters/Ethics%20Posting%20Jan%2030%202024.pdf>

We plan to post the all-new 2024 online training for all employees and elected officials, and for lobbyists, in the next few weeks, and post the appointed officials training by the end of February.

Classes and other presentations

We cancelled all in-person classes from March 2020 on, given the course of the pandemic. We extended all training deadlines accordingly, and will restart them later this month. All Board classes and educational programs cover sexual harassment. We are reaching out to all City Council offices to schedule classes for them at Chicago Public Library facilities or their offices. We are also in the process of scheduling in-person classes for Mayor Johnson and key members of his team.

We presented a class to employees from the Department of Planning & Development on January 26, and a class for staff of various non-profit organizations on February 2, at the invitation of the Illinois Environmental Council. We are scheduling a class for the Mayor and his leadership team, which should occur in late February or early March. We will also make a presentation to the attorneys of the Taft, Stettinius firm on February 14. They have several attorneys who are registered lobbyists. We are also working with the staff of the Committee on Ethics and Government Oversight to present multiple classes to representatives of non-profit organizations.

Advisory Opinions

Since the Board's last meeting, we have issued 144 informal advisory opinions. The leading categories for informal opinions were, in descending order: Travel; Gifts; Travel; Campaign financing; City property; Lobbying; Political activity; Outside employment; and Post-employment.

The leading City departments from which requesters came in this period were, in descending order: City Council; Chicago Police Department/Civilian Office of Police Accountability (COPA)/Community Commission for Public Safety and Accountability (CCPSA); Mayor's Office; Department of Public Health; Department of Finance; Department of Transportation; Department of Planning and Development; and Fire Department. 80% of all inquiries came from City employees or elected officials, the remainder from attorneys, vendors, lobbyists or potential lobbyists.

Informal opinions are confidential and not made public, but are logged, kept, and used for training and future advisory purposes. This same practice occurs with our colleagues at the New York City Conflicts of Interest Board, who issue roughly the same number of informal opinions. They form the basis for much of our annual and periodic educational programs. Formal opinions are made public, in full text, with names and other identifying information redacted out. In the past five (5) years, the Board has issued 67 formal opinions. There are no formal opinions on today's agenda for consideration.

Summary Index of Formal Advisory Opinions/Text of all Formal Advisory Opinions

The full text of every formal Board opinion issued since 1986 is posted on the Board's website (more than 920), redacted in accordance with the Ordinance's confidentiality provisions, here:

https://www.chicago.gov/city/en/depts/ethics/auto_generated/reg_archives.html.

Redacted formal opinions are posted once issued or approved by the Board. Summaries and keywords for each of these opinions—and a link to each opinion's text, which we added since the August Board meeting--are available on the Board's searchable index of opinions, here:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/AOindex.docx>.

Only a few other ethics agencies have comparable research tools. We are unaware of jurisdictions that make their *informal* opinions public—though others issue them confidentially and enable requesters to rely on them in the event of an investigation or enforcement.

Lobbyists Filings

All lobbyists registered as of December 31, 2024 were required to re-register or terminate their registrations and file their 4th Quarter 2023 activity reports before January 23, 2024. Currently 697 lobbyists successfully filed their 2024 registrations; but 99 filed either their registrations or activity reports late. As required by law, we sent 176 lobbyists probable cause notices who appear to have violated the law for late or incomplete filings. They have until February 16, 2024 to respond, or they face fines of \$1,000 per day until they file (note: these fines will shrink to \$250 per day and be capped at \$10,000 on July 1, 2024).

On February 1, we posted a current list of registered lobbyists and their clients here:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/LobbyistStuff/LISTS/lobbyistlist.xls>

and as of then had collected \$262,150 in 2024 registration fees, but this will be revised upward in the next few weeks.

Lobbyists' filings dating back to 2014 can be examined here: https://webapps1.chicago.gov/elf/public_search.html.

Currently there are 126 lobbyists lobbying on behalf of nonprofit organizations.

Sister Agencies

We have been consulting with our colleagues at the Chicago Public Schools (CPS) regarding the election next year of school board members. We will next meet with our fellow ethics officers from all the sister agencies, as well as the Cook County Board of Ethics and Cook County Assessor's Office, in March 2024.

Waivers

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted eight (8) and denied three (3) waiver requests.

Summary Index of Board-Initiated Regulatory Actions/Adjudications/pre-2013 Investigations

We post a summary index of all investigations, enforcement and regulatory actions undertaken by the Board since its inception in 1986 (other than those for violations of filing or training requirements or campaign financing matters). It includes an ongoing summary of all regulatory actions the Board undertook without an IG investigation, based on probable cause findings the Board makes as a result of its review of publicly available information, where no factual investigation by the IG is necessary. *See*

<https://www.chicago.gov/content/dam/city/depts/ethics/general/EnforcementMatters/Invest-Index.pdf>

The Board makes public the names of all violators and penalties it assesses when authorized by law to do so. But only in those that occurred after July 1, 2013, can the Board release the names of those found to have violated the Ordinance. Since July 1, 2013, there have been nearly 90 such matters.

Summary Index of Ongoing/Past IG/LIG Investigations/Adjudications

There are currently ten (10) completed IG ethics investigations in the process of adjudication. More information on these cases is posted here: <https://www.chicago.gov/city/en/depts/ethics/provdrs/reg/svcs/ongoing-summary-of-enforcement-matters.html>.

The first, 23045.IG, was sent to the Law Department for the drafting of charges and a confidential administrative hearing, pursuant to §2-156-392. The City is being represented by the law firm of Hinshaw & Culbertson, and the matter will be heard before ALJ Frank Lombardo. The Board is pursuing a \$20,000 fine.

In the second, 23050.IG, the Board found probable cause; it met with the subject's counsel in November 2023 and concluded that the subject bribed a City employee and imposed the maximum fine of \$5,000. The matter might be settled, but the subject earlier expressed the desire to proceed to a confidential administrative hearing, pursuant to §2-156-392, and the matter was assigned to ALJ Frank Lombardo. Charges were drafted. The City is being represented by the law firm of Kulwin, Masciopinto and Kulwin, LLP.

In the third, 23053.IG, the Board found probable cause at its November 2023 meeting. The matter is on today's agenda for a meeting with the subject and the subject's attorney; they will attempt to reverse the Board's probable cause finding.

In the fourth and fifth, 23054.IG and 23055.IG, the Board found probable cause at its November 2023 meeting. Both matters are on today's agenda for a meeting with the subject and the subject's attorney; they will attempt to reverse the Board's probable cause finding.

In the sixth and seventh, 23059.IG and 23063.IG, the IG submitted its completed investigations to the Board on November 14 and November 20, 2023, respectively. The Board found probable cause in both cases at its December 2023 meeting. Both subjects and their attorneys will meet with the Board at today's meeting to attempt to rebut the Board's findings.

In the eighth case, 23066.IG, the IG delivered its completed investigation to the Board on December 26, 2023. The Board found probable cause at its January 2024 meeting. The subject is entitled to meet with the Board at its March or April meeting to attempt to reverse the Board's finding.

In the ninth case, 23067.IG.1, .2, and .3, the IG delivered its completed investigation to the Board on December 30, 2023.. The matter involves three (3) employees from the same City department; the IG concluded that one of them had a prohibited financial interest in City contracts, and that the others knew of this violation but failed to report it to the IG as required by §2-156-018(a). At its January 2024 meeting, the Board voted to refer the matter back to the IG, because the evidence adduced in the IG's investigation appears to show that a *fourth* employee from the same department also violated §2-156-018(a) by failing to report the violation to the IG. The Board is requesting that the IG review its investigation, and if it agrees with the Board, properly petition the Board for a probable cause finding with respect to that fourth employee.

In the tenth case, 24003.IG, the IG delivered its completed investigation to the Board on February 2, 2024. The matter involves an investigation into the deletion of comments from an elected official's official social media account. The IG's investigation found that the official improperly used a comment moderation tool that resulted in the deletion of comments that did not meet the Board's prescriptions for the kinds of comments that can be deleted. The matter will be presented to the Board for a finding of probable cause at its March 2024 meeting.

More complete summaries of these cases are available on our website, subject to the Ordinance's confidentiality requirements. We post on our website and continually update an ongoing investigative record showing the status of every completed investigation brought to the Board by both the Office of Inspector General since July 1, 2013, and the former Office of the Legislative Inspector General ("LIG"), since January 1, 2012, and the status of all 50 petitions to commence investigations presented to the Board by the LIG. We update this record as appropriate, consistent with the Ordinance's confidentiality provisions. See <https://www.chicago.gov/city/en/depts/ethics/provdrs/reg/svcs/ongoing-summary-of-enforcement-matters.html> and <https://www.chicago.gov/content/dam/city/depts/ethics/general/EnforcementMatters/PulbicScorecard.pdf>

Whenever the IG presents the Board with a completed ethics investigation in which the IG believes there have been violations of the Governmental Ethics Ordinance, the procedure that follows is governed by §2-156-385(3) and (4) of the Ordinance: the Board reviews the IG's report, recommendations, and the entirety of the evidence submitted in its completed investigation, including a review to ensure that the IG conformed with the requirement that it complete ethics investigations within two (2) years of commencing them (unless there is evidence that the subject took affirmative action to conceal evidence or delay the investigation), and that the ethics investigation was commenced within five (5) years of the last alleged act of misconduct.

If the Board finds that the evidence presented warrants a finding of probable cause to believe the subject violated the Ordinance, it notifies the subject of the allegations and affords the subject the opportunity to present written submissions and meet with the Board, together with an attorney or other representative present. The Ordinance provides that this meeting is *ex parte* – no one from the City's Law Department or IG is present. Note that the Board may also request clarification from the IG as to any evidence found in its investigation before making a probable cause finding, or refer the matter back to the IG for further investigation (and has done so). The Board cannot administer oaths at this meeting but can and does assess the subject's credibility and the validity and weight of any evidence the subject provides.

If the subject does not rebut the Board's probable cause finding, the Board may enter into a public settlement agreement—or the Board may find there was a violation and the Board or the subject may proceed to a hearing on the merits that is not open to the public. That hearing is held before an administrative law judge (ALJ) appointed by the Department of Administrative Hearings. The City would be represented by the Law Department (or a specially hired Assistant Corporation Counsel for that purpose), and the subject by their attorney. At the conclusion of that hearing, the ALJ submits their findings of fact and law to the Board, which can accept or reject them, based solely on the written record of the hearing. The Board will then issue a public opinion in which it may find violations of the Ethics Ordinance and impose appropriate fines, or find no violation and dismiss the matter.

These processes are based on specific recommendations of then-Mayor Emanuel's Ethics Reform Task Force in Part II of its 2012 Report—the primary purposes being to: (i) guarantee due process for all those investigated by the IG; (ii) ensure that only the Board of Ethics could make determinations as to whether a person investigated by the IG violated the Ordinance, given the Board's extensive jurisprudence and unique expertise in ethics matters; and (iii) balance due process for those investigated by the IG with an accurate adjudication by the Board and the public's right to know of ethics violations.

On our website, we have a publication describing this process in detail:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/EnforceProcedures.pdf>

Note: fines range from \$500-\$2,000 per violation for non-lobbying or non-campaign financing violations that occurred before September 29, 2019, and \$1,000-\$5,000 per violation for such violations occurring between September 29, 2019, and September 30, 2022. For violations occurring on or after October 1, 2022, the fine range is between \$500 and \$20,000 per violation, and the Board may also assess a fine equal to any ill-gotten financial gains as a result of any Ordinance violation. Fines for unregistered lobbying violations remain at \$1,000 per day beginning on the fifth day after the individual first engaged in lobbying and continuing until the individual registers as a lobbyist.

Please note finally that, in all matters adjudicated or settled on or after July 1, 2013, the Board makes public the names of all violators and penalties assessed, or a complete copy of the settlement agreement. All settlement agreements are posted here: <https://www.chicago.gov/city/en/depts/ethics/provdrs/reg/svcs/SettlementAgreements.html>

Disclosures of Past Violations

July 2013 amendments to the Ordinance provide that, when a person seeks advice from the Board about past conduct and discloses to the Board facts leading it to conclude that they committed a past violation of the Ordinance, the Board must determine whether that violation was minor or non-minor. If it was minor, the Board, by law, sends the person a confidential letter of admonition. If it was non-minor, then, under current law, the person is advised that they may self-report to the IG or, if he or she fails to do so within two (2) weeks, the Board must make that report. In 11 matters, the Board has determined that minor violations occurred, and the Board sent confidential letters of admonition, as required by the Ordinance. These letters are posted on the Board's website, with confidential information redacted out.

Litigation

Czosnyka et al. v. Gardiner et al., docket number 21-cv-3240. As was widely reported, Judge Sharon Johnson Coleman ruled on this matter on September 25, granting the plaintiffs' motion for summary judgment. The decision is published here: <https://casetext.com/case/czosnyka-v-gardiner-2>. We are gratified that the Court explicitly cited this Board's formal advisory opinion in Case 18038.A.1, which is posted here:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/AO-City%20Owned%20Property/18038.A.1.pdf>.

The Board and the City of Chicago were previously dismissed out of this case.

We continue to be asked about when, if ever, City elected officials may block persons from their official and/or their personal or political sites. Our interpretation of the Governmental Ethics Ordinance has not changed since issuing our advisory opinion in Case No. 13038.A.1: <https://www.chicago.gov/content/dam/city/depts/ethics/general/AO-City%20Owned%20Property/18038.A.1.pdf>. Still, we are following the cases argued recently before the U.S. Supreme Court in *O'Connor-Ratcliff v. Garnier* (docket # 22-324) and *Lindke v. Freed* (docket # 22-611), which involve blocking from personal or political accounts. Obviously we will follow the law as announced by the Supreme Court, and anticipate a decision next June.

Open Meetings Act/FOIA Challenges

The Board is involved in five (5) challenges filed with the Illinois Attorney General by the same person. These challenges request: (1) a review of the propriety of adjourning into executive session during the Board's September 11, 2023 meeting under the Open Meetings Act ("OMA"). (2) A review of the propriety of adjourning into executive session during the Board's August 14 and September 11, 2023 meetings under OMA. (3) (i) A review of the propriety of adjourning into executive session during the Board's May 16, 2022 meeting under OMA; AND (ii) A review of the Board not producing certain records pursuant to the Freedom of Information Act ("FOIA"). (4) A review of the propriety of adjourning into executive session during the Board's July 18, 2022 meeting under OMA. (5) A review of the Board not producing certain records pursuant to FOIA. The Board has worked with the Law Department and responded to each. The Board awaits replies from the Illinois Attorney General.

Freedom of Information Act

Since the last Board meeting, the Board has received six (6) requests.

The first request was for lobbying records; we responded with a link to our electronic lobbyist filing system.

The second request was for the 2023 all employees/elected officials training; we sent the 2023 training.

The third request was for all records related to a City employee; we responded by stating that the request was burdensome as being too broad and that we would work with the requestor to narrow the request.

The fourth was for communication between third parties; we responded that we were the wrong department.

The fifth was for records showing political contributions in lobbyist filings; we provided a link to our lobbyist system to the requestor.

The sixth was for (i) any and all subpoenas, civil or criminal, seeking document or testimony filed with the Board since January 1, 2023; and (ii) any and search warrants from law enforcement authorities for access to records or equipment at the Board since January 1, 2023, and warrant returns or receipts indicating items or records removed to such warrant. The Board responded to (i) by producing the one (1) subpoena it received during this period, on October 30, 2023, and responded that it had no responsive documents for (ii).