



CITY OF PHILADELPHIA

BOARD OF ETHICS
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**Philadelphia Board of Ethics
Non-Public Board Opinion No. 2017-001**

July 20, 2017

**Re: Disclosure of Clients as Sources of Income Not Required on
the City of Philadelphia Statement of Financial Interests**

Dear City Official:

Prior to the May 1, 2017 financial disclosure deadline, you requested a non-public advisory Opinion regarding disclosure of clients as direct or indirect sources of income on the City of Philadelphia Statement of Financial Interests. With respect to income attributable to clients that you receive from a business, it is sufficient for you to disclose the business as a source of income, and you are not required to disclose clients.

I. Jurisdiction

The Board of Ethics has jurisdiction to administer and enforce all Philadelphia Home Rule Charter (“Charter”) provisions and ordinances pertaining to ethical matters. Charter § 4-1100. The Charter and The Philadelphia Code (“Code”) authorize the Board to render advisory opinions concerning a City officer’s or employee’s proposed future conduct. Charter § 4-1100; Code § 20-606(1)(d). Board of Ethics Regulation 4 describes the procedures related to seeking an advisory opinion and for requesting reconsideration of an advisory Opinion issued by the Board. Board Reg. 4 ¶¶ 4.0, 4.26.

II. Facts Provided by the Requestor

In addition to being a City official, you are also the owner of a private, local firm (the “Firm”). You and others who work for the Firm provide client services, and clients

pay the Firm for services provided. You are compensated and receive a percentage of the Firm's profits through a commission-based approach that takes into account client origination.

III. Question Presented & Brief Answer

If a filer of the City of Philadelphia Statement of Financial Interests receives income from a business that is above the disclosure threshold and that is attributable to a client, is the filer required to disclose the client as a direct or indirect source of income?

No. On the City of Philadelphia Statement of Financial Interests, it is sufficient for a filer to report the business as a source of income. Disclosure of individual clients is not required.

IV. Discussion

The Code mandates that certain City officials and all members of boards and commissions annually file the City of Philadelphia Statement of Financial Interests ("City Form") disclosing information for the prior calendar year. *See* Code § 20-610(1). By virtue of your City position, you are required to file the City Form.¹ The City Form generally must be filed on or before May 1 of each year the filer holds City office and in the year after leaving office.² *See id.* Filed City Forms are available to the public through the Department of Records. *See* Code § 20-610(4).

Financial disclosure enhances public trust by promoting transparency and accountability in City government. The Code financial disclosure provision, which was added in 1982, appears to have been modeled in many respects on the financial disclosure provision of the 1978 Pennsylvania Public Official and Employee Ethics Act ("State Ethics Act"). The Code financial disclosure requirement regarding disclosure of direct or indirect sources of income mirrors that of the State Ethics Act, except that due to post-1982 amendment of the State Act, its \$1,300 income disclosure threshold is higher than the Code income disclosure threshold of \$500.

¹ By virtue of your City position, you are also required to file the State Ethics Commission Statement of Financial Interests. *See* 65 Pa. C.S. §§ 1102, 1104.

² The May 1 deadline does not apply in two circumstances. First, if May 1 does not fall on a business day, the deadline is the next day after May 1 that the City is open for business. Second, in the initial year of holding City office, an individual who takes office less than thirty days before May 1 or on or after May 1 of the calendar year is required to file the City Form within thirty days of taking office. *See* Code § 20-610(1). For instance, if an individual is appointed to City office on May 5, the individual has thirty days from May 5 to file the City Form.

In relevant part, Code Section 20-610 requires disclosure of the following on the City Form:

The name and address of any person³ who is the direct or indirect source of income totaling in the aggregate five hundred (\$500) dollars or more. However, this provision shall not be construed to require the divulgence of confidential information protected by statute or existing professional codes of ethics.

Code § 20-610(2)(e). Correspondingly, the State Ethics Act requires disclosure of the following on the State Ethics Commission Statement of Financial Interests (“State Form”):

The name and address of any direct or indirect source⁴ of income totaling in the aggregate \$1,300 or more. However, this provision shall not be construed to require the divulgence of confidential information protected by statute or existing professional codes of ethics or common law privileges.

65 Pa. C.S. § 1105(b)(5).

The Pennsylvania Supreme Court has ruled that under this State Ethics Act provision, a filer who receives income from a business as the result of providing services to clients through that business is not required to disclose individual clients and may instead disclose only the business as a source of income. *See In re Paulmier*, 937 A.2d 364, 372-73 (Pa. 2007), *as clarified* (Dec. 28, 2007). In so holding, the Pennsylvania Supreme Court examined the plain language of the State Ethics Act financial disclosure requirement and focused on the definitions of: (1) the term “person,” which includes an individual or a business; and (2) the term “business,” which includes both a sole proprietorship and a self-employed individual. *See id.* Noting the breadth of these definitions, the Court determined that there are two distinct sources to which a self-

³ The Code defines “person” as: “A business, individual, corporation, non-profit, union, association, firm, partnership, committee, political committee, club, or other organization or group of persons.” Code § 20-601(20). The Code defines “business” as: “Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or legal entity organized for profit.” Code § 20-601(5).

⁴ The State Ethics Act defines “source” as: “Any person who is a provider of an item reportable under section 1105 (relating to statement of financial interests).” 65 Pa. C.S. § 1102. “Person” is defined in the State Ethics Act as: “A business, governmental body, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.” *Id.* The State Ethics Act defines “business” as: “Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit.” *Id.*

employed filer or a filer with a sole proprietorship might attribute income. *See id.* The Court concluded, “[W]hen that same contribution to income has more than one statutorily defined source, the [filer] may list either the individual **or** business that serves as a source of that income.” *Id.* at 373 (emphasis in original). Thus, if a State Form filer discloses as a source of income the business through which the filer receives income for serving clients, the filer is not required to disclose individual clients as sources of income. *See id.*

The Code income disclosure provision at issue is not only built upon virtually the same language and definitions as the State Ethics Act, but it also appears to have been taken directly from the State Ethics Act provision interpreted by the Pennsylvania Supreme Court in *Paulmier*. Like the Pennsylvania Supreme Court, the Board determines that it is sufficient for a City Form filer to report as a source of income the business from which the filer receives income attributable to clients, and disclosure of individual clients is not required. Accordingly, you would satisfy the City Form disclosure requirement by identifying the Firm as a source of income. You could also satisfy this requirement through disclosure of clients, but client disclosure is not required.

Please note that in your capacity as a City official you would have a conflict of interest if a matter that financially affects a client is before you. *See* Board Opinion 2012-001 at 5-6 (advising a City official that he has a conflict if he is in a position to take official action in a City matter that financially affects his private clients); State Ethics Commission Opinion 92-010 at 4-5 (advising a township supervisor that he has a conflict if his private clients have matters pending before the township). In that situation, you would be prohibited from taking official action as a City official and would be required to disclose the conflict publicly and disqualify yourself from taking official action regarding the matter. *See* Code §§ 20-607, 20-608; 65 Pa. C.S. § 1103(a), (j).

* * * * *

Thank you for your concern about compliance with the City financial disclosure requirements and for seeking advice. Advisory opinions are fact-specific, and this Opinion is predicated on the facts that you provided, the details of which have been redacted here. You are entitled to act in reasonable reliance on this Opinion and not be subject to penalties under the laws within the Board’s jurisdiction, unless you have omitted or misstated material facts in your request. Code § 20-606(1)(d)(ii); Board Reg. 4 ¶ 4.12.

Since you requested a non-public opinion, the original Opinion will not be made public. As required by the City Code, this version of the Opinion that has been redacted to conceal facts that are reasonably likely to identify you is being made public. Please let Board Staff know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

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