

## **PHILADELPHIA BOARD OF ETHICS**

### **REGULATION NO. 5**

#### **CONFIDENTIALITY OF ENFORCEMENT AND INVESTIGATIVE MATTERS AND PROHIBITED DISCLOSURES**

##### **SUBPART A. DEFINITIONS; SCOPE.**

**5.0 Definitions.** As used in this regulation, the following words and phrases shall have the meanings indicated.

- a. Board.** The Board of Ethics and its individual members.
- b. Board Staff.** Employees of the Board of Ethics.
- c. Candidate.** As that term is defined at Philadelphia Code § 20-1001(2).
- d. Candidate political committee.** As that term is defined at Philadelphia Code § 20-1001(3)
- e. Complainant.** A person who has submitted a complaint to the Board.
- f. Complaint.** The written document submitted to the Board pursuant to Regulation 2 Paragraph 2.4 for the purpose of initiating a Board investigation or enforcement action.
- g. Covered election.** As that term is defined at Philadelphia Code § 20-1001(7).
- h. Executive Director.** The Executive Director of the Board and his or her designee or designees.
- i. Investigation or ongoing investigation.** The Board's inquiry, as described in Regulation 2 Subpart B, into an alleged violation of the Public Integrity Laws, as the term Public Integrity Laws is defined at Regulation 2 Paragraph 2.0(a). An investigation is ongoing until the Executive Director terminates the investigation pursuant to Regulation 2, Subpart B, or makes a finding of probable cause.
- j. Person.** As that term is defined at Philadelphia Code § 20-601(12).
- k. Referral.** As that term is described at Regulation 3 Paragraph 3.3.
- l. Subject of a complaint or an investigation.** Those individuals or entities alleged to have violated the Public Integrity Laws.

**5.1 Scope.** This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapters 20-600 and 20-1000 of the Philadelphia Code, clarifies the limitations imposed by Section 20-606(1)(i) of the Philadelphia Code on the disclosure of information related to Board enforcement and investigation activities.

## **SUBPART B. DISCLOSURE BY PERSONS OTHER THAN THE BOARD OR BOARD STAFF.**

### **5.2 Disclosure of a Complaint.**

a. Disclosure of the intention to file a complaint, the fact of filing of a complaint, or the complaint itself shall not constitute a violation of Section 20-606(1)(i) of The Philadelphia Code, except as provided in Subparagraph “b.” below.

b. During the period of time beginning 14 days before and through the date of a covered election, no person shall disclose the intention to file a complaint, the fact of filing of a complaint, or the complaint itself where a subject of the complaint is a candidate in that covered election, the candidate’s political committee, or the treasurer of the candidate’s political committee.

c. The limitation in Subparagraph “b.” above does not prohibit a complainant or other person from disclosing facts and allegations included in a complaint, so long as he or she does not disclose the intent to file a complaint, the fact of filing a complaint, or the complaint itself.

**5.3 Disclosure Related to an Ongoing Investigation Prohibited.** While an investigation is ongoing, disclosure of any information related to that investigation shall constitute a violation of Section 20-606(1)(i) except as follows:

a. A person may disclose or acknowledge information related to an ongoing Board investigation when he or she has obtained such information independently of his or her contact with the Board or Board Staff.

b. A person may disclose or acknowledge the substance of his or her own statements to the Board or Board Staff.

c. A person may disclose or acknowledge information related to an ongoing Board investigation for the purpose of seeking advice of legal counsel.

d. A person may disclose or acknowledge information related to an ongoing Board investigation to the Board or Board Staff.

e. A person may disclose or acknowledge information related to an ongoing Board investigation to a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency.

f. A person may disclose or acknowledge information related to an ongoing Board investigation if compelled to provide testimony under oath before a governmental body or court.

g. A member of the media may publish or broadcast legally obtained information regarding a confidential Board proceeding.

**5.4 Notice.** The Executive Director shall notify the complainant and the subject of an investigation when an investigation has been terminated pursuant to Regulation 2, Subpart B, or a finding of probable cause has been made. The notice shall inform them that they are no longer bound by the disclosure prohibitions of Section 20-606(1)(i), as defined in this regulation. The Executive Director shall, where practicable, notify persons who have provided testimony or other information to the Board during the course of an investigation that the investigation has been terminated and that they are no longer bound by such disclosure prohibitions.

#### **SUBPART C. DISCLOSURE BY THE BOARD OR BOARD STAFF.**

**5.5 Disclosure Related to a Complaint, Investigation, Referral, or Pending Adjudication Prohibited.** Neither the Board nor Board Staff shall disclose at any time any information related to a complaint, investigation, referral, or pending adjudication except as follows:

- a. For the purpose of seeking advice of outside legal counsel.
- b. In the course of an investigation, to subjects of that investigation, witnesses, and legal counsel of such subjects and witnesses.
- c. In the course of settlement discussions with the subject of a complaint, investigation, or judicial or administrative enforcement proceeding, and with legal counsel of such subjects.
- d. In an executed settlement agreement resolving violations of the Public Integrity Laws, or in a public announcement concerning such settlement agreement.
- e. In filings or pleadings related to a judicial enforcement action, administrative adjudication, appeal or other legal proceeding, or in a public announcement concerning such filings or pleadings.
- f. To the Board's contracted vendors and to other Board members and Board Staff.
- g. To consult with a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency.
- h. If compelled to provide testimony under oath before a governmental body or court.

#### **SUBPART D. DISCLOSURE OF BOARD RECORDS.**

**5.6** Except as otherwise provided under Philadelphia, Pennsylvania, or Federal law, the records, reports, memoranda, and files of the Board shall be confidential and shall not be subject to public inspection.

#### **SUBPART E. PENALTIES.**

**5.7** A person who makes a disclosure prohibited by § 20-606(1)(i) of the Philadelphia Code as described in this regulation shall be subject to the penalties prescribed by §20-612 of the Philadelphia Code.

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