

# PHILADELPHIA BOARD OF ETHICS

## REGULATION NO. 5

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

#### SUBPART A. DEFINITIONS; SCOPE.

**5.0 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, interprets 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.

**5.1 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.** Information that a City department or a federal, state, or local governmental entity with civil or criminal enforcement powers, or an employee or representative of any of the foregoing, provides to the Board or Board Staff so they may determine whether a potential violation of the Public Integrity Laws has occurred.

- 1. Subject.** Those individuals or entities alleged in a complaint, referral, investigation, or preliminary inquiry to have violated the Public Integrity Laws.

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

**5.2 Disclosure of a Complaint.** 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 Philadelphia Code Section 20-606(1)(i).

**5.3 Disclosure of a Referral.** Disclosure of the intention to make a referral, the fact of having made a referral, or the substance of the referral itself shall not constitute a violation of Philadelphia Code Section 20-606(1)(i).

**5.4 Disclosure Related to an Ongoing Investigation Prohibited.** While an investigation is ongoing, disclosure of any information related to that investigation, including disclosing the existence of an investigation, shall constitute a violation of Code 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 or content 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 an ongoing Board investigation.

**5.5 Notice.** The Executive Director shall notify the subject of an investigation and the complainant or the source of a referral 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 Code Section 20-606(1)(i) related to an ongoing investigation, 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.**

**5.6 Disclosure Related to a Complaint, Investigation, Referral, or Pending Adjudication Prohibited.** Neither the Board nor Board Staff shall disclose or acknowledge at any time any information related to a complaint, preliminary inquiry, 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 or preliminary inquiry, to subjects of that investigation or preliminary inquiry, witnesses, and legal counsel of such subjects and witnesses.
- c. To a complainant, the source of a referral, or the subject of a complaint, referral, investigation or preliminary inquiry, for the purpose of explaining the status or outcome of a referral, complaint, investigation or preliminary inquiry.
- d. In the course of settlement discussions with the subject of a complaint or investigation, or with the respondent of a judicial or administrative enforcement proceeding, and with legal counsel of such subjects and respondents.
- e. In an executed settlement agreement resolving violations of the Public Integrity Laws, or in a public announcement concerning such settlement agreement.
- f. In the course of a judicial or administrative enforcement proceeding to the respondent, witnesses, and legal counsel of respondents and witnesses.
- g. In filings, pleadings, hearings, oral arguments or any other element of a judicial or administrative enforcement proceeding, appeal, or other legal proceeding. In a public announcement concerning any of the foregoing.
- h. In order to provide the scheduling, result, or explanation of any step in the process of a judicial enforcement action, administrative adjudication, appeal or other legal proceeding, including whether the Board has served an enforcement petition or Notice of Administrative Enforcement Proceeding or whether a respondent to an administrative enforcement proceeding has requested a hearing.
- i. To the Board's contracted vendors and to other Board members and Board Staff.
- j. 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.

k. If compelled to provide testimony under oath before a governmental body or court.

l. If such information has been previously disclosed by the Board or Board Staff in accordance with Paragraph 5.6 (e) or (g).

m. The Board or Board Staff may disclose the source of a referral, but not a complaint, in an executed settlement agreement or in filings, pleadings, hearings, oral arguments or any other element of a judicial or administrative enforcement proceeding, appeal, or other legal proceeding, or in a public announcement concerning any of the foregoing.

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

**5.7** 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, except that filings and pleadings related to a judicial or administrative enforcement proceeding, appeal, or other legal proceeding shall be subject to public inspection.

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

**5.8** 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 Chapter 20-1300 of the Philadelphia Code.

Initially approved for public comment by Board September 16, 2009  
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Proposed amendments to ¶5.2 approved for public comment by Board November 18, 2009  
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Proposed amendments that had been approved for public comment on June 16, 2010 and that were the subject of a July 21, 2010 Public Hearing were rescinded by Board September 15, 2010

Proposed amendments throughout approved for public comment by Board September 15, 2010  
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