

**CITY OF PHILADELPHIA
LAW DEPARTMENT**

MEMORANDUM

DATE: September 17, 2010

TO: Richard Glazer, Esq., Chair, Board of Ethics
FROM: Martha Johnston, Senior Attorney/MJ
SUBJECT: Ethics Board Regulation No. 5, Confidentiality

I have reviewed the Philadelphia Board of Ethics' proposed Regulation No. 5, entitled "Confidentiality of Enforcement and Investigative Matters and Prohibited Disclosures," as amended by the Board on September 15, 2010, and find it to be legal and in proper form. In accordance with Section 8-407(a) of the Philadelphia Home Rule Charter, you may now forward the proposed Regulation to the Department of Records where it will be made available for public inspection.

Attachment

Cc: Shane Creamer, Executive Director

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2010 SEP 17 PM 12:36


DEPARTMENT OF RECORDS



CITY OF PHILADELPHIA
BOARD OF ETHICS

MEMORANDUM

TO: Department of Records

FROM: Evan Meyer, General Counsel
Board of Ethics 

DATE: September 17, 2010

SUBJECT: Board of Ethics
Regulation No. 5

This is a notice for advertising and public inspection, but with an unusual modification. Previously, The Board of Ethics had adopted Regulation No. 5 in November of 2009, and adopted amendments in December of 2009. Then in June of 2010, the Board approved additional amendments and held a public hearing on the proposed amendments on July 21, 2010. Normally, the Board would then issue a Hearing Report and the amendments would become effective. However, the Board determined to make revisions to the amendments not discussed at the July 21, 2010 hearing, and, on the advice of the Law Department, determined to begin the process anew.

Accordingly, the Board of Ethics voted at its public meeting on September 15, 2010 to rescind the amendments that were approved for public comment on June 16, 2010. The Board then approved for public comment new amendments.

The proposed amendments to the Regulation have been approved by the Law Department. Therefore, in accordance with Section 8-407 of the Home Rule Charter, I am forwarding the Regulation, as it is proposed to be amended, to you for advertising and public inspection. Please note we would appreciate the newspaper legal notice of these regulations also to note that the previous proposed amendments have been rescinded, and that no hearing has been held on the attached amendments.

Thank you.

cc: Joan Decker, Records Commissioner
J. Shane Creamer, Jr., Esq., Executive Director
Martha Johnston, Senior Attorney

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SEP 17 PM 12:36
DEPARTMENT OF RECORDS

PHILADELPHIA BOARD OF ETHICS

REGULATION NO. 5

CONFIDENTIALITY OF ENFORCEMENT AND INVESTIGATIVE
MATTERS AND PROHIBITED DISCLOSURES

SUBPART A. SCOPE; DEFINITIONS; SCOPE.

~~5.1~~ **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, ~~clarifies~~ 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.

~~5.0~~ **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.** As that term is described at Regulation 3 Paragraph 3.3. 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.

2010 SEP 17 PM 12:44

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- 1 DEPARTMENT OF RECORDS

Regulation No 5 - Confidentiality - amendments approved by Bd 9.15.2010

1. **Subject of a complaint or an investigation.** 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.

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 Philadelphia Code 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, neither a complainant, nor any person who is authorized to act at the direction of the complainant, 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.~~

~~_____ d. The limitation in Subparagraph “b.” above does not prohibit a member of the media from publishing or broadcasting legally obtained information regarding a complaint filed with the Board.~~

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.

Regulation No 5 - Confidentiality - amendments approved by Bd 9.15.2010

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~~ 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.

Regulation No 5 - Confidentiality - amendments approved by Bd 9.15.2010

~~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.~~

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.

~~f~~ i. To the Board's contracted vendors and to other Board members and Board Staff.

~~g~~ 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.

~~h~~ 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 ~~§20-612~~ Chapter 20-1300 of the Philadelphia Code.

Regulation No 5 - Confidentiality - amendments approved by Bd 9.15.2010

Initially approved for public comment by Board September 16, 2009
Public Hearing held October 21, 2009
Reaffirmed by Board October 21, 2009
Effective November 2, 2009

Proposed amendments to ¶5.2 approved for public comment by Board November 18, 2009
Effective December 18, 2009

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
Effective [insert date]

Underlined text indicates an addition; ~~striketrough~~ indicates a deletion.