



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

August 22, 2014

PAUL A. RENNE
VICE-CHAIRPERSON

The Honorable Presiding Judge Cynthia Ming-mei Lee
400 McAllister Street, Department 206
San Francisco, CA 94102

BRETT ANDREWS
COMMISSIONER

Re: Civil Grand Jury Report: Ethics in the City

BEVERLY HAYON
COMMISSIONER

Dear Judge Lee:

PETER KEANE
COMMISSIONER

The 2014 Civil Grand Jury produced a report regarding the Ethics Commission. In 13 of their findings/recommendations, they requested that both the Ethics Commission and the Ethics Commission Executive Director respond to those sections.

JOHN ST. CROIX
EXECUTIVE DIRECTOR

My responses must concur with those of my Commissioners. They are attached.

Sincerely,


John St. Croix
Executive Director

Cc: Board of Supervisors

Ethics in the City: Promise Practice or Pretense
Response to Findings and Recommendations
California Penal Code, section 933.05
San Francisco Ethics Commission Executive Director

Finding 4: Some information currently reported and posted is not put into the standard searchable electronic format. The Jury specifically finds that contract approval forms, Form 700 forms, behested payments forms, and Lobbyists on Behalf of the City forms can be converted to a searchable format before they are posted.

Recommendation 4: That contract approval forms be converted to a format which allows searches by the name of the official, by the name of the contractor, the value of contracts and the date the contract was signed. Behested payments information should be filed electronically in a format that allows for searches and data aggregation. Form 700s should be formatted to allow data to be searched on income sources, outside employment, gift sources and travel.

Finding 4: Partially agree. There is some information filed with the Ethics Commission not currently in searchable electronic format.

Recommendation 4: Partially implemented/partially will not be implemented. Converting each type of form into such a format requires expensive development of software platforms. This particular recommendation would be extremely expensive. Over time, the Commission plans to develop such platforms for most if not all of the filings it administers. Lack of funding for development means that the addition of the various forms will be done as resources are made available. It should be noted, for example, that 2014 is the first time ever that all Form 700 financial disclosures filed with the Ethics Commission had to be submitted electronically. This was an important, but technically difficult step. Since there is no specified state electronic schema for these forms, creating a searchable database would be risky as it might not conform to state standards when they are eventually promulgated. But it is a desirable goal and will be accomplished eventually. Absent the proper software, data would have to be entered manually. This is unrealistic as the cost would be higher in terms of staff time and attendant issues would arise such as transfer error.

The Commission has already made great progress in moving its many filings into electronic databases, and there should be no doubt that this will continue. San Francisco is ahead of the majority of jurisdictions in this area. For example, The New York Times recently noted that the Federal Election Commission takes weeks and in some cases more than a month to process campaign finance filings of federal candidates, whereas in San Francisco this information is processed in a matter of minutes.

Note: this recommendation includes Behested Payment Forms, which are not filed with the Ethics Commission.

Finding 5: Required filings are treated independently and cannot easily be cross searched electronically using common data reference fields like name and organization to access and aggregate information types, such as dollar amounts, that cross between filings.

Recommendation 5: The Ethics Commission work to develop a common format database for data posted to DataSF, initially aiming to combine campaign, lobbying and Form 700 data.

Finding 5: Disagree partially. This assertion is not completely accurate. The Commission compiles all campaign and lobbyist filings on DataSF so that the information may be searched and aggregated. In fact, the Commission uses the campaign and lobbyist data on DataSF to aggregate and visualize the data on the Commission's web dashboards.

A recent report by the Mayor's Office describes "how the San Francisco Ethics Commission uses DataSF to increase transparency by summarizing and creating visualizations related to ethics data and reports." Further, the report states "Our top referrer is the Ethics Commission, see Figure 12, which has made extensive use of DataSF not only as a publishing platform but as a means to create dashboards and visualizations on its own site. See Figure 13 on the next page for a screenshot showing how the Ethics Commission creates visualizations using the DataSF platform and then embeds the visualizations into a web page. This makes them the top embedders, i.e. the top data visualizations that have been viewed within an external website."

Further, according to "Governing" magazine, the U.S. Open Data Census in March of this year rated San Francisco as the "best city for open data" in the country. The study involved gives both our lobbyist reporting system and our campaign finance system perfect scores.

Recommendation 5: Partially implemented/partially awaiting state action. The Commission notes that the campaign and lobbyist data are already available in a common database format on DataSF. Form 700 data is not on DataSF because a state data schema has yet to be defined by the Fair Political Practices Commission and the Commission will revisit this issue by February 2015.

Finding 7: The Ethics Commission provides written information only in English although San Francisco has strong political participation from communities and officials whose first language is not English and who require guides and educational materials relevant to their needs.

Recommendation 7: The Ethics Commission should make guides and educational materials available in the major languages as is done in other City Departments.

Finding 7: Agree. This is correct for the time being.

Recommendation 7: Will be implemented. The Commission will make guides in education materials as is done in other departments.

Finding 12: Many departments have failed to post their sources of outside funding, as required by the Sunshine Ordinance.

Recommendation 12: The Jury recommends that the Ethics Commission and the Sunshine Ordinance Task Force review departmental web sites for compliance and notify non-compliant departments to immediately post their sources of outside funding, or face a show-cause before the Ethics Commission on why the information has not been posted.

Finding 12: The Commission does not have enough information to respond to this finding so it cannot yet agree.

Recommendation 12: Will be partially implemented. The Commission Director will direct staff to notify all departments to remind officials and employees to follow this requirement and ensure that such postings are easy to locate on departmental web sites.

Finding 13: When violations of the standards in a departmental Statements of Incompatible Activities are enforced departmentally as a disciplinary matter, the Ethics Commission is not notified and the discipline is not disclosed to the public.

Recommendation 13: All violations of departmental Statements of Incompatible Activities should be disclosed to the Ethics Commission and posted on the Commission's web site.

Finding 13: Agree. Normally, departments are required to keep employee disciplinary measures confidential. In accordance with the Civil Service Commission's "Citywide Employee Personnel Records Guidelines," all employee personnel records—including records of completed/resolved/sustained disciplinary actions—must be maintained only in the employee's Official Employee Personnel File ("OEPF"). How long a disciplinary action remains in the OEPF and what is removed from an OEPF will vary depending on departmental policy and the applicable collective bargaining agreement. Employees' OEPFs are maintained in their departments; the Ethics Commission does not have access to those files. Thus, only the department head would have information regarding disciplinary matters. Moreover, even if the Ethics Commission did have that information, the right of privacy in the California Constitution protects employees from unwarranted disclosure of confidential information. Cal. Const. Art. I, Section 1. Accordingly, as information regarding disciplinary actions taken against an employee is considered a confidential personnel matter/confidential personnel information it is not normally disclosable. In addition, there are a number of other state laws protecting employee privacy not mentioned here.

Recommendation 13: Will not be implemented. The Commission's position is that this cannot be implemented when it violates employee privacy rights.

Additionally, only a narrow range of five types of employee misconduct is disclosable, and even then ONLY when such matters are "confirmed." The "Good Government Guide" indicates that the process for determining if such matters are confirmed is "unclear." Further, the Guide states that "The privacy issues pertaining to these types of personnel records can be complex, and other considerations in addition to privacy, such as the need to maintain effective investigations, may be relevant."

The categories not exempt from disclosure are: 1) personal dishonesty, 2) misappropriation of public funds, resources or benefits, 3) unlawful discrimination against another on the basis of status, 4) abuse of authority, and 5) violence.

The disclosable categories are not necessarily addressed in each departmental SLA. Therefore, in order to carry out this recommendation, the Ethics Commission would have to take each reported case of employee misconduct, analyze whether it meets the disclosable threshold under local law, and then compare it with the requirements of the individual departmental SLA. There are at least 53 different departmental SLAs in existence; administering this proposal would be both difficult and incredibly time consuming and possibly incite a legal challenge.

Finding 14: The Ethics Commission has increased compliance by notifying any employee who fails to file Form 700 within 30 days after the deadline that he or she must file or face potential penalties.

Recommendation 14a: The Ethics Commission should continue to routinely notify all non-filers of their obligation within 30 days of the state filing deadline.

Recommendation 14b: The Ethics Commission should recommend dismissal for any officer or employee who fails to file 90 days after the deadline.

Recommendation 14c: The Ethics Commission should recommend dismissal for any officer or employee who files a Statement of Economic Interest (Form 700) that is inaccurate and relevant to the position they hold.

Recommendation 14d: Now that all Form 700 filers file electronically, the Ethics Commission should require that all Form 700s be filed with them as well as with the Department filing officer.

Finding 14: Agree.

Recommendation 14a: Implemented. The Commission already does this.

Recommendation 14b & c: Will be implemented in amended form. If someone has failed to file within 90 days, the Ethics Commission will recommend to the appointing authority suspension of that person until they have filed.

Recommendation 14d: Will be implemented in the future. The Ethics Commission has already discussed doing this and it is an eventual goal. 2014 is the first year that Forms 700 filed with the Commission have been filed exclusively electronically. The Director notes that while this process was successful and resulted in only five non-filers as of this writing, it was also difficult to convert the many filers to a new process. The Commission needs a few years to settle into the new process but would like to introduce a change wherein all Form 700 filers in the City file directly with the Ethics Commission electronically. We envision doing this in the foreseeable future; a set timeframe is not possible because it will largely be determined by available funding.

Finding 15: The disclosures in Form 700 filings also may reveal violations of San Francisco laws that are enforced locally. This includes compensated advocacy before other commissions and arrangements that violate the locally adopted and enacted Statements of Incompatible Activities for each department.

Recommendation 15: The Ethics Commission should audit and act on violations disclosed through Form 700 filings of local prohibitions such as compensated advocacy and incompatible activities, and enforce these violations with strong action.

Finding 15: Agree.

Recommendation 15: Implemented. The Ethics Commission already does this. The Director notes that while we do not have the staffing resources to audit all Form 700 filings, we do review a portion of them based on investigative criteria, complaints filed and other information that is brought to our attention.

Finding 17a: There is useful information in the calendars of City Officials that should be readily available to the public.

Finding 17b: The Jury found calendar entries that did not meet the law's requirements, particularly in listing the meeting's subject matter and attendee names. As a result, it is not possible to crosscheck lobbyists' reports on their meetings with City officials with the calendar reports from the City officials.

Finding 17c: The training currently provided on the Sunshine Ordinance contains no materials on the keeping of official calendars as required by the Ordinance.

Recommendation 17a: The Ethics Commission staff should collect the official calendars prepared under the Sunshine Ordinance monthly, convert them to electronic form and post them online.

Recommendation 17b: The City Attorney and the Ethics Commission ensure that those officials subject to the calendar requirement, and their administrative staff, be trained on the law's requirements.

Findings 17a – 17c: Agree. Although there is a lack of explanatory information in the report, the Ethics Commission will not dispute these findings, except to note that the ordinance does not require attendee names.

Recommendation 17a: Will not be implemented. The Ethics Commission does not have the staffing resources to do this; other priorities are wanting already. The Ethics Commission recommends that departments should collect the official calendars prepared under the Sunshine Ordinance monthly, convert them to electronic form and post them online.

Recommendation 17b: Will be implemented. The Director will work with the City Attorney's office to include this item in future annual Sunshine Trainings (although it does not apply to the vast majority of those who receive the training).

Finding 21a: The policy-making powers of the Ethics Commission are vested in the Commission itself, not in the Executive Director (absent express delegation by the Commission).

Finding 21b: The current structure where staff provides much of each Commission meeting's content creates the impression that the Commission is not an independent policy-making body.

Recommendation 21: The Board of Supervisors should provide the Commissioners an Executive Secretary separate from the existing Commission's employee base who will, among other duties, prepare the Commission's agendas, maintain minutes, lists of complaints, serve as a liaison for public input and interested persons meetings and assist a Commission member to be the parliamentarian.

Finding 21a: Agree.

Finding 21b: Disagree.

Recommendation 21: Will not be implemented in the foreseeable future. The Ethics Commission's staffing priorities are for more investigators and auditors. The Commission notes that, while in an ideal world a Commission Secretary is desirable, for a commission this small it is not an urgent need.

Finding 23: While the Charter mandates the City Attorney represent the Ethics Commission, conflicts have arisen repeatedly and the Ethics Commission has had to obtain outside counsel. We find these instances of conflict are likely to continue and that the Commission is best represented by a consistent set of lawyers who are not City employees.

Recommendation 23: That the Ethics Commission apply to the City Attorney for permission to engage outside counsel for advice and recommendations.

Finding 23: Mostly disagree. The Ethics Commission has obtained outside counsel only three times.

Recommendation 23: Needs further analysis. This Ethics Commission is willing to discuss the merits of this with the City Attorney, but has concerns about continuity and costs. Under the Charter, it is ultimately not the Commission's decision to make.

Finding 25a: Periodic reviews of filed information are essential to ensure its validity.

Finding 25b: The Ethics Commission has undertaken little to no monitoring and auditing of the content of Lobbyists, Campaign Consultants, Conflict of Interest and Governmental Ethics filings beyond fines for late filing of statements; nor have they actively monitored whether former City employees abide by the restrictions on dealing with their former departments.

Recommendation 25: The Ethics Commission should begin to focus staff resources on monitoring and auditing other items within the Ethics Commission jurisdiction unrelated to campaigns such as the following ordinances: Conflict of Interest, Governmental Ethics, The Lobbyist Ordinance, Campaign Consultant Ordinance, and the Sunshine Ordinance.

Finding 25a – b: While true, this finding describes a huge volume of work. We disagree with the characterization of “little to no.”

Recommendation 25: Partially implemented. Provided with sufficient resources, more work in the area will be accomplished. The Commission staff does much more of this work than the finding indicates, but lacks the staff and resources to do this work on a comprehensive basis. As it is, the staff can only audit a few non-publicly financed campaigns each year due to resource limitations. The Commission notes that additional auditors are needed just for campaign finance; extending the audit reach is a desirable notion, but like many of these recommendations, this one comes with costs but no suggestions on how to meet them. Note: recent changes in the lobbyist ordinance will require audits of lobbyists in the future.

Finding 26: The Ethics Commission, though its staff, can catalog information reported elsewhere that is relevant for supplemental understanding of information currently reported locally. Links to this information would be a logical addition to the Ethics Commission web site.

Recommendation 26: The Ethics Commission should determine information reported elsewhere that is relevant for supplemental understanding of information currently reported locally, and provide links to it on the Ethics Commission web site, if it cannot be imported and posted.

Finding 26: Disagree. The concept is too broad to understand appreciably.

Recommendation 26: Already implemented. The Commission already provides links to the Secretary of State's CAL-Access database and material on the Fair Political Practices Commission web site. The Ethics Commission Staff will continue to link to other relevant web sites where appropriate. The Commission adds that it should be noted that the Commission's website is already considered among the best and most comprehensive sites in the country.

Finding 27: The Charter requires that proposals to amend campaign finance and ethics laws explain how the change will assist in furthering the purpose of the law. The Ethics Commission proposals have not included any statements showing that its proposals will further the purposes of the law.

Recommendation 27: When a bill is proposed or passed to amend campaign finance and ethics laws, it should specify how it "furtheres the purposes of this Chapter".

Finding 27: Disagree. There is no basis for this finding.

Recommendation 27: Already implemented. All proposed changes to existing ordinances are accompanied by comprehensive staff memoranda explaining the details and purposes of the proposed changes.