



Beach County Commission on Ethics

Commissioners

Manuel Farach, Chair
Robin N. Fiore, Vice Chair
Ronald E. Harbison
Daniel T. Galo
Patricia L. Archer

Executive Director

Steven P. Cullen

RESPONSE

Commission staff is pleased to furnish the following in response to OPPAGA's Preliminary Information Request. You may also find an open file on the commission website, www.palmbeachcountyethics.com, entitled "OPPAGA Review." There you will see this response as well as additional documents under the headings Documents Received from OPPAGA, Documents Sent to OPPAGA, Correspondence and Miscellaneous Documents.

This response will not duplicate materials available on the website. Please note, however, that there is a wealth of information there including the empowering statutes, rules, procedures, video and audio clips of meetings, training videos, complaint dispositions, databases and advisory opinions. A preliminary understanding of the commission's structure, controls, policies and procedures and performance requires a detailed review, in our opinion, of those voluminous materials.

By definition, the Commission on Ethics is an independent office, not under the control of the County Commission. Volunteer commissioners are appointed by various non-political civic, educational and professional organizations. The business of the commission is conducted openly pursuant to the Sunshine and Public Records laws. Although pending investigations and executive sessions are required to be conducted confidentially, all of these materials, including audio recordings of executive sessions, become public as the cases progress through the process. Many other state and local laws and rules apply to the work of the commission.

As expressed by Manuel Farach, Commission Chair, in his letter to Senator Abruzzo on April 10, 2013, the commission welcomes your review. Since it appears that OPPAGA has neither previously reviewed a county ethics commission nor an agency of our small size, we pledge the full resources of staff to provide information designed to insure your accurate review.

Section I: General Background Information

1. Description of major activities undertaken to create the Commission on Ethics subsequent to the November 2010 countywide ethics referendum, including a description of the Implementation Advisory Committee, its mission, members, and duration of its work; and
2. Ethics/Inspector General Ordinances Drafting Committee, its mission, members, and duration of its work.

Response: [Click here to view documents for items 1 and 2.](#)

3. Complete list of individuals appointed to the commission, the specific entity appointing each commission member, and the terms of each member's service

Response: [Click here to view document.](#)

Section II: Budget, Policies and Procedures, and Other Documents and Information

1. Commission operating budgets for the last three county fiscal years with sufficient detail to allow examination of the purposes of the expenditures

Response: [Click here to view budget documents](#)

- a. Policies and procedures governing the commission's expenditures

Response: COE PPM Rule 1.5, Countywide Policies & Procedures, states in part: "All Countywide PPMs are incorporated herein by reference...". The [Palm Beach County Administrative Code 305.00](#) governs department expenditures. The commission has no independent expenditure authority and all expenditures are reviewed by the comptroller for Palm Beach County. The commission's advocates are used on a pro bono basis at a savings of approximately \$200,000 annually.

- b. Excluding county general revenue funds, a description of any other revenue sources for the commission, including fines and fees.

Response: In addition to budgetary appropriations made by the county, the board of county commissioners may accept grants, contributions or appropriations from the federal government, state government, any municipality within the county, or any academic institution or nonprofit entity as authorized by §2-259 of the Commission on Ethics Ordinance (COE Ordinance). Furthermore, the COE is empowered by §2-258.1 of the COE Ordinance to enter into memoranda of understanding with taxing districts, other public officials and entities. Currently, the COE has entered into agreements to provide oversight, advice and review to the Delray Beach Housing Authority, Delray Beach CRA, and Lake Worth CRA.

Finally, the COE may order a fine of up to \$500 and/or restitution when the person or entity in violation of the Code has received a financial benefit as a result of the violation in accordance with §2-448 (b) of the Code of Ethics Ordinance. At this time the COE has not

collected government or private grant funding. The COE has collected just over \$1000 in fines since 2010.

2. Copies of external and internal reports relevant to the commission's operation and activities
 - a. Copies of any independent financial audits of the commission conducted by the county (e.g., Palm Beach County Clerk & Comptroller, etc.) or any outside entity;
 - b. Copies of any internal audit reviews of the commission or its activities

Response: The COE is only three years old, has a relatively small budget, and has not yet been audited by an independent agency such as the Palm Beach County Clerk or the Office of Inspector General, nor has the office been audited by the Internal Auditor for Palm Beach County. Check requests are approved by the comptroller.

3. Does the commission have a system for tracking complaints, processing timelines (e.g., requirements to inform respondents within 20 days, etc.), and disposition? If so, please describe the information recorded in the tracking system and provide the policy and procedures that establish the timeframes and the methods used to ensure that complaints are processed in accordance with these guidelines

Response: The Commission on Ethics (COE) currently uses a dual system for tracking complaints, including procedural timelines, dispositions and notification of interested parties. The first of these is a computer based program maintained by the Intake Manager (IM), allowing the IM to track all complaints from beginning to conclusion. This system is also used to track other COE staff tasks, such as advisory opinion requests. The second system is a complaint log system maintained by the Senior Investigator (SI). This log is compared to the IM's database system on a weekly basis to make sure they are in sync as to open and closed cases. The printout from the IM's computer based system is also used at the weekly staff meeting, where each open case is discussed and evaluated both as to the direction of the investigation/inquiry itself, and the procedural timelines as applicable. We are in the early stages of implementing a new computer based tracking system (PTS) developed by county Information Systems that will closely monitor the actual "billable" time used by individual staff members for each assigned task.

4. Copies of the commission's policies and procedures pertaining to
 - a. Investigating ethics complaints (e.g., taking witness statements, preserving evidence, etc.);

Response: The investigation of complaints that a county or municipal official or employee, or that a vendor, lobbyist, principal or employer of a lobbyist has violated the PBC Code of Ethics or another ordinance over which the COE has jurisdiction, is governed by Section 4.2, *Anonymous information and unsworn complaints*, and Section 4.3, *Sworn Complaints*, of the COE Policy and Procedures, as well as Section C. *Complaints –General Rules*, and Section D. *Preliminary Investigations*, of the COE Rules of Procedure.

Pursuant to Section 4.3.3, *Preliminary Investigation*, COE Policy and Procedures, a COE investigator may conduct interviews with any persons able to provide investigative background information, and with persons who have relevant information regarding the focus of the preliminary investigation. When an interview is conducted with any person who is the focus of the preliminary investigation, they shall be advised that such interview is on a voluntary basis. Interviews with persons having relevant information shall be conducted under oath and recorded, unless the assigned investigator determines that the information

sought is of such a nature that sworn recorded testimony is unnecessary under the circumstances. If the person refuses to be interviewed at the request of the COE investigator, the Executive Director shall be consulted to determine whether the issuance of a subpoena is appropriate.

All statements obtained from witnesses, complainants or respondents, as well as all documentary evidence, that was obtained during the period from the initiation of an Inquiry or Preliminary Investigation to the point that the COE makes a probable cause determination is confidential. The specific handling of confidential information is discussed in section "4d" of this response.

- b. conducting training compliance audits (e.g., interviews conducted, materials reviewed);

Response: As of June 1, 2011, all municipalities within Palm Beach County came under the jurisdiction of the Palm Beach County Code of Ethics (the Code). Pursuant to Section 2-446 of the Code, each municipal administrator is required to establish by policy a mandatory training schedule for all employees and elected/appointed officials to provide them with training on their ethical responsibilities as prescribed by the Code. The Commission on Ethics is required to develop and deliver training programs and to coordinate and cooperate with the municipalities to ensure effective and meaningful training of elected/appointed officials and employees. A training acknowledgment form for each full-time employee and elected/appointed officials must be maintained by the Human Resources Department or Administrator's designee for each municipality. In order to assure that employees and officials have been trained COE staff conducts training compliance reviews on a bi-yearly basis. The final reports are published on the COE website at <http://www.palmbeachcountyethics.com/audits.htm>. The review process is as follows:

Compliance Review Process

1. Intake Manager assigns compliance review case number and provides contact information and assignment to Investigator.
2. Contact City/Municipality to schedule the compliance review, determine the review schedule and discuss the scope of the review.
3. Obtain a master list of all full-time employees and elected/appointed officials from human resources, municipal clerk or the municipal administrator's designee.
4. Review all personnel/training files for all full-time employees and elected/appointed officials for Ethics Training Acknowledgement Forms.
5. Verify the names of those full-time employees and elected/appointed officials that have received training based on the master list of names provide by the appropriate contact.
6. Identify those employees/officials that are not in compliance with the county/municipal training requirement.
7. Notify the county/municipality in writing within 7 days of the review of the names of those employees/officials that were non-compliant. Municipality/County will be provided up to 45 days from initial review to correct the findings.
8. Following the 45 day grace period, a follow-up assessment is conducted and the final report issued, unless additional time has been requested and approved by the Executive Director of the Commission on Ethics.

- c. governing the ethics hotline, including hours of operation, who may receive hotline calls; and how information provided via the hotline is processed;

Response: Pursuant to Internal Policy and Procedure Manual(COE PPM), procedure 3.19.1 Hot Line states as follows: *All hot line calls should be kept in the telephone log provided to each applicable COE staff member. Accurate notes should be taken as to the name of the caller, date and time of call and the telephone number the call is made from. Notes should reflect the subject matter of the call and whether or not the caller was referred to another agency or how their call was resolved. All telephone logs are to be submitted to the EA for record keeping purposes.*

- d. handling confidential information; and

Response: In General, confidential information in the case of the Palm Beach County Commission on Ethics (COE) only refers to information pertaining to an open Inquiry or Preliminary Investigation concerning the Code of Ethics, Lobbyist Registration Ordinance, or the Post Employment Ordinance. The exceptions to this would be personnel records, payroll records and other personal information relating to COE staff.

Pursuant to Section 3.18 of the COE PPM, personnel records are maintained by the PBC Human Resources Department, although some personal information from these files is also maintained by the COE Intake Manager. Only the Executive Director and his/her designee (the Intake Manager) have access to these files unless the Executive Director gives specific access to another COE employee. These files are maintained in a separate drawer within the COE office that is kept secured.

Payroll records are maintained by the PBC Clerk of Courts under their authority as PBC Comptroller, and regulated by state law, county rules, and their internal policies. Limited access to computer payroll records where available is restricted to the COE employee, his/her supervisor, the Intake Manager (who is tasked with the responsibility for preliminary payroll verification), and the Executive Director.

During the initial inquiry, through the preliminary investigation, and to the point that the COE makes a determination as to whether probable cause exists to believe a violation of one of the ordinances within its jurisdiction has been violated, all documents, statements and investigative information is confidential, and exempt from Florida public record laws, based on §112.324, Florida Statutes. Pursuant to §5.41, COE PPM 4.3.4, *Probable Cause Determination*, COE policy and procedure manual, and §286.11, Florida Statutes, once a determination of probable cause has been made by the COE, all investigative records that are not subject by statute to nondisclosure become public records pursuant to Chapter 119, Florida Statutes

Regarding information that is obtained during the COE's inquiry/investigative powers, evidence obtained is either documentary or based on personal interviews of witnesses, complainants or respondents based on the nature of our investigations. This information when in paper format is held in the COE investigative file within the COE office, which has a limited access card reader system that allows access only to COE staff, or persons accompanied by COE staff. This information when computer based (such as investigative

memorandums and digital audio recordings), are held on a secured central computer drive or on the investigators office computer, where access is limited to COE staff.

During the period between initiation of an Inquiry/Investigation, COE staff does not discuss investigations with persons outside of COE staff, and allow access to investigative information and evidence only to the Respondent (once a finding of legal sufficiency has been made by the Executive Director), and to COE members prior to a probable cause hearing, who are also aware that this information remains confidential until after a probable cause determination is made.

- e. governing the conduct of the commission in executive session.

Response: F.S. § 112.324 (2) (b) provides: “Any proceeding conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation, is exempt from the provisions of § 286.011, § 24(b), Art. I of the State Constitution, and § 120.525.” Pursuant to this authority, executive sessions are conducted in a closed meeting. As cases progress through the process, audio tapes of the session are posted to the commission website. The conduct of commissioners is governed by the ordinance, rules of procedure and policies required of local quasi-judicial boards detailed by *Board of County Commissioners of Brevard v. Snyder*, 627 So. 2d 469 (Fla. 1993).

- 5. Description of information the commission collects regarding in-person training sessions for county employees and officials (e.g., the time, place, and number of attendees, etc.)

Response: A listing of all dates and places the Commission on Ethics has given presentations, overview or training, are available on our website under [Presentation Schedule/ Request a Speaker](#). No other data is collected by the Commission on Ethics. All completed training acknowledgements are kept by the records custodian of the respective agency.

- 6. Description of the commission’s responsibilities related to the Palm Beach County Lobbyist Registration Ordinance

Response: Pursuant to Article V, Division 8, §2-258 of the Palm Beach County Commission on Ethics Ordinance the COE is empowered to review, interpret, render advisory opinions and enforce the County Lobbyist Registration Ordinance. On April 2, 2012, subject to the policies and procedures outlined in PPM#: CW-O-041, the Lobbyist Registration Ordinance took effect Countywide. Currently 35 of Palm Beach County’s 38 municipalities are subject to the ordinance. Lobbyist Registration pursuant to the ordinance is managed by county staff under the direction of Todd Bonlarron, Director of Legislative Affairs. The Commission has authored six (6) advisory opinions interpreting the ordinance.¹ While the ordinance does not require training for lobbyists, or principals or employers of lobbyists, COE staff has developed a training program available on the COE website at [mms://pbcvideo.co.palm-beach.fl.us/COE/2013/COELobbyist.wmv](https://pbcvideo.co.palm-beach.fl.us/COE/2013/COELobbyist.wmv).

- 7. Description of the commission’s responsibilities related to the Palm Beach County Post-Employment Ethics Ordinance:

¹ RQO 12-025, RQO 12-033, RQO 12-038, RQO 12-050, RQO 12-054, and RQO 12-067.

Response: Pursuant to Article V, Division 8, §2-258 of the Palm Beach County Commission on Ethics Ordinance the COE is empowered to review, interpret, render advisory opinions and enforce the County Post-employment Ordinance. As a practical matter, the COE has not ruled on any issues arising under the ordinance to date.

8. Description of the commission’s responsibilities related to the Annual Gift Disclosure Report

Response: Pursuant to Article V, Division 8, §2-258 of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to review, interpret, render advisory opinions, and enforce the Countywide Code of Ethics (the Code). Section 2-444(f) of the Code governs county and municipal official and employee gift reporting requirements and prohibitions. Employees and officials who are identified by state law as reporting individuals must report gifts pursuant to state law, specifically as provided by Fla. Stat. §112.3148 and file a copy of their state report with the COE. All other employees and officials within the jurisdiction of the COE must report gifts in excess of \$100 to the COE as provided by §2-444(f)(2) and §2-444(g).²

While there is no written policy governing the processing of Gift forms, they are processed consistent with general office practice. When a gift form is received, the Intake Manager (IM) date stamps the document and conducts an initial review of the submitted forms for prohibited gifts using the Palm Beach County Lobbyist Registration Site and the County vendor database. If the IM determines there has been no gift accepted by an official or employer from a vendor or lobbyist who conducts business with the official or employee’s public entity, the form is scanned and uploaded into the website database for public viewing. If the IM determines that a gift has been accepted by an official or employee from a vendor or lobbyist who sells, leases or lobbies the official or employee’s public entity, the IM will confer with the ED, Staff Attorney, or Senior Investigator to determine whether there is a basis to perform additional inquiry into receipt of the gift, pursuant to COE PPM rule 4.2.1.

If approved by the ED, Staff Counsel, or Senior Investigator for further action, the IM will assign an Inquiry case number for the file and will assign the case to an investigator for follow up according to COE PPM rule 4.2.2. After review of the initial inquiry, the ED will determine whether legal sufficiency exists to file a self-initiated complaint as authorized by §2-260(a)(2) of the Commission on Ethics ordinance.

All gift reports are public records and are maintained by the Commission on Ethics. Processed forms are posted on the COE’s website and made available to the public through a searchable database available at

<http://www.palmbeachcountyethics.com/coepub/Gifts/Search.aspx>.

Section III: Monitoring and Performance Information

1. Description of the mechanisms the commission uses to ensure that its policies and procedures are followed by its staff and by commissioners.

² See also, PBCCOE Rule of Procedure 11.3

Response: The commission follows the requirements of Ordinance §2-257 in adopting bylaws and rules of procedure and conducting its meetings and business in accordance with all of these requirements. The commission also follows the requirements of §2-257(d) in appointing an executive director empowered to supervise staff and adopt personnel and management policies. Each of the commissioners answers to the group that approved him or her and under the ordinance as drafted, which must be followed, not to other commissioners. In any event, the commission operates in the sunshine and commissioners cannot engage in supervision of other commissioners without violating the Sunshine Law.

2. Description of the commission's performance measures as identified in the county's adopted budget and related performance data for the last three county fiscal years

Response: [Click here to view response.](#)

3. Does the commission have any internal performance measures that it uses to evaluate its performance? If yes, please describe the measures and provide related performance data for the last three county fiscal years.

Response: Pursuant to COE PPM Rule 8.2, all employees will be evaluated annually. The Staff Attorney, IM and Supervising Investigator are evaluated by the ED. Level I and Level II Investigators are evaluated by the Supervising Investigator. COE staff developed the existing policy and procedure manual in December of 2012. Staff evaluations are scheduled to take place before the end of the 2012-2013 fiscal year.

Staff prepares and presents an annual report to the Commission each calendar year. The annual report summarizes the yearly work of COE staff, presents budget forecasts and outlines goals for future years for public review and comment.

4. Does the commission have a strategic plan or other document specifying its goals and measurable objectives? If yes, please provide a copy.

Response: See Response to number 2 in this section.

Respectfully Submitted,



Steven P. Cullen, Esquire
Executive Director
Palm Beach County Commission on Ethics

SPC/gal

Copies to: COE Website