

Office of Ethics

Guidelines for Investigations

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Introduction

1. Metropolitan has established an Office of Ethics with authority to investigate allegations of conduct in violation of its ethics rules and policies, including conflicts of interest, abuse of authority, and other designated improper activities. The purpose of these Guidelines is to ensure allegations of activity in breach of Metropolitan's ethics rules and policies are investigated impartially, fairly, and fully.

Definitions

2. "**Breach**" is conduct or activities constituting a violation of one or more provisions of Metropolitan's ethics rules or policies, specifically, the rules and policies contained in Metropolitan Administrative Code Division VII, Articles 1-3, Operating Policy H-03, and the requirements of these Guidelines for Investigations.
3. "**Complaint**" is any allegation, claim, concern, or information known to the Ethics Officer indicating possible Breach of Metropolitan's ethics rules or policies.
4. "**Complainant**" is a person or entity submitting a Complaint to the Ethics Officer.
5. "**Day**" is a day on which Metropolitan's Headquarters building is open for business.
6. "**Failure to cooperate**" means obstructing or deliberately inhibiting an Ethics Office Investigation.
7. "**Investigation**" is the systematic and objective collection and analysis of facts concerning whether the allegations within a Complaint are substantiated, including identification of any individuals responsible for an alleged Breach of Metropolitan's ethics rules or policies.
8. "**Retaliation**" means any direct or indirect detrimental action recommended, threatened, or taken toward an individual because he or she has reported activities suggesting a Breach of Metropolitan's ethics rules or policies or has provided information related to an alleged Breach. When established, Retaliation constitutes a separate Breach subject to Investigation.
9. "**Subject**" is a person a Complaint alleges committed a Breach of Metropolitan's ethics rules or policies, or a person for whom credible and reliable information indicates committed a Breach.

Stages of Investigatory Process

Receiving Complaints and Initial Review

10. The Ethics Officer considers all Complaints regardless of source. Complaints may be submitted anonymously or with attribution. Anonymous Complaints generally are more

difficult to analyze, investigate, and substantiate. The Ethics Officer may initiate investigation of a matter based on evidence obtained in the course of an ongoing Investigation or other work.

11. The Ethics Office registers all Complaints in a database. The Ethics Office initially reviews Complaints for whether the alleged facts, if true, fall within the subject matter scope of the Ethics Office. If the Complaint does not state facts alleging a violation of Metropolitan's ethics rules or policies, the Ethics Office shall notify the Complainant by confidential writing or verbally, to be documented in the closing file and shall make any necessary referrals.
12. With the advice of the General Counsel, the Ethics Officer maintains the discretion to forward a Complaint and any related information to the appropriate law enforcement or regulatory authority for appropriate action.

Preliminary Review

13. Each Complaint that raises issues within the mandate of the Ethics Office is subject to a preliminary review to assess the credibility of the allegations and to determine whether a full Investigation is warranted. A preliminary review generally includes an interview of the Complainant, review of any documents submitted by the Complainant, and any additional investigative steps necessary to determine whether there is a reasonable evidentiary basis that a Breach of Metropolitan's ethics rules or policies may have occurred.
14. If the matter is closed immediately after preliminary review, the potential Subject of an Investigation is not notified of either the decision to initiate a preliminary review or of the allegations, unless the Subject was previously made aware of the allegations.
15. If the Ethics Officer closes a matter after preliminary review, the Ethics Officer shall document the reasons for this decision in a closing memorandum for the permanent case files.
16. For all Complaints pending after preliminary review, the Ethics Officer shall make a determination whether evidence submitted by the Complainant or information otherwise available is substantial enough to warrant full Investigation. If there is no reasonable evidentiary basis for a Breach of Metropolitan's ethics rules or policies, the Ethics Officer shall notify the Complainant by confidential writing or verbally, to be documented in a closing memorandum for the permanent files.
17. If the Ethics Officer determines there is reasonably sufficient evidence that a Breach of Metropolitan's ethics rules or policies has occurred, the Ethics Officer shall forward written notice to the Subject of the Ethics Officer's determination to commence an Investigation.

Objection to Commencement of Investigation

18. Within five (5) days of receiving notice, the Subject may object to the commencement of Investigation on the grounds that the Ethics Officer lacks authority to proceed with the matter. The objection shall be in writing and filed with the General Counsel with a copy filed with the Ethics Officer.
19. Within three (3) days, the Ethics Officer may file with the General Counsel a written response to the objection with a copy to the Subject.
20. Within ten (10) days of receipt of objection, the General Counsel shall issue a written determination whether the Ethics Officer has authority to proceed with the Investigation.
21. Within five (5) days of receiving notice of the General Counsel's determination, either the Subject or Ethics Officer may request final review by a designated Subcommittee of the Audit and Ethics Committee. The request must be in writing directed to the Chair of the Audit and Ethics Committee, with copies to the General Counsel and Ethics Officer.
22. Within ten (10) days of receiving a request for final review, the designated Subcommittee of the Audit and Ethics Committee shall meet to consider the matter and make a final determination.
23. If the designated Subcommittee of the Audit and Ethics Committee determines that the matter is within the scope of the Ethics Officer's authority, the Investigation will move forward.
24. If the designated Subcommittee of the Audit and Ethics Committee determines that the matter is outside the scope of the Ethics Officer's authority, the matter shall be closed with referrals as appropriate. The Ethics Officer shall report the general disposition and any referrals of all matters referred to the designated Subcommittee of the Audit and Ethics Committee in standard periodic reports.

Conduct of Investigation

25. An Investigation generally will include a review of relevant documents, electronic information, and interviews of Complainants, witnesses, technical experts, and Subjects. The Investigation shall seek and consider all relevant inculpatory (i.e., tending to substantiate the allegations) and exculpatory (i.e., tending to disprove the allegations) evidence.
26. The Ethics Office investigator shall maintain all evidence obtained in the course of the Investigation in a confidential case file, designating the origin of any item of evidence, location, or data obtained. Such records become part of the permanent Ethics Office files.
27. Ethics Office investigators shall have full, free, and prompt access to all records, documents, electronic data, property, and functions within Metropolitan which, in the

- opinion of the Ethics Officer, are relevant to the subject matter under Investigation. All information obtained during the course of an Investigation shall remain confidential and privileged from disclosure to the extent permitted by law, except that relevant information and findings will be provided and disclosed as appropriate and necessary to address a Breach.
28. To the extent feasible under the circumstances, all interviews shall be conducted by two investigators. Investigators shall prepare a written record of interviews in a timely manner. The investigator may document an interview with an audio or video recording. The investigator shall provide the Subject of an Investigation with a copy of the written record or electronic record of the interview and will invite review of the record for accuracy and consistency with the testimony given, with an opportunity to comment on the record within a reasonable period of time.
 29. Any represented employee may request the attendance of an employee representative during interviews conducted in the course of the Investigation if the employee reasonably believes that the interview may result in disciplinary action against him or her.
 30. Neither the Ethics Officer, investigators, nor Ethics Office staff shall comment on the substance or process of a pending Investigation, including whether an Investigation is pending, to the extent permitted by law; except, relevant information will be provided and disclosed as appropriate and necessary to address a Breach. Nothing in this provision is intended to limit the Ethics Officer's obligation to provide the Board with periodic information and reports regarding the activities of the Ethics Office and general information concerning workload and similar information about pending investigations.
 31. The Ethics Officer will attempt to complete the Investigation and submit the final report within 120 days after initiating the Investigation. If there is an unavoidable delay in completing the full Investigation, the Ethics Officer shall so notify the Subject in writing with an estimate when the Investigation will be completed.

Completion of Investigation and Report

32. Upon completion of an Investigation, the Ethics Officer shall prepare a preliminary report of the findings and file the report with the General Counsel. This report shall contain a description of evidence collected and the factual conclusions reached and shall include the Ethics Officer's determination whether the evidence establishes by a preponderance of evidence that a Breach of Metropolitan's ethics rules or policies occurred. The report shall include as exhibits relevant evidence, including all exculpatory evidence, obtained during the Investigation.
33. The Ethics Officer shall consult with the General Counsel and collaborate to attempt to resolve any differences. The Ethics Officer retains autonomy to accept or reject any of the General Counsel's recommendations.
34. The Ethics Officer forwards the preliminary report, as modified if applicable, confidentially to the Subject.

35. Within ten (10) days of receiving the preliminary report, the Subject may file with the Ethics Officer written responses and/or a written request to confer with the Ethics Officer.
36. The Ethics Officer may, at its option, have further consultation with the General Counsel.
37. Within ten (10) days of receiving the Subject's written responses or a requested conference with the Subject (whichever date is later) the Ethics Officer shall finalize its report, file the final report with the General Counsel, and forward a copy of the report to the Subject.
38. Within five (5) days of filing the final report: (a) the General Counsel may file with the Ethics Officer a report identifying any legal concerns or stating concurrence with the Ethics Officer's final report; and (b) the Subject may file with the Ethics Officer any responsive comments to the final report.
39. Within (5) days after receipt of the General Counsel's or Subjects comments (whichever date is later), the Ethics Officer shall forward to the Executive Committee or Department Head (as appropriate) a package including the Ethics Officer's final report, the General Counsel's report, the Subject's comments on the final report, and any additional responses from the Ethics Officer.
40. After the full report of an Investigation has been submitted , the Ethics Officer shall prepare a summary report for inclusion in periodic activity reports to the Board. The summary report shall present an abbreviated summary of the allegations, evidence, and findings without individuals or involved parties identified by name.

Rights and Obligations

41. Any individual who is the Subject of an Investigation is entitled to an impartial, objective, and thorough Investigation into the allegations.
42. The Ethics Officer shall notify the Subject of the nature of the allegations in writing, as soon as reasonably practicable. If the integrity of an investigation may be compromised by notifying the Subject at its outset, the Ethics Officer may withhold notice to the Subject until an appropriate time.
43. The Subject shall have the opportunity to respond to the allegations, affirmatively present evidence, and identify witnesses to provide further information.
44. The Subject of an Investigation is expected to cooperate fully, including answering any questions from Ethics Office investigators completely and truthfully, and providing any requested documents or other information. Any failure to cooperate may be noted in the final investigation report.

45. The identity of a Complainant who submits a Complaint to the Ethics Office in good faith is confidential, and the Ethics Officer will withhold identification of a Complainant to the degree feasible in each case.
46. Witnesses to the matters under investigation are expected to cooperate fully with the Investigation, including answering any questions from investigators completely and truthfully, and providing any requested documents or other information. Any failure to cooperate may be noted in the final investigation report.
47. Failure to cooperate or knowingly providing false or misleading information to the Ethics Officer or investigators constitutes a Breach of Metropolitan's ethics rules or policies subject to Investigation.

Public information

48. In general, the full Investigation files for specific Complaints are confidential investigatory files for purposes of the Public Records Act, California Government Code section 6254, subdivision (f) and California Evidence Code Sections 1040 and 1041, and shall be subject to release only as required by law and as appropriate and necessary to address a Breach.

Confidentiality and Protection Against Retaliation

49. To protect the rights of all individuals involved in the investigative process, the Ethics Office carries out Investigations in confidence to the extent permitted by law; except, relevant information and findings will be provided and disclosed as appropriate and necessary to address a Breach.
50. The existence of either a preliminary review or a full Investigation and the identity of a Subject or witness are, as a general rule, disclosed by the Ethics Officer only to those with a legitimate need to know.
51. If a Complainant or witness has reasonable grounds to believe that the use or disclosure of information he or she provides creates a risk of retaliation because the information is known to be attributable to him or her, that person shall inform the Ethics Officer, investigator, or Ethics Office staff promptly to allow consideration of appropriate protective measures.
52. Complainants and witnesses are protected against retaliation. The Ethics Office separately investigates instances brought to its attention of retaliation or attempted retaliation against Complainants or witnesses acting in good faith.
53. Unauthorized disclosure of the identity of a Complainant, a Subject of an Investigation, or a witness, or any other significant investigatory information, unless generally known or made public by other sources, constitutes a Breach of Metropolitan's ethics rules and policies subject to subject to a separate Investigation.

54. Knowingly making false Complaints or intentionally providing misleading information constitutes a separate Breach of Metropolitan's ethics rules and policies subject to Investigation.