

# **BOARD OF ETHICS**

## **OPEN SESSION MINUTES**

January 20, 2016, 3:05 p.m.  
740 North Sedgwick, Suite 500

### **BOARD MEMBERS PRESENT**

Stephen W. Beard, Chair  
Zaid Abdul-Aleem  
Russell F. Carlson  
Mary T. Carr  
Frances R. Grossman  
Dr. Daisy S. Lezama

### **STAFF PRESENT**

Steven I. Berlin, Executive Director  
Lisa S. Eilers, Deputy Director  
Richard J. Superfine, Legal Counsel  
Ana Collazo, Attorney Investigator  
Edward Primer, Program Director  
Pauilly Casillas, Staff Assistant

At the commencement of the meeting, the attendees, and the Board's newest member, Zaid Abdul-Aleem, introduced themselves to each other, and the Chair welcomed Member Abdul-Aleem.

### **I. APPROVAL OF MINUTES**

The Board VOTED 6-0 to approve the Open Session Minutes of the November 18, 2015 meeting. There was no December 2015 meeting.

### **II. CHAIR'S REPORT**

Deferred.

### **III. EXECUTIVE DIRECTOR'S REPORT**

#### **A. Education**

##### **Classes**

Staff's work with the Department of Innovation & Technology to replace the system for scheduling people for 4-year classes is nearing the end of the testing phase. The goal is now to have the new system running in February. It will save time and money by utilizing emails for all correspondence, except with respect to enforcement matters.

Staff has finalized the script for all-new training videos, and is arranging for them to be produced through the Cable TV Office of the Department of Business Affairs and Consumer Protection.

Since the last Board meeting, 59 employees and officials have attended classes that were held on November 20 (for the 49<sup>th</sup> Ward), December 1, 4 (for the Treasurer's Office) and 17, and January 7 and 15 (for the 35<sup>th</sup> Ward). Classes are scheduled for January 21 (2 of them, including one for the 32<sup>nd</sup> Ward), January 28, and for February 10 (for the 17<sup>th</sup> Ward) and 24, for a group of incoming Special Service Area (SSA) Commissioners.

### **Other Presentations**

On January 8, the Executive Director made a presentation to the Election Law Committee of the Chicago Bar Association. On January 25, the Executive Director will conduct a seminar on government ethics to a group of visiting dignitaries from 11 countries in Africa, in conjunction with personnel from the Inspector General. The seminar is being held at the request of World Chicago.

### **On-line Training**

The 2015-2016 lobbyist program has been completed and posted.

As of January 1, 2016, all but 32 City employees (of the 31,650 scheduled) had completed the 2015 required annual ethics training. Staff will post the names of all violators on its website later this week.

## **B. Website Modifications, New Gift Brochure**

The link to brochures and information regarding the recently passed election cycle was replaced by a link and icon to all educational brochures, covering 17 different topics.

## **C. Advisory Opinions**

To date in 2016, staff has issued 148 informal opinions. In 2015, the Board of Ethics issued 3,891 informal and 22 formal opinions. All are confidential, by law. For the benefit of the new Board member, Zaid Abdul-Aleem, and in response to his question, the Executive Director explained the difference between formal and informal opinions. The vast majority of opinions rendered by Board staff are informal, meaning that they are issued to City employees, officials, lobbyists, vendors and others with legal standing to receive opinions by telephone and/or email, and are “informal” because they are based on questions that the agency has faced repeatedly. Examples are: “can I attend this reception?” “Can I take this business-related trip paid for by a third party?” “Can my aldermanic office accept a tin of popcorn or artwork?” These are kept under lock and key, as they are confidential. Formal opinions, by contrast, are always issued in writing, signed by the Chair or Executive Director, and address questions that are either factually complex, or require interpretation of the Ordinance in a way that is new to the Board (that is, they present “questions of first impression”), or are of City-wide importance.

Of the informal opinions, 34% were issued to managerial City employees, 12% to non-administrative or non-managerial City employees, 9% to department heads, 20% to elected officials (nearly all of them City Council members), 4% to City appointed officials, 2% to former City employees or officials, and 9% to lobbyists, 8% to businesses, and the remainder to attorneys. These figures do not count inquiries received from persons who do not have “standing” to ask for an advisory opinion, namely the media (in 2015, the Board received 57 media inquiries about specific situations—all handled in conjunction with the Mayoral Press Office), citizens (121 citizen inquiries) and other government agencies (91 of

these in 2015, most from our colleagues at the Chicago Public Schools, Chicago Housing Authority, Chicago Transit Authority, and the Cook County Board of Ethics, and other large cities' ethics commissions such as the Philadelphia Board Ethics).

Informal opinions were issued to personnel from every single City department, with the leading ones (in descending order) being: City Council; Mayor's Office; Chicago Police Department (concerning travel); Chicago Public Library; Department of Public Health; Department of Law; Department of Planning & Development (DPD); Department of Aviation.

Board member Fran Grossman then asked whether she could see all these informal opinions, and where they are kept. The Executive Director explained that they are kept in a secure database (recent ones), and for all others, in folders that are organized by topic, chronologically, within each year. They are kept in a locked conference room. Ms. Grossman then said that she had asked this question several times before, and hadn't realized that it is actually this simple. The Executive Director again offered to have her come in and review these informal opinions at her pleasure.

By law, all formal opinions, signed either by the Chair or Executive Director, must be made publicly available (we post them on our website) *but with names and all other identifying information removed*. To help ensure confidentiality, the Board instituted a policy of waiting three (3) months from the date of issuance before posting them.

Confidentiality aside, one of the greatest values the Board provides to City employees and officials—and thus to the public—comes through our advisory and educational functions. One way to look at this is that each opinion we issue, formal or informal, represents one potential “small ethics problem” or large “ethics-related scandal” that we have helped City government avoid. It is not a result that grabs headlines, but it is still an invaluable one.

**D. Status: Legislative Inspector General**

The Board's comments on the Ordinance proposed by several aldermen in November 2015 to strengthen the authority of the Legislative Inspector General were made available publicly, and reported on by the media. Passage of that proposal is, as of today, one of several possibilities.

As to another possibility, it has been publicly reported that the Ordinance that would transfer authority to investigate City Council passed through Committee on January 11 and will likely face a vote at the February 2016 City Council meeting. The Executive Director has been following this closely. He explained that the Chair of the Council's Committee on Workforce Development has convened a working group of 6 aldermen (plus some staff) to clean up and prepare for passage the Ordinance that was passed by that Committee at its January 11 meeting. There are no members or employees of the Board of Ethics in the group. The Board Chair discussed the possibility of meeting with the working group or members thereof, together with the Executive Director, to share the Board's insights into the matter and its experiences with both inspectors general. As was reported in the media, the Executive Director was asked to comment at the next meeting of that Committee on January 11, but the Committee's Chair advised his colleagues that the Executive Director was available for consultations outside of the hearing.

Board member Fran Grossman then explained to the Board that she testified—as a citizen, not as a Board member—at a meeting of the Council’s Committee on Workforce Development on December 14, after being invited to meet with Aldermen Michele Smith. She reported that, in her testimony, she had expressed her frustration that the City Council had hired Faisal Khan, who they probably knew, or soon after hiring, should have known, was incompetent, a disaster, and who had leaked information to the press. She then told the other Board members that it is important that she know which aldermen are on the working committee, and that she does not trust the City Council to hire a new legislative inspector general who would be independent, thus she supports the proposal that would transfer the authority to investigate City Council to the Office of Inspector General.

The Executive Director then explained, in response to a question from new Board member Zaid Abdul-Aleem, how it is that this has become an issue of contention, and what has led the City to this point. The Executive Director discussed the long history of the issue, beginning with the City’s establishment of the Board of Ethics, in 1987, during the administration of Mayor Harold Washington—the Board was not granted investigative authority over the City Council. Then, in 1989, during the administration of Mayor Richard M. Daley, the Office of Inspector General was established in its current form (being the successor to the former Office of Municipal Investigations). However, that office was not authorized to investigate City Council either. In 1997, after a series of stories involving City Council that were widely reported in the media, the City Council granted the Board of Ethics the authority to investigate signed and sworn complaints alleging violations of the Governmental Ethics Ordinance. But the Board was explicitly prohibited from initiating such investigations (i.e., from signing or swearing out its own complaints). Then, in February 2010, the Daley administration submitted a proposal that would have granted the Office of Inspector General authority to investigate City Council, initiate its own investigations, and investigate anonymous complaints into any kind of misconduct. The City Council at the time requested that the Board of Ethics research prevailing practices and advise it accordingly. In March 2010, the Board released its 100-page research memorandum (still posted on the Board’s website). In it, the Board did not address whether there should be one or two inspectors general, but focused on the need for due process during and after any ethics investigation conducted by an inspector general, and urged that only the Board of Ethics should be accorded the authority to determine whether an investigative subject had violated the Governmental Ethics Ordinance, and that the inspector general must have rules and regulations guaranteeing due process (which did not exist in March 2010). The City Council passed the Legislative Inspector General Ordinance in May 2010, and the City’s first (and only) LIG began his four-year term in November 2011. Then, in 2012, Mayor Rahm Emanuel’s Ethics Reform Task Force picked up on the Board’s recommendations, and itself formally recommended an overhauled investigative process, which is reflected in the Governmental Ethics Ordinance that became effective on July 1, 2013.

**E. Ongoing Investigative Record**

We continue to post on the Board’s website an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the Office of Inspector General (a total of 2 since July 1, 2013) and the former Office of the Legislative

Inspector General, since January 1, 2012, and the status of all 50 petitions to commence investigations that were presented to the Board by the former Office of the Legislative Inspector General. It is updated monthly, consistent with the Ordinance's confidentiality provisions.

**F. Legislative Inspector Cases**

As was widely reported in the media, "a report from the ... Office of the Legislative Inspector General conclude[d] that 29 aldermen took in a total of \$282,000 in illegal campaign donations in 2013. The donations, ranging anywhere from \$500 to in excess of \$50,000, were found to have violated the city's ethics ordinance, according to Legislative Inspector General Faisal Khan."

However, no such report, nor any petitions for findings of probable cause based on possible investigations into these matters, were ever submitted to the Board of Ethics by the Legislative Inspector General. Moreover, the Office of the Legislative Inspector General then closed and its files were sealed and/or turned over to federal investigators. The Board of Ethics has thus been unable to consider or determine whether any elected official, candidate, or contributor actually violated the Ordinance, and does not know whether any excess contributions were returned by the official's or candidate's committee to the contributor within the 10 day grace period provided for in the Ordinance (a timely return of the excess amount means that "the person shall not be deemed in violation" of that section of the Ordinance).

All remaining matters that, to the Board's knowledge, were being investigated by the Office of the Legislative Inspector General, are summarized in the publicly-available investigative record. That record shows that: (i) two (2) cases were referred to law enforcement agencies in June/July 2012; and (ii) the Office of the Legislative Inspector General had 28 ongoing non-campaign financing investigations as of November 16.

**G. Disclosures of Past Violations**

July 2013 amendments to the Ordinance provide that, when a person seeks advice from the Board about past conduct, and discloses to the Board facts leading it to conclude that he or she committed a past violation of the Ordinance, the Board must determine whether that violation was minor or non-minor. If it was minor, the Board, by law, sends the person a confidential letter of admonition. If it was non-minor, then, under current law, the person is advised that he or she may self-report to the appropriate inspector general or, if he or she fails to do so within two weeks, the Board must make that report. Since the time this provision became effective, the Board has advised three (3) aldermen, one (1) aldermanic staffer, and two (2) department heads or former department heads that their past conduct violated the Ordinance. In three (3) of these five (5) cases, one involving an alderman, the second an aldermanic staffer, and the third a department head, the Board concluded that the apparent violations were *not* minor, and the individuals self-reported themselves to the appropriate Inspector General. To date, we have received no reports of commenced investigations (in the case of the former LIG) or completed investigations (from either Office) of any of these matters.

In the other cases, the Board sent confidential letters of admonition, as required by Ordinance.

**H. 2016 Statements of Financial Interests**

On March 1, 2016, approximately 3,600 employees and officials will be notified via email of their requirement to file a 2016 Statement of Financial Interests. About 75% will file electronically, using the Board's "EFIS" program. The Board works closely with departmental and aldermanic ethics officers to reach our goal of zero filing violations.

**I. 2015 Council on Government Ethics Laws Annual Conference**

Staff members attended the 37<sup>th</sup> Annual Conference of COGEL this year, in Boston, from December 6-9. The Executive Director presented at the annual "Ethics Update," which summarizes key developments in organizational, substantive legal developments in the past year (including advisory opinions, enforcement actions, and statutory changes). The Conference covered development in the fields of government ethics, public disclosure, lobbyist regulation, and campaign financing regulation.

**J. Lobbyists-Regulation and Enforcement**

As of December 31, 2015, there were 584 lobbyists registered, and the agency had collected \$332,350 in registration fees. This figure represents about 40% of our operating budget.

2016 registrations are due by c.o.b. today, January 20, and as of this writing, 455 have re-registered. 80% of registered lobbyists file electronically. We will make this e-filing mandatory for 2017.

**K. New Dataset on the City's Data Portal**

All aldermanic disclosures are now posted on the City's central data portal, and are sortable by filer, data, and matter. This is done through Socrata. The disclosures have long been posted on our Board website as well.

**L. Recent Public Financing Legislation Submitted to City Council**

At the January 13, 2016 City Council meeting, four aldermen (Arena, Harris, J. Moore and Pawar) submitted a proposal that was referred to the Council's Rules & Ethics Committee. The proposal is denoted "The Fair Election Ordinance," and, if enacted, would implement a system of public financing of City elections, modeled somewhat after the system in place in New York City. Board staff is intrigued by this, and has been asked to comment on it by and to the Mayor's Office. At this time, staff believes that it will propose that a working group be convened to conduct further research into relevant constitutional and implementation issues, and whether and how the Governmental Ethics Ordinance would need to be amended.

**M. Integrity Monitoring RFQ**

The Department of Procurement Services is in the process of considering responses to a Request for Qualifications ("RFQ") for Integrity Monitoring. Lisa Eilers, our Deputy, is a member of the RFQ evaluation committee. Proposals were due July 20, the evaluation process was completed, and a list of approved monitors compiled. An integrity monitor – also known as an Independent Private Sector Inspector General or IPSIG, is an independent, private sector firm with legal, auditing, investigative, and loss prevention skills, employed by an organization (voluntarily or by compulsory process) to ensure compliance with relevant law and regulations and to deter, prevent, uncover and report unethical and illegal conduct by, within and against the organization.

The RFQ was issued at the behest of the Inspector General.

**N. Freedom of Information Act**

Since the last regularly scheduled Board meeting, the office has received two (2) new requests under the Freedom of Information Act. For one request, the records were located and sent to the requestor. The other request was denied, on the basis that the information requested is exempt from disclosure.

**IV. OLD BUSINESS**

1. Status Report on authority to investigate City Council.
2. Status Report on one ongoing administrative hearing matter.
3. Report on 2015 mandatory ethics training.

These matters were discussed in executive session.

**V. NEW BUSINESS**

1. Office of Inspector General: Draft Audit Report with respect to Lobbyist Registration.
2. Report on two ongoing lawsuits.

These matters were discussed in executive session.

The Board VOTED 6-0 to adjourn into Executive Session at 3:15 p.m. under: (i) 5 ILCS 120/2(c)(1) to discuss the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity; and (ii) 5 ILCS 120/2(c)(4) to hear and discuss evidence or testimony in closed hearing as specifically authorized pursuant to Governmental Ethics Ordinance Section 2-156-385 and the Board's Rules and Regulations, 4-1 and 4-5, as amended, effective October 23, 2014, presented to a quasi-

adjudicative body, as defined in the Illinois Open Meetings Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

At 4:32 p.m., the Board VOTED 6-0 to reconvene into open session.

## **VI. MATTERS CONSIDERED AND ACTED UPON BY THE BOARD IN EXECUTIVE SESSION**

### **I. APPROVAL OF EXECUTIVE SESSION MINUTES IN OPEN SESSION**

The Board approved the Executive Session minutes of the November 18, 2015 meeting by a VOTE of 6-0.

### **II. OLD BUSINESS**

#### **1. Status Report on authority to investigate City Council**

The Board and staff agreed that we will request a meeting with the members of the working group that is preparing the ordinance that will transfer responsibility of investigating City Council to the Inspector General. The Board has insights it wishes to share with them.

#### **2. Status Report on one ongoing administrative hearing matter**

The matter is before an administrative hearing officer. The parties are engaged in pre-hearing motion practice at this time.

#### **3. Report on 2015 mandatory training**

Board staff reported to the Board the numbers of ethics violations and fines for City employees who failed to complete the 2015 on line ethics training by the December 31 deadline.

### **III. CASES**

#### **A. Office of Inspector General**

*Consideration Pursuant to §§2-156-385(1)-(3) of Request for Finding of Probable Cause*

##### **1. Case No. 151695.IG, Statement of Financial Interests**

On October 29, 2015, the Executive Director received a Summary Report of Investigation and its accompanying investigative file from the Inspector General's Office ("IG"). The IG filed a petition requesting that the Board issue a finding that there was probable cause that an employee at a City department, violated the Governmental Ethics Ordinance by knowingly filing a false or misleading Statement of Financial Interests in 2014, in violation of §§2-156-150 and -465(a) of the Ethics Ordinance, and to conduct proceedings accordingly.

After reviewing the request, the Executive Director assigned the matter to a Board staff member to review the case and recommend a Board finding, pursuant to Ordinance §2-156-385 and Board Rule 4-1(A), which was prepared with recommendations for the Board's consideration. The Board VOTED 6-0 and found there existed probable cause.

**B. Formal Advisory Opinion**

2. Case No. 151698.A, Post-Employment

Staff reported that a City employee contacted the Board to inquire whether and how the Governmental Ethics Ordinance would affect his post City employment plans to practice as a private attorney.

The Board then discussed staff's draft advisory opinion finding that the Ordinance does not prohibit him from practicing law after leaving City employment, but it does impose certain restrictions on his activities. Specifically, he would be prohibited for one (1) year after leaving City service, from assisting or representing any client in a hearing before his City department, pursuant to §2-156-100(b) of the Ordinance.

The Board approved the findings in the advisory opinion by a VOTE of 6-0.

**C. Query Consult Summaries**

In these cases, the Board confirmed that it had heard staff's reports.

3. Case No. 151700.Q, Outside Employment

Staff reported that a City employee, engaged in outside employment, contacted the Board after completing the annual on line ethics training, for a determination of whether he could work his second job. Staff first advised that per the City's personnel rules, his outside employment should have been preapproved by his department before commencing work and that he should address that immediately. Staff then reviewed his job responsibilities for both positions and advised there are no conflicts, but advised him of restrictions and the standard admonitions.

4. Case No. 151701.Q, Post-Employment

Staff reported that a City employee (an attorney with a City department), planning to leave City service at the end of February, contacted the Board to learn whether and how the Governmental Ethics Ordinance would affect his post City employment plans.

Staff advised that the Ordinance does not prohibit him from joining either of the law firms he is considering joining, but that his work would be subject to some restrictions. Specifically, the following restrictions apply: (i) for one (1) year from the date he leaves City service, he is prohibited from assisting or representing any

person, such as a law firm or its clients, in any business transaction involving the subject matter of his work with the City and/or any other matter under the purview of the City department where he is employed; and (ii) a permanent prohibition with respect to assisting or representing any person in connection with any matter or proceeding with which he had involvement while with the City.

**D. Referred Complaint Report**

5. Case No. 151699.C, No Jurisdiction

Staff reported that the Board received two identical anonymous letters via U.S. mail alleging discriminatory acts by an employee at a City department. Pursuant to §2-156-380(a) of the Governmental Ethics Ordinance, the Board referred this matter to the City's Inspector General's office for action as that office deems appropriate. After referring the matter, the complainant sent an additional six copies of the same letter, all of which were also forwarded to the Inspector General's office.

**IV. OTHER BUSINESS**

**E. Pending Case List.**

The Board discussed pending cases.

**V. NEW BUSINESS**

**F. Office of Inspector General: Draft Audit Report on Lobbyist Registration**

The staff discussed its formal response to the draft audit report sent to it on December 16, 2015 by Inspector General, and explained its understanding of the audit response process.

At 4:35 p.m., the Board VOTED 6-0 to adjourn the meeting.