

Item 8 - Enforcement Report



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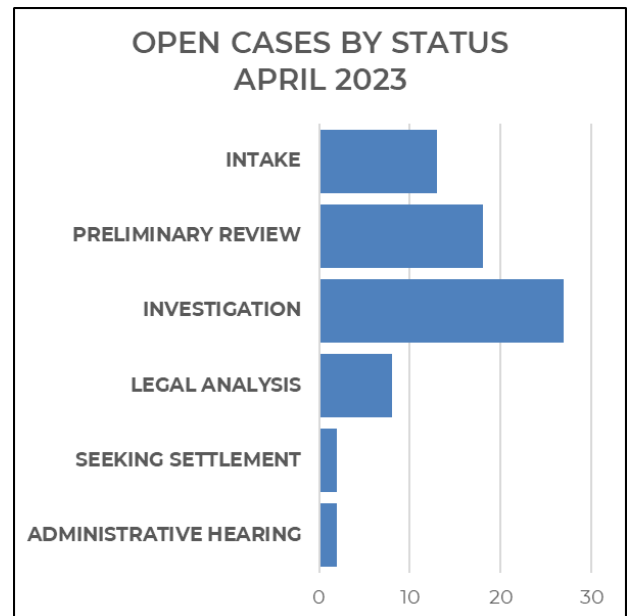
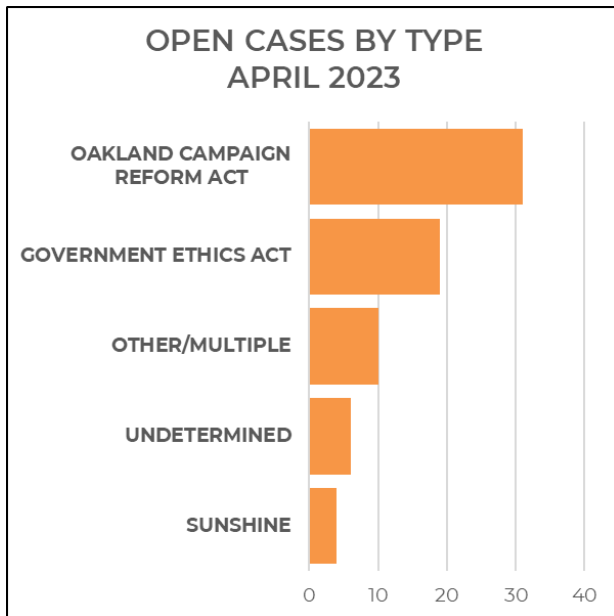
Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: April 26, 2023
RE: Enforcement Unit Program Update for the May 10, 2023, PEC Meeting

Current Enforcement Activities:

Since the Enforcement Unit Program Update submitted to the Commission on March 28, 2023, Commission staff received 2 formal complaints, which are still in the intake stage. Enforcement staff also initiated 3 pro-active complaints on its own, of which two are under preliminary review and one is under investigation.

This brings Enforcement's caseload to 70 matters at all stages, from preliminary review through to investigation, settlement negotiations or administrative hearing. That number does not include informal complaints awaiting review.



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In addition, Enforcement staff also received 11 informal complaints, of which 6 were rejected and 5 are awaiting a decision as to whether to reject them or escalate them to a preliminary review (i.e. waive the formal complaint requirements and process them as if they were formal complaints).

At its meeting of April 12, 2023, a Commissioner requested that Enforcement provide a summary of the subject matter of informal complaints received. That summary is provided here (the total below is greater than eleven, because some complaints contained multiple allegations):

- two informal complaints alleged misuse of City resources;
- two informal complaints alleged a conflict of interest;
- one informal complaint alleged a lobbyist violation;
- one informal complaint alleged a misuse of City position;
- one informal complaint alleged a violation of the open meetings laws;
- one informal complaint alleged a failure to receive public records;
- one informal complaint alleged improper operations of a street food vendor;
- one informal complaint alleged racial discrimination at a private business;
- one informal complaint sought monetary damages from the City due to a pothole;
- one informal complaint concerned a landlord-tenant dispute; and
- one informal complaint alleged a violation of federal contracting requirements.

Personnel

Enforcement is very pleased to announce the hiring of Chris Gonzales as a full-time Administrative Assistant. Chris will be assisting the Enforcement Unit with complaint intake and administrative support functions, in addition to supporting other PEC units. Chris is a dedicated public servant for the City of Oakland, having previously served with the Purchasing and Parking Enforcement offices, as well as with Head Start. He also has prior experience in the private sector, including as an administrative assistant at a law firm. He has a B.S. in Business Administration (Marketing) from San Francisco State University, and is bilingual in Tagalog. This is the first time that the PEC has had an Administrative Assistant whose primary role will be to support the Enforcement Unit, and we are extremely pleased that Chris will be bringing his skills and insight to our team.

Due to Severe Staffing Shortage, Enforcement Will Begin Placing Some Matters on Indefinite Hold

Increasing public awareness of Enforcement's work has led to a greater number and complexity of formal and informal complaints being filed with our office over time. Unfortunately, staffing levels at Enforcement have not kept pace with the growth in caseload. Delays caused by the recent ransomware attack and COVID-19 lockdown also impacted our case processing.

Currently, Enforcement is budgeted for a total investigative staff of two: an Enforcement Chief (who also functions as an attorney/prosecutor) and an Investigator. No additional investigative staff has been budgeted for Enforcement since our first investigator was brought on in 2016. Present caseload is 70. Under such circumstances, our current caseload-to-staff ratio would be 35:1 even if we were fully staffed at our current budget level.

Unfortunately, no new Investigator has been hired since our most recent Investigator was promoted to Enforcement Chief. The lengthy times associated with the recruitment process and unforeseen delays in hiring a temporary investigator means that the Enforcement program must continue to manage with a staff of one, the Enforcement Chief, and a caseload-to-staff ratio of 70:1. It is unknown how long this situation will last, but our caseload is expected to continue to grow as we receive more complaints than we are able to resolve.

By way of comparison, the Enforcement Unit at the San Francisco Ethics Commission has a total of eight budgeted investigative staffers, including an Enforcement Chief and seven Investigative Analysts. With a total caseload of 56¹, San Francisco's budgeted caseload-to-staff ratio is 7:1 – a tenfold difference with our own ratio of 70:1.

In light of our severe staffing shortfall, Enforcement is unable to work on all of the cases in our caseload with the level of attention they require. Cutting corners in the interest of expediency is not desirable in light of the seriousness and complexity of the many allegations we investigate, which can also involve serious monetary and reputational consequences for respondents.

Staff has therefore made the difficult choice to begin formally placing certain preliminary reviews, investigations, and prosecutions on an indefinite hold on a case-by-case basis. Any complaint or case that is put on hold will have its status changed to “ON HOLD” in our Enforcement Database (as opposed to, e.g., “INVESTIGATION” or “PRELIMINARY REVIEW”). This will allow staff to more accurately report the number of cases or complaints on which Enforcement is able to work at its current staffing level. It will also allow us to provide a more accurate status update to complainants, respondents, media, and members of the public whenever we receive inquiries as to the current status of a case or complaint. Finally, placing some matters on hold allows us to allocate scarce resources more effectively.

Enforcement will use the following criteria when deciding which cases or complaints to put on hold at this time:

1. The degree to which the public interest would be impacted by proceeding with a case or complaint versus putting it on hold. While every case or complaint is important, there is

¹ March 6, 2023, San Francisco Ethics Commission Enforcement report.

typically a greater public interest in those matters involving higher-ranking public officials (e.g. elected officials or senior administrative staff), larger amounts of money (e.g. in campaign finance or conflict-of-interest cases), and/or potential public safety issues (e.g. involving health-and-safety inspectors or police/fire personnel).

2. The availability of evidence to prove or disprove the allegations at hand, and the staff resources that may be needed to obtain and review that evidence. While this is always a consideration when deciding to pursue an investigation or prosecution, we will begin making this determination earlier in the process.
3. The amount of staff time and resources already invested into a particular matter, and its expected time to completion. We are highly unlikely to place a matter on hold if we have already conducted substantial investigation and/or litigation, particularly if we believe we are approaching the conclusion of our work on the matter. This also means that newer matters are unlikely to be given priority until older matters are resolved.

The above criteria are not exhaustive, and Enforcement retains the discretion to place a matter on hold and/or take it off hold for any reason it deems necessary or warranted. In cases involving a combination of major and minor allegations, we may place the minor allegations on hold while continuing to pursue the major ones.

At this time, Enforcement anticipates putting at least half of its 70 complaints or cases on hold.

To be clear, Enforcement is still vigorously pursuing a number of cases on its docket. While there is a substantial risk that respondents may try to take advantage of Enforcement's staffing challenge to unduly delay the investigation or prosecution of their case, Enforcement will continue to pursue those cases with all resources at its disposal. Any bad-faith effort to delay or obstruct a PEC investigation or prosecution will be treated by Enforcement as a serious aggravating factor when determining what final penalty to seek.

We must emphasize that this is not a long-term or even sustainable solution to the challenges Enforcement faces. Placing some complaints and cases on an indefinite hold will certainly have a detrimental effect on our work, as certain matters may become too old to reasonably pursue; we are unable to help resolve new issues or controversies as they arise; and knowledge of our staffing shortage potentially emboldens new violations. The only solution is to ensure that Enforcement has adequate staff to carry out its work. In the absence of that, we believe that placing certain matters on hold will allow staff to allocate the resources we have more effectively, while also allowing a greater level of transparency with the Commission and the public as to the status of a particular matter and its likelihood of completion in the near-term.

Legal Actions

Since the last Enforcement Unit Program report on March 28, 2023, the following public court actions have been submitted or scheduled by or on behalf of the Enforcement Unit:

1. *City of Oakland Public Ethics Commission v. Harriet Hutchinson* (Alameda County Superior Court case no. 22CV019951). A case management conference is scheduled for May 30, 2023, at 10:00 AM in Department 14.

Except where otherwise noted, no allegations have yet been proved or admitted in any of the above matters, and the existence of these cases and associated litigation should not be taken as an indication that the potential respondent(s) necessarily violated any laws. This information is being provided for the PEC's informational purposes only.