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City Attorney

*City of Oakland*  
**Public Ethics Commission**  
August 30, 2004

In the Matter of )  
 ) Complaint No. 04-04  
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Complaint No. 04-04 was filed by Gene Hazzard on June 16, 2004.

**I. SUMMARY OF COMPLAINT AND ALLEGATIONS**

Mr. Hazzard filed the above complaint alleging that Phil Tagami failed to file a timely Statement Of Economic Interests (Form 700) as a member of the Oakland Base Reuse Authority.

**II. BACKGROUND AND ANALYSIS**

The California Political Reform Act ("CPRA") requires most state and local government officials to publicly disclose their assets and income. This is accomplished by filing a Statement of Economic Interests when the official assumes and departs his or her particular office. Officials are required to file annual statements as well. The Fair Political Practices Commission ("FPPC") is generally responsible for enforcing and interpreting the CPRA.

Pursuant to the CPRA, Oakland has adopted its own conflict of interest code that requires members of certain boards and commissions to file Statements Of Economic Interests. Among the boards and commissions required to file such statements is the Oakland Base Reuse Authority ("OBRA"). OBRA is a joint powers agency formed in 1993 for the purpose of planning the closure and reuse of military installations located within the City. Its current membership is comprised of the Mayor and four City Councilmembers. Each member is permitted to designate an alternate.

On or about June 23, 2003, Mayor Brown appointed Phil Tagami as his alternate to OBRA. Mr. Tagami says he attended his first OBRA meeting the same day he was appointed. He states he submitted an assuming office statement to Aliza Gallo, the executive director for OBRA, on July 28, 2004. He said he assumed Ms. Gallo would take responsibility for filing the document with the City Clerk. Mr. Tagami said he has typically submitted his Form 700 to the staff of other boards and commissions on which he has previously served for filing with the City Clerk. (Mr. Tagami has served on the Oakland Planning Commission and Port Of Oakland Board Of Directors.)

Mr. Tagami told Commission staff that in December, 2003, he inquired through the City Attorney's office whether his OBRA assuming office statement was on file with the City Clerk. When he learned that it was not, he said that he gave the same copy of the statement he initially gave to Ms. Gallo to Deputy City Attorney Curtis Kidder, who at that time served as counsel to OBRA.

On or around June 15, 2004, Mr. Tagami said he received a call from the Office of the City Auditor. He said that call prompted him again to inquire whether the City Clerk's Office had received his statement. Upon learning that it had not, he said he filed another copy of the statement directly with the City Clerk. **Attachment 2.** That statement was date-stamped by the City Clerk's Office on June 15, 2004. At about the same time, Mr. Hazzard requested an inspection of Mr. Tagami's OBRA assuming office statement from the City Clerk's Office. When Mr. Hazzard learned the document was not on file, he submitted this complaint to the Commission.

The City Clerk is the filing officer for Statements of Economic Interests in Oakland. Under the CPRA, officeholders must submit their statements to the City Clerk no later than 30 days after assuming or leaving office. The City Clerk has the discretion to impose a fine for any statement that is filed late. The fine is ten dollars per day up to a maximum of \$100. Persons who fail to timely file their statements may also be referred to the FPPC for investigation and possible prosecution. The issue before the Commission is whether to refer this matter to the Office of the City Clerk City and/or to the FPPC for enforcement.

Commission staff contacted Ms. Gallo who stated that she has no recollection of receiving Mr. Tagami's Form 700 in July, 2003. She said she does not deny that Mr. Tagami gave it to her, but that she simply has no recollection of receiving it. She said she also spoke with Mr. Kidder who reportedly told her that he has no recollection of receiving the statement from Mr. Tagami in December, 2003.

Commission staff also obtained a copy of Mr. Tagami's leaving office statement from the Port Of Oakland. That statement is dated July 1, 2003, four weeks before he says he submitted his OBRA assuming office statement to Ms. Gallo. Port of Oakland secretary John Betterton told Commission staff that Mr. Tagami submitted his leaving office statement to him on July 1, 2003, even though there is no date-stamp on the document. The information contained in Mr. Tagami's Port of Oakland leaving office statement is, with very minor differences, identical to the OBRA statement of July 28, 2003.

In summary, it appears from the above that the City Clerk never received Mr. Tagami's OBRA assuming office statement until July 15, 2004. This statement was due 30 days after he officially assumed office, sometime in July, 2003. Mr. Tagami said he submitted his Form 700 to Mr. Gallo although she has no recollection of receiving it from him. The information contained in his OBRA assuming office statement had been previously filed with the Port of Oakland in his leaving office statement dated July 1, 2003.

Commission staff has no basis to doubt Mr. Tagami's version of events. As told, his account indicates a good faith effort to submit the required statement, although Commission staff notes that he reportedly submitted his OBRA assuming office statement to Ms. Gallo more than 30 days after he attended his first OBRA meeting on or about June 23, 2004. The fact that his OBRA assuming office statement was not on file with the City Clerk for approximately one year is somewhat mitigated by the fact that his Port Of Oakland leaving office statement was apparently filed with the Port within a week of his OBRA appointment and contained the same financial information.

### **III. STAFF RECOMMENDATION**

Commission staff recommends that the Commission dismiss Complaint No. 04-04 on grounds that the Commission cannot enforce or determine violations of the CPRA. The Commission may wish to refer a copy of this complaint to the Office of the City Clerk for further action in her capacity as filing officer for the City of Oakland.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

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*\*\* City Attorney approval as to form and legality elates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*