
City Attorney

City of Oakland
Public Ethics Commission
June 7, 2004

In the Matter of)
) Complaint No. 04-01
) **SUPPLEMENTAL**

Gary Sirbu filed Complaint No. 04-01 on January 22, 2004.

I. SUMMARY OF COMPLAINT AND ALLEGATIONS

Mr. Sirbu filed Complaint No. 04-01 alleging that an unknown City official or employee may have violated Section 7 of the City Council's Code of Ethics (and other provisions of state law) by disclosing a confidential attorney-client communication to the news media. ***Attachment 1.***

II. BACKGROUND

In its report dated April 5, 2004, Commission staff provided a detailed account of how an unidentified City official or employee may have "leaked" to members of the local news media a confidential communication between Oakland City Attorney John Russo and Mayor Jerry Brown. Commission staff reported that it had discussed the matter with members of the City Council, the Mayor, the City Attorney, the City Administrator, as well as key members of their respective staffs, to determine who had disclosed a copy of the letter to the press. Everyone with whom Commission staff spoke expressly denied they had sent the letter to anyone outside the City.

At the April 5, 2004, hearing, the Commission directed staff to obtain a sworn declaration from everyone interviewed in this complaint. The complainant, Gary Sirbu, argued that when confronted with a declaration signed under penalty of perjury, any person who may have leaked the letter might reconsider his or her previous statements to Commission staff.

The Commission also directed staff to investigate whether it would be possible to trace the telephone records from City fax machines which may have been used to send the letter to the press. (Published news reports indicated the letter had been faxed to at least some members of the news media.) Commission staff reported that it did not seek this information during its initial investigation because the mere presence of a recipient's telephone number on a telephone bill or fax log was not considered probative of the content of the transmission or the identity of the sender.

III. RESULTS OF ADDITIONAL INVESTIGATION

Commission staff drafted and distributed a declaration to each of the approximately 25 people questioned during staff's initial investigation. The declaration essentially states that the signer did not leak the letter, direct anyone to leak the letter or knows who leaked the letter. Everyone Commission staff had questioned about the letter returned the declaration signed and dated or agreed to deliver executed declarations before the June 7, 2004, Commission meeting.

Commission staff also conducted a survey of fax machines which could have been used to send a copy of the letter to the local news media. In total, Commission staff identified 13 fax machines within the offices of those persons who drafted or received a copy of the letter. (This number may not be definitive. There is also no information that the fax machine used to transmit the memorandum was a City-owned machine.) Commission staff also identified fax numbers for reporters and columnists at the Oakland Tribune and San Francisco Chronicle, the two media outlets known to have received a copy of the leaked memorandum.

The results of this survey were unproductive. The City of Oakland does not track or receive copies of outgoing local telephone numbers, according to Robert Glaze, Chief Technology Officer for Oakland's Finance and Management Agency. He said Oakland's current software does not have the storage capacity necessary to track and record outgoing local calls. He also said that SBC, the City's local telecommunications carrier, does not provide this information to the City.

IV. STAFF RECOMMENDATION

Commission staff continues to believe it is unlikely that the person who leaked the letter will admit it, even when requested to execute a sworn declaration to the contrary. In the absence of a personal admission or a witnessed event, there is unfortunately no objective, reliable information that can identify the sender or the contents of the transmission. In light of these conclusions, and the considerable amount of time already spent investigating this matter, Commission staff recommends that the Commission dismiss Complaint No. 04-01 on grounds that there are insufficient facts on which to base a finding that a particular person violated Section 7 of the Code of Ethics or any applicable law.

Respectfully submitted,

Daniel D. Purnell
Executive Director

*** 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.*