



MONTGOMERY COUNTY ETHICS COMMISSION

Montgomery County Ethics Commission Annual Report for Calendar Year 2022

I. Introduction

Section 19A-6(f) of the Montgomery County Public Ethics Law requires the Ethics Commission (the Commission) to publish an annual report. The report is to summarize the actions the Commission has taken during the preceding calendar year and describe the waivers it approved and advisory opinions it issued during the year.

The Commission's mission is to promote the public's trust of County government through the independent administration, including enforcement, of laws designed to promote and ensure the impartiality of County employees, including elected officials, in the execution of their responsibilities. The Commission does this through the administration of myriad activities.

The year 2022 could properly be viewed as one where post-Covid operations and opportunities were institutionalized. Commission meetings were held remotely with efforts to make those meetings more transparent; there was continued focus on leveraging online capabilities to deliver and expand ethics training to County employees; and Commission staff blended in-office and remote work. With few exceptions, Commission staff work can be accomplished remotely relying on County Microsoft Office 365 products and online Commission financial disclosure, outside employment, and lobbying registration and activity reporting programs. Ethics training was carried out almost exclusively through Zoom and Teams presentation, though some important training was conducted in person.

As we turn towards 2023, we expect that the business systems and methods that the Commission has developed during the pandemic will be continued. We expect that there will be less dramatic adjustments as time goes by – and believe that the Commission is well-positioned to do what is necessary and appropriate to execute its mission.

The Commission currently has five members which is a full complement under the Public Ethics Law. They, along with the respective dates of their terms' expiration, are:

Bruce Romer, Chair	10/2025
Jennifer Collins, Vice-Chair	10/2023
Susan Beard	10/2025
Rahul Goel	10/2024
Mary Ann Keeffe	10/2023

Susan Beard was Chair of the Commission during 2022, with Bruce Romer serving as Vice Chair. At the December 2022 meeting of the Commission, Bruce Romer was elected Chair and Jennifer Collins was elected Vice Chair for 2023.

The Commission held eleven public meetings in 2022 using the Zoom platform. These meetings were held each month except November. In each of the meetings, a portion of the meeting was held in closed session pursuant to Maryland General Provisions Article 3-305(b). At the October meeting, the Commission voted to start recording and posting its meetings to promote transparency to the public portion of Commission meetings.

The implementation of a comprehensive and systemic training regimen for County employees was a major priority for the Commission in 2022. During the year, several new training activities and programs were implemented, as will be discussed in the Education section, II.6 further below. In 2022, the Ethics Commission also sought changes to the County's Public Ethics Law that were compelled by the State Ethics Commission pursuant to changes to the State's ethics laws.

II. Status of Programs and Operations

Ethics program statistics:

Performance Measures	Actual 2020	Actual 2021	Actual 2022
Number of Issuances of Formal Opinions, Waivers, or Guidance	13	21	21
Number of Lobbyists Registered	148	152	184
Number of Lobbyist Activity Reports	221	250	287
Number of Financial Disclosure Statements for Calendar Year	1703	1814	1872
Number of Outside Employment Requests	1125	1548	2042

This annual report summarizes the work of the Commission in each of the following areas:

- 1. Financial Disclosure**
- 2. Outside Employment**
- 3. Lobbying**
- 4. Complaints, Investigations and Hearings**
- 5. Advisory Opinions, Interpretation and Advice, and Waivers**
- 6. Education**
- 7. Legislative and Regulatory**
- 8. Outreach**
- 9. Administration**

1. Financial Disclosure:

The Public Ethics Law promotes the public's confidence in the integrity of County employees by requiring certain employees, including elected officials, to file financial disclosure reports that are required to be made publicly available. The reports detail financial holdings and relationships so that conflicts of interest between an employee's County duties and the employee's personal activities and interests can be identified and addressed. The Public Ethics Law requires filings of financial disclosure reports when individuals are first appointed to a filing position, annually thereafter, and when terminating from a filing position. The Commission prepares financial disclosure forms, makes them available electronically and maintains reports filed by employees; it currently administers the electronic filing system for reporting and coordinates with the Office of Human Resources and all County agencies regarding the status of filers. It also resolves all anomalous circumstances and questions associated with the filing of financial disclosure reports.

There were 1872 financial disclosure forms completed by public employees in 2022. Successful program administration is dependent on the accuracy of the database of employees and their status as filers. It is also dependent on the employees who file the forms and on County senior management who are the designated reviewers of forms. Lastly, it is dependent on County human resources liaisons and managers to follow-up with employees who have not filed and to obtain final reports from employees who are terminating from filing positions. Members of certain County boards, commissions, and committees, who are considered "public employees" for purposes of the public ethics law, are also required to file reports.

With respect to full-time County employees, there was one hundred percent compliance with the requirement to file annual financial disclosure reports. Those terminating service as full-time employees were also universally compliant, and the Commission ensures this by having, in accordance with the ethics law, the County withhold the final paycheck of employees until a final disclosure statement has been filed. There are instances where the Commission is not notified of a filing employee's departure from service, and the employee is paid without having filed a final disclosure. Due to notification and enforcement challenges associated with obtaining these reports, on occasion Commission staff treats the last filed report by the filer as a final report. This also occurs with some terminating board, commission, and committee volunteers who terminate service without filing a disclosure report after leaving County service.

2. Outside Employment: The Public Ethics Law requires that County employees obtain approval from the Commission prior to engaging in any compensated service other than County employment. The Commission utilizes the outside employment online system (OEOS) to process requests for outside employment. The system provides a vehicle for review by the employing department's management and the Ethics Commission.

The Commission's staff reviews all requests and prepares all requests for consideration by the Commission, to include obtaining additional information from requestors and County agencies and conducting preliminary legal analysis of requests. The Commission approves requests, as appropriate, setting conditions on approval as necessary to ensure compliance with ethics

requirements, and staff notifies requestors by email of the disposition of requests by the Commission. The Commission publishes approved Outside Employment information required to be made publicly available by the Public Ethics Law.

The Commission acted on 2042 requests for outside employment in calendar year 2022.

A current list of outside employment approvals is incorporated into dataMontgomery's publicly available information of all currently approved outside employment of County employees. This can be found at: data.montgomerycountymd.gov/Government/Outside-Employment/j6hr-qfpx/data Employees are notified prior to the expiration of their approvals so that new filings can be made if an employee desires to continue the outside employment.

3. Lobbying: The Public Ethics Law requires persons meeting certain criteria and thresholds who communicate with County employees to register as lobbyists and to file semi-annual activity reports with the Commission. Annual registration fees are required and are paid to the Commission and processed and deposited into the General Fund.

Since 2013, lobbying registration and activity reporting has been effected through an online application developed by the Commission and the Department of Technology Services. The system has made registration easier for registrants, allowed data to be captured electronically rather than by manual processes of Commission staff, and promoted transparency for the public in accessing the online data.

These systems have resulted in almost instantaneous availability of lobbying information on the Ethics Commission's website.

<https://www2.montgomerycountymd.gov/Lobbyist/ActivityReport.aspx>

As the system is easy to use, registering lobbyists' compliance with requirements is very high. For example, 100 percent of required semi-annual reports on lobbying activity for the last several years (including 2022) have been filed. This compliance rate is in stark contrast to the system in place prior to 2013 where compliance was irregular and there were no systems in place to measure compliance.

184 lobbyists registered in calendar year 2022. The total receipts for calendar year 2022 were \$23,896.50, an increase from 2021 receipts of \$18,650.72. For reference, fee receipts for 2020 were \$15,639.42; \$18,116.42 in 2019; \$20,500 in 2018 and \$30,625 in 2017. Variances in the numbers of lobbyists required to register is beyond the Commission's control but is believed to be a function of community interest in land use matters before the County Council, particularly Master Plans.

4. Complaints, Investigations and Hearings: Pursuant to the Public Ethics Laws, the Commission receives complaints and, as appropriate: conducts investigations and hearings, makes findings, and imposes sanctions and penalties. During 2022, the Commission received several allegations of ethics violations constituting "informal" complaints. (A complaint that is

made that does not meet the ethics law's requirements for submission of a formal complaint is treated as an "informal" complaint.)

Matters that do not raise issues within the jurisdiction of the Commission are closed or referred to a more appropriate office for disposition. Others are brought to the attention of the Commission and considered and addressed by the Commission. When appropriate, matters are coordinated with the County Attorney, the relevant County agency or the Inspector General. The Commission is authorized to conduct investigations on its own initiative and to bring complaints.

At the beginning of 2022, the Ethics Commission had one open matter that was the subject of a formal investigation conducted in 2021. This matter was resolved pursuant to agreements with the two subjects of the investigation, Richard Hetherington and Thomas Tokarz, and the agreements with those individuals are published at <https://www.montgomerycountymd.gov/Ethics/Decisions/Agreements.html>

During 2022, the Ethics Commission authorized one formal investigation of a matter and engaged the Office of Inspector General to conduct the ethics investigation on behalf of the Commission in accordance with provisions of the County ethics law. The Inspector General completed its confidential report of investigation on December 12, 2022. The Ethics Commission considered the confidential report at its December meeting and closed the matter as no conduct violative of the ethics law could be linked to any individual County employee.

At the end of 2022, there were no open formal investigations or formal complaints pending before the Ethics Commission.

5. Advisory Opinions, Interpretation and Advice, and Waivers: The Ethics Commission is expressly authorized to interpret the Public Ethics Law and advise persons as to its application. It does this proactively or in response to or as a result of formal or informal inquiries. Commission staff receives a substantial number of informal inquiries from County employees and from members of the public. These questions relate to each of the programs operated by the Commission and with respect to the overall mandate of the Commission under the ethics law.

The Commission is authorized to publish advisory opinions and grant waivers of ethics law requirements, as appropriate. The Commission is required to publish its advisory opinions, or, in the event an opinion is not published, state the reasons for not publishing the opinion.

The Commission published four advisory opinions during calendar year 2022, the full text of which can be found at:

<https://www.montgomerycountymd.gov/Ethics/Decisions/opinions/2022.html>

The Ethics Commission issued seventeen waivers, which are published at:

<https://www.montgomerycountymd.gov/Ethics/Decisions/waivers/2022.html>

Brief summaries of the opinions and waivers appear below. The decisions made were limited to the facts presented and no assumption should be made to the application of any opinion or waiver to any other circumstances.

Advisory Opinion 22-06-012

The Ethics Commission denied a request for a waiver from an employee in the Asset Management Section of the Finance and Administration Division at Montgomery County Department of Housing and Community Affairs (DHCA). The employee previously was granted outside employment approval in connection with his real estate business. The outside employment approval was granted with a condition that the employee seek a waiver from the Ethics Commission if the employee's business "seeks to do business with or conducts activities that are regulated by the DHCA or subject to DHCA jurisdiction." The employee wanted to purchase one or more condominiums as investment properties in Montgomery County to be used as rental units. Purchasing and operating rental properties in Montgomery County implicates the jurisdiction of the DHCA. In the view of the Commission, the nature of the proposed activity for which the waiver was sought was too close to DHCA's responsibilities for oversight and regulation of rental properties. The request for a waiver was not supported by the employee's agency.

Advisory Opinion 22-08-14

The Chief of the Energy, Climate & Compliance Division at the Department of Environmental Protection (DEP) sought an advisory opinion from the Ethics Commission pertaining to the administration of a set of County programs known as the EV Purchasing Co-op (EVPC, or EV Group Buy) and the Electrified Dealers Program. The submission explains that these programs are part of the County's strategy to reduce greenhouse gas emissions by incentivizing residents and businesses to transition from fossil fueled internal combustion engine (ICE) vehicles to plug-in electric vehicles (EVs). DEP requested a review of certain elements of this program to determine whether Section 19A-14 of the County's Public Ethics Law and applicable regulations apply to this program. The Commission advised that the prohibitions of 19A-14 are implicated by certain aspects of the County's EV purchasing programs and that statutory authority would be needed or a waiver from the Commission of the 19A-14 prohibitions.

The Commission acknowledged that it could be argued that the prohibition against an employee intentionally using prestige of office for private gain or gain of another does not apply to a County-sanctioned program where that program serves a valid public purpose. The Commission concluded that the fact a program is sanctioned by a County agency and in that agency's view serves a valid public purpose does not, by itself, overcome the requirements of the ethics law provisions designed to prevent County employees from abusing government power to the advantage of individual parties. The Commission concluded that the ethics law requires, in effect, a check on exercise of government power to the benefit of private parties where the benefit conferred is not a usual and customary constituent service. To engage in activity that

involves an endorsement or advancement of the interests of a specific business, statutory authority or a waiver of the ethics provision is required.

The Commission recommended that if a waiver was to be sought, it be sought by the agency head with a statement of concurrence from the Chief Administrative Officer. The Commission reasoned that when the Chief Administrative Officer commends a request, it signals that the Executive Branch in its entirety embraces the activity that is sought to be waived.

[Subsequent to the issuance of this Advisory Opinion, a waiver was sought by the DEP and was granted by the Commission. See the discussion below of Waiver 22-10-016, issued October 4, 2022.]

Advisory Opinion 22-10-017

An advisory opinion was sought as to whether County Councilmembers may consider and vote upon a Council resolution that would alter retiree health benefits applicable to current Councilmembers (and elected officials taking office in the future).

The Ethics Commission determined that the contemplated action was inconsistent with the intent of the ethics law and would not be or appear to be impartial or a product of independent judgment; the Commission concluded that the appearance or reality of lack of impartiality would undermine confidence in the execution of County governance. The Commission cited specific prohibitions of the ethics law, particularly section 19A-11 which prohibits a public employee from participating in any matter that affects an employee's economic interest in "property" in a way that is distinct from its effect on the public generally. For purposes of the question before the Commission, the Commission concluded that retiree health benefits are "property" interests that involve economic interests. And the contemplated actions would benefit just elected officials, not members of the public generally or even as members of the class of County employees, but as a small and distinct group. The Commission noted that three of the nine Councilmembers would immediately qualify for the benefit from the contemplated action at the end of the year when the Councilmembers' terms concluded. The potential benefit to other Councilmembers was varied.

The Commission recognized that in theory, there are ways 19A-11's prohibition could be deemed not to apply – including through application of an exception to 19A-11 for matters where recusal would cause a circumstance where too few members of a deciding body would be available to constitute a quorum. (19A-11(b)(1)). However, the Commission expressed concern that there was no way for the current Council to consider the matter without giving an appearance that action was taken to serve the interests of themselves or the other current members of the Council.

The Commission concluded that the intent of the ethics law is to preclude the use of government to advance personal financial interests and that consequently, the contemplated action was

inconsistent with both 19A-11 and 19A-14. This conclusion would not preclude consideration and voting on retiree health benefits for future office holders who are not current Councilmembers. The Commission indicated sensitivity to the possibility that an inequity affecting a set of County decisionmakers warrants correction that only the affected set of decisionmakers can repair – and understands that that idea is what underpins the justification for what was requested. For this reason, the Commission emphasized that this opinion was limited to the facts presented. Moreover, the Commission recognized that there may be circumstances where the Commission’s authority to issue a waiver of the law’s requirements would appropriately be exercised as being, among other things, in the best interests of the County (in accordance with 19A-8(a) of the ethics law.)

Advisory Opinion 22-12-021

An employee of the Department of Technology and Enterprise Business Solutions (TEBS) was elected as a Councilmember for the City of Gaithersburg, MD and was sworn in on November 15, 2021. While the County’s ethics law provides “public employee[s] must not engage in any other employment unless the employment is approved by the Commission,” the employee did not seek outside employment approval from the Ethics Commission until after she had filed her financial disclosure report for 2021. In the report, she identified outside earned income from the City of Gaithersburg and was notified by the staff of the Ethics Commission that she was required to have outside employment approval with respect to her compensated outside position. She then requested outside employment through the Commission’s online system with the employee’s agency head recommending to the Ethics Commission that it approve the outside employment request. Insofar as the employee’s role with the County impacts the City of Gaithersburg (as well as other incorporated municipalities in Montgomery County), the employee sought an advisory opinion from the Ethics Commission to determine whether the ethics law results in any conflicts or requires the imposition of any limitations on the execution of the employee’s County position or her position with Gaithersburg.

In her work for the County, the employee along with her co-workers, develops technological solutions for the County that are occasionally of utility to local municipalities, including the City of Gaithersburg. These are single solutions developed to be used by many, and no work has been customized separately for the City of Gaithersburg.

To address the potential for conflicts of these interests and impairment of the employee’s impartiality, the Commission advised the employee in performing services to the County to recuse herself from working on any specific matter or issue concerning the City of Gaithersburg. While the Commission believed that there was no prohibition on working on projects that multiple jurisdictions, including the City of Gaithersburg, might utilize, the employee was advised to not be involved (in her County capacity) in meetings with or have any direct communications with the City of Gaithersburg and its personnel or to be involved in addressing any specific concern identified by the City.

Waivers.

The Ethics Commission issued 17 waivers in 2022.

8 of the 17 waivers related to outside employment activities.

A public employee is prohibited, pursuant to § 19A-12(b)(1)(B), from being employed by a business that negotiates or contracts with the County agency with which the public employee is affiliated, unless the Ethics Commission grants a waiver. Many employees are notified of the prohibition after they have submitted a request for outside employment, and it has been reviewed by management or the Ethics Commission. In general, outside employment waiver applications are granted where there is no relationship between the conduct of the employee's County duties and the outside employer and the duties performed in the outside position do not relate to the contract between the County and the outside employer. In short, they are approved where there is no actual conflict of interest.

The waivers issued of 19A-12(b)(1)(B) involved the following employees:

Waiver 22-03-007	Dawn Pollard	DHHS
Waiver 22-06-010	Julie Mowdy	DHHS
Waiver 22-06-011	Kemeka Henry	DHHS
Waiver 22-07-013	Markia Graham	DHHS
Waiver 22-09-015	Eric Mercurio	MCPD
Waiver 22-10-018	Carey Riordan	DOCR
Waiver 22-12-019	Kamal Mayers	REC
Waiver 22-12-020	Mery Aquilar de Rivas	DHHS

These waivers are not discussed in detail here and can be reviewed in full at:
<https://www.montgomerycountymd.gov/Ethics/Decisions/waivers/2022.html>

The other nine waivers issued involved requests for waivers of application of other provisions of the ethics law and can be found below. The complete waiver documents can also be found at
<https://www.montgomerycountymd.gov/Ethics/Decisions/waivers/2022.html>.

W22-01-001 was issued to Hans Riemer, a Montgomery County Councilmember. County Code 19A11(a) prohibits a County employee from participating on County matters affecting a company that employs a relative. Mr. Riemer requested that the Ethics Commission issue a waiver pursuant to its authority in 19A-8(a) of the Code with respect to his sister's employment at Washington Gas Light Company. Upon a review of the request and the concurrence in and support for the waiver request from the Council Executive Director, the Commission concluded that a waiver pursuant to the standard in 19A-8(a) was warranted as being in the best interest of the County for the Commission to issue the waiver. The Commission concluded that the importance for Mr. Riemer to be able to participate in Council proceedings that might indirectly affect WGL outweighed any potential harm, and no unfair advantage would result from the grant of the waiver.

W22-01-002 was issued to the Office of Emergency Management and Homeland Security (“OEMHS”). In December 2021, the County’s DEP contacted OEMHS about an offer by the U.S. Department of Homeland Security HS to convey 24 flood control sensors to the County, at no cost to the County, pursuant to DHS’s Small Business Innovation Research (SBIR) and Small Business Technology Transfer (SBTT) program.

In order to have the free access to the flood sensors DHS offers, the County would need to enter into a Cooperative Research and Development Agreement (CRADA) with both DHS and the company that created and owns the flood sensors, Intellisense Systems, Inc. (“Intellisense”), a California corporation. Under the CRADA, in exchange for access to and use of the sensors, DHS and Intellisense expect feedback as to how the sensors could be improved to allow Intellisense to “develop enhancements” of the sensors “potentially leading to commercial availability and adoption of the sensors” by others. This would include two feedback reports, one at the beginning of the project and one at the end, from County employees as to how the sensors performed and how they could be improved. The County would also have to work with Intellisense to “prosecute a patent application” for any inventions related to use of the sensors – a commitment of County employee time of unknown scope. Also of note, Intellisense planned to use Intellisense flood sensor data stored on Intellisense servers for “product development and commercialization.”

OEMHS requested an opinion as to whether the County’s participation in the CRADA arrangement with DHS and Intellisense implicated County Code § 19A14(c) and, if the Commission concluded it did, a waiver of the ethics provision. Finding this question to be close, the Commission decided to issue a waiver, noting that the process of submitting a request for a waiver assures that the transaction is reviewed at least at the level of the relevant agency head which itself provides a measure of assurance that there is no impropriety.

The Commission found that granting the waiver was in the County’s best interest in advancing the County’s proactive approach to mitigate flood risks associated with urban development to safeguard life and property. The importance of having County employees performing official duties outweighed the actual or potential harm of any conflict of interest. And granting the waiver resulting in County participation in the CRADA would not give employees working on the matter an unfair economic advantage over other public employees or members of the public.

W22-02-003 and W22-02-004 involved related waivers. Thomas Tokarz and Richard Hetherington were former county employees who had been employed by the Automated Traffic Enforcement Unit (ATEU) of the Montgomery County Police. Each sought waivers of the one-year post-employment bar of 19A-13(b) prohibiting a former public employee from being employed by a business if the public employee significantly participated during the previous 3 years in regulating the person or business or in any procurement or other contractual activity concerning a contract with the business.

The ATEU implemented several aspects of a Montgomery County Public Schools (MCPS) contract with BusPatrol America LLC (BusPatrol) concerning cameras on school buses, pursuant to a Memorandum of Understanding between the MCP and the MCPS.

The matters pertaining to Mr. Tokarz and Mr. Hetherington's employment with Bus Patrol are addressed in agreements from Mr. Tokarz and by Mr. Hetherington and accepted by the Ethics Commission which were issued with the waivers. These are published on the Ethics Commission's website at:

<https://www.montgomerycountymd.gov/Ethics/Decisions/Agreements.html>.

The Ethics Commission concluded that no conflicts exist given that Mr. Tokarz and Mr. Hetherington's work for BusPatrol was unrelated to any of the previous work they did while employed by the MCP on the MCPS contract with BusPatrol and the agreement of Mr. Tokarz and Mr. Hetherington not to work on, advise, or assist in any way with respect to any Montgomery County matter concerning any existing contract and any follow-on contract with the MCPS or the MCP relating to school bus cameras.

W22-03-005 and W22-03-006 involve related waivers. Ms. Laurie Boyer Babb served as the Economic Development Manager for the Business Advancement Team in the Office of the County Executive. Ms. Babb had submitted that in her role as Economic Development Manager for MCG, she had worked collaboratively with the Montgomery County Economic Development Corporation (MCEDC) on business attraction and retention projects to advance the economic health and stability of the County. She subsequently was offered employment at the MCEDC. County Code Section 19A-13(b) prohibits a former public employee from working for another person or business for one year after leaving County service if that employee significantly participated in regulating or contracting with that person or business. Section 11B-52(a) of the County Code prohibits a person, while engaged in a procurement matter with the County, from employing or offering to employ a public employee if the duties of the public employee include significant participation in the procurement matter

Ms. Babb requested that the Ethics Commission waive the application of Section 19A-13(b) employment of former public employees, a request that was supported by the Chief Administrative Officer. MCEDC requested a waiver of section 11B-52(a).

A majority of Commission members concluded that under the circumstances presented, that if Ms. Babb abides by the restriction imposed by 19A-13(a) that there will be no conflict of interest in her execution of a position at MCEDC. The Commission recognized that MCEDC's responsibilities amount to the execution of County functions by a non-profit organization. And, in carrying out its statutorily defined mission, MCEDC does not operate like a private organization in the normal sense of seeking business from the County through a competitive procurement process. Further, the nature of Ms. Babb's work as a County employee with MCEDC involved collaboration on a number of programs; she was not working on contract administration but collaborating with a non-profit, statutorily mandated to pursue the County's economic development objectives. The Commission acknowledged that failing to grant the waiver could reduce the ability of the County to hire or retain highly qualified public employees.

The Commission also found that the issuance of a waiver to MCEDC was in the best interest of the County.

Waiver 22-04-008 Mr. Taggart Hutchinson, an Attorney in the Office of County Attorney (OCA), submitted a request for an advisory opinion on the question of whether employment pursuant to a job offer he received from Miller, Miller and Canby (MM&C) is barred for one year by 19A-13(b) and, in the event the Commission determined that it is, Mr. Hutchinson sought a waiver from the Commission from the prohibition.

At the Ethics Commission meeting where this matter was considered (in closed session), the four members present split on the question of whether the proposed employment of MM&C would be barred by 19A-13(b). As the decision was inconclusive as to whether the bar of 19A-13(b) applied to Mr. Hutchinson's proposed employment with MM&C, the Commission considered Mr. Hutchinson's request for a waiver.

The Commission granted the requested waiver on the basis that Mr. Hutchinson's employment by MM&C meets both standards for issuance of a waiver pursuant to 19A-8(c): that failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees and that the proposed employment is not likely to create an actual conflict of interest. In applying the waiver standard regarding hiring and retention of employees, the Commission placed considerable weight on the position of the requesting employee's agency head, John Markovs, the Acting County Attorney.

The waiver was conditioned on Mr. Hutchinson's compliance with 19A-13(a), so he would be prohibited from working on the same specific matters that he worked on while an employee with the County. The Commission found that compliance with 19A-13(a) provided a measure of assurance that an "actual conflict of interest" in Mr. Hutchinson's work with MM&C was unlikely.

W22-06-009 was issued to William Jawando, a Montgomery County Councilmember who wrote a book, *My Seven Black Fathers: A Young Activist's Memoir of Race, Family, and the Mentors Who Made Him Whole*. The book concerns Mr. Jawando's personal history unrelated to his role as an elected County Council member. Mr. Jawando received an unsolicited request to speak about his book as an author at a Juneteenth event at the Blackrock Center for the Arts (Blackrock), a facility that is in part funded by the Montgomery County Government. The event is sponsored by, among others, the County's Human Rights Office and Human Rights Commission.

As the County Council exercises jurisdiction over County agencies and exercises budget and other authority over the Human Rights Office and Human Rights Commission, these agencies can be viewed as "County agenc[ies] with which the public employee is affiliated." Mr. Jawando's private enterprise as an author could be viewed as contracting with these County agencies to engage in the "employment" activity of promoting his book. Out of an abundance of caution, Mr. Jawando submitted the request for a waiver of the prohibition of 19A-12(b) so that

he could participate in the Juneteenth event at Blackrock without fear of violation of the outside employment prohibition.

Upon review of the request and the concurrence in and support for the waiver request from the Council Executive Director, the Ethics Commission, by unanimous vote, one member abstaining, granted the request for a waiver on the basis that the proposed activity is not likely to create an actual conflict of interest.

W22-10-016 The Department of Environmental Protection (DEP) applied for a waiver of the prohibitions in 19A-14 of the ethics law and applicable regulations for the class of County employees involved in the design or implementation of the EV Purchasing Co-op Program (EVPC or EV Group Buy). The EVPC is part of the County's strategy to reduce greenhouse gas (GHG) emissions by incentivizing residents and businesses to transition from fossil-fueled internal combustion engine (ICE) vehicles to plug-in electric vehicles (EVs). The EVPC involves the promotion of certain incentives and products offered by private automobile dealerships that would reduce costs for County residents and businesses that want to lease or purchase an electric vehicle. DEP requested an advisory opinion from the Commission to determine if Section 19A-14 of the County Ethics Law applied to the administration of the EVPC. The Commission advised in AO22-08-014 that the prohibitions of 19A-14 and implementing regulations are implicated by certain aspects of the proposed EVPC and concluded that DEP would require statutory authority or a waiver of prohibitions to proceed.

The Ethics Commission granted the requested waiver to the class of persons working on the EVPC, subject to certain conditions. The Commission believes the request from the Acting Director of the Department of Environmental Protection, as supported by the Chief Administrative Officer, demonstrated that the administration of Montgomery County believes that the EVPC is in the best interest of the County. The information provided in the request supports that determination, and the Commission concluded based on the request and the concurrence of the Chief Administrative Officer that the best interest of the County would be served by granting the waiver.

As the waiver request itself stated that the EVPC will adjust, the Commission insisted that material EVPC changes must be approved by the Chief Administrative Officer. Additionally, due to potential for adjustments in the EVPC and in light of the likelihood of change in the rapidly altering landscape of the development and sale of electronic vehicles, the waiver was set expire one year from the date of its issuance, with the Commission stating its expectation that a new waiver request would be submitted prior to the expiration of the current waiver.

6. Education: The Commission conducts public education and other information programs regarding the Ethics Law. Commission staff routinely provides individual instruction on filling out and review of financial disclosure forms, outside employment requests and lobbying reports, and other matters falling within its jurisdiction.

Prior to the restrictions resulting from Covid, Ethics Commission staff participated in biweekly orientation sessions for all new County employees. When the Covid restrictions on in-person

contact were instituted, Commission staff provided a PowerPoint presentation to the Office of Human Resources covering basic tenets of the ethics law. During 2022, the approach towards ethics training for new employees was revamped. In the process to on-board new employees, a system requiring new employees to sign an acknowledgement form regarding ethics obligations was implemented. In addition, new employees beginning County employment as of November 2022 have been automatically enrolled in a one-hour online training program. This online training is conducted monthly by Commission staff.

Mandatory ethics training for executive branch public financial disclosure filers has been conducted since May of 2017. The Office of Human Resources Training and Organizational Development Division has provided support in the implementation of this training and compliance initiative.

The new employee training and the training for public financial disclosure filers is conducted using the Microsoft Teams platform. This allows for online presentation by Commission staff, along with appropriate PowerPoints. Further, it allows through its chat feature for Commission staff to monitor both technical problems of attendees in participation and substantive ethics questions so that the primary presenter could present without unnecessary distraction.

In 2022, the Commission staff conducted the mandatory training for financial disclosure filers once each month. Commission staff also conducted two online training sessions for HOC employees and in-person training for both Fire and Rescue Service recruits and new officers of the Montgomery County Police Department. A hybrid in-person and online training was conducted for new County Council members and staff in December of 2022. Commission staff also conducted numerous individualized training sessions to address such matters as how to review financial disclosure reports, operate the financial disclosure system and how to review outside employment requests.

Also in 2022, the Commission staff prepared a one hour recorded training session for Board Committee and Commission members, engaging TEBS staff to build a framework for BCC members to take the training, with certificates of completion issued for compliance purposes. In coordination with the BCC office in the County Executive's office, this training was made mandatory for all BCC members.

7. Legislative and Regulatory: The Commission recommends and prepares new ethics legislation and regulations.

The Commission prepared legislation that was submitted to the County Council for consideration in April 2022. This became bill 17-22 which was introduced by the then Council President Alborno and signed into law in November 2022. Commission staff provided testimony before the County Council at its public hearing on the bill, appeared at a Government Operations Committee work session considering the bill, and appeared before the County Council when it considered and approved the bill.

Bill 17-22 and the various documents considered by the County Council in connection with it can be found at: <https://apps.montgomerycountymd.gov/ccllms/BillDetailsPage?RecordId=2758>

The Commission submitted no other requests for legislative change in 2022.

8. Outreach and Other Activities: The Staff also serves as the principal public resource on the County's ethics laws, to include managing a website that reflects Commission programs, activities, and publications such as annual reports, approvals of outside employment requests, lobbying data, and waivers and opinions.

9. Administration: The Staff of the Commission is responsible for assuring that Commission meetings are run in accordance with the Open Meetings Act and other applicable law. The Staff informs and advises the Commission as to all material matters under its jurisdiction; Commission staff are also responsible for budget, procurement, human resources, and resource management for the operation of the office in accordance with Montgomery County policies, and attends required training in these and other office management areas.

For the Commission:

Respectfully Submitted,



Bruce Romer, Chair

3/1/2023

Date