

CITY OF AUSTIN ETHICS REVIEW COMMISSION

JERMAINE A. HOPKINS

Complainant

v.

HUBERT “ART” ACEVEDO

Respondent.

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**Complaint No. 20141212
(Amended)**

ORDER ON FINAL HEARING

I. PROCEDURAL HISTORY

On December 12, 2014, Jermaine A. Hopkins (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) a Sworn Complaint (“the Original Complaint”) against Hubert “Art” Acevedo (“Respondent”). On that date, the City Clerk sent a copy of the Original Complaint and a notice of filing to the City Attorney, the chair of the Ethics Review Commission (“the Commission”), the Complainant, and the Respondent.

On December 15, 2014, Commission Staff Liaison and City of Austin Assistant City Attorney Cynthia Tom (“Tom”) issued a Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for December 18, 2014, and advising the Respondent and Complainant of procedures for the Preliminary Hearing.

On December 22, 2014, Complainant filed an Amended Sworn Complaint (“the Amended Complaint”), which the City Clerk on that date sent to the City Attorney, the chair of the Commission, the Complainant, and the Respondent.



On December 29, 2014, Tom issued a Revised Notice of Preliminary Hearing setting a Preliminary Hearing on the Amended Complaint for January 5, 2015, and advising the Respondent and the Complainant of procedures for the Preliminary Hearing.

On January 5, 2015, the Commission conducted a Preliminary Hearing. In its Order on Preliminary Hearing, the Commission determined that reasonable grounds existed to believe that a violation of Section 2-7-72 of the City Code had occurred as a result of actions or omissions of Respondent alleged in the Amended Complaint with respect to the non-filing of his statement of financial information for calendar year 2012. The Commission set this matter for Final Hearing on January 27, 2015.

On January 9, 2015, Tom issued a Request for Information and Notice of Final Hearing for January 27, 2015. The January 9 Request and Notice advised Complainant and Respondent of procedures for the Final Hearing, and made requests for information pursuant to Section 2-7-46 of the City Code to the Respondent. On January 12, 2015, Tom issued letters to the City Clerk, the City Communications and Technology Management Department, and Janet De La Rosa requesting evidence and the presence of witnesses at the January 27 Final Hearing.

On January 22, 2015, Respondent filed a sworn statement addressing the Amended Complaint but did not pre-file documents. On that date, Complainant pre-filed approximately thirty-two exhibits in connection with the January 27 Final Hearing.

On January 23, 2015, the agenda for the January 27 meeting of the Commission and Final Hearing in this matter was timely posted.



Prior to the January 27 Final Hearing, the City Clerk and City Communications and Technology Management Department responded to the Request for Information by providing responsive documents to the Commission.

II. FINDINGS OF FACT

1. Respondent is the Chief of Police for the City of Austin and held the same position in 2012 and 2013 and at all times since the date of the alleged violation.
2. Complainant alleges that Respondent violated Section 2-7-72, Austin City Code (“Section 2-7-72”) on April 26, 2013, by failing to file a statement of financial information for calendar year 2012 on or before that date.
3. The January 22 sworn statement of Respondent acknowledged that he had not filed a statement of financial information for 2012 by the required date, and explained the circumstances surrounding his effort to do so.
4. At the Final Hearing, the Chair of the Commission, Austin Kaplan, recused himself and took no part in the hearing.
5. Complainant and Respondent were each afforded an opportunity to appear at the Final Hearing in accordance with Chapter 2-7 of the City Code and the Rules of the Commission. Complainant appeared in person. Respondent asked for and was granted approval to appear by telephone. Respondent was also represented by counsel at the Final Hearing.
6. At the Final Hearing, Respondent’s administrative assistant, Janet de la Rosa, appeared as a witness and responded to questions from the Commission.



7. At the Final Hearing, Complainant made a verbal statement and responded to questions from the Commission.
8. At the Final Hearing, counsel for Respondent made a verbal statement.
9. At the Final Hearing, all exhibits pre-filed by Complainant, the January 22 sworn statement of Respondent, and the documents tendered by the City Clerk and Communications and Technology Management Department were accepted into the record.

III. CONCLUSIONS OF LAW

1. The January 27, 2015, Meeting of the Commission and the Final Hearing were properly noticed in accordance with Chapter 2-7 of the City Code, the Ethics and Financial Disclosure Ordinance (“Chapter 2-7”), and the Texas Open Meetings Act.
2. The Commission has jurisdiction over complaints alleging violations of Chapter 2-2 of the City Code (The Austin Fair Campaign Chapter), Chapter 4-8 of the City Code (Regulation of Lobbyists), Article III, Section 8 of the City Charter, (Limits on Campaign Contributions and Expenditures), Chapter 2-7 of the City Code (Ethics and Financial Disclosure), and Section 2-1-24 of the City Code (Conflict of Interest and Recusal).



3. The Amended Complaint was filed with the City Clerk, was sworn to by Complainant, and identified the provision of the City Code alleged to have been violated, as required by Section 2-7-41 of the City Code.
4. Under Section 2-7-72, certain defined “City Officials,” including the Chief of Police, are required to file a public statement of financial information with the City Clerk for each calendar year in which the official holds a City office. The statement of financial information must be filed by the last Friday in April of the succeeding year.
5. Under Section 2-7-75 of the City Code, a statement of financial information may be filed electronically with the City Clerk “under procedures to be determined by the City Clerk.”
6. Under Section 2-7-45 of the City Code (“Section 2-7-45”), the issue to be considered by the Commission at a Final Hearing is whether a violation of the cited section of the City Code has occurred. The Commission shall make its final determination based on a preponderance of the credible evidence in the record.
7. The January 22 sworn statement of Respondent acknowledged a violation of Section 2-7-72.



IV. DETERMINATIONS OF THE ETHICS REVIEW COMMISSION

1. The Commission determines that Respondent violated Section 2-7-72, a provision within the jurisdiction of the Commission, by failing to file his statement of financial information for calendar year 2012 by April 26, 2013, the last Friday in April of 2013.
2. The Commission will not refer the Amended Complaint to the City Attorney for prosecution.
3. The Commission determines that Respondent's violation of Section 2-7-72 was clearly unintentional.
4. The Commission determines that the appropriate sanction for Respondent's violation is a Letter of Notification under Section 2-7-48.
5. The Commission determines that Respondent should take the following steps to avoid future violations:
 - A. Follow up to confirm that the statement of financial information has been filed and that it was received by the City Clerk's Office; and
 - B. Obtain written confirmation that the filing has been received by the City Clerk's Office.



ORDERED as of this 27th day of January, 2015.



Peter Einhorn
Vice-Chair, Ethics Review Commission

