

Frequently Asked Questions about the Code of Ethics of the Town of Greenwich

D. COMPLAINTS

Q. Who can file a complaint?

A. Anyone who has knowledge of a violation of the Greenwich Code of Ethics may file a complaint with the Board of Ethics.

Q. How do I file a complaint?

A. There is no required procedure for filing a complaint. In order to assist persons interested in making a complaint, the Board has provided a form for making complaints that can be downloaded from the Board of Ethics page on the Town's website. Instructions for filing complaints can also be obtained on this page.

Q. How does the Board of Ethics determine whether information submitted to the Board constitutes a complaint?

A. Whenever the Board as a whole receives information about a possible violation of the Code of Ethics it treats that information as a potential complaint unless the information is received hypothetically in the form of a formal request for an Advisory Opinion. An indication from the individual providing the information that it is not intended as a complaint may be taken into account, but is not determinative.

When the Board receives information that it feels could possibly be intended as a complaint, it will consider the information and make a determination as to whether it constitutes a complaint. If it determines that it does not constitute a complaint, the reasons for this will be articulated at the public meeting at which the determination is made. If it determines that the submission contains allegations sufficient to indicate a potential violation of the Code of Ethics, it will commence a procedure to determine whether probable cause exists that a violation of the Code has occurred and the Town Officer or Officers involved will be notified.

Frequently, individuals have questions about whether certain behavior constitutes a violation of the Code of Ethics, but are unsure as to whether they should proceed with a complaint for a variety of reasons. In such circumstances, individuals may contact a member of the Board individually and request that the information that they are discussing remain confidential. If an individual member of the Board receives information as a representative of the Board, it is their duty to bring it to the attention of the entire Board. However, there is

nothing that requires an individual Board member to disclose information that is received privately, accompanied by a request for confidentiality. Whether to respect the request for confidentiality in such circumstances is a decision for the individual Board member to make and any failure to observe such request cannot be the responsibility of the Board as a whole. Moreover, any advice that the individual Board member provides under those circumstances may only be construed as advice given by the individual based on the information provided and without the benefit of discussion with other members of the Board. The Freedom of Information Act prohibits discussion of such matters with any other Board member outside of a public meeting of the Board. Therefore, persons seeking advice from members of the Board as individuals can take no assurance that the positions indicated by such an individual Board member will reflect the position of the entire Board. In addition, no request for confidentiality can extend to information previously or subsequently received by a member of the Board from other sources, or to information that the individual requesting confidentiality subsequently makes public on their own.

Q. May a complaint be made anonymously?

A. Yes. The Code does not require that the person making a complaint be identified. However, it should be recognized that the filing of an anonymous complaint makes the Board's task of investigating the complaint significantly more difficult. Unless the Board can communicate with the complainant, it has no way to clarify the meaning of statements in the complaint that may be unclear or incomplete. In considering a complaint, the Board of Ethics has a responsibility to protect the due process rights of Town Officers, which require that the Board receive a complaint that contains detailed allegations sufficient to establish that there is probable cause to consider that a violation of the code has occurred. For example, an anonymous complaint that "members of the Town's XYZ Department have an interest in matters that they are handling" would not be considered sufficient because it does not allege a specific violation of the Code. Further information would be required in order to identify the individual(s) involved, what the unspecified interests are, the fact that these interests are more than nominal and are financial in nature and how they affect one or more specific Town transactions. Unless a detailed complaint is filed by a person familiar with legal proceedings and investigations, further contact with an anonymous complainant may be critical in order for the Board of Ethics to determine whether there is probably cause that a violation of the Code has occurred. On the other hand, when the Board receives a complaint from a person who is identified, the Board can contact the complainant to determine whether information is available that justifies further proceedings even if it is missing from the original complaint.

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Q. What if I am concerned about retaliation against me for filing a complaint?

A. In many cases, there are laws that protect whistleblowers against retaliation. If you are an employee under a union contract, you may also have rights under that contract or may be able to secure the assistance of your union representative in determining how to proceed. An attorney can assist you in determining the applicability of these laws or contract provisions to your circumstances. You may also wish to ask an attorney or another trusted third party intermediary to file a complaint on your behalf. While the Board may need to establish that key allegations are backed up with evidence from a reliable source, the use of a trusted intermediary can allow you to retain control over the decision as to whether disclosure of your identity is necessary in order to establish probable cause for a complaint.

Q. What is the procedure for investigating a complaint?

A. The Board of Ethics has adopted a Statement of Procedures that describes in detail the procedures involved in investigating a complaint. The procedure involves several phases, including initial review of the complaint for sufficiency, a preliminary investigation, a procedure for determining probable cause that a violation of the Code has occurred and the requirements with respect to any subsequent hearings related to the complaint.

Q. What happens if the Board determines that a complaint is not sufficient or that there is no probable cause?

A. Any proceedings that would identify the target of a complaint prior to a determination of probable cause are required to be confidential. However, a determination that a complaint is not sufficient or a decision that there was no probable cause for a complaint must be made in an open meeting of the Board. Thereafter, interested persons and other members of the general public may wish to bring additional information to the attention of the Board and a new or revised complaint may be filed.

Q. Is the Board required to reveal the identity of a person who has been the subject of a complaint?

A. The Board is not required to reveal the identity of the person who is the subject of a complaint unless and until a finding of probable cause has been made. Persons filing a complaint are required, as a condition to filing the complaint, to agree to maintain the confidentiality of the proceedings until a determination has been made by the Board that there is probable cause to believe that a violation of the Code has occurred. If a person

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considering filing a complaint with the Board wishes to publicize the matter immediately, they should not file a complaint with the Board. However, unless a complaint is filed, the investigation of those public allegations will have to be undertaken by other authorities.

The Town does not wish to discourage persons from filing complaints making good faith allegations that a violation of the Code has occurred. At the same time, there is no desire to expose Town Officials to the glare of adverse publicity in the case of complaints that may be malicious, unfounded or political in nature. The procedures adopted by the Board were intended to strike a balance between these objectives.

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