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TITLE 100 – DEPARTMENT OF STATE

CHAPTER 50 – PUBLIC RECORDS ADMINISTRATION

SUBCHAPTER 20 – STATE AGENCY RECORDS RETENTION SCHEDULES

PART 16 – ETHICS COMMISSION RECORDS (ETH)

16.1 Purpose, Authority, Severability, and Destruction

16.1.1 Purpose

To establish the official retention, maintenance, and disposal requirements for a public record based upon any administrative, legal, fiscal, and/or historical value related to that record created or received by an agency, department, division, board, commission, office, or quasi-public corporation under any branch of State or local government which performs functions relating to government, or acts on behalf of a governmental agency, pursuant to law or relating to the transaction of public business.

16.1.2 Authority

This Regulation is promulgated pursuant to the authority granted in R.I. Gen. Laws Title 38 (“Public Records”), including expressly but without limitation R.I. Gen. Laws §§ 38-3-1 et seq.

16.1.3 Severability

If any provision of these Regulations or the application thereof to any Person or circumstances is held invalid by a court of competent jurisdiction, the validity of the remainder of the regulations shall not be affected thereby.

16.1.4 Destruction Review Procedure

Government employees should also consult with their administration to determine if any records eligible for destruction may be involved in current, pending, or anticipated litigation, any government investigation or regulatory proceeding, or request under the Access to Public Records Act. (Part 10-2 of this Chapter (Legal Records) and R.I. Gen. Laws Chapter 38-2)

ETH **Ethics Commission**

ETH1 **Financial Disclosure Statements**

Certain categories of public officials are required to file financial disclosure statements annually pursuant to R.I. Gen. Laws § 36-14-16. The law requires that those officials disclose sources of income and assets, their own as well as those of spouses and dependent children, for the preceding calendar year. These disclosures must also note any interest an official, spouse, or dependent child holds in any business that is regulated by Rhode Island government or engages in transactions with Rhode Island government. All state appointed and elected officials, and state employees holding major decision-making positions, are required to file annual statements. Municipal elected officials and certain appointed municipal officials are also subject to this requirement. A yearly statement must be filed as long as the official holds his or her public position. In addition, candidates for elected office must file a statement within thirty (30) days of declaring candidacy. The purpose of these disclosures is to ensure that people acting in the public interest do not use their positions to further their private financial interests. They also provide evidence that there are no conflicts between officials' financial interests and their official duties. The records in this series consist of the forms filled out by public officials disclosing their sources of income and assets, and those of their spouses and dependent children (if applicable). These records may include attachments, where additional space is required for said disclosures, as well as any amendments filed thereto. General Officers are also required to file a separate addendum listing the sources and amounts of income in excess of two hundred dollars (\$200.00) according to enumerated categories of amounts pursuant to R.I. Gen. Laws § 36-14-17(b)(2).

Retention: Permanent.

ETH2 **Advisory Opinions**

State and municipal public officials and employees may request advice from the Ethics Commission if they believe that they face a real or potential conflict of interest pursuant to R.I. Gen. Laws § 36-14-11 and Commission Regulation 1024. These requests should be submitted before any action is taken. The opinions issued by the Commission are interpretations of the Rhode Island Code of Ethics in Government. Any advisory opinion rendered by the Commission, until amended or revoked by a majority of its members, is binding on the Commission in subsequent proceedings concerning the person or entity that requested the opinion and acted in reliance on it in good faith. The only exception to this is in the case of a revelation that material facts were omitted or misstated in the original opinion request. These opinions may be

valuable to public officials and employees in providing guidance as to how the Commission might interpret particular provisions of the Code of Ethics in other circumstances, but each opinion is strictly limited to the facts as stated in the request for advice and may or may not be applicable to similar situations faced by other officials. The Commission also issues General Commission Advisory Opinions (GCAs) pursuant to Commission Regulation 1027, which are advisory opinions of general application on a specific topic addressed by the Code of Ethics. GCAs provide general guidelines and examples that explain in simple terms provisions found in the Code of Ethics. The records in this series may include, but are not limited to the following: petitioners' requests for advisory opinions and supporting documentation submitted therewith, draft opinions prepared by Commission legal staff, correspondence to petitioners regarding their requests for opinions, issued opinions, annual summaries of issued opinions, digests (by which issued opinions are indexed by petitioners' names, positions, agencies, governmental units, substantive issues, and keywords), and GCAs issued by the Commission.

ETH2A Advisory Opinions

Retention: Permanent.

ETH2B General Commission Advisory Opinions (GCAs)

Retention: Permanent.

ETH3 Complaints

Members of the public have the right to submit signed, notarized complaints on forms provided by the Ethics Commission. Complainants must name the individual alleged to have violated the Code of Ethics (the Respondent), identify the public office held by the Respondent, and detail the specific actions that allegedly violate the Code of Ethics. Pursuant to Commission Regulation 1002, submitted complaint material that is not in proper form is returned to the Complainant for correction. If it is not returned to the Commission within twenty (20) days in corrected form, the complaint will not be processed. Upon receipt of a complaint in proper form, the Commission mails copies of each complaint, along with copies of the Code of Ethics and Commission regulations, to the Complainant and the Respondent. The Complainant and Respondent also receive timely notices of any subsequent Commission actions. Complaints may also be initiated by Commission staff. At the first stage of review, the Commission determines whether the verified complaint alleges facts sufficient to constitute a knowing and willful violation of the Code of Ethics. If the complaint alleges sufficient facts, the Commission authorizes a full investigation of the alleged violation. If not, the

complaint is dismissed. After the Commission makes its initial determination, the Prosecution and the Respondent can seek an informal disposition of the complaint through an agreed settlement, consent order, or other informal means. Informal dispositions are subject to approval or rejection by the Commission. The Commission may issue subpoenas to compel the production of evidence or the attendance of witnesses. Investigators may take oral or written evidence under oath or affirmation. An investigation must be completed within one hundred eighty (180) days after the complaint is filed, unless the Commission approves an extension for good cause, with a maximum of two (2) such sixty (60) day extensions. Investigative reports compiled by staff become public records after a probable cause hearing has been completed. Respondents receive copies of investigative reports prior to probable cause hearings, at which the Prosecution presents the results of the investigation and the Commission reviews the investigative report along with any response submitted by the Respondent. The Commission may vote to dismiss the complaint or find that probable cause exists to support the allegations. The Commission may also amend the complaint if it is determined that other violations of the Code of Ethics may have occurred. If the Commission finds that probable cause exists to support the allegations, it issues written findings stating in detail the violations complained of and the manner in which they occurred. An adjudicative hearing is scheduled on the findings of probable cause, at which time the Prosecution and the Respondent present evidence and examine witnesses before the Commission at a public hearing. Members of the Commission may also question witnesses. At the conclusion of the proceedings, the Commission deliberates on the evidence in closed session to determine whether there has been a knowing and willful violation of the Code of Ethics. If a knowing and willful violation is found, the Commission may issue a cease and desist order, require the Respondent to file any statement mandated by the Code, impose a fine, require the return of any unjust enrichment or, for egregious violations, remove an official from office, provided the official is not subject to impeachment. The records in this series may include, but are not limited to, notarized complaint forms, submitted complaint material not accepted for filing, correspondence, notices of Commission actions (including hearings), dockets of Commission actions, dismissals of complaints, investigative reports, informal dispositions, Commission decisions, orders issued by the Commission, transcripts of hearings, exhibits, and copies of meeting minutes regarding the subject complaint.

ETH3A Records of Submitted Complaint Material Not Accepted for Filing

Retention: Retain six (6) years.

ETH3B **Records of Complaints Dismissed for Failure to
Allege Facts Sufficient to Constitute a Knowing and
Willful Violation of the Code of Ethics**

Retention: Retain six (6) years.

ETH3C **Records of Complaints Dismissed for Lack of
Probable Cause**

Retention: Permanent.

ETH3D **Records of Complaints Resulting in Findings of
Violation**

Retention: Permanent.

ETH4 **Complaint Investigation Files**

Upon the Commission authorizing investigation of complaints alleging facts sufficient to constitute a knowing and willful violation of the Code of Ethics, investigators and staff attorneys proceed to investigate and prosecute the complaints. During investigation, oral or written testimony may be taken from witnesses subpoenaed by the Commission. Other types of evidence may be obtained as needed. The records in this series consist of both the investigators' and attorneys' complaint files. These records include duplicate copies of the records found in ETH3 (Complaints) in addition to records compiled in the investigation of the complaint, which may or may not ultimately be presented to the Commission at a public adjudicative hearing. These records may include, but are not limited to, transcripts of witness testimony, documentary evidence, audio or video recordings, timelines, questions for witnesses, contact information for potential witnesses, investigators' notes, attorneys' notes, legal memoranda, draft informal dispositions, correspondence with Respondents and/or legal counsel regarding complaints.

ETH4A **Investigator and Attorney Files for Complaints
Dismissed for Lack of Probable Cause**

Retention: Retain six (6) years.

ETH4B **Investigator and Attorney Files for Complaints
Resulting in Findings of Violation**

Retention: Permanent.

ETH5 **Complaint Litigation Files**

Pursuant to R.I. Gen. Laws § 42-35-15 and Commission Regulation 1022, any final decision of the Commission is subject to judicial review. A complaint may be filed in Providence County Superior Court within thirty (30) days of the mailing of the Commission's Decision and Order. Any party in interest aggrieved by the final judgment of the Superior Court may petition the Rhode Island Supreme Court for a writ of certiorari to review any questions of law involved. Upon the filing of a complaint seeking judicial review of a Commission final order, the Commission opens a litigation file. Records in this series may include, but are not limited to, complaints, notices, dockets, correspondence, certification of agency record on appeal, transcripts, court forms, entries of appearance, motions, memoranda of law, pleadings, court orders, judgments and decisions. Additionally, the staff attorney assigned to the matter will typically establish an attorney litigation file, which will include all of the material contained in the Commission litigation file, as well as the attorney's notes, draft memoranda, and correspondence.

ETH5A Commission Complaint Litigation File

Retention: Permanent.

ETH5B Attorney Complaint Litigation File

Retention: Retain seven (7) years after final
disposition of litigation or ten (10) years
after case opens, whichever is later.

ETH6 Preliminary Investigation Files

Pursuant to Commission Regulation 1200, a preliminary investigation may be initiated upon a determination by the Commission's Executive Director that information provided to and/or in the possession of the Commission and/or its staff establishes a reasonable basis to believe that a public official or employee may have violated the Code of Ethics. Notification is provided to the Commission that a confidential preliminary investigative file was opened, but all files, documents or other materials relating to a preliminary investigation shall remain confidential. The preliminary investigation must be completed within sixty (60) days of its initiation, with a report filed with the Commission detailing the results of the preliminary investigation, including whether a complaint will be filed as a result. If a preliminary investigation results in the filing of a complaint, the investigative materials related to the preliminary investigation will be disclosed to the subject of the complaint. In addition to the Commission's Preliminary Investigation File, both the investigator and staff attorney assigned to the matter will maintain individual files. Investigator and attorney files will contain duplicate copies of the materials found in the Commission file, as well as additional documents.

Records in this series may include, but are not limited to, notices, correspondence, memoranda, notes, documents, transcripts, audio or video recordings, timelines, reports, and related meeting minutes.

ETH6A Commission Preliminary Investigation File

Retention: Retain six (6) years unless complaint results in findings of violation, then permanent.

ETH6B Investigator and Attorney Preliminary Investigation Files

Retention: Retain six (6) years.

ETH7 Declaratory Rulings

Pursuant to R.I. Gen. Laws § 42-35-8 and Commission Regulation 1025, any interested person may petition the Commission for a declaratory ruling as to the applicability of any provision of the Code of Ethics or of any regulation or order of the Commission. The Commission shall promptly respond to each such petition. Any ruling disposing of petitions shall have the same status as Commission orders in contested cases. Records in this series may include, but are not limited to, petitions for declaratory rulings and supporting documentation, correspondence relating to petitions for declaratory rulings, Commission staff memoranda, and declaratory rulings issued by the Commission.

Retention: Permanent.

ETH8 Gift Disclosure Reports

From 2000 through 2005, Commission Regulation 5009 required individuals subject to the Code of Ethics to file with the Commission, on or before January 31 of the succeeding calendar year, a list of all gifts received from an "interested person" during the preceding calendar year. Due to subsequent amendments to Regulation 5009, the gift reporting requirement is no longer in effect. Some individuals, however, continued to provide the Commission with gift reports through calendar year 2009. Records in this series may include, but are not limited to, correspondence, reports, logs, listings, spreadsheets and receipts.

Retention: Retain six (6) years.

ETH9 Copy of Annual Lobbying Report

Pursuant to R.I. Gen. Laws § 22-10-9(d), not later than January 15 of each year, every individual, firm, business, corporation, association,

partnership or other group which employed a lobbyist or engaged any person to act as a lobbyist or who was required to register with the Office of Secretary of State during the preceding calendar year shall provide the Ethics Commission, and to any major state decision-maker to whom it provided or promised money or anything of value which in the aggregate exceeds two hundred fifty dollars (\$250.00) within the preceding calendar year, an exact copy of the report required to be filed with the Secretary of State pursuant to R.I. Gen. Laws § 22-10-9(c). The Commission has no jurisdiction to enforce this provision of the law and simply serves as a repository for duplicate copies of these Secretary of State filings. Records in this series may include, but are not limited to, correspondence, reports, logs, listings, spreadsheets, and receipts.

Retention: Retain six (6) years.

ETH10 Municipal Clerks' Certification Lists

Pursuant to R.I. Gen. Laws § 36-14-8(j), each year municipal clerks provide the Commission with updated, certified lists of those public officials who held office during the preceding calendar year. Such officials are required to file annual financial disclosure statements with the Commission no later than the last Friday in April of each year. Information provided on the lists is entered into the Commission's financial disclosure database and causes a financial disclosure statement to be mailed to the public official for completion and submission to the Commission in accordance with R.I. Gen. Laws § 36-14-16. Records in this series may include, but are not limited to, correspondence, notes, certified lists, and requests for information.

Retention: Retain six (6) years.

ETH11 Financial Statement Mailing Lists

Each year, by the last Friday in March, the Commission mails annual financial disclosure statements for the preceding calendar year to those public officials and employees subject to the reporting requirement of R.I. Gen. Laws § 36-14-16. Reports generated from the Commission's financial disclosure database, based upon information provided by municipal clerks, provide a master list of all individuals to whom the Commission mails the requisite financial disclosure statement, as well as their designated mailing addresses. The financial statements are mailed from the State Central Mailing facility no later than the last Friday in April of each year. The Commission retains the master mailing list for each year, as generated from the Commission database. Additionally, reminder notices are forwarded to those officials who fail to file the required financial statements with the Commission. Reports generated from the Commission's financial disclosure database provide a master

list of those individuals who failed to file the required statement, as well as their designated mailing addresses. The reminder letters are forwarded to those individuals from the State Central Mailing facility. Records in this series may include, but are not limited to, Commission database reports, notes, emails, mailing lists, and certifications.

Retention: Retain six (6) years.

ETH12 Certificates of Records Destruction [LEGACY – DUPLICATE]

Certification of Records Destruction forms signed by authorized agency official and submitted to, and signed by, the State Archivist/Public Records Administrator. Certificates authorize the disposal of records listed in this and other applicable schedules. (R.I. Gen. Laws §§ 38-1-10, 38-3-6(j), and 42-8.1-10)

Retention: Permanent.

See Also: This record series is for information only, see GRS6.8B (Certificates of Records Destruction).