

the Ethical Times

The Ask

By Roy Koshy

Picture this: Your boss stops by your desk and asks:

"Hey, have you seen that new [HBO TRUE CRIME DOCUMENTARY] yet?"

"Oh yeah, it was riveting! Truth is truly stranger than fiction!"

"But did you see that [HULU FICTIONAL SERIES BASED ON HBO TRUE CRIME DOCUMENTARY] yet?"

"Of course, it was crazy! Fiction based on truth is truly stranger than the truth, which is already stranger than regular fiction!"

"Absolutely! I decided to take a break from all this real-life inspired strangeness over the weekend, and I binged all the episodes of [UPLIFTING NETFLIX REALITY TV SERIES]. Have you seen it?"



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"No, I haven't yet."

"You *must* check it out so we can talk about it. Oh, and Netflix is saying they might cancel it soon, so be sure to fill out this online petition to save the show!"

"Sure thing, boss!"

What if, instead, your boss stops by your desk and asks:

"Hey, did you see that news article about [STORY ABOUT CRUMBLING CIVILIZATION] this morning?"

"Oh yeah, the world is a scary place!"

"I agree. And then did you see what [ELECTED OFFICIAL] said in response?!"

"I did. The people supposedly running the world are scary too!"

"Absolutely! I decided to DO something about it, and I'm volunteering for [CANDIDATE FOR OFFICE], because they've promised to fix it all! Have you decided who you're voting for this year?"

"No, I haven't yet."

"Oh, I strongly recommend that you check out their campaign platform, and maybe you can even phone bank this weekend! If you want, of course."

"Umm...yeah...uh... sounds good boss. See you this weekend."

Let's assume the best: your boss genuinely wants to bond over his favorite show, and possibly save it; he also wants to bond over a shared sense of outrage at the state of the world, and possibly fix it. We can just as easily assume the worst: your boss wants to leverage his power over you to compel you to be his TV discussion buddy as well as support his chosen candidate. Or maybe it's a little bit of both. Regardless, the television suggestions are merely annoying, while the electioneering is a stark violation of Chapter 68, the City's conflicts of interest law.

Why? Why does the law prohibit a boss from asking a subordinate to petition for a candidate, but not prohibit that same boss from asking their subordinate to petition for the renewal of a TV show?

Broadly, the law prohibits public servants from using City time, City resources, or their City position for political activities – that is, any action in service of a campaign to elect someone or any campaign-related activities (it also prohibits using these for any personal financial gain or business activity). This ensures that public servants do not even ap-

pear to be compromised by any political (or financial) motivations that would interfere with their ability to carry out their City duties impartially and with the taxpayers' needs at heart. Additionally, the law explicitly prohibits public servants from compelling, inducing, or requesting that their subordinates make any political contributions or engage in any political activities, and makes no exception for asking nicely. Finally, the law defines a superior very broadly: not just a public servant's direct boss, but anyone who can affect the terms and conditions of their employment, such as by assigning work, writing evaluations, and approving leave and overtime requests — generally, anyone with a say over whether and how that person is employed by the City or not.

Taken together, these provisions are concerned with the inherent power dynamic that exists between superiors and subordinates in a work environment, with extra energy directed at business and political ends.

But, I hear you say, that still doesn't quite answer the question: Why doesn't the law prohibit superiors from recommending films



and TV shows to their subordinates? As mentioned above, we still have a power differential inherent in the boss/employee relationship, so wouldn't it follow that *any* suggestion from the boss could be coercive?

Well, let's reiterate: if my superior has *any* financial interest in a recommendation – for example, she is employed by the show's production company on the side, or her spouse has an ownership interest in one of the streaming services she's constantly pushing at me – she is indeed prohibited from taking any action on behalf of the above using City time, City resources, or her City position (including polite suggestions to her subordinates).

However, if there is no private financial stake for my boss, then my *not* bingeing that show, petitioning for its renewal, or subscribing to that service is only disappointing my boss on a personal level. The law, rightly, doesn't wade into the murky waters of whether that disappointment rises to the level of an "interest" unless and until there is a specific financial or political impact.

Of course, you can always remind your boss that the conflicts of interest law does not prohibit him from gifting you a streaming service subscription. He probably won't do it, but it's not a violation to give it a shot!

And if you're ever looking for advice on these or other Chapter 68-related questions, it's not only allowed, but *a very good idea* to reach out to our Advice attorneys for confidential, even anonymous, guidance. Just call 212-442-1400, or fill out the [webform](#).



As for me, I'll be waiting for a gift card from my boss, so I can purchase [SPECIAL EDITION BLU-RAY OF PRESTIGIOUS ARTHOUSE FARE]. Any day now...

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Recent Enforcement Cases

Misuse of Confidential Information & Misuse of City Position. To perform her official duties, a Job Opportunity Specialist at the NYC Human Resources Administration (HRA) had access to the Welfare Management System (WMS), which contains confidential information about all persons who have applied for or have been determined to be eligible for certain public assistance benefits, and the Paperless Office System (POS), a database used by HRA to administer these benefits. On 111 dates from 2016 to 2021, the Job Opportunity Specialist misused confidential City information by accessing WMS to view the public assistance records of a person who lived with her (the Tenant). She also misused her City position by, on 16 dates between 2017 and 2019, using POS to take actions on her own public assistance case and that of the Tenant. The Job Opportunity Specialist agreed to resign to resolve agency disciplinary charges related to this conduct. The Board did not impose its own penalty but joined in this three-way settlement.

Prohibited Post-Employment Appearance. A former NYC Department of Citywide Administrative Services (DCAS) Policy Analyst began working as a Development Manager at a solar energy storage and supply company. Within one year of leaving DCAS, the former Policy Analyst sent multiple emails to staff at DCAS Fleet—which is working to convert the City's fleet of 27,000 vehicles to an all-electric fleet by 2040—to request meetings between his new employer and high-level DCAS employees concerning potential collaboration. To resolve his violations, the former Policy Analyst agreed to pay a \$2,000 fine to the Board.

Misuse of City Position. In 2017, an Assistant Principal for the NYC Department of Education (DOE) purchased a house and entered into a mortgage with a teacher at her school. She began supervising that teacher

Recent Enforcement Cases

when she was promoted to Interim Acting Principal in August 2019 and continued supervising the teacher when she became a full Principal in May 2020. They continued to share the mortgage until August 2020. In a three-way settlement with DOE and the Board, the Principal agreed to pay a \$1,000 fine to the Board for misusing her City position by supervising someone with whom she had a financial relationship.

Misuse of City Position. A Resident Buildings Superintendent at the NYC Housing Authority (NYCHA) supervised her domestic partner's work as a seasonal per diem employee for four months. During this time, she approved her domestic partner's timesheets and reassigned him to work at another location, substantially shortening his commute. In a three-way settlement, she agreed to serve a 15-day suspension, valued at approximately \$5,464, for using her City position to benefit her domestic partner and other violations of the NYCHA Code of Conduct unrelated to the conflicts of interest law. The Board accepted the suspension as sufficient and did not impose its own penalty.

Misuse of City Time. A Child Protective Specialist Supervisor for the NYC Administration for Children's Services (ACS), who is responsible for investigating and resolving reported cases of child abuse, performed approximately 13 hours of volunteer work for the Fort Lee Fire Department and Fort Lee Ambulance Corps at times he was required to perform work for ACS. The Board chose to resolve this misuse of City time with a public warning letter, rather than impose a fine, because the Child Protective Specialist Supervisor's outside work was unpaid.

A [searchable index](#) of all COIB Enforcement Dispositions is available courtesy of New York Law School.

Annual Disclosure Reports

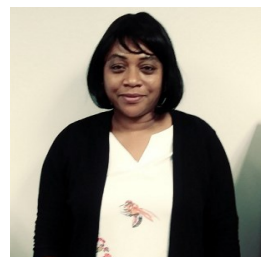


New York City's Annual Disclosure Law requires certain public servants, elected officials, and candidates for elected office to file annual reports disclosing outside positions and financial interests, as well as those of their spouses or domestic partners and unemancipated children.

The 2021 Annual Disclosure Reports of all 2022 City elected officials are now [available for public inspection](#) on the COIB website; 2021 reports for all other required filers are available [upon request](#).

THE PUBLIC SERVICE PUZZLER

Congratulations to **Sandra Collymore** of DOF, who has a lovely and on-brand story about R&B superduo Ashford & Simpson!



The current [contest](#) has you figuring out which word is NOT in the grid. Answers are due **Friday, July 29th**.



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