

**THE CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD**

x

In the Matter of

The Financial Disclosure Appeal of:

FD No. 2016-02

Adam Buchanan

x

**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

Upon consideration of all the evidence presented in this matter, and upon the full record herein, the Conflicts of Interest Board (“COIB” or “the Board”) finds that, pursuant to section 12-110(b)(3)(a)(4) of the New York City Administrative Code and Board Rules § 1-15, Adam Buchanan is required to file a financial disclosure report for calendar year 2014.

This financial disclosure appeal involves Adam Buchanan, an employee of the New York City Department of Transportation (“DOT”).¹ Buchanan was notified by DOT of the requirement, pursuant to Section 12-110(b)(3)(a)(4) of the Administrative Code of the City of New York, to file a financial disclosure report for calendar year 2014,² and he fully and timely appealed that designation as a required filer to the agency head and, after DOT’s denial of his appeal, to the Board. DOT denied Buchanan’s appeal, noting that his work during 2014 “was predominately contract related” and that DOT “relied upon [Buchanan] to review ... contracts on behalf of the agency.”³ DOT identified 21 such contracts and stressed that Buchanan “provided numerous substantive comments and edits to the scope of work and specifications” and was given a wide degree of latitude in the performance of his work, “particularly with respect to [his] review of contracts on behalf of the Staten Island Ferry Division.”⁴ It further noted that although he received “some degree of supervision in the performance of [his] work, [Buchanan’s]

¹ During 2014, Buchanan’s civil service title was Agency Attorney Level I from January 1, 2014, to December 20, 2014, and Agency Attorney Level II from December 21, 2014, to December 31, 2014. See COIB Annual Financial Disclosure Appeal for 2014, dated June 25, 2015 at 2 (“Buchanan Determination”).

² Financial disclosure reports pertaining to a particular calendar year are filed in the next calendar year. For example, reports relating to 2014 were filed in 2015.

³ Buchanan Determination at 2. The words omitted are “and negotiated” as there is no evidence set forth in the Buchanan Determination that Buchanan negotiated contracts.

⁴ *Id.* at 4.

independent judgment, skills and level of experiences were relied upon by managers in the Division of Legal Affairs.”⁵

In his appeal to the Board, Buchanan argued that DOT did not timely notify him of its determination of his appeal⁶ and that his work as an agency attorney during 2014 did not fit the category of employees required to file a financial disclosure report as a result of their contracting duties and responsibilities.⁷ Buchanan specifically argued that he “was not given latitude to take independent, unsupervised action or to make independent decisions” but “was supervised by senior attorneys ... and tasked with ensuring general compliance with the applicable laws and with identifying and raising any outstanding issues.”⁸ He further explained his role as assessing the legality of the matters reviewed and identifying and flagging “issues that required substantive responses from one of the divisions or executives within the Agency;” he also indicated that the main focus of his work “was to ascertain what operational goals the DOT division [drafting the particular contract] was trying to accomplish and ensure that the policy was being implemented in a legal manner.”⁹ He asserted that he did not approve the substantive content of any DOT contract, did not decide to whom any DOT contract would be awarded, and never met with a contractor.¹⁰

Section 12-110(b)(3)(a)(4) of the Administrative Code of the City of New York requires the filing of a financial disclosure report by:

Each employee whose duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances and special permits, as defined by rule of the conflicts of interest board and as annually determined by his or him agency head or employer, subject to review by the conflicts of interest board.

The rules of the Board clarify which employees with the responsibilities set forth in that Section are required to file financial disclosure reports (“contract filers”). Any employee who is **involved in the substantive determination** of any aspect of the contracting process, whether in

⁵ *Id.*

⁶ This argument is without merit. DOT followed the Financial Disclosure Appeals Process (“Process”), which required a decision “within 14 days after the meeting.” Process § B6. According to Process § E6, “[r]eference to a number of days specified as a time period within which an act is required to be done means such number of calendar days.” *See also Matter of Acito, et. al.*, FD Order No. 2012-02 (August 28, 2012) (14-day period commences the date after the event in question). The meeting was held on June 11, 2015, and DOT timely rendered its decision on June 25, 2015.

⁷ August 20, 2015, Appeal of Requirement to File a 2014 Annual Financial Disclosure Report, from Adam Buchanan to the New York City Conflicts of Interest Board (“Buchanan Appeal”).

⁸ Buchanan Appeal at 4. Buchanan further asserts that he “was under constant supervision.” Buchanan Appeal at 5.

⁹ *Id.* at 5.

¹⁰ *Id.* at 6.

the drafting of a contract, the evaluation of a bid, the approval of documents relating to a contract, or the determination of contract policies, rules, or regulations, is required to file.¹¹ Included in the category of contract filers is any employee who “[n]egotiates or **determines the substantive content** of a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order,”¹² “[r]ecommends or determines whether or to whom a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order should be awarded or granted,”¹³ or “[a]pproves a contract, lease, franchise, revocable consent, or concession or change order on behalf of the City or any agency subject to Administrative Code §12-110.”¹⁴ Exempted from this particular category of employees required to file financial disclosure reports are clerical personnel and other public servants who perform only ministerial tasks.¹⁵ Charter §2601(15) defines “ministerial matter” as “an administrative act . . . which does not involve substantial personal discretion.”¹⁶

Adam Buchanan, whose civil service titles were Agency Attorney Level I and Agency Attorney Level II and whose in-house title was Associate General Counsel in 2014, performed duties that year that included legal review of contracts for DOT.¹⁷ In this work, he offered comments, edits, and suggestions concerning DOT draft contracts submitted to him. His editing of these contracts, which removed or altered clauses and directed what wording should be employed, became part of the final contract. For example, for the Rehabilitation of Staten Island Culverts (“SI Culverts Contract”), Buchanan instructed DOT personnel to remove wording limiting required prior construction experience to New York State Department of Transportation or New York City DOT projects and noted that there was “[n]o need to limit this experience to only NYS and NYC as other municipality work should suffice.”¹⁸ He also instructed agency personnel to change the contractual requirement to one project manager.¹⁹ The Specification

¹¹ Board Rules § 1-15.

¹² Board Rules § 1-15(4)(emphasis added).

¹³ Board Rules § 1-15(5).

¹⁴ Board Rules § 1-15(6).

¹⁵ Board Rules § 1-15(b). For example, “public servants who are under the supervision of others **and** are without substantial personal discretion, **and** who perform only clerical tasks . . . shall not, on the basis of such tasks alone, be required to file a financial disclosure report.” (*Id.*; emphasis added) Examples of ministerial tasks include “typing, filing, or distributing contracts, leases, franchises, revocable consents, concessions, or zoning changes, variances, or special permits or calendaring meetings or who identify potential bidders or vendors.” *Id.*

¹⁶ The Board concludes that the Charter definition of “ministerial matter” shall apply to the interpretation of “ministerial tasks” referenced in Board Rules § 1-15(b).

¹⁷ In its determination, DOT listed 21 contracts that Buchanan had worked on during 2014. Buchanan Determination at 2-3. Buchanan concedes that he worked on contracts; his claim is that his work did not rise to the level to be required to file a financial disclosure report. *See* Buchanan Appeal.

¹⁸ Buchanan Determination, Exhibit D (June 3, 2014, email from Adam Buchanan to Junaid Syed, et. al.).

¹⁹ *Id.*

Units agreed with his suggestion,²⁰ and the final version of the contract did not contain this requirement.²¹ In addition, in the contract for Preventative Maintenance of Various Movable Bridges in New York City (“Moveable Bridges Contract”), Buchanan’s asking whether the minimum qualifications for bidders should be changed from “bridges over roadways or railroads” to “bridges over navigable waters”²² resulted in his suggested language becoming part of the final contract.²³ Therefore, his suggested changes on both contracts, which altered the criteria for bidders, could have affected the choice of contractors.

The Board concludes that Buchanan’s duties during the reporting period involves him in contracting responsibilities based on him work drafting DOT contracts, specifically the SI Culvert Contract and the Moveable Bridges Contract. Contrary to Buchanan’s arguments, his work offered substantive comments.²⁴ Thus, his role falls squarely within Administrative Code §12-110(b)(3)(a)(4) and Board Rules §§1-15(a)(5) and (6).²⁵

²⁰ Buchanan Determination, Exhibit D (June 4, 2014, email from Kenneth Woo to Adam Buchanan).

²¹ See Exhibit D (final version of SI Culverts Contract). Buchanan’s contention that he “[r]emoved limitations on minimum qualification in order to foster greater competition” (Buchanan Appeal, Exhibit F) concedes that this alteration was a substantive change to the contract.

²² Buchanan Determination, Exhibit G (September 16, 2014, email from Adam Buchanan to Junaid Syed et. al.). Buchanan contends that his edit sought to clarify the types of structures to be included in the solicitation. Buchanan Appeal, Exhibit G. However, his proposed language that had a different meaning and resulted in a different contractual requirement than that of the original language did not merely seek to clarify the terms of the contract but substantively altered its terms.

²³ Buchanan Determination, Exhibit G (final version of Moveable Bridges Contract).

²⁴ Offering substantive comments, e.g., in the drafting of a contract, requires the filing of a financial disclosure report. See *Matter of Lawrence*, FD Order 2015-01 (March 24, 2015) (DCAS Landscape Architect’s substantive comments on contract document required her to file a financial disclosure report). However, providing only technical assistance that followed pre-set guidelines, was limited to a boilerplate scope of work, and applied agency policies and standards within a pre-defined and pre-approved range of options did not require the filing of a report. See *Matter of Acevedo, et. al., supra*, FD Order No. 2013-01 (April 10, 2013).

²⁵ Buchanan’s argument that the Annual Disclosure Law does not either specifically include agency attorneys as contract filers or identify them as a category of required filers is unpersuasive. The categories of required filers focus on groups of employees with certain duties and responsibilities, e.g., contract filers and policymakers (see Ad. Code § 12-110(b)(3)(a)(2) and (4)). Except for assessors (see Ad. Code § 12-110(b)(3)(a)(6)(codifying state law)), who file a separate state-prescribed form, no specific professions or occupations are named in the statute. Accordingly, the profession of an employee alone does not determine whether she or he files an annual disclosure report. Therefore, the Board has found employees of various professions who perform contracting duties to be required to file when their work fits the standards set forth in the law and not to be required to file when their work does not. See, e.g., *Matter of Akeloko, et. al.*, FD Order 2015-01 (March 24, 2015) (two architects with different duties both required to file); *Matter of Acevedo, et. al.*, FD Order No. 2013-01 (April 10, 2013) (some architects required to

To be exempted from the filing requirement, public servants performing contracting responsibilities must perform **only** ministerial duties.²⁶ Buchanan is directly and substantially involved in determining the substantive content of DOT contracts.²⁷ Thus, he does not perform merely ministerial tasks but engages in activities that are precisely the kind that have the potential to pose a conflict of interest. Therefore, he is required to file a financial disclosure report for calendar year 2014 pursuant to section 12-110 of the New York City Administrative Code and 53 RSNY 1-15.

Conclusion

Board Rules § 1-15 was enacted to, among other things, “limit financial disclosure filing to those public servants who are at risk of conflicts of interests ... [, and] to ensure that rules for determining who is a ‘contract’ filer are uniform and uniformly applied throughout the City.”²⁸ That objective is furthered by requiring Adam Buchanan to file a financial disclosure report.

The work performed by Buchanan is exactly the type that might pose a conflict of interest because a potential contractor could benefit from his input. No DOT employee should be determining the substantive content of a contract with a party with whom the employee has a financial relationship. To determine whether such financial relationships exist, and thus to avoid such conflicts of interest violations, is precisely why financial disclosure by these employees is crucial and is required.

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Administrative Code §12-110(b)(3)(a)(4), that Adam Buchanan file a financial disclosure report for calendar year 2014 no later than March 18, 2016.

file while others are not). The civil service or job title is also not dispositive concerning the requirement to file, as evidenced where some Special Consultants in the Department of Health and Mental Hygiene were required to file a report and others were not. *See Matter of Acito, et. al.*, FD Order No. 2013-03 (September 26, 2013). In addition, contrary to Buchanan’s claim, the offices of the district attorneys and the special narcotics prosecutor are included in the statute as agencies subject to the law, not as specific professions required to file. *See Ad. Code §§ 12-110(a)(2); 12-110(b)(3)(a)(2)-(3).*

²⁶ Board Rules § 1-15(b).

²⁷ Although Buchanan consulted with supervisors and the Law Department concerning **some** of the issues identified in his review of DOT contracts, the mere fact that he was supervised or sought additional legal guidance does not preclude him from being required to file a financial disclosure report if he has determined the substantive content of a contract: public servants who draft contractual documents “under of the direction of a superior but who do **not** determine the substantive content of the document shall not, **on the basis of such tasks alone**, be required to file a Financial Disclosure Report.” Board Rules § 1-15(b)(emphasis added).

²⁸ Conflicts of Interest Board Notice, The City Record, January 30, 2004, at 276.

Adam Buchanan has the right to appeal this Order to the Supreme Court of the State of New York.

The Conflicts of Interest Board



By: Richard Briffault, Chair

Fernando Bohorquez
Anthony Crowell
Andrew Irving
Erika Thomas-Yuille

Dated: February 11, 2016

Cc: Adam Buchanan, DOT
David Fenichel, DOT
Marlene Hochstadt, DOT