

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

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In the Matter of

The Financial Disclosure Appeal of:

FD No. 2019-02

Lydia Lewis

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**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, including all papers submitted to, and recommended findings of, the neutral arbitrator of the Office of Collective Bargaining (“OCB”), the Conflicts of Interest Board (“COIB” or “the Board”) adopts the recommendation of OCB neutral arbitrator Mary O’Connell that, pursuant to § 12-110(b)(3)(a)(4) of the New York City Administrative Code (“Admin. Code”) and Board Rules § 4-04, Lydia Lewis is not required to file a financial disclosure report for calendar year 2017.

Lydia Lewis is an employee of the New York City Department of Environmental Protection (“DEP”). Ms. Lewis was notified by DEP of the requirement, pursuant to Admin. Code § 12-110(b)(3)(a)(4), to file a financial disclosure report for calendar year 2017.<sup>1</sup> She fully and timely appealed the designation as a required filer to the agency head and the Board, and the matter was heard before an OCB neutral arbitrator.<sup>2</sup>

Admin. Code § 12-110(b)(3)(a)(4) 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 her agency head or employer, subject to review by the conflicts of interest board.

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<sup>1</sup> Financial disclosure reports pertaining to a particular calendar year are filed in the next calendar year. For example, reports relating to 2017 were filed in 2018.

<sup>2</sup> The appeal was heard pursuant to the Financial Disclosure Appeals Process, the procedure for hearing appeals that was previously agreed to among COIB, the City’s Office of Labor Relations, and DC 37 (Exhibit A). The OCB neutral arbitrator, Mary O’Connell, submitted her Report and Recommendation (“Lewis Report”) on February 8, 2019 (Exhibit B).

The Rules of the Board clarify which employees with the responsibilities set forth in that Section are required to file financial disclosure reports, colloquially termed “contract filers.” Any employee who is involved in the substantive determination of any aspect of the contracting process, whether in 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.<sup>3</sup> Included in the category of contract filers is any employee who: “Negotiates 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”<sup>4</sup> and “**Recommends 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.”<sup>5</sup> 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.<sup>6</sup> City Charter § 2601(15) defines “ministerial matter” as “an administrative act . . . which does not involve substantial personal discretion.”<sup>7</sup>

Ms. Lewis, whose civil service title was Project Manager, performed duties that included computerized mapping and creating submission packages to towns concerning properties the City was bringing on as part of its acquisition program.<sup>8</sup> In 2017, she worked on site plans for the Ashokan Day Use area, a former roadway that needed clearing to allow for hiking, biking, and other recreational activities.<sup>9</sup> Ms. Lewis was tasked with finding vendors for clearing and landscape work.<sup>10</sup> At the direction of Ira Stern, the Chief of the Natural Resources Division at DEP, Ms. Lewis first conducted a search for local vendors in Ulster County. When that proved unsuccessful, she obtained permission from a supervisor to broaden the search to adjoining counties by using the internet, yellow pages, and an internal office list.<sup>11</sup> When she failed to receive any responses from vendors to her inquiries, Mr. Stern suggested contacting Limber Tree Services, the vendor who was ultimately selected. Notably, Limber Tree Services failed to appear in any of Ms. Lewis’s search results.<sup>12</sup>

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<sup>3</sup> Board Rules § 4-04.

<sup>4</sup> Board Rules § 4-04(a)(4).

<sup>5</sup> Board Rules § 4-04(a)(5)(emphasis added).

<sup>6</sup> Board Rules § 4-04(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.*

<sup>7</sup> The Board applies the definition of “ministerial matter” found in City Charter § 2601(15) to its interpretation of “ministerial tasks” in Board Rules § 4-04(b).

<sup>8</sup> Lewis Report at 6. Ms. Lewis’s office title is Community Resource Specialist.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 7-8.

<sup>12</sup> *Id.*

Based on the record, the Board concludes that there is insufficient evidence to find that Ms. Lewis is required to file a financial disclosure report based on her search for vendors to clear the Ashokan Day Use area. As stated in Board Rules § 4-04(b), “public servants who are under the supervision of others and are without substantial discretion, and who perform only clerical tasks (such as...identify[ing] potential bidders or vendors) shall not on the basis of such tasks alone, be required to file a financial disclosure report.” The evidence demonstrates that Ms. Lewis’s search for and identification of potential vendors were conducted under the direction of her supervisor without any substantial discretion on her part. Thus, her duties fall squarely within the list of ministerial clerical tasks exempting her from the financial disclosure filing requirement.<sup>13</sup>

### **Conclusion**

Board Rules § 4-04 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.”<sup>14</sup> That objective is furthered by not requiring Ms. Lewis to file a financial disclosure report for calendar year 2017.

To be exempt from the filing requirement, public servants performing contracting responsibilities must perform **only** ministerial duties.<sup>15</sup> Ms. Lewis’s duties in 2017 were ministerial in nature as defined by Board Rules § 4-04(b) and, thus, not the kind to have the potential to pose a conflict of interest.

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<sup>13</sup> Board Rules § 4-04(b).

<sup>14</sup> Statement of Basis and Purpose for Board Rules § 1-15 (now Board Rules § 4-04).

<sup>15</sup> Board Rules § 4-04(b) (emphasis added).

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Admin. Code §12-110(b)(3)(a)(4), that Lydia Lewis is not required to file a financial disclosure report for calendar year 2017 “or in future years until or unless the employee’s title, position, duties, or responsibilities change such that he or she should be a required filer.”<sup>16</sup>

The Conflicts of Interest Board



By: Richard Briffault, Chair

Fernando A. Bohorquez, Jr.  
Anthony Crowell  
Jeffrey D. Friedlander  
Erika Thomas

Dated: March 12, 2019

cc: Lydia Lewis, DEP  
Morlan Ty Rogers, DEP  
Aaron Amaral, DC37  
Onya Brinson, DC37

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<sup>16</sup> Financial Disclosure Appeals Process § D14.