

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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Advisory Opinion No. 2011-8

I. SUMMARY

The Honolulu Ethics Commission (“Commission”) approved a stipulation to settle the claims against a city employee, Patricia A. Teruya. The stipulation required, among other things, that Ms. Teruya resign from her position as the city’s Special Events Coordinator no later than December 31, 2011, in consideration for the dismissal of all claims against Ms. Teruya. The Commission believes that resignation, at a minimum, is justified under the circumstances. Ms. Teruya’s alleged violations were numerous and egregious and, in our opinion, make her unfit for continued employment with the city.¹

The Commission found probable cause that Ms. Teruya was in violation of the city’s ethics laws. Specifically, RCH Sec. 11-104, for using her city computer to access 2,135 URL’s², store 23 personal documents, and send and receive 174 personal emails for non-city purposes all within the span of several months. The Commission further found probable cause that Ms. Teruya misused her city position and inherent authority over non-profit organizations and vendors to grant favorable treatment to herself and others, by obtaining letters of recommendation to bolster her city employment; obtaining a \$150 discount on []³; and endorsing

¹ RCH Sec. 11-101 provides:

Elected and appointed officers and employees shall demonstrate by their example the highest standards of ethical conduct, to the end that the public may justifiably have trust and confidence in the integrity of government. They, as agents of public purpose, shall hold their offices or positions for the benefit of the public, shall recognize that the public interest is their primary concern, and shall faithfully discharge the duties of their offices regardless of personal considerations.

² “URL” is defined as a universal/uniform resource locator and is the address of a resource such as a website on the internet that consists of a communication protocol followed by the name or address of a computer on the network. (<http://www.merriam-webster.com/dictionary/url>) (Aug. 14, 2010).

³ The Commission has redacted the names of witnesses and others affected by the misconduct pursuant to HRS. Sec. 92F-13(1) and (3). These redactions are necessary to avoid the frustration of a legitimate government purpose, that is, to help prevent the discovery of the identification of the witnesses, reduce the risk of retaliation, and encourage other witnesses and complainants to cooperate with the Commission.

her friend for [] contracts at city-sponsored events. Probable cause for a violation exists when the facts and circumstances within one's knowledge and of which one has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been committed.⁴

This advisory opinion is not a decision on the facts and law resulting from a contested case hearing because the matter was settled. Ms. Teruya denies any wrongdoing in violation of the city's ethics laws, and this settlement is not an admission of any wrongdoing on her part. This opinion reflects the investigation conducted by the Commission's staff, the positions of Ms. Teruya and describes the specific possible violations of law discovered as a result of the investigation and is rendered pursuant to the Revised Ordinances of Honolulu, Section 3-6.7(c).

II. FACTUAL BACKGROUND

Ms. Teruya was an employee with the city as a Community Relations Specialist III in the Department of Customer Services. The city hired Ms. Teruya on an annual personal services contract.⁵ Ms. Teruya's position with the city was also referred to as the "Special Events Coordinator."⁶ As part of Ms. Teruya's duties as a Special Events Coordinator, she was required to, among other things, plan, coordinate, and supervise the activities and personnel assigned to special events such as the Honolulu City Lights, Flavors of Honolulu, and a variety of ceremonies, dedications and groundbreakings attended by the Mayor or Managing Director.

Ms. Teruya was the city's only Special Events Coordinator since 2006. Ms. Teruya had significant discretionary power to provide and coordinate city department logistical support for city-sponsored events such as Customer Services Department ("CSD") for printing of flyers and posters for the event, Department of Facility Maintenance ("DFM") to hold meetings in city buildings and offices and obtaining equipment, Honolulu Police Department ("HPD") for security and roadblocks, Department of Parks and Recreation ("DPR") for park permitting and trash cleanup, and Emergency Services Department ("ESD") for emergency medical response issues. Ms. Teruya also worked closely with the Office of Economic Development ("OED") to coordinate all the Hawaii Tourism Authority-OED Community Product Enrichment Program grant events⁷ and with the Office of the Mayor to coordinate the stage, programming and

⁴ See State v. Maganis, 109 Hawai'i 89, 93 (Haw. App. 2005) certiorari granted 109 Hawai'i 32 (Haw. 2005) opinion affirmed in part, vacated in part 109 Hawai'i 84 (Haw. 20005); U.S. v. Lim, 984 F.2d 331, 337 (9th Cir. 1993) certiorari denied 508 U.S. 965 (1993); U.S. v. Jit Sun Loo, 478 F.2d 401, 404 (9th Cir. 1973); Sunn v. City & County of Honolulu, 852 F.Supp. 903, 908 (D. Haw. 1994). See also, Honolulu Ethics Commission Advisory Opinion No. 2008-4; Honolulu Ethics Commission Procedures for Handling Requests for Advice and Complaints (Sep. 21, 2006).

⁵ See Personal Services Basic Contract Employer-Employee (Jun. 15, 2010) Bates Nos. 000665-000673.

⁶ See Statement of Duties and Responsibilities Bates Nos. 000665-000673.

⁷ Many city-sponsored events are funded by the Hawaii Tourism Authority in partnership with the city's Office of Economic Development ("HTA-OED"), County Product Enrichment Program. HTA-OED solicits Requests for Proposals from non-profit organizations to hold community-based programs which provide unique, authentic and

drafting scripts for the Mayor. Ms. Teruya also ensured that vendors had the proper insurance and permits to participate in an event.

Over the years, Ms. Teruya worked with numerous non-profit organizations and vendors to coordinate city-sponsored events. Because of their own lack of expertise, some non-profit organizations often relied on Ms. Teruya's experience and recommendations to obtain various vendors. Ms. Teruya's recommendations often times had the practical effect of selecting the vendors for the non-profit groups sponsoring the event.⁸ Similarly, over the years, vendors often relied on Ms. Teruya's experience and recommendations to non-profits for invitations to participate in city-sponsored events.⁹

A. Ms. Teruya requested letters of recommendation from non-profit organizations and vendors who she worked with because of her Special Event Coordinator duties.

During the fall of 2010, Ms. Teruya used her city email and position to ask non-profit organizations and vendors to provide her with letters of reference and commendation to support her position during the new administration and to counter complaints about her to the Mayor's Office and the Ethics Commission.¹⁰

Food vendors [Vendor X] and [Vendor Y], among others, responded to Ms. Teruya's request with glowing letters of commendation.¹¹ After receiving the letters, Ms. Teruya

desired visitor experiences to improve and enrich Hawaii product offerings. Some of these popular events include: Waianae Coast Sunset on the Beach, Hawaii Book and Music Festival, Haleiwa Arts Festival, and the Rediscover the Waimanalo Country Fair. Ms. Teruya participates in the coordination of all these events.

⁸ See email from P. Teruya to [] and [] re: [] (Nov. 5, 2010) (Teruya replies in response to [] question regarding needing an additional food vendor, "Not a problem, I know that vendor who does this type of food.") Bates Nos. 000817-000821; email from [] to [] re: [] field light request for event at Honolulu Hale on November 5th (Sep. 13, 2010) (asking Teruya to recommend vendors who can provide field lights for their event) Bates Nos. 000822-000826; email from [] to P. Teruya re: Vendor Request (Oct. 28, 2010) ("I received a call from []...She is interested in selling cotton candy, shave ice, popcorn at the Block Party. As this is your area, I told her I would forward her request to you...") Bates No. 000827.

⁹ See email from [] to P. Teruya re: [] Block Party (Nov. 15, 2010) (expressing interest in a food booth at the [] Block Party) Bates Nos. 000828-000832; email from [] to P. Teruya re: Events 2010 (Nov. 17, 2010) (requesting an opportunity to participate in the 2010 [] City Lights) Bates Nos. 000833-000835; email from [] to P. Teruya re: [] City Lights – Vendor info please (Nov. 16, 2010) (informing Teruya of interest in providing a vendor booth at [] City Lights.) Bates Nos. 000836-000838; email from [] to P. Teruya re: Misc...(Dec. 9, 2010) ("Mahalo for the invitation again to participate in this years [] City Lights") Bates Nos. 000839-000841.

¹⁰ See email from [] to [] re: [Department] at [Festival] (Sep. 13, 2010); email from to re: [] field light request for event at Honolulu Hale on November 5th (Sep. 13, 2010); email from Teruya to []@aol.com, et al re: Reference Letter (Sep. 13, 2010); Staff interview of P. Teruya Bates Nos. 000846.

¹¹ See email from [] to P. Teruya re: Reference Letter (Sep. 15, 2010) Bates No. 000023-000024; email from [] to P. Teruya re: Letter of Support (Sep. 10, 2010) Bates No. 000020.

recommended and invited Vendors X and Y to be the food vendors for [] City Lights Block Party sponsored in part by the city and the Non-profit C¹². Vendors X and Y accepted the invitation.¹³

As the date got closer for the [] City Lights Block Party, Vendor Y asked Ms. Teruya if his/her two food booths would be next to each other. Even though the president of Non-profit C instructed Ms. Teruya to ensure Vendor Y's food booths be located in close proximity to each other, Ms. Teruya ignored Vendor Y's question. Instead Ms. Teruya used her city email and position to ask Vendor Y if he/she had written another letter of support for Ms. Teruya.¹⁴ After not hearing back from Vendor Y, Ms. Teruya inquired again: "[Vendor Y] – Do you have a statement letter yet? I really appreciate your support – [name] and [name] has (sic) made more and more false statements."¹⁵

B. Ms. Teruya used her city position and email to obtain a discount on the price to rent bouncers for her church event.

Ms. Teruya frequently recommended, and non-profit organizations selected, [Vendor Z] as a [] vendor for city-sponsored events. In the fall of 2010, Ms. Teruya used her city email address and position to ask Vendor Z to provide a 50% discount on [] for Ms. Teruya's church event. Vendor Z agreed to provide the discount to Ms. Teruya's church.¹⁶

C. Ms. Teruya trained, groomed, recommended, and introduced [Vendor A], a close personal friend, as [position] to non-profit organizations for city-sponsored events.

As discussed above, Ms. Teruya often recommended vendors to non-profit organizations for city-sponsored events. Non-profit organizations used Vendor A, Ms. Teruya's close friend, as the [] for several city-sponsored events including, but not limited to: 2010 [] Sunset on the

¹² At that time, Ms. Teruya was an officer for the [] as well as the City's Special Events Coordinator assisting [] with the 2010 []. See email from Teruya to [] re: [] (Nov. 4, 2010) Bates No. 000849; email from Teruya [], [] re: KCL (Nov. 4, 2010) Bates Nos. 000033-000034.

¹³ Email from [] to P. Teruya re KCL (Nov. 4, 2010) ([] responded "ITS SO GOOD TO HEAR FROM YOU. YOU CAN COUNT ON ME.") Bates No. 000851; Email from [] to P. Teruya re: KCL (Nov. 5, 2010). ([] responded, "[] will be blessed to accept your invitation in helping to celebrate the 10 years of [] Christmas Block Party with our food booth, count us in.") Bates Nos. 000033-000034

¹⁴ See email from P. Teruya to [] re: [] City Lights Program Map Site (Dec. 13, 2010) (Teruya responded, "Sorry I did not get this email till today when I returned to work-oopps (sic)...anyway, I text (sic) you and really appreciate if you could please oput (sic) everything down [and names] of individuals who are attacking me and my character. I trust in you as a friend and more than a good friend and really need to put a stop to these personal personal (sic) talks about me.") Bates No. 000036-000039.

¹⁵ See email from P. Teruya to [] re: []City Lights Program Map Site (Dec. 13, 2010) Bates No. 000036-000039.

¹⁶ See email strand from [] to [] re: [Equipment] (Oct. 28, 2010) Bates Nos. 000040-000048.

Beach, 2009 and 2010 [] Sunset on the Beach, 2008 and 2009 [] Fair, 2009 [] Sunset on the Plains, 2009 [] City Lights, and 2010 [] Festival.¹⁷

Ms. Teruya and Vendor A became close friends in 2005 and even shared the same house for three and a half years when Vendor A dated [].¹⁸ Vendor A often accompanied Ms. Teruya to parties, events, and festivities.¹⁹ Ms. Teruya introduced Vendor A to non-profit organizations because he/she was “like a son/daughter” to Ms. Teruya. For example, Ms. Teruya asked Vendor A for information so Ms. Teruya could “sell” Vendor A to organizations.²⁰ In an email, Ms. Teruya writes:

As you both are aware I’m trying to get Vendor A to do the [] at most of the Sunset events (instead of []) and [] (instead of [])...I feel it’s time for new “young blood”. So please work with me as we start meeting the organizations...The first event is June at Ala Moana Beach Park along with the Dragon Boat Race and Sunset event. I will be meeting w/ the coordinators and have already mentioned [individual] will not be doing [position] and I have been working w/ [Vendor A]. So, with that, maybe you can put up some proposal (sic) when I start meeting organizations before bringing you in to meet with them or visa-versa...

Email from P. Teruya to [] and Vendor A re City Events 2009 (Feb. 19, 2009). Ms. Teruya alleged that she groomed Vendor A in the [] field such that his/her skills were comparable with other more experienced [positions] vying for city-sponsored events. Ms. Teruya alleged that she taught Vendor A [list of skills pertinent to position].²¹

In regard to the 2010 [Event A], the non-profit group sponsoring the event, [Non-profit A], did not need or want Vendor A’s services, but paid \$1,300 for his/her services nonetheless.²²

¹⁷ Staff interview of P. Teruya (Feb. 3, 2011).

¹⁸ Staff interview of P. Teruya (Feb. 3, 2011).

¹⁹ “I observed as you [Teruya] introduced him/her at various community meetings and touted Vendor A’s skills and abilities. I witnessed as you groomed him/her in his/her attempt to establish himself/herself as a partner in community and City co-sponsored events. With your strong support he/she was able to obtain contracts at various sunset events, the [] City Lights Program and other City co-sponsored events. After acquiring these contracts, I watched you coach him/her as [position] and observed as you assisted him/her in carrying out his/her duties and responsibilities...I also observed you make substantial efforts to expand his/her network of business contacts and associates and introduced him/her to many of your friends and acquaintances.” Email from [] to P. Teruya (Sep. 23, 2010) Bates No. 000052.

²⁰ See email from P. Teruya to Vendor A Re: Your Proposal (Mar. 9, 2009) (“Hope you’re doing fine, I need to have your description for [position]. I’m meeting with a lot of the organizations, so I can (sic) sell you if I don’t have anything. Do you have a photo that you can send over with your proposal?”) Bates No. 000049.

²¹ Staff interview of P. Teruya (Feb. 3, 2011).

²² “I told Vendor A, ‘Vendor A, when I was introduced to you,’ I said, ‘no offense...I never knew you came with a price.’ I said, ‘But, because we’re in the middle of this,’ I said—and his/her price was \$1300. What Vendor A does

In addition, Ms. Teruya also specifically invited Vendor A to be the [position] for the 2008 and 2009 [Event B].²³

D. Ms. Teruya had ample notice to only use city resources for purposes that were related to her official city position.

As early as August 22, 2003, the Executive Director and Legal Counsel to the Ethics Commission, orally advised Ms. Teruya not to use city resources for non-city projects. This was in response to a complaint, EC No. 03-67, that had been submitted in regard to Ms. Teruya sending out emails soliciting help for [Politician A's] recycling drive.

In June 2010, Matthew Viola²⁴, who was at the time the contract attorney for the Ethics Commission, contacted Ms. Teruya regarding two complaints the Commission received alleging that Ms. Teruya misused city resources by sending emails from her city email address while on city time to encourage attendance at a Neighborhood Board meeting related to Council Resolution No. 10-114 regarding a Nanakuli Regional Park.²⁵ Ms. Teruya admitted that she had sent the emails as Chair of her Neighborhood Board and that she was confused because the Neighborhood Board program was created under the Revised Charter of Honolulu.²⁶

On July 9, 2010, Ms. Teruya met with Customer Services Department Director Gail Haraguchi, a Deputy Corporation Counsel, and Labor Relations and Training Division Chief, Department of Human Resources, Lissa Lau to address a complaint that had been submitted against Ms. Teruya for using her city email account for Nanakuli Neighborhood Board matters.²⁷

is what I do, and I don't need (sic) pay \$1300...he's/she's like a [position]. He/She coordinates the band. He/She negotiates the prices and stuff like that. I do that on my own...he/she did the public press release...I do that normally, but I had to pay \$1300 for Vendor A. Staff interview of [] (Dec. 20, 2010).

²³ In 2008, 2009, it was Patty Teruya to (sic) bring in a gentleman/lady name (sic) Vendor A to do the [position] (sic) and the Non-profit B paid her \$1,300 to cover the [] plus all meals and drinks. Because this [] was Patty Teruya's friends (sic) and [], we felt that he/she was good and watching Patty trained (sic) him/her to do the [] was amazing. Vendor A has grown because of Patty bringing him/her in to all the City events and introducing him/her to many groups in the community. So, from there Vendor A did well and we all got along so well and we paid him/her for the 2 years that he/she covered the [] and in fact last year, Patty and Vendor A got a beach house to stay together in Waimanalo and attended parties and clubs together." Letter from [] to C. Tutto (Dec. 22, 2010) Bates Nos. 000053-000056.

²⁴ Matthew J. Viola was appointed as a Judge of the District Family Court, First Circuit, on August 26, 2010. In this opinion he is referred to as Mr. Viola.

²⁵ See Email from M. Viola to P. Teruya re Ethics Commission EC Nos. 10-163 and 10-166 (Jun. 18, 2010) Bates Nos. 000016-000018, 000722-000724.

²⁶ See email from P. Teruya to M. Viola (Jun. 21, 2010) Bates Nos. 000016-000018, 000722-000724.

²⁷ See G. Haraguchi Microsoft Outlook Calendar from Jun. 28-Jul. 4, 2010, and Jul. 5-Jul. 11; Bates Nos. 000532-000533

During this meeting, Ms. Teruya was told not to use her city email for matters that were not part of her official duties as Special Events Coordinator. Ms. Teruya acknowledged the direction and stated that she would never do that again as it was a strong lesson for her. No disciplinary action was taken during this meeting pending the Ethics Commission investigation by Mr. Viola.

On August 24, 2010, Mr. Viola informed Ms. Teruya that RCH Sec. 11-104 “prohibits city employees from using city resources, including their city email addresses and city time for personal or non-city purposes.”²⁸ Mr. Viola also informed Ms. Teruya that “a non-city purpose is a purpose that is unrelated to or falls outside the scope of a city employee’s official duties.” He clarified that, “any use of your city email address and city-compensated time must be used for purposes related to your duties as Special Events Coordinator.” Mr. Viola also explained that, even though the Neighborhood Board is a city-related entity, the work for the Board does not fall within the scope of her official city duties as Special Events Coordinator and therefore her use of her city email for Neighborhood Board materials was a violation of RCH Sec. 11-104. Id.

Ms. Teruya knew or should have known that 2,662 misuses of the city’s computer, email account, and internet were in violation of the ethics laws and also in violation of the city’s internet policy and guidelines (Sep. 23, 2002), which specifically states each time a city employee accesses the internet on a city computer:

INTERNET access using City resources is for work-related purposes only. Non-compliance to the City's Internet Guidelines and Procedures may result in the revocation of internet privileges or other appropriate disciplinary action including reprimand, suspension, termination of employment, and prosecution if warranted.²⁹

E. Despite instruction from several departments and her agreement not to misuse city resources, Ms. Teruya continued to do so.

On December 16, 2010, Ethics Commission Staff formally requested Ms. Teruya’s electronic files as part of the investigation based on the information contained in several complaints against Ms. Teruya.³⁰ On December 30, 2010, the Department of Information Technology (“DIT”) pursuant to DIT Security Policy and Guidelines (Feb. 3, 2003)³¹, provided Staff, among other things, a log of internet usage on Ms. Teruya’s city computer from October 14, 2010 through December 22, 2010, the hard drive from Ms. Teruya’s city computer, and emails contained on her city computer from approximately August 2010 through December 24,

²⁸ See Email from M. Viola to P. Teruya re Ethics Commission EC Nos. 10-163 and 10-166 (Aug. 24, 2010) Bates Nos. 000016-000018, 000722-000724.

²⁹ See City and County of Honolulu Employee Internet Use Policy, Bates No. 000755; 000756-000762.

³⁰ EC Nos. 09-141(w), 10-166, 10-217, 10-311, 10-314, 10-403, and 10-408.

³¹ Bates Nos. 000494-000496.

2010. Staff’s review of the electronic files revealed that Ms. Teruya continued to use her city computer and email for purposes unrelated to her work as the Special Events Coordinator even after receiving the prior warnings on August 22, 2003, July 9, 2010, and August 24, 2010.

1. Ms. Teruya used her city computer to access at least 2,135 URLs that were unrelated to her city position.

The internet log produced by DIT consisted of URLs accessed from Ms. Teruya’s computer from October 14, 2010 through December 22, 2010. The following sites were most clearly identified as unrelated to Ms. Teruya’s official duties as the Special Events Coordinator:

Category/Site	Number of hits
Internet Shopping Including:	118
• Victoria’s Secret	27
• Gerbers	31
• Wetseal	33
• Apple	88
Job/Career Searches	104
Personal Campaign Website (e.g., members.webs.com; pattyteruya.webs.com)	1,603
Personal email site (e.g., mail.google.com)	365
Social Networking (e.g., facebook.com)	275

2. Ms. Teruya used her city computer hard drive to store at least 23 personal documents.

The hard drive produced by DIT contained Ms. Teruya’s personal folders from her city computer. 23 documents were most clearly identified as unrelated to Teruya’s official duties as Special Events Coordinator including documents related to: [Non-profit B]³², [Non-profit C]³³, [Person B], political support for Bill 37, Neighborhood Board matters, and other personal subjects.

³² Ms. Teruya was the secretary for Non-profit B from approximately 2000 through mid-December 2010. Ethics Commission Staff Interview of P. Teruya (Feb. 3, 2011). Non-profit B received over \$120,000 from the Leeward Coast Community Benefits Program (“LCCBP”) from Fiscal Year 2007 to the present. Non-profit B was also the recipient of Hawaii Tourism Authority-Office of Economic Development Community Product Enrichment Program awards from the City from 2006-2010 in the amount of \$66,000.

³³ Ms. Teruya was the secretary of the Non-profit C from 2009 to approximately mid-December 2010. See Amended and Restated Articles of Incorporation for the Non-profit C (Mar. 4, 2009). Non-profit C received \$60,000 from LCCBP in 2009.

3. Ms. Teruya used her city email address to receive and send at least 174 personal emails.

DIT provided Staff with email files from October 14, 2010 through December 23, 2010. These files contained approximately 174 emails that were not related to Ms. Teruya's position as Special Events Coordinator including:

- Person B's job hunt
- Neighborhood Board activities
- Political activities including, emails supporting [Politician B's] campaign, [Politician C's] campaign, and her own campaign for City Council.
- Shopping
- [] Family Foundation
- Ads selling Teruya's private boat
- [] Invitations

II. ANALYSIS AND DISCUSSION OF POSSIBLE VIOLATIONS OF RCH SEC. 11-104

RCH Section 11-104, which reflects the city's fair and equal treatment policy, prohibits elected or appointed officers or employees from using their official positions to secure special treatment for them or any other person. "Special treatment" may be either to the advantage or disadvantage of another. The particular problem with a government employee who has the power to help a nonprofit's event run smoothly or a vendor sell its' services is that some may feel coerced by the employee while others may expect to be favored.

In Advisory Opinion No. 2004-2, the Commission opined that a violation of RCH Sec. 11-104 occurs when a city officer with significant discretionary authority to affect the interests of vendors, requests donations from vendors in his private capacity as an officer for his non-profit organization because there is a possibility that the request may appear to or actually coerce vendors for donations. Further, the Commission was also concerned that some vendors may "expect special treatment as a result of their contribution."

There is a possibility that a request for donations from the head of Department's procurement process may appear to or actually coerce donors that are also current or potential Department vendors. Another concern is that some donor/vendors may expect special treatment as a result of their contribution to Nonprofit's conference. Should these circumstances occur, they would constitute a violation of the City's fair and equal treatment policy, Section 11-104, Revised Charter of Honolulu.

Advisory Opinion No. 2004-2; Bates Nos. 000521-000524. The Ethics Commission determines if there is a violation of RCH Sec. 11-104 based on an objective standard – whether a reasonable person would perceive favoritism. See Advisory Opinion No. 2008-4 ("the public

may reasonably perceive that some candidates may be favored and others not...Consequently, the petition signing practice at least appears to allow Clerk's Office staff to support one political candidate over another and, therefore, should be discontinued as contrary to RCH Section 11-104 and the *Guidelines*."); see also Advisory Opinion Nos. 2004-7; 2008-2.

In Advisory Opinion No. 2004-2, the Commission found that the city officer did not violate RCH Sec. 11-104 when he solicited donations from vendors in his private capacity for his non-profit organization because there were sufficient safeguards in place against special treatment. The Commission found that the following safeguards were effective in avoiding an appearance of special treatment including, but not limited to: (1) the officer removed himself from the operations of the procurement process that directly affected the interest of the vendors; (2) the solicitations were made only on the nonprofit letterhead stationery, signed by the officer without reference to the officer's city title or position; (3) communications were to be addressed to the nonprofit's address; and (4) the nonprofit supported many programs that were of significant benefit to government public safety departments, and therefore, ultimately benefitted the public.

Finally, the Commission recommended an additional safeguard by adding a disclaimer to the non-profit donor solicitation letters that would create a record of understanding between the non-profit, the officer, and the vendors. The Commission recommended that the language in the disclaimer state, "a contribution, or lack thereof, will not be taken into account should the vendor offer services or products to the Department."

A. Use of city position and email to provide special treatment to herself when she solicited letters of recommendation from non-profit organizations and vendors whom she assisted in city-sponsored events.

Ms. Teruya used her official city position and city email account to request the letters of recommendation, which were intended to help her advance her career or protect her from scrutiny by the Commission. Unlike the city officer in Advisory Opinion No. 2004-2, Ms. Teruya failed to take any safeguards against special treatment when she requested letters of recommendation from non-profit organizations and vendors. Ms. Teruya did not have any disclaimer stating that a letter of recommendation, or lack thereof, will not be taken into account should the vendor or non-profit require Ms. Teruya's services in providing logistical support or recommendations for city-sponsored events. Ms. Teruya continued to actively recommend vendors for events. Also, the letters of recommendation were solely to preserve or advance Ms. Teruya's career – they served no public purpose.

Ms. Teruya's request for the letters of recommendation contravenes the public policy supporting RCH Sec. 11-104 and described in Advisory Opinion No. 2004-2. That is, at a minimum, each request had the appearance of coercing non-profits and vendors to provide Ms. Teruya with positive letters of recommendation. A reasonable person could believe that non-profits may have felt obligated to provide Ms. Teruya with positive letters because Ms. Teruya was the only city employee with broad discretion to coordinate the necessary and important city logistic support for their event.

Similarly, a reasonable person could believe that vendors also felt obligated to provide Ms. Teruya with positive letters because Ms. Teruya's vendor recommendations carried tremendous weight with the non-profit organizations sponsoring the event. A negative letter or no letter from a vendor for Ms. Teruya may mean a negative recommendation or no recommendation for the vendor to the non-profit organization. For example, in the case of Vendors X and Y, a reasonable person could believe that Ms. Teruya specifically recommended and thereafter invited those vendors to the [] City Lights event because they provided her with letters of support.

Further, a reasonable person could believe that Ms. Teruya insinuated that Vendor Y's booths would not be next to each other unless Vendor Y provided Ms. Teruya with an additional statement of support. Again, unlike the city officer in Advisory Opinion No. 2004-2, Ms. Teruya failed to take any safeguards against an appearance of favoritism. Ms. Teruya could have at least used personal letterhead and email account when contacting vendors for letters of recommendation, but she did not. Instead, she used her city email, title and position which gave the appearance of coercion.

B. Use of city position and email to obtain special treatment for her church when she solicited and received a 50% equipment discount from Vendor Z.

Similarly, a reasonable person could believe that Vendor C, who worked closely with Ms. Teruya on numerous city-sponsored events, was aware that Ms. Teruya's recommendations to use Vendor Z's products and services carried weight with the non-profit organizations. Since 2006, Ms. Teruya had been the only city Special Events Coordinator and had broad discretion in carrying out her city duties. The Commission has evidence that vendors request Ms. Teruya "get them in" on events and even referred to the city-sponsored events as Ms. Teruya's "wonderful events." In addition, Ms. Teruya requested the discount by using her city email and official city title, giving the impression that the request may have been related to her city position.

Here, a reasonable person could believe that Vendor Z felt compelled to provide Ms. Teruya's church with a 50% discount off the price to rent [] because of Ms. Teruya's position with the city. Ms. Teruya did not ask Vendor Z using her personal email address or on [church] letterhead. She used her city email, title and position, which, again gives the appearance of coercion.

C. Use of city position to provide special treatment to Vendor A as a [position] vendor for city-sponsored events.

Ms. Teruya used her city position to give Vendor A a competitive advantage over other vendors vying for city-sponsored events. Ms. Teruya and Vendor A had a very close personal relationship since 2005. Ms. Teruya stated that Vendor A was like a "son/daughter" to her and that was part of the reason why she introduced him/her to non-profit organizations and groomed him/her in the entertainment/stage management industry. Ms. Teruya specifically asked Vendor

A for additional information so that Ms. Teruya could “sell” Vendor A to the organizations. Ms. Teruya admitted that she was trying to get Vendor A to do the [] work at the events instead of others.

A reasonable person could believe that non-profits hired Vendor A based on Ms. Teruya’s grooming, introduction, and recommendations. In the case of the 2010 Event A, Ms. Teruya introduced and recommended Vendor A to Non-Profit A as a personal friend and [position]. Non-profit A did not need Vendor A’s services, but was compelled to pay him/her \$1,300 as vendor [] in order to maintain their professional business reputation in the community.

In addition, [], president of Non-profit B, admitted that he/she hired Vendor A as the [position] for Event B two years in a row based on Ms. Teruya’s close relationship with Vendor A and Ms. Teruya’s special training and grooming. Ms. Teruya used her city position to grant favorable treatment to Vendor A.

D. Use of city resources for purposes unrelated to her position as city Special Events Coordinator.

RCH Sec. 11-104 prohibits city employees from using city resources including city email addresses and city time for personal or non-city purposes. See Guidelines on the Use of City Resources (Oct. 9, 2007). “In general, the authority and duties associated with your position determine whether you are using city resources for a city or a non-city purpose. If you use city resources to do something that is within the scope of your job authority and duties, it is likely that you are using those resources for a city purpose.” Id. “In general, a city employee or officer violates the ethics laws if he or she *knew or should have known* that his or her conduct would constitute a violation.” Advisory Opinion No. 2004-7.

In the present case, Ms. Teruya used the city internet, email, computer and city paid time for shopping, job hunting for Person B, supporting political candidates (including herself), social networking, Non-profits B and C matters, Neighborhood Board issues, the [] Family Foundation, ads to sell her boat, and [] Club invitations. None of these were related to her city duties. She had been forewarned not to use city resources for purposes that were unrelated to her official city position by Ethics Commission staff, Department of Human Resources, and her own Director of the Customer Services Department. Any reasonable person in Ms. Teruya’s position would know or should have known that she should not have misused city resources.

III. CONCLUSION

A. The stipulation requiring Ms. Teruya to resign from her position is justified.

The Commission and Ms. Teruya agreed to settle this matter. The Commission believes that resignation, at a minimum, is justified under the circumstances. Ms. Teruya’s alleged violations were numerous and egregious. These characteristics make Ms. Teruya unfit for continued employment with the city. Ms. Teruya agreed to waive her opportunity to be heard at

a contested case hearing before the Ethics Commission and to resign from her city position as Special Events Coordinator no later than December 31, 2011. The Ethics Commission agreed not to pursue reimbursement for Ms. Teruya's alleged misuse of city time or resources and to dismiss all claims against Ms. Teruya.

The Commission believes that Ms. Teruya's resignation from her city employment, at the very least, is justified in this circumstance. In determining an appropriate penalty for violations of the city's ethics laws, the Commission weighs the twelve mitigating and aggravating circumstances of the individual case: the nature and seriousness of the violation, the duration of the violation; the effort taken by the officer or exempt employee to correct the violation; the presence or absence of any intention to conceal, deceive or mislead; whether the violation was negligent or intentional; whether the officer or exempt employee demonstrated good faith by consulting with the ethics commission or another government agency or an attorney; whether the officer or exempt employee had prior notice that his or her conduct was prohibited; the amount, if any, of the financial or other loss to the city as a result of the violation; the value of anything received or sought in the violation; the costs incurred in enforcement; and whether the officer or exempt employee was cooperative in the investigation. See RCH Section 11-106 and ROH Section 3-8.5(a); ROH Sec. 3-8.5(d)(2).³⁴ Below we examine the factors in light of Ms. Teruya's conduct.

(1) Nature, seriousness, and duration of the violations

Ms. Teruya's alleged misconduct spans a wide spectrum of violations. The nature of each of the violations can be categorized into the following: (1) Misuse of City Computer, Internet and Email Account (2,666 violations); (2) Misuse of City Position to Provide a Special Advantage to Self (7 violations); and (3) Misuse of City Position to Provide a Special Advantage to Others (4 violations).

³⁴ Section 11-106. Penalties and Disciplinary Action for Violations –

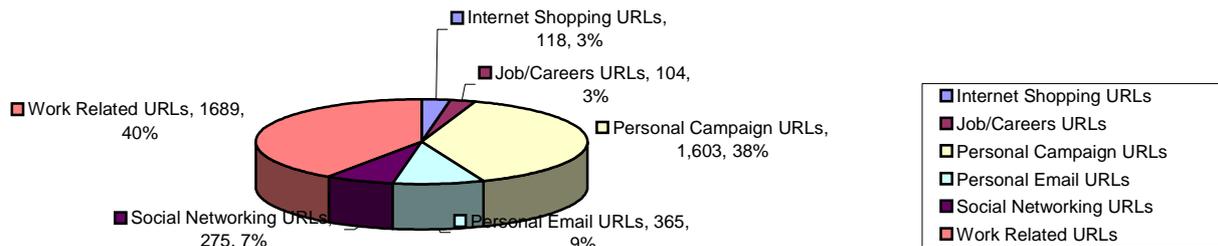
The failure to comply with or any violation of the standards of conduct established by this article of the charter or by ordinance shall be grounds for impeachment of elected officers and for the removal from office or from employment of all other officers and employees. The appointing authority may, upon the recommendation of the ethics commission, reprimand, put on probation, demote, suspend or discharge an employee found to have violated the standards of conduct established by this article of the charter or by ordinance.

- | | |
|------------|--|
| Sec. 3-8.5 | Violation--Penalty. |
| (a) | The failure to comply with or any violation of the standards of conduct of this article or of Article XI of the revised charter shall be grounds for impeachment of elected officers and for the removal from office or from employment of all other officers and employees. The appointing authority may, upon the recommendation of the ethics commission, reprimand, put on probation, demote, suspend or discharge an employee found to have violated the standards of conduct established by this article. Nothing contained herein shall preclude any other remedy available against such officer or employee. |

The majority (2,666) of Ms. Teruya’s alleged ethical violations are a result of misuse of her city computer, email, and internet access for personal purposes. Based on the evidence summarized in the chart below, 60% of the URLs Ms. Teruya accessed over this approximate three month span were unrelated to work. The nature and scope of this abuse is egregious. It is disturbing that Ms. Teruya accessed URLs related to her personal City Council campaign website almost as many times (38%) as she accessed the internet for her official duties.

P. Teruya Internet Activity: 10/14/2010 – 12/22/2010

Total URLs (work related and unrelated)	Unrelated to work - Internet Shopping URLs	Unrelated to work - Job/Career Search URLs	Unrelated to work - Personal Campaign URLs	Unrelated to work - Personal Email URLs	Unrelated to work – Social Networking URLs
4,154	118	104	1,603	365	275



Ms. Teruya’s city computer hard drive contained at least 23 documents that were most clearly identified as unrelated to her official duties. Similarly, Ethics Commission staff discovered approximately 174 emails sent and received from Ms. Teruya’s city email account that were unrelated to Ms. Teruya’s city duties over approximately a three month period. Due to constraints on DIT’s electronic records, Ethics Commission staff was limited to review of emails and internet access to a period of approximately three months.

The remainder of Ms. Teruya’s alleged violations (11) are in the nature of using her city position to obtain favorable treatment for her and others. During the fall of 2010, Ms. Teruya used her city email and position to ask non-profit organizations and vendors whom she had broad discretionary authority over to provide her with letters of reference and commendation to support her position during the new administration and to counter complaints about her to the Mayor’s Office and the Ethics Commission. Ms. Teruya always made the requests via her city email account and used her official city position.

Ms. Teruya also used her city email account and official position to obtain a \$150 (50% off) discount on [] equipment for Ms. Teruya's church event. She requested the discount for her church to a vendor who usually relied on Ms. Teruya's recommendations to participate in city-sponsored events. There is an inherently coercive nature to these requests such that vendors may be afraid to decline her requests for fear of retaliation in the form of negative treatment (bad or no recommendations) for future city-sponsored events, or poor logistical coordination which can make or break an event.

Finally, Ms. Teruya used her city email and position to give a special advantage to Vendor A, Teruya's close friend, as the [position] for numerous city sponsored events including the 2008 and 2009 Event B and the 2010 Event A to the exclusion of others.

(2) Intention to deceive

During several interviews with Ms. Teruya, she made misrepresentations to the Ethics Commission about the level of her involvement in the selection of vendors for city-sponsored programs.

(3) Prior notice and intentional violations

Ms. Teruya has had notice in August 22, 2003, July 9, 2010, and August 24, 2010 by the Ethics Commission Executive Director, Charles Totto, and at least five other city employees and/or officials, who informed her that her city computer was only to be used for official city purposes related to her job duties. Despite this clear and unmistakable advice, Ms. Teruya completely ignored the advice. Ms. Teruya's misuse of city resources, was unquestionably intentional and in blatant disregard for the Ethics Commission's advice and the advice of others.

(4) Efforts to correct

Ms. Teruya has made an effort to correct misuse of her city email for non-city purposes after the Ethics Commission had started investigation of these cases in approximately late December 2010 and early January 2011, Ms. Teruya forwarded several emails to Ethics Commission staff that shows her telling others not to send personal emails to her city email account. Prior to this, Ms. Teruya failed to correct misconduct after being told in August 2003, July 2010, and August 2010 not to use city resources for purposes unrelated to her official city position.

(5) Loss to the city

Ms. Teruya's misconduct resulted in the public losing her services while she was using her city computer, email accounts and internet access for non-city purposes. There is an additional financial loss to the city, for the amount of time she has been compensated for performing non-city business on city time. Furthermore, many

vendors and non-profit organizations that have worked or attempted to work with the city for city-sponsored events have lost respect, confidence, and trust in the city.

(6) Costs incurred in enforcement

Ethics Commission staff has spent considerable time on these cases conducting numerous interviews for investigation, drafting reports, memorandums and correspondence, and preparing for a contested case hearing. Ethics Commission staff has spent portions of more than 66 working days on these cases.

(7) Ms. Teruya's cooperativeness in the investigation

Ms. Teruya was generally cooperative during the course of the investigation. She was interviewed over the course of almost eight hours and timely provided additional documents via her attorney, when requested.

All in all, given the seriousness and the quantity of the violations and weighing the factors above, the Commission believes that Ms. Teruya's resignation from city employment, at a minimum, is justified. The nature, scope, duration, and intentional misconduct of Ms. Teruya's violations are commensurate with those in a prior case in which the Commission recommended employee termination.

In Ethics Commission Advisory Opinion No. 2007-3, the Commission recommended that [X], a supervising employee with the Department of Y ("Department"), be discharged from employment because of the high number of violations, the abuse of the public trust, the long-term nature of the violations X's failure to be truthful during the investigation, the loss to the city, and the significant value of the personal gain from the violations. X used city work time and city-assigned vehicles 106 times to scavenge and redeem recyclable materials for his own financial benefit that amounted to \$11,000 over the course of four years.

In certain respects Ms. Teruya's conduct is even more egregious than X's misconduct. X had 106 violations over the course of three years whereas Ms. Teruya has over 2,000 violations, the majority of which occurred over the course of several months. The Ethics Commission decided that X may have been unaware that his/her conduct was a violation of the city's ethics laws because the Department of Corporation Counsel ("COR") enacted a policy which allowed Department employees to scavenge (although not on city time or using city vehicles). Here, Ms. Teruya was expressly told by Mr. Viola and city officials that city ethics laws prohibit her from using city resources for non-city purposes. Therefore, unlike X, Ms. Teruya knew or should have known that misuse of the city's computer, email account, and internet were in violation of the ethics laws and also in violation of the city's internet policy and guidelines (Sep. 23, 2002), which specifically states each time a city employee accesses the internet on a city computer:

INTERNET access using City resources is for work-related purposes only. Non-compliance to the City's Internet Guidelines and Procedures may result in the revocation of internet privileges or other appropriate disciplinary action including reprimand, suspension, termination of employment, and prosecution if warranted. **If you do not agree to these terms, you are required to close your INTERNET connection.**

In regard to Ms. Teruya's use of her position to provide favorable treatment to herself and others, Ms. Teruya abused the trust and discretion placed on her as the city's sole Special Events Coordinator. Ms. Teruya took advantage of the lack of immediate oversight. Like X, she essentially had the liberty to supervise herself as to her work activities and whereabouts, and she used her position to put pressure on those she was supposed to assist to provide her with letters of recommendation, discounts, and to hire friends for city-sponsored events. It is unclear exactly how many hours were spent performing personal work on city time although it is clear that of all the URLs Ms. Teruya accessed, 60% were unrelated to her job duties.

The Commission believes that resignation, at a minimum, is justified under the circumstances. Ms. Teruya's violations were numerous and egregious. These characteristics make Ms. Teruya unfit for continued employment on behalf of the city.

B. The Ethics Commission is authorized to publish an advisory opinion detailing Ms. Teruya's possible ethical violations.

The Commission must weigh the public's interest in knowing the conduct of its government officials as well as the Commission's work to enforce the ethics law against the privacy interests of the government official. A government record, such as a formal advisory opinion, may not be disclosed if disclosure would constitute "a clearly unwarranted invasion of personal privacy." However, disclosure of a government record does not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual. Public interest in disclosure includes official information that sheds light on the conduct of government officials (Ms. Teruya) and on an agency's (the Commission) performance of its statutory purpose.

In balancing a government employee's privacy interests against the public's interest in disclosure, a court should consider several factors, including: (1) the government employee's rank; (2) the degree of wrongdoing and strength of evidence against the employee; (3) whether there are other ways to obtain the information; (4) whether the information sought sheds light on a government activity; and (5) whether the information sought is related to job function or is of a personal nature. The factors are not all inclusive, and no one factor is dispositive.

See Office of Information Practices (“OIP”) Op. Ltr. No. 10-03, at 7 citing Perlman v. United States Dept. of Justice, 312 F.3d 100, 107-08 (2d Cir. N.Y. 2002).

Ms. Teruya has committed 2,677 ethics violations most of them (2,666) through the misuse of her city computer, internet and email account within the span of just a few months. These violations are serious because of the high number of violations. The evidence against Ms. Teruya is strong as there are documents that support every one of the claims. There is no other means for the public to find out if Ms. Teruya violated the city’s ethics laws and what is being done to resolve the violations. Finally, Ms. Teruya’s identity and the details of the Advisory Opinion would shed more light on what the Ethics Commission is doing to enforce the city’s ethics laws.

All of the factors above weigh in favor of identifying Ms. Teruya in an advisory opinion pursuant to the Uniform Information Practices Act, HRS Chapter 92F. Under the Commission’s Opinion Policy, Ms. Teruya has been given notice and a copy of this opinion 10 days before this opinion is published.

Dated: December 21, 2011

By: /S/
CHARLES W. GALL, Chairperson
Honolulu Ethics Commission

APPROVED AS TO FORM
AND LEGALITY:

/S/
CHARLES W. TOTTO, Executive Director and Legal Counsel
Honolulu Ethics Commission