



The District of Columbia Government
Board of Ethics and Government Accountability

Final Audit Report on Kerry Pearson

January 2016

Lobbyist Activity Report

July 1, 2015 through December 31, 2015

February 2017

Office of Government Ethics

BACKGROUND

D.C. Official Code § 1-1162.29(a) requires that lobbyists register on or before January 15th of each year, or within 15 days of lobbying within the District of Columbia. Kerry Pearson registered as a lobbyist with the Director of Government Ethics (“Director”), on January 10, 2016 with respect to reported lobbying activities that he engaged in during the month of October 2015. Mr. Pearson designated Pepco as his client on his 2015 Lobbyist Registration Form (“LRF”). Mr. Pearson also filed a January 2016 Lobbyist Activity Report (“LAR”) on January 11, 2016.

On February 18, 2016, the Director issued an audit notification letter to Mr. Pearson and requested records to substantiate information disclosed on his January 2016 LAR. The periodic audit of the statements and records of Mr. Pearson covered the period July 1, 2015 through December 31, 2015. Mr. Pearson provided the documentation required on March 4, 2016. In the 2016 January LAR, Mr. Pearson disclosed that he met with Councilmembers David Grosso, Jack Evans, Kenyan McDuffie, and Yvette Alexander on October 14, 2015 and that he met with Councilmembers Anita Bonds, Brianne Nadeau, Brandon Todd and LaRuby May on October 15, 2015. Based on Mr. Pearson’s disclosures that he performed lobbying activities as early as October 15, 2015, the Office of Government Ethics (“OGE”) determined that he was required to register as a lobbyist and file his 2015 LRF by October 29, 2015. Notwithstanding this requirement, Mr. Pearson filed his 2015 LRF on January 10, 2016, which would have been more than 30 days late.¹

OGE preliminarily determined that there were two deficiencies with regard to Mr. Pearson’s filings: (1) that he filed his 2015 Lobbyist Registration Form (“LRF”) late and (2) that he failed to describe his activities in his January 2016 Lobbyist Activity Report (“LAR”), which identifies lobbying activities from the preceding July 2015 through December 2015, with sufficient specificity. Mr. Pearson’s January 2016 LAR indicated he lobbied the District on behalf of Pepco Holdings, Inc. (“Pepco”) regarding “General Support for Merger,” and met with various Councilmembers to “engage for support.” The subject matters disclosed on his report were broad and the narrative regarding Mr. Pearson’s lobbying activities, i.e., the subject matter and formal designation thereof, were not described with sufficient specificity for OGE to determine whether the activities constituted lobbying within the meaning of the Ethics Act.

OGE communicated these preliminary findings to Mr. Pearson through the Statement of Findings (Draft Audit Report) it provided to him on October 17, 2016. OGE recommended that Mr. Pearson submit a response to the preliminary findings and provide further clarification as to the specific matter upon which he lobbied the Councilmembers on behalf of Pepco.

OGE received Mr. Pearson’s response on November 2, 2016. He explained that on December 14, 2015, he sent his LRF (paper copy) with the filing fee by FedEx priority overnight delivery to BEGA and on the following day, he received a telephone call from BEGA staff who informed him that all registration forms must be filed electronically. Based on this information, he filed his LRF and paid the required registration fee electronically. Mr. Pearson’s response did not

¹ The calculation excludes Saturdays, Sundays and holidays pursuant to D.C. Official Code § 1-1162.32(c).

address his failure to timely file a 2015 LRF. He created his 2015 Lobbyist Registration on January 10, 2016 and made the requisite payment electronically at 6:40 p.m., on the same day. He also clarified that his “[g]eneral support for the merger” amounted to “advocate[ing] for [the] D.C. Public Service Commission[’s] approval of Pepco/Exelon Merger, D.C. Public Service Commission Case No. FC1119, *In re Joint Application of Exelon Corp., Pepco Holdings, Inc., Potomac Electric Power Co., Exelon Energy Delivery Co., LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction.*” (Case No. FC1119). He clarified further that he spoke with Councilmembers to “request [] [their] support for D.C Public Service Commission approval of Pepco/Exelon merger, D.C. Public Service Commission Case No. FC1119.”

Upon review of Mr. Pearson’s November 2, 2016 response, OGE determined that the above activities fell outside of the definition of lobbying and further determined that Mr. Pearson did not lobby the District government on behalf of Pepco in the calendar year 2015. Even though Mr. Pearson was not required to register as a lobbyist, he voluntarily chose to register as such for the calendar year 2015. Additionally, the review of the financial records provided by Mr. Pearson corroborated the information provided on his activity report. Mr. Pearson billed a \$2,000.00 “KSPLLC” invoice to Pepco for lobbying activities performed on behalf of Pepco. Mr. Pearson also incurred no lobbying expenses during this reporting period and the January 2016 LAR reflected compensation of \$2,000 and total expenditures of \$0.00.

OBJECTIVE

The Office of Government Ethics’ objective is to determine Mr. Pearson’s compliance with the Ethics Act by providing documentation to support information disclosed on his January 2016 Lobbyist Activity Report filed with the Director of Government Ethics.

SCOPE

The audit procedures performed included examination of source documents and reports filed with the Director of Government Ethics in order to verify the following:

- i. Mathematical accuracy of the lobbyist activity report during the period audited;
- ii. Amount of income reported for lobbying activities;
- iii. Total reported receipts and expenditures and individual transactions;
- iv. Proper categorization of the receipts and expenditures of the filer/registrant- who may be a lobbyist, lobbying entity, or client; and
- v. Other review procedures as deemed necessary under the circumstances.

Audit Risk Factor Rating Scheme

The Risk Factor (RF) associated with each test is listed in the fourth column of the table and is noted as follows:

RF-H - Risk in this situation is high. It indicates a potential violation of the Ethics Act. It also decreases public confidence in the integrity of government. Please be advised that substantial penalties may be incurred and/or there may be negative media exposure.

RF-M - Risk in this situation is moderate. Under certain conditions, non-compliance may have negative impacts.

RF-L - Risk in this situation is low.

RF-O - There is no risk in this situation.

Summary of Audit Findings

Finding No. 1: OGE's review determined that Mr. Pearson reported conducting lobbying activities in 2015, more than 30 days late before filing a 2015 LRF with the Director of Government Ethics on January 10, 2016. Mr. Pearson reported communications with nine officials in the legislative branch, Councilmembers David Grosso, Jack Evans, Kenyan McDuffie, Yvette Alexander, Anita Bonds, Brianne Nadeau, Brandon Todd, and LaRuby May to engage them to support the "D.C Public Service Commission approval of Pepco/Exelon merger, D.C. Public Service Commission Case No. FC1119.

Status of Finding from Preceding Draft Audit Report:

OGE reviewed Mr. Pearson's response to the Statement of Findings and determined that Mr. Pearson's reported activities described in finding No. 1 fell outside of the definition of lobbying. Therefore, Mr. Pearson did not lobby the District government on behalf of Pepco in the calendar year 2015, within the meaning of the Ethics Act. Even though he was not required to register as a lobbyist, he voluntarily chose to register.

Finding No. 2: OGE review revealed that Mr. Pearson did not sufficiently describe the subject matter and formal designation on which he reported lobbying on behalf of Pepco.

Status of Finding from Preceding Draft Audit Report:

Mr. Pearson satisfactorily addressed the above deficiency and provided the description of the subject matter in his November 2, 2016 response.²

² The November 2, 2016 response letter is available at the Board of Ethics and Government Accountability Office.

Criteria (Substantive Tests Performed)	Conditions	Effects (Material Findings)	Risk Factors	Correction Actions Recommended and/or Taken
Did the Lobbyist provide documentation for key elements?	Yes	None	RF-O	Not Applicable
Did the Lobbyist provide documentation for income earned towards lobbying?	Not Applicable. Mr. Pearson is the Client.	None	RF-O	Not Applicable
Did the Lobbyist provide documentation for expenses made towards lobbying?	Mr. Pearson incurred no lobbying expenses during this reporting period.	None	RF-O	Not Applicable
Did the Lobbyist accurately complete its Lobbyist Registration Form?	Yes	None	RF-O	Not Applicable
Did the Lobbyist file Activity reports online?	Yes	None	RF-O	Not Applicable
Did the Lobbyist timely file Activity Report?	Yes	None	RF-O	Not Applicable
Did the Lobbyist accurately complete its Lobbyist Activity Report?	No	The subject matter and formal designation on which Mr. Pearson lobbied on behalf of Pepco was not described with any specificity.	RF-L	Mr. Pearson provided the description of the subject matter in his November 2, 2016 response. ³

³ The November 2, 2016 response letter is available at the Board of Ethics and Government Accountability Office.

Did the Lobbyist timely register pursuant to D.C. Official Code § 1-1162.27(a)?	No	Mr. Pearson conducted lobbying activities more than 30 days late without filing a 2015 LRF as required by the Ethics Act. Therefore, his 2015 LRF was filed untimely.	RF-O	The actions Mr. Pearson took on behalf of Pepco as indicated in his 2016 LAR fall outside of the definition of lobbying in that there was no attempt to influence a legislative action or administrative decision. Mr. Pearson did not lobby the District government on behalf of Pepco in the calendar year 2015, and was not required to register or file activity reports on its client's behalf for the January 2016 reporting period.
Did the Lobbyist timely pay its registration fee pursuant to D.C. Official Code § 1-1162.27?	No	Mr. Pearson untimely paid the \$250.00 Lobbyist Registration Fee.	RF-O	Although, Mr. Pearson paid his 2015 lobbyist registration fee untimely, he was not required to register as a lobbyist in 2015 calendar year.

AGENCY COMMENTS

OGE determined that Mr. Pearson was not required to register as a lobbyist in 2015 or voluntarily file an activity report based upon OGE's review of his January 2016 LAR and his additional responses to the Statement of Findings. Lobbying is defined as communicating directly with any official in the executive or legislative branch of the District government with the purpose of influencing any legislative action or an administrative decision.⁴ Although Mr. Pearson reported communicating directly with executive and legislative officials regarding the Pepco/Exelon merger, those communications were not made with the purpose of influencing any legislative action or administrative decision, as those terms are defined.⁵ As a result, OGE

⁴ See D.C. Official Code § 1-1161.01(32)(A).

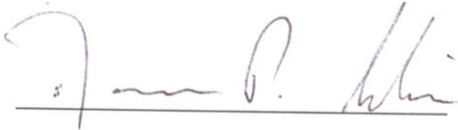
⁵ "Legislative action" is defined "any activity conducted by an official in the legislative branch in the course of carrying out his or her duties as such an official, and relating to the introduction, passage, or defeat of any legislation in the Council." D.C. Official Code § 1-1161.01(31). The Code also defines administrative decision as "any activity directly related to action by an executive agency to issue a Mayor's order, to cause to be undertaken a rulemaking proceeding (which does not include a formal public hearing) under [the Administrative Procedure Act], or to

concluded that Mr. Pearson did not attempt to influence any legislative actions or administrative decisions taken or made by a District government official on Pepco's behalf. Therefore, Mr. Pearson was not required to register as a lobbyist because he did not engage in "lobbying" activity in 2015.


Even though Mr. Pearson was not obligated to register as a lobbyist in 2015 based on his November 2, 2016 clarification of the nature of his "lobbying" activities, he, nevertheless, chose to register as such. OGE considered this registration as a precautionary measure in this instance. To the extent Mr. Pearson was required to register, i.e., his activities met the statutory definition of "lobbying," he would be in compliance with the reporting requirements because he filed his 2015 LRF, and his 2016 January LAR clarified that he did not engage in lobbying activities during that reporting period.

RECOMMENDATION

OGE, therefore, recommends that the Ethics Board issue this Audit report as the "**Final Periodic Audit Report**" for Kerry Person. Mr. Pearson filed his 2015 LRF voluntarily and out of an abundance of caution because he believed the activities in which he engaged constituted lobbying. Upon further review of these activities, OGE determined that the activity did not meet the statutory definition of lobbying. Therefore, Mr. Pearson was not required to submit a 2015 LRF or file the requisite activity report. OGE is not recommending any civil penalty for Mr. Pearson's 2015 LRF late filing because Mr. Pearson was not required to register as a lobbyist in 2015.

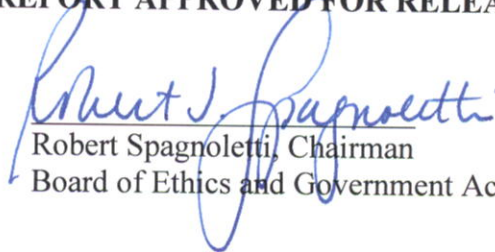


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FINAL PERIODIC AUDIT REPORT APPROVED FOR RELEASE:



Robert Spagnoletti, Chairman
Board of Ethics and Government Accountability

February 9, 2017
Board of Ethics and Government Accountability

