



**Jim Newberry**  
**MAYOR**

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**  
**Citizens' Advocate Ombudsman Office**

**MEMORANDUM**

**TO:** Mayor Jim Newberry  
Vice Mayor Jim Gray  
Council Members

**From:** Joan R. Beck  
Citizens' Advocate Ombudsman

**Date:** April 10, 2009

**Re:** 1st Quarter 2009 Activity Report

**FOLLOW-UP: Waste Management Investigation - Human Resource.** Last summer I reported that I was unable to obtain information from the Division of Waste Management that I determined was necessary in conjunction with an investigation. I had received complaints about alleged improprieties concerning handling of recyclable materials and about irregularities with accident reporting. When I inquired with Waste Management I was told the matter had been investigated. My request to see the documentation of that investigation was refused. I was unable to verify that a proper investigation had been made. Also, this allowed a division of government to refuse to cooperate with me, and so by extension with the Council. Council members asked what the investigation was about. As the discussion proceeded, the Council directed that the investigation be turned over to the Division of Human Resources. I met with a representative of the Division and turned over all of the documents I had obtained. More than six months later the response from Human Relations reports that the complaints were "unsubstantiated, inconclusive or unwarranted". No explanation was given, and I have still been unable to review the investigatory reports by Waste Management or by Human Resources.

Here's why this is important. First, the initial allegations concerned management's response to allegations of taking property for personal use and damage to government property. Both of those behaviors are addressed in the employee handbook. The question was whether the work rules which are supposed to apply equally to every employee were being applied differently. The Council has an interest in assuring that all divisions of government operate fairly and efficiently. To achieve those ends you pass ordinances and resolutions. To ensure that your ordinances and resolutions are implemented properly and that they work as intended you have the Citizens' Advocate Office. The Citizens' Advocate Office cannot complete the task unless it is given free, unfettered access to records.

Second, you, the Council, must have confidence that the information I report to you is accurate. If I cannot obtain records responsive to an inquiry then I cannot give you the best report. Situations like this led prior advocates to ask for subpoena powers. I have not done so. But, through the discussions in the Citizens' Advocate Working Group, we recommended amendments to the Council Rules which would require all

**H O R S E   C A P I T A L   O F   T H E   W O R L D**

officials in this government to respond to inquiries from this office within a specific time. Those recommendations also formalized protections for records that are otherwise “closed”, to assure record custodians that complying with my requests will not defeat protections of sensitive material.

As an aside, since the original complaints to my office some of those complainants received discipline from the person about whose conduct they complained. This illustrates the need for examination of the relationship between grievances and discipline and about the adequacy of whistleblower protections.

**Recommendations:**

1. Adopt the documents currently under consideration in the Intergovernmental Committee, as recommended by the CAWG, in order to formalize requirements to comply with information requests from the Citizens' Advocate Office.
2. Direct the Divisions of Human Resources and Waste Management to allow the Citizens' Advocate to review all records related to the investigations of these allegations.
3. Refer to the Intergovernmental Committee for study a thorough review of the grievance and discipline systems to determine a) if there is an institutional bias; b) if the placement of both processes in the hands of one person presents a conflict of interest; c) if there is a statistical relationship between grievances and discipline; and d) if there are adequate whistle-blower protections in place.

\* \* \* \*

**UPDATE: Case Management System research.** Many thanks to Greg Charles of Information Technology who has been very helpful with this project. We developed a description of the needs, applications, and minimum requirements of a case management software system. Mr. Charles has surveyed providers to determine availability and suitability of packages. One of the criteria is suitability for use by Council Members for complaint tracking. The next step is Council Members' input. While we acknowledge that these tight budgetary times are not conducive to new expenses, this is a good time to do the research, so that the project is ready when funding becomes available. Therefore, we would like the opportunity to present to Council in a Committee of the Whole meeting the information we have gathered on Case Management software.

\* \* \* \*

**THE NOISE ORDINANCE: Do as I say, not as I do.** The Urban County Council adopted a noise ordinance, to protect people from offensive sounds that disturb the quiet enjoyment of their homes. See sections 14-70 through 14-80 of the Code of Ordinances. That ordinance prohibits creating a noise disturbance across a dwelling unit boundary from 11:00 p.m. until 7:00 a.m. The rule means that one person should not make noise that can be heard by the next door neighbor during those hours. The ordinance does not exempt government; indeed, governmental units are specifically included in the operation of the ordinance unless a special variance is granted. There is no record of a special variance from the noise ordinance for routine operation of the recycling center. Yet this government violates the ordinance routinely at the MURF on Thompson Road. Dumpsters are moved and emptied, and refuse collection vehicles are operated and can indeed be heard clearly before 7:00 a.m. across adjoining residential lot lines. The complaints of the neighbors were met with this statement: “With respect to your complaints regarding noise, the recycling center is a lawful and properly zoned industrial use of the property that has existed for years”. We believe this statement is unresponsive. The noise ordinance does not exempt properly zoned activities. We also have concerns about zoning related matters, but that is still under investigation.

If this government ignores one ordinance we cannot expect it to comply with any other ordinance. As Americans we fully expect our government to follow its own rules. If the government cannot or will not comply with the law, it alone has the power to change the law. In many situations the government does grant itself special status to avoid operation of the law. In this instance it has not.

For several years various committees of the Council have studied noise concerns and all have acknowledged that noise is detrimental to a high quality of life. The Council knows that healthy, vibrant communities are also

restful at appropriate times. The question of effective noise regulation enforcement continues to be a concern to the council.

As the Council considers beefing up the noise ordinance I suggest that this government ought to set the standard for the rest of the community. Alternatively, this government should document its unwillingness to comply by granting itself a special variance. However, I urge caution in granting this variance. Currently there is a proposal to relocate the MURF. Recently property owners adjoining the proposed new site expressed concerns about noise. The best way to reassure those property owners that the MURF will be a good neighbor there is to be a good neighbor in its current location.

**Recommendation:** Direct the Commissioner of Environmental Quality to comply with the provisions of 14-70 through 14-80 of the Code of Ordinances.

\* \* \* \*

**EEO REPORT:** Two employees of the Urban County Government applied for a promotion. Both met the minimum qualifications for the promotion. The unsuccessful candidate examined the records, to try to improve the likelihood of promotions in the future. That research led the candidate to conclude that the promotion may have been based on improper considerations. The recourse is to file a complaint with the Equal Employment Opportunity Officer. However, the EEO Officer is in the same chain of command that could be implicated in the complaint. In other words, the Division of Human Resources provides oversight to the Division of Human Resources for compliance with the Equal Employment Opportunity Act. Placing EEO within HR creates the appearance of potential conflict of interest and decreases the confidence that employees have in the system.

**Recommendation:** Refer to the Intergovernmental Committee the question of where in the Urban County Government the Equal Employment Opportunity Office ought to be placed and how it ought to be structured.

**STATISTICAL DATA:****1st Quarter of 2009**

**Complaints Received this Quarter:** 37

**Activity This Quarter:**

(01/01/2009 - 03/31/2009)

Cases Closed:	26
Cases Pending:	11
Pending Cases Rolled over from previous quarters:	8

**Top Complaints per Department:**

10	Public Works & Development
	Public
6	Safety
3	Finance & Administration
15	Outside Agencies

**Council District Totals:**

1	James	2
2	Blues	1
3	Lawless	3
4	Beard	0
5	Feigel	2
6	Stinnett	5
7	Crosbie	3
8	Myers	2
9	McChord	1
10	Martin	4
11	Henson	1
12	Lane	1
13	Anonymous	12
		37

**Type 1:**

Assistance = 10  
Complaints = 22  
Informational = 5

**Type 2:**

Email = 8  
Fax = 0  
Phone = 23  
Visit = 4  
Written = 2

**Type 3:**

Jurisdictional = 21  
Non-Jurisdictional = 16

**Citizen Quote for the Quarter:**

*“Wow, thanks. I thought about my email just yesterday and wondered if it found it's way to the right people.....apparently so. Keep up the good work. The city could use more like you.”*