

## **“Executive Yuan and Subordinated Entities Guidelines for Registration and Monitoring of Influence Lobbying” Q&A**

### **I. Why did the Executive Yuan establish the “Executive Yuan and Subordinated Entities Guidelines for Registration and Monitoring of Influence Lobbying”?**

Answer:

According to the “2011 Public Opinion Survey on Integrity Indicators of Taiwan” conducted by the Ministry of Justice, the culture of intercession is far more serious than the culture of bribery. Seeing that people are entitled to petition for the protection of their administrative rights under law, civil servants should respond to the petitions of the people in the right way for the protection of their rights, and avoidance of settlement under the table, which is a violation of applicable laws and the principle of equity. This set of guidelines is established for making related rules and regulations for clarifying the institutionalization, transparency, and standardization of registration of influence lobbying. Heads of government institutions at all levels and all in public service shall handle cases of this category in due process of law to make influence lobbying transparent for assurance of aligning with the administrative procedure under law to the expectation of the people and to provide basic protection for the civil servants.

**II. The “Executive Yuan and Subordinated Entities Guidelines for Registration and Monitoring of Influence Lobbying” was enacted on September 7 2012. Could civil servants just follow this set of guidelines in responding to “influence lobbying” without taking the “Ethics Guidelines for Civil Servants” in account?**

Answer:

In the event of “influence lobbying”, the parties regulated by the Guidelines shall review the content of the case. If the case involves the rules specified in III of the Guidelines, the person who processes the case for registration should follow the “Ministry of Justice Integrity Management System”. If it is difficult to determine if the content of the intercession meets the requirements of III of the Guidelines or does not meet the criteria of III of the Guidelines but conforming to the requirements of the “Ethics Guidelines for Civil Servants”, proceed to 11 of the Ethics Guidelines for registration without the necessity of registering at the “Ministry of Justice Integrity Management System”.

**III. Are the subjects governed by the “Ethics Guidelines for Civil Servants” the same as those governed by II of the “Executive Yuan and Subordinated Entities Guidelines for Registration and Monitoring of Influence lobbying”?**

Answer:

Subjects governed by II – (I) of the “Ethics Guidelines for Civil Servants” are “civil servants governed by the Civil Servant Service Act”. According to Article 24 of this law, the subjects governed by this law should include “all salaried officials in military and civil services and personnel employed by public enterprises and entities”. Accordingly, this should also include the employees of administrative institutions and public schools (including Employees Employment Statute and contract-based employees of entities subordinated to the Executive Yuan under the Regulations Governing Contract-Based Employment of Personnel), teachers of public schools who also perform administrative duties, police, military (non-commissioned) officers in active duty, persons in conscription of public service under law, service personnel of public-owned enterprises (including directors or supervisors paid to represent shareholders of private sector excluding labor force), and directors paid to represent government shares in private enterprises. (With reference to Judicial Yuan Interpretation Jia-Zi no. 3486, Shi-Zi No. 92, Interpretation No. 101 and No. 308, and Ministry of Civil Service Letter Tai-Quan-Hua-Can-Zi No. 43193 dated 1986.09.08, Letter Tai-Fa- (II)-Zi No. 1450605 dated 1997.05.09, and Letter Fu-Fa-(I)-Zi No. 0922259031 dated 2003.06.20 for interpretations).

As stated in II of the guidelines, the subjects governed by the Guidelines are “personnel regulated by the Civil Servant Service Act and institutional directors, supervisors and managers representing government shares or public shares”. Further to the subjects governed by the “Ethics Guidelines for Civil Servants”, it also includes the institutional directors, supervisors, managers representing government shares or public shares, which entails broader scope of application.

**IV. Should the “skilled workers”, “janitors” under the staffing of administrative institutions, and “labor force” of public-owned enterprises be defined as the subjects governed by the “Executive Yuan and Subordinated Entities Guidelines for Registration and Monitoring of Influence lobbying”?**

Answer:

According to II of the “Janitorial Staff Management Guide” established by Executive Yuan Personnel Administration Bureau on 2005.07.01, janitorial staff are classified into regular janitors and skilled workers (including drivers) within the organizational establishment. XXXII of the same Guide further specified that after the janitorial staff are covered by the Labor Standards Act, the terms and conditions of labor service and the authority and responsibility of supervisors shall be governed by the “Applicable Legal Rules Governing the Terms and Conditions of Labor Service and Segregation of Authority and Responsibility of Supervisors after the Inclusion of Janitorial Staff of Administrative Entities at All Levels of the Government and Public Schools”. Accordingly, the Labor Standards Act and related interpretations of laws shall be applicable, and the Civil Servant Service Act is not applicable to this Guide. Likewise, the “Labor Force” providing service at public-owned enterprises are not covered by the Civil Servant Service Act under Ministry of Civil Service Letter Bu-Fa-(I)-Zi No. 0922259031 dated 2003.06.20, and this Guide is also not applicable.

**V. How to differentiate “Influence lobbying” as stated in III of the “Executive Yuan and Subordinated Entities Guidelines for Registration and Monitoring of Influence lobbying” and the “Service for the People” rendered by elected public officials?**

Answer:

- (I) In performing the duties under mandate, elected public officials may act on behalf of and in the name of the people in the expression of grievances, petitions, and recommendations, which are services for their constituencies. According to IV- (II) of the Guidelines, expression of grievances and petitions as the means of expression of opinions in the due process of law and in this manner shall be governed by the Administrative Procedure Act, and Petition Act, where the Guidelines shall not be applicable. In accepting the services for the constituencies through elected public officials, civil servants shall proceed in accordance with applicable laws governing the expression of grievances and petitions where the Guidelines shall not be applicable.
- (II) If the services for the constituencies expressed through the elected public officials are susceptible in defiance of the aforementioned rules and regulations, civil servant shall explicitly inform the parties concerned of relevant legal references so that the elected public officials can fully understand the situation. Their persistence in their action will be construed as alleged violation of applicable laws. Accordingly, civil servants shall act in accordance with the Guidelines.

**VI. What is the condition for substantiating “an event of influence lobbying” as stated in the “Executive Yuan and Subordinated Entities Guidelines for Registration and Monitoring of Influence Lobbying”? If an ethics office handles an influence lobbying case and discovers that the condition for registration is irrelevant with the condition stated in the Guidelines, what should the ethics office do?**

Answer:

- (I) As stated in III of the Guidelines in defining “ **influence lobbying**”, there are two conditions, namely, “Making requests with the subjects governing by the Guidelines in favor of the person himself or herself or a third party not in the due process of law”, and “The request becomes a concern for violation of applicable laws or rules of regulations governing an operation”. The Guidelines shall be applicable only when the aforementioned conditions were satisfied. If the party entrusted to make an intercession request still have query, consult the ethics office of the same administrative jurisdiction and this office shall provide full explanation.
- (II) According to IV of the Guidelines, ”The following shall not be governed by the Guidelines: (I) The requests or lobbying as prescribed in the Government Procurement Act. (II) Intercession, petition, expression of grievances, application, expression of opinions and related means of expression under the Enactment of Lobbying Act, Petition Act, Administrative Procedure Act, or other procedures and means provided by law”. As such, respective ethics offices shall determine if the lobbying being accepted for further action falls within the category for exclusion under IV of the Guidelines. If so, corresponding action shall be taken.
- (III) If the case shall not be governed by III of the Guidelines, the Government Procedure Act, Administrative Procedure Act, Petition Act, or other applicable laws, it will be necessary to keep a detail on written record and submit to the head of the agency along the official hierarchy.

## **VII. How to respond if the person initiating the influence lobbying is the supervisor or agency chief?**

Answer:

According to Article 2 of the Civil Servant Service Act, “Senior officials may order subordinated officers within the scope of supervision and it is the onus of the subordinated officers to obey. Subordinated officers may express their grievances when holding different opinions from the order given by the senior officials”. This indicated that it is the onus of subordinated officers to obey the orders given by senior officials. If the subordinated officers suggest the orders given by the senior officials are in violation of laws, they are obliged to report pursuant to Article 17 of the Civil Servants Protection Act. If the senior official concerned insists that the order is not in defiance of applicable laws and the order is given in writing, the civil servant concerned shall obey such order. Accordingly, the senior official concerned shall assume responsibility deriving from the order. If the order is an alleged violation of the Criminal Code, the civil servant concerned is not obliged to obey. In consideration that the civil servant concerned may have already reported to the supervisor or the agency chief in practical situation, and that the supervisor or the agency chief still insist on giving the order “not in writing”, the civil servant concerned shall follow the Guidelines and make registration with the ethics office.

Furthermore, the supervisor has the authority over the approval of job transfer, performance evaluation (scoring) over the subordinated officers. Under such circumstance, the subordinated officers will be under the pressure of promotion and performance evaluation (scoring) at the time when an act of **influence lobbying** is made and they will tend to be reserve about the content of the case. As such, ethics offices shall consider the situation on a case-by-case basis and proceed to registration, and report to the ethics office of the competent authority along the official hierarchy with caution and bypass the gate approval of the supervisor or the institution chief.

**VIII. In V (I) of “Executive Yuan and Subordinated Entities Guidelines for Registration and Monitoring of Influence lobbying”, “in the event of influence lobbying, the entity handling the influence lobbying shall make registration with the ethics office of the institution within 3 days thereafter”. How do we count the duration “within 3 days”?**

Answer:

According to Paragraph 2 in Article 48 of the Administrative Procedure Act, “Counting of time on the basis of day, week, month, or year shall exclude the beginning day unless the law required otherwise that counting shall start on the beginning day”. As stated in Paragraph 4 of the same article that, “if the last day of the duration is a Sunday, national holiday, or other day off, the day after the last day shall be construed as the last day of the duration. If the last day of the duration is a Saturday, the morning of the next Monday shall be construed as the last day of the duration.”

For facilitating the registration made by the subjects governed by the Guidelines, the beginning day and holidays under the Administrative Procedure Act is not being taken into account in the counting of days and counting is based on 3 business days.



**IX. Which agency (personnel) shall be responsible for handling the registration form of influence lobbying? How to process and keep the “Executive Yuan and Subordinated Entities Influence lobbying Application Form”?**

Answer:

As stated in V- (I) of the Guidelines, “In influence lobbying cases, the party being asked to make influence lobbying shall make registration with the ethics office of its agency within 3 days thereafter. If there is no ethics office established in the agency, make registration with the personnel playing the role as adjunct ethics officer or the person designated by the agency chief”. According to XII – (II) of the Guidelines, “registration materials under the Guidelines shall be kept for 10 years”. As such, upon the completion of registration, the party being asked to make influence lobbying shall, after reporting to the agency chief for review and approval, keep the original specimen of the document for registration at the ethics office of the agency for record and reference.

For “agencies without the establishment of an ethics office or the agency where the personnel play the role as adjunct ethic officer, the agency chief or the superior agency shall appoint a designated person to make the registration” pursuant to V- (II) of the Guidelines, and upon the completion of registration, the party being asked to make influence lobbying shall refer the case to the agency chief for review and approval by signing. The person playing the role as adjunct ethics officer, the agency chief or the designated person by superior agency for making registration shall then forward the documented materials to the ethics office at a higher level for reference filing further to the entry of the information into the system case-by-case.

**X. As stated in VI of the “Executive Yuan and Subordinated Entities Guidelines for Registration and Monitoring of Influence lobbying”, “respective agencies shall create files on the cases of influence lobbying one-by-one, and report to the ethics office at central level II monthly for consolidation of the cases and referral to the Agency Against Corruption at Ministry of Justice for reference”. What should respective ethics offices do?**

Answer:

The Ministry of Justice has opened the influence lobbying registration system to respective agencies or offices responsible for handling influence lobbying. The ethics office at a higher level may proceed to download and consolidate related information from the system for reference in review and investigation. Respective ethics offices shall enter the cases of influence lobbying to the system one-by-one as required for registration and filing without presenting written report.

**XI. As stated in VII of the “Executive Yuan and Subordinated Entities Guidelines for Registration and Monitoring of influence lobbying”, “Agency Against Corruption at the Ministry of Justice and ethics office above central level II shall conduct inspection on the cases of influence lobbying entered registered at the system on a selective basis”. What will be the method and procedure for inspection on a selective basis?**

Answer:

(I) According to VII of the Guidelines, the Agency Against Corruption, ethics offices of the agencies above central level II, and the ethics offices of the competent authorities permitted to apply the Guidelines and establish relevant operation procedures with reference to the Guidelines are the agencies responsible for inspection on a selective basis.

(II) Method of selection:

1. Routine random inspection: Inspection conducted once quarterly and the selection ratio is 14% tentatively (consult the ratio of random inspection on information of declaration of property by public officials. Round to the next integer for figures with decimal places) subject to adjustment by the Agency Against Corruption where necessary.
2. Special random inspection: inspection will be conducted in the event of influence lobbying with material breach of applicable laws or attraction of social attention, or where necessary.

(III) Important Notice:

1. The inspection unit shall check if the case in point has been registered in accordance with the Guidelines and the understand status of other procedures pertinent to the case of influence lobbying.
2. Ethics offices of agencies above central level II, and the ethics offices of the competent authorities permitted to apply the Guidelines and establish relevant operation procedures with reference to the Guidelines shall report the findings from the inspection to Agency Against Corruption for record and reference.

**XII. Should all the registered information on influence lobbying be opened to public?**

Answer:

The registered information on influence lobbying is the documented materials formed or acquired by government agencies within their authority and shall be construed as government information pursuant to Article 3 of the Freedom of Government Information Law. If the case of influence lobbying is the request made by the person himself or herself or in favor of a third party on particular event and does not fall into the scope of “government information that should go public voluntarily” as inscribed in Subparagraphs 1-10 of Paragraph 1 in Article 7 of the Freedom of Government Information Law, and also under Article 6 of the Freedom of Government Information Law but government information on policies related to the rights and privileges of the people that should be disclosed voluntarily on due time.

When people request government agencies for the supply of information on influence lobbying, government agencies should determine to restrict for going public or decline to supply on a case-by-case basis pursuant Subparagraphs 1-9 of Paragraph 1 in Article 18 of the Freedom of Government Information Law. In addition, Paragraph 2 in Article 18 of the Freedom of Government Information Law specified that, “If the government information contains elements of restricted disclosure or not for supply as mentioned, only other parts of the information could be disclosed or supplied.” As stated in XII of the Guidelines, respective agencies shall disclose information on the statistics of the categories and quantity of the cases of influence lobbying for registration, and the names of the personnel confirmed for punishment on violation of the Guidelines, and the reasons.

**XIII. What will be the content and timing for the disclosure on the information network pursuant to XII of the “Executive Yuan and Subordinated Entities Guidelines for Registration and Monitoring of influence lobbying”?**

Answer:

According to XII of the Guidelines, “Agencies shall disclose the information on the statistics on the categories, quantity of the registered cases of influence lobbying, and the names of the personnel being punished for violation of the Guidelines, and the reasons at the information network”. The content and timing of disclosure are specified as follows:

- (I) The statistics on the categories and quantity of the cases of influence lobbying should include:
  1. Quantity: total number of cases registered by each agency on a quarterly basis.
  2. Statistics on categories: Effective 2015, classification was made under the “Principles of the Ministry of Justice in the Classification of Corruption and Malfeasance Cases and Special Mention Cases: thereby statistics were kept under the categories of supervision and management of industry and commerce, finance and insurance, taxation, customs affairs, telecommunications supervision, highway administration, transportation/tourism/meteorology, judiciary, legal affairs, police administration, fire safety, construction, civil affairs/household and conscription/ land administration, entry and exit/migration/coast guard patrol, environmental protection, health and medicine, social welfare, education, agriculture/forestry/fishery/livestock farming, rivers and gravel management, military affairs, foreign affairs, national security and intelligence, state-owned property management, state-owned enterprises, administrative affairs, and others, a total of 27 categories. “Procurement” is an exclusion from the Guidelines under IV of the Guidelines.
- (II) The names of the persons confirmed for punishment and the reasons.
- (III) The timing for disclosure at information network: the disclosure of

information at information network should be made on the 15<sup>th</sup> days of the month after the end of each quarter. For example: disclosure in the 1<sup>st</sup> quarter (January to March) will be April 15, and so forth.