

MEMO

To: Commissioners and Staff
From: Ava Ayers
Re: Responding to public comments on informal guidance
Date: March 12, 2024

In light of discussions at the Commission's meeting on Feb. 21, and the Ethics Committee's discussion on March 12, I would propose that we endorse the following proposed legislative change to Executive Law § 94(7)(b), which presently says:

“Persons receiving such informal advice may rely on that advice absent misrepresentation or omission of material facts to the commission and such communications with the commission shall be treated as confidential, except as disclosure is needed to prevent or rectify a crime or fraud, or prevent a substantial threat to public health or safety or if required by court order.”

My suggested change would add the following sentence to Executive Law § 94(7)(b):

If a person who has requested informal advice, or someone who speaks on their behalf, makes public statements about the substance of advice received, they waive confidentiality as to the substance of that advice; and if they make public statements about the the process or communications associated with a request, they waive confidentiality as to the communications or process.

This proposal is based on one of the suggestions made by group representatives at our November roundtable.

I would propose we add this item to our *next* legislative agenda, not our current agenda.