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CITY OF SPOKANE ETHICS COMMISSION

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SPOKANE AREA NOW,

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Complainant,

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v.

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**MOTION TO CONSIDER
ADDITIONAL EVIDENCE AND
REQUEST FOR CLARIFICATION
OF PROCESS**

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DAVID CONDON, MAYOR,

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Respondent.

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COMES NOW Complainant SPOKANE AREA NOW ("NOW"), by and through

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its undersigned attorneys, Rick Eichstaedt and the Center for Justice requests that this

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Commission consider additional documentary evidence in this matter and also requests

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clarification of the process.

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1. Consideration of Additional Evidence

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As discussed at the previous hearing on this matter, the Mayor's office and City

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Council have hired an independent investigator to investigate the handling of the departure

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of former Chief Straub and circumstance regarding the transfer of Monique Cotton. *See*

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Attachment A. This includes answer the following questions:

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MOTION TO CONSIDER ADDITIONAL EVIDENCE
AND REQUEST FOR CLARIFICATION OF
PROCESS - 1

CENTER FOR JUSTICE
35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211
Fax: (509) 835-3867

13
7-20-16

- What information was known to Mayor Condon regarding the facts and circumstances of workplace complaints asserted against Chief Straub?

- When was information known?

- Were the City's policies and procedures followed in connection with complaints that were made known to the City by Ms. Cotton?

- Were policies followed in connection with transfer of Ms. Cotton?

Id.

As the attached email from Councilmember Breean Beggs, indicates, the release of this report is imminent. *See* Attachment B.

Consider of this report will greatly assist fact-finding by this Commission and is consistent with the governing documents of the Commission. The Spokane Municipal Code, SMC § 01.04A.110(F), provides that the Commission establish a factual record for consideration of ethics complaints, stating:

If the complaint is not resolved by stipulation, or earlier in the adjudication process, or additional information is required to establish the factual record necessary for the Commission to determine whether a violation of the Code of Ethics has occurred, the board may convene a hearing at a future date certain. **At such a hearing, the Commission may call additional witnesses or consider additional documentary evidence.** After final deliberations on additional testimony, statements, or documents presented at the hearing, the Commission shall determine whether or not a violation of the Code of Ethics has occurred.

Likewise, the Commission's Handbook reiterates this, stating, "Complaints that are not resolved through the adjudication or the stipulation process under SMC 1.04A.E, shall proceed to an investigation and hearing process pursuant to SMC 1.04A.110 F."

Moreover, on a practical matter, failure to consider this report may result in duplicative and unnecessary proceedings. If the Commission fails to consider the report and it contains information adverse to the Mayor, a subsequent complaint could be filed.

1 Accordingly, NOW requests that the factual record of this matter include consideration of
2 the independent investigator report.

3 **2. Request for Clarification of Procedure**

4 As previously indicated and discussed at the last hearing, it is inappropriate to
5 consider motions to dismiss at this junction of the proceeding.

6 The Ethics Code, as described by the Ethics Commission Handbook, outlines a three step
7 process for consideration of complaints:

8 **Adjudication Process.** The Ethics Commission engages an adjudication
9 process to resolve complaints. The Commission shall request an initial
10 written response to the complaint from the respondent, which shall pertain to
11 whether the complaint should be dismissed pursuant to the reasons set forth
12 in SMC 1.04A.110 D. 1. a. – f., which includes the Commission's lack of
13 jurisdiction, the matter is moot, corrective action has already been taken, or
the alleged violation would be a minor or de minimis violation. The initial
response shall not address the merits of the complaint. The Commission shall
conduct a hearing to determine whether the complaint shall be dismissed
pursuant to SMC 1.04A.110 D.

14 **Stipulation Process.** If the Commission determines that the complaint shall
15 not be dismissed pursuant to SMC 1.04A.110 and that the complaint alleges
16 facts, which, if found to be true, would be sufficient to constitute a violation
17 of the Code of Ethics, it shall schedule a time to meet with the respondent to
create a stipulation resolving the complaint, the determination of compliance
and the penalty. Such meeting shall be open to the public.

18 **Investigation and Hearing Process.** Complaints that are not resolved
19 through the adjudication or the stipulation process under SMC 1.04A.E, shall
20 proceed to an investigation and hearing process pursuant to SMC 1.04A.110
21 F.

22 At this point, the Commission already completed the adjudication process by a
23 unanimous decision finding jurisdiction and a vote against reconsidering that decision. In
24 that vote, this Commission determined that dismissal was not warranted per SMC
25 §1.04A.110(D)(1)(a-f).


Having completed that step, the Code provides that there must be an offer of
stipulation. This has not occurred. However, now the Commission is considering
MOTION TO CONSIDER ADDITIONAL EVIDENCE
AND REQUEST FOR CLARIFICATION OF
PROCESS - 3

1 improperly filed motion by the Mayor that urge this Commission to simply dismiss without
2 the benefit of an investigation and hearing as required by the Code.

3 NOW requests that this Commission clarify where in the three step process for
4 resolving complaints this matter resides and the legal authority for consideration of the
5 Mayor's motions.

6 RESPECTFULLY SUBMITTED this 20th day of July, 2016.

7
8 CENTER FOR JUSTICE

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10 RICK EICHSTAEDT, WSBA #336487
11 Attorney for Spokane Area NOW
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MEMORANDUM OF PROPOSED SCOPE

Date: December 30, 2015

To: Brian McClatchey, Esq.
Laura McAloon, Esq.
Councilmember Karen Stratton
Rick Romero, Director City Utility

From: Kris Cappel, Seabold Group
Martha Norberg, Seabold Group

Based on discussions with the joint committee on Tuesday, December 29, 2015, it is our understanding that the scope of the investigation for which we have been retained will address the following issues:

1. The facts and circumstances of workplace complaints that have been asserted against Chief Straub since he was hired as Spokane's Chief of Police, including:
 - a. What information was known to Mayor Condon, City Administrator Theresa Sanders, and HR Director Heather Lowe;
 - b. When was the information known to these individuals; and
 - c. What action was taken to address the complaints?
2. The facts and circumstances surrounding Chief Straub's resignation.
3. What are the City's policies and procedures for responding to employee complaints of discrimination and harassment, and are they consistent with best practices? Seabold Group will offer recommendations as necessary.
 - a. What are the City's policies and procedures for transferring employees internally and were those policies followed in connection with Monique Cotton and Carly Cortright?
4. Were the City's policies and procedures followed in connection with complaints that were made known to the City by Ms. Cotton and Ms. Cortright?
5. What are the City's policies and procedures for responding to public record requests and were they followed in responding to media requests for documents related to Chief Straub and Ms. Cotton?

Rick Eichstaedt

From: Beggs, Breean <bbeggs@spokanecity.org>
Sent: Wednesday, July 20, 2016 4:14 PM
To: Rick Eichstaedt
Subject: Independent Investigation Update

Dear Rick,

I earlier advised you that the report would be released this week. However, the committee asked the investigator to complete two matters that will delay release of the report until July 26th.



Breean L. Beggs | City of Spokane | City Council Member, District 2
808 W. Spokane Falls Boulevard, Spokane, WA 99201-3342
509.625.6254 | bbeggs@spokanecity.org

ATTACHMENT B