



CITY OF SPOKANE
808 W. SPOKANE FALLS BLVD.
SPOKANE, WASHINGTON 99201-3327
509.625.6250

May 31, 2016

Spokane City Council
808 W. Spokane Falls Blvd., 7th Floor
Spokane, WA 99201

City Council Members,

I write this to you with a mixed sense of duty and disappointment. As the Mayor of the City of Spokane, I have an obligation to act in the best interest of the citizens at all times. Today, that obligation compels me to remind you of your duties as fiduciaries of the City.

I am in receipt of Council Resolution No. 2016-0049, and a follow-up letter of May 24 from Council President Stuckart holding ransom the extension of a second unrelated contract if I do not comply with the City Council's demands. I am also aware that Council President has asked to meet in executive session with me this week to discuss the Council's demands. This meeting is unnecessary and belated. Earlier this year, he declined at least two offers to move this process forward by appointing special counsel to oversee the investigation; we are now too far along in the independent investigation to upend the process.

It is no secret that Council President Stuckart has repeatedly and publicly demanded that I disregard attorney-client privilege considerations and release documents to the independent investigator inquiring into the facts and circumstances surrounding the departure of former Chief Frank Straub with whom the City is now involved in active litigation.

This is the crux of my thinking – I will not compromise the City's ability to defend itself and thereby put the citizens at risk by releasing documents that are protected by the attorney-client privilege.

Thousands of documents have already been released to Ms. Cappel so she may conduct a fully independent investigation. Special counsel, appointed in accordance with Section 33 of the City Charter, is reviewing additional thousands of documents for attorney-client privilege communications. Until that process is completed, we will not know exactly how many documents are subject to attorney-client privilege. All documents not under the protection of the attorney-client privilege will be released to Ms. Cappel.

I look forward to Ms. Cappel's report and will use it to assist the City going forward. I am sure there are processes and procedures that will be reviewed and revised in light of Ms. Cappel's findings. But to extend this investigation to include documents and content that may compromise the City's ability to defend itself in the Straub litigation – at an even greater expense to taxpayers – is unacceptable.

I have long been convinced that Mr. Stuckart and others have had a political motivation in their criticism of my handling of the matters surrounding Mr. Straub. This suspicion was recently confirmed when a public records request revealed that Council President Stuckart and former Councilman Jon Snyder used their private campaign emails to develop the City Council's initial letter demanding answers on the Straub matter, included on the attached email dated November 25, 2015. It appears this was done to circumvent the public records process. But for the apparently accidental inclusion of Mr. McDaniel's official email, this email may never have been discovered.

By demanding the release of attorney-client privileged documents, Council President Stuckart places his political agenda above the public interest. Council President Stuckart now threatens to eliminate funding for the City's legal defense in the Straub litigation – a process distinct from the investigation.

Mr. Stuckart's demand is dramatically beyond the limits of what a reasonably prudent officer of the City should do to protect the taxpayers from unnecessary liability. By acting outside the appropriate bounds of his office, Council President Stuckart is exposing the City and its taxpayers, as well as himself, to legal liability.

I will not aid Mr. Stuckart's political agenda at the expense of the City of Spokane and its taxpayers. As part of our agreement not to communicate about the Cappel inquiry except through the unanimous Joint Committee, I have made every effort to stay silent throughout this process, to protect the integrity and independence of the ongoing investigation. However, at this juncture my obligations as a City fiduciary outweigh my commitment to speak only through the Joint Committee.

As those entrusted by the public to carry out the City's business, we have an obligation to perform our duties prudently and in good faith. I have done my best to do this while balancing transparency, good governance, and my duties as the City's Mayor. I am now calling on you – the councilmembers and directors of this organization – to do the same, and work collaboratively with me for the betterment of Spokane.

I look forward to continuing our work to making Spokane the City of Choice.

Sincerely,



David A. Condon
Mayor

Cc: Joint Committee Members
Kris Cappel
Dennis Hession
Spokane Media

From: Brian McClatchey <brian@mcclatcheylaw.com>
Sent: Wednesday, November 25, 2015 10:43 AM
To: Citizens for Ben Stuckart
Cc: McDaniel, Adam; Jon Snyder
Subject: Re: ROUGH DRAFT
Attachments: 11 27 2015 letter to Condon.docx

What do you all think about this draft? This is in redlined format, and may present a bit more aggressive tone than the first draft.

This is a private and confidential communication and intended solely for the viewing and use of the intended recipient. This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 USC 2510. Any review or distribution to other recipients is not intended and not authorized and does not constitute a loss or waiver of the confidential or privileged nature of the communication. Any review or distribution by other recipients is strictly prohibited. If you are not the intended recipient of the communication, please contact the sender by return electronic mail and delete and destroy all copies of this communication.

On Nov 25, 2015, at 12:55 AM, Citizens for Ben Stuckart <benstuckart@gmail.com> wrote:

<November 27.docx>

November 27, 2015

Mayor David A. Condon
City of Spokane
808 West Spokane Falls Blvd.
Spokane, WA 99201

Mayor Condon:

~~In the~~ The last few days, through public records requests and media reports, have brought to light various communications involving you and your staff and documents generated by your staff that raise many questions for the citizens of Spokane. We are writing to reiterate a plain truth which should go without saying: Spokane deserves to understand the events and misrepresentations of the executive branch of our City government which, under your leadership, brought us to that led to where we are today.

The compelling facts finally uncovered recently lead the The Spokane City Council to asks that both you and City Administrator Mayor Condon and Theresa Sanders offer an explanation to the citizens of Spokane for the following events:

- Given that After a previous female employee left the Spokane Police Department in 2013(14?) due to Chief Straub's behavior ((Add reference to Spokesman article about Carly Cortwright))- why, was the complaint raised by when a second employee had a concerning plainstrikingly similar behavior t-in April 2015 was this not acted on ignored?
- What is the City of Spokane's policy for handling complaints of sexual harassment by, or against, for-exempt employees? Did you follow Was this policy direction? followed? Did you refer this Was this particular issue taken to the City's Human Resources Director? -HR? If not, why not? If so, what was the HR's response?
- What was your rationale for determining the three month delay for the release of ~~is~~ responsible for the timing of documents responsive to a media releases of public records requests? When were the documents released on November 24th discovered? Who knew about the content ~~the contents~~ of these documents? If these documents were discovered prior to November 24th, why Why were these documents not released when they were discovered? at the time of discovery?
- Why did you the mayor misrepresent the facts of the sexual harassment allegation at the his press conference in which Chief Straub's resignation was announced? announcing the resignation of Chief Straub?
- Why did City Administer Sanders tell Council President Stuckart, when asked direct questions about documents responsive to the results of the public records requests, that there was nothing damaging about Straub and Cotton's relationship which would be forthcoming?
- Why did you hide the sexual harassment complaint when you learned of it in April, 2015, ~~to then force the Chief Straub to resign in October, then~~ withhold release documentary

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evidence of the notes confirming the sexual harassment allegations and your staff's handling of that situation until from Theresa Sanders in late November, 2015?

LAST BULLET:: WE CAN WAIVE PRIVILEGE ON THE EXECUTIVE SESSION

- Why did you and the Mayor and City Administrator Theresa Sanders lie to the City Council when asked directly about the veracity of rumors concerning the sexual harassment or intimate relationship between Cotton and Straub rumors on in October, 2015? ???
- Certainly, if there is any kind of dispute about the content of executive session in which both you and City Administrator Sanders delivered misleading and inaccurate information, the City Council may, at its discretion, choose to waive the attorney-client privilege in order for the public to, finally, understand the truth of this matter.

These questions are is is-not about Chief Straub. -Rather, these questions are about This is about how a difficult situation was handled by some of the most senior officials in the City of Spokane. the government closest to the citizens of Spokane. We – the City Council and the citizens of Spokane - were lied to, -the citizens have been lied to.- It is time for you and your senior staff to answer questions so we all, finally, know the truth. The credibility of the Mayor of the City of Spokane, his judgment, and the judgment of his closest and most senior advisors in all matters is at stake, as is the citizens' trust in the governing institution which most closely impacts their daily lives.

The citizens of Spokane deserve answers to the questions stated above, we look forward to hearing it in the coming week. public looks forward to an explanation in the next week.

Sincerely,

City Council

-cc: Nick Deshais, Jake Thomas (other media)