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Date: January 28, 2016

Present: Erin Jacobson, Esq., Assistant City Attorney  
Martha Norberg, Seabold Group

Location: City Hall, 7<sup>th</sup> Floor  
City Attorney's Office

By prearranged appointment, the investigator met with Ms. Jacobson at her office at City Hall. Ms. Jacobson is a Labor and Employment attorney for the City, and most of her work involves labor negotiations. The focus of the meeting was to discuss the process and procedures for receiving and responding to Public Records Requests (PRRs) in general, and those relating to Frank Straub and Monique Cotton in particular. She provided the following information.

#### **Ms. Jacobson's Involvement in Responses to PRRs**

Ms. Jacobson said that, as a general rule, she is copied on the City Clerk's email notifications regarding PRRs that have anything to do with a labor issue. But she could not think of any for which she had any responsive documents. If there is someone she thinks might have responsive material and is not included in the email from the Clerk, Ms. Jacobson will forward the PRR to that person, copying the Clerk on the email.

Records from the various City sources are sent back to Terri Pfister, the City Clerk. Ms. Jacobson understood that Ms. Pfister examines them for responsiveness and other issues, and then forwards them to Pat Dalton, the Assistant City Attorney who handles Public Disclosure issues. 90% of Mr. Dalton's work is examining responses to PRRs, Ms. Jacobson estimated. Mr. Dalton reviews the documents and makes determinations as to whether the documents contain exempt or confidential information that needs to be redacted.

During the month of November 2015, Mr. Dalton went on an extensive vacation and left the legal review of PRR documents to Ms. Jacobson. She recalled that she reviewed a batch of documents relating to the Straub/Cotton PRRs. She reviewed Theresa Sanders' notes of her communication with Monique Cotton, text messages between Ms. Sanders and Ms. Cotton, and she recalled conducting the final review of the text message chain involving Dan Torok, with the "infamous 'I love you' string." She also recalled reviewing the letters between Bob Dunn, Ms. Cotton's attorney, and the City Attorney.

Ms. Jacobson recalled that she went on vacation after Thanksgiving, but that prior to that she was the lead on public disclosure matters while Mr. Dalton was gone. She had no recollection of any concern regarding the length of time that the response was taking during the time period from October 29, 2015, when the PRR response was "due," according to a media report, and November 24<sup>th</sup>, when the City produced the documents. The media report stated that Nancy Isserlis said she had not completed the review. The investigator asked if Ms. Isserlis actually conducted legal reviews. Ms. Jacobson said Ms. Isserlis might have reviewed the Sanders/Cotton documents and then passed them to Pat and/or Ms. Jacobson for additional review. She could not recall.

Ms. Jacobson has no knowledge of the PRR process ever being varied from their normal practice. She thought the reason it took a long time in November was because of the emails. She said the Clerk makes the determination of how long a response might take, depending on many different factors, including the number of documents, the nature of them, whether there are privilege or confidentiality issues, and other things. There is no “normal” response time. Ms. Jacobson thought the Clerk asked IT to do a search to determine how many hits they got, and from there she tried to estimate how long the response might take. For example, if there are 20,000 hits with a lot of legal implications, that will take a lot longer than 20,000 without the legal factors, or 1,000 with or without legal issues. Another factor is the sensitivity of the issues. If there are a lot of employees involved and they have to send out a lot of notifications and waiver requests, that will delay the response as well.

Ms. Jacobson said that, other than during Mr. Dalton’s absence in November, she is rarely involved in the legal review of documents in response to PRRs. Mr. Dalton might ask her for a second opinion occasionally regarding documents related to labor negotiations. And, as she mentioned previously, she will forward the PRR to others she thinks might have responsive documents. The above circumstances are the only ways she could think of that she becomes involved in PRRs.

### **Specific Searches Conducted to Respond to the PRRs**

Ms. Jacobson said it is rare that she gets a PRR for which she might have responsive material. But when she does, she said any requests for emails are handled by IT so she does not search her emails. If she gets a request for other documents, there are various places she searches. She recently received a PRR for “all records regarding any conversations” during a specific period of time relating to Chief Straub “or” Monique Cotton. Ms. Jacobson conducted the following searches in response to the PRR:

- She conducted a word search in her computer. Her files are kept on the City’s shared drive, in her own folder. This is where she conducted the word search. When she conducts word searches, she will use the terms that IT uses in their searches of emails for the same PRR. Most of her files would be in her folders on the shared drive.
- Paper files. In her office she has a file cabinet with five drawers. Two drawers are dedicated to the Police Department, two to Fire, and one to all of the other departments. She went through her paper files for responsive documents.
- Negotiation binders. Ms. Jacobson said that what she primarily does is labor negotiations. She found one record that she thought could be responsive, even though many of the processes in labor negotiations are exempt from PRRs. She forwarded the document to the Clerk and to Mr. Dalton and let them decide whether it could or should be disclosed.

### **Advising HR Regarding Whether to Investigate**

Ms. Jacobson said HR comes to her to talk about issues and whether to investigate. She said sometimes HR makes their own decisions based on the facts of the complaint. If there is a gray area they might call her, and she gives advice. But they (HR) are the ones who make the decision.

HR did not come to Ms. Jacobson regarding issues involving Chief Straub. She didn't think issues came to HR's attention until after the Labor Management meeting. Ms. Jacobson said she usually doesn't go to those meetings. Meghann Steinolfson (sp?) was at the meeting when the Lieutenants and Captains wanted to go on record with their complaints.<sup>1</sup> Ms. Jacobson did not recall when that meeting was.

Meghann took notes of that meeting. She called Ms. Jacobson with a "heads up" about the complaints that were raised.

The meeting occurred a day or two before City Attorney Nancy Isserlis received letters from Lieutenants, Captains and Executive staff regarding Chief Straub.

Ms. Jacobson said this is the only interaction with HR that she can recall regarding Straub.

### **Tracking Hours Worked on PRR Requests**

Ms. Jacobson does not track her time worked on PRR requests. She added that Pat Dalton works probably 90% of his time on PRR requests.

### **Role in Advising SPD on Personnel Issues**

Ms. Jacobson has a role in advising SPD on personnel issues. They are a client, similar to HR. But they have an Internal Affairs unit, so it is a little different. A commander might get information that prompts him or her to bring it to IA. IA investigates, and at that point they would "typically" call Ms. Jacobson for advice on the discipline aspect.

Ms. Jacobson said Chief Kirkpatrick wanted her involved in the whole process, from the beginning. The other chiefs don't involve her until after the IA investigation is done. She will get a call typically after the Administrative Review Panel (ARP) has reviewed the IA investigation and made a recommendation. The ARP is made up of Captains and Lieutenants.

Another way Ms. Jacobson might get involved in SPD issues is through Assistant City Attorney Mary Miramatsu, SPD's legal advisor on use of force, policy, and other police issues. Ms. Miramatsu is in frequent contact with SPD and might flag an issue that comes to her attention if it has labor implications. She will bring those issues to Ms. Jacobson.

### **Involvement with the Mayor Regarding Chief Straub**

Ms. Jacobson did not recall SPD bringing her in on issues involving Chief Straub. She said her involvement came through the Mayor's office. She didn't get direct complaints or requests for advice about Straub. She was not sure how she would have handled it. The Police Chief is her client. She explained that her clients are the Mayor, City Council, and their agents acting on their behalf, which

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<sup>1</sup> Per the timeline included in the Mayor's December 11, 2015 letter, on April 20, 2015, HR representative Meghann Steinolfson was present during a phone conversation between Monique Cotton and Theresa Sanders regarding Ms. Cotton's transfer to Parks and Recreation.

includes the Police Chief. She said that when the Chief was “accused,” the Mayor became her client, and she did advise the Mayor.

### **Cortwright/Cotton Job Changes**

Ms. Jacobson had no direct involvement in Carly Cortwright’s job change. She said she found out that Carly was getting a new job, and there was nothing out of the ordinary, based on what Ms. Jacobson knew. She said people move around a lot, especially in civil service jobs, but also at the exempt level.

Ms. Jacobson had more direct involvement in Ms. Cotton’s job change. After the March 31, 2015, meeting in which Frank Straub had an “outburst,” Capt. Eric Olsen contacted Ms. Jacobson. He told her he was just in a meeting and it did not go well. He told her about Chief Straub’s actions. She thinks he called on March 31<sup>st</sup>, after the meeting. She recalled that she went on a ten-day vacation the next day, and by the time she came back Ms. Cotton had talked to Theresa Sanders and the Mayor. Nancy Isserlis told Ms. Jacobson about it. The Mayor asked them to investigate. She and Ms. Isserlis interviewed everyone who was in that March 31<sup>st</sup> meeting except Ms. Cotton, who was represented by an attorney. They spent three days interviewing the meeting participants during the week that Ms. Jacobson came back from vacation (probably the week of April 13<sup>th</sup>, but Ms. Jacobson will verify that.) They both together interviewed the participants, one at a time. They did not take notes and did not produce a report. They orally debriefed the Mayor after the interviews.

Ms. Jacobson said that they were acting in an investigative capacity, and if they had produced any notes or reports it would not be protected by any privilege. She added that their discussions with the Mayor and Theresa Sanders would be privileged.

Ms. Cotton’s move to Parks and Recreation was an “outgrowth” of that process. Ms. Jacobson said she did not make the decision about what to do with Ms. Cotton, but she made a factual finding that the meeting occurred as described, was “terrible,” and it was impossible for these two people to work together.

Ms. Jacobson thought that the notes of Lt. Mark Griffith and Capt. Eric Olsen, which were produced in response to a PRR, were in preparation for their meeting with Ms. Jacobson and Ms. Isserlis.

Ms. Jacobson does not normally conduct investigations, those are usually done by HR or SPD IA. Occasionally, she will be asked to conduct an investigation if it is a high profile matter, or for other reasons. The other investigation she could recall was when she was first hired and she was asked to investigate a complaint by an officer against then-Chief Kirkpatrick.

On certain matters they hire outside investigators as well.