

ATTACHMENT B

LAW OFFICES OF
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Sidney J. Strong

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June 3, 2010

Kristen Cappel, JD
Martha Norberg, CPA
Seabold Group
811 First Avenue, Suite 630
Seattle, WA 98104

Re: Mayor Don Gough Interview

Dear Ms. Cappel and Ms. Norberg:

Please consider this a renewal of the issues we raised with you at the outset and during your investigative interview of Mayor Gough. We understood that the City of Lynwood Attorney retained you to investigate a complaint made by Ms. Stephanie Simpson of workplace mistreatment allegedly attributed to Mayor Gough. However, Ms. Simpson declined to file any complaint with the Human Resources Department, which was the process provided her for such complaints by city ordinance. Nor did Ms. Simpson file a tort claim with the City or in any other way register her complaint as required by law.

Instead, we understand Ms. Simpson spoke to the Chief of Police who delivered his summary of that conversation to the City Attorney. At some point, Ms. Simpson prepared her own statement. When retained by the City Attorney, you were provided what the Chief of Police had prepared and the statement prepared by Ms. Simpson. We understand you interviewed Ms. Simpson and left town on a preplanned trip. When you returned, you learned from the City Attorney that the City had settled with Ms. Simpson and executed a Severance Agreement and General Release of Claims. You were unaware that the City intended to take this action in your absence or before you could complete your investigation. Nonetheless, the City directed you to continue your investigation even with no threat of litigation or claim of any kind against the City.

We had requested, through the City Attorney, a copy of the complaint or complaints made by Ms. Simpson as well as any of the documents supporting the charges she made. The City Attorney declined, indicating that it would not be appropriate to provide Mayor Gough with the charges she made against him. However, the City Attorney did provide a summary or recap of

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the charges, which lacked any factual detail from which Mayor Gough could understand the charges being made against him. All of this made the investigative process being faced by Mayor Gough as having more attributes of a Kafkaesque process than one with due process.

You first interviewed Mayor Gough on May 19th. Before proceeding, we asked that you disclose to us your tasked purpose in interviewing Mayor Gough and the intended use of the interview. You indicated that you were not certain, but thought you would be reporting the results to the City Council. Upon further questioning, we learned that you had interviewed a number of City employees but would not disclose who or what each had said. However, you did say that you would be showing Mayor Gough selected documents, but that if you did, they would have to be returned to you and we would not be permitted to make copies. In short, we were led to believe that the investigative interview was to be as secretive as possible so that Mayor Gough would have little or no opportunity to understand fully what he was being accused of, thus severely limiting his ability to respond. As you know Mayor Gough is a full time Mayor of a vibrant and busy city and cannot be expected to have a full detailed response to any investigation unless he has had the opportunity to prepare and, if necessary, to defend himself.

The two investigative sessions on May 19th and May 27th proceeded as you stated. You provided us with several documents, which in many cases Mayor Gough had either not seen before or had limited recollection of them. At the conclusion of your interview on May 27th, you indicated that you would seek permission from the City Attorney to provide us with a copy of Ms. Simpson's statement. That document was provided by email a few hours later. To date, that is the only document you have provided. We still do not know who you interviewed, what documents you provided those individuals and what documents may have been provided by them to you. In short, we have yet to learn what you have investigated, how that has any bearing on the charges made by Ms. Simpson, and how your work is to be used by the City, particularly when there is no claim of any kind pending.

Given these circumstances we will be making a Public Records Act request for all writings as defined by RCW 42.56.010 making up any report, oral or written, or any results of your investigation done pursuant to your contract with the City. See, Morgan v. City of Federal Way, 166 Wn.2d 747 (2009). This will include your handwritten and computer saved notes, emails, letters, transcripts of interviews, all documents created or gathered by you and any other writings generated by you for this investigation. We assume all of this will be preserved for response to our request.

In the meantime, we ask that you provide us now with all documents used by you to question Mayor Gough during the interview sessions. We know of no lawful basis to deny us these

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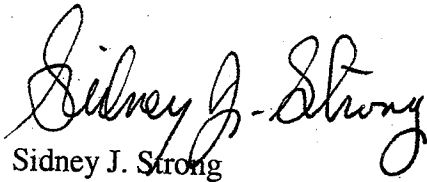
documents and if there was even an arguable privilege, that privilege would have been waived by your decision to use these documents.

Pursuant to your questions posed during the interview of Mayor Don Gough on May 19 and 27, 2010, we are faxing separately to you a collection of documents and a supplemental and clarifying summarization regarding City of Lynnwood employees' administrative leave grants from 2006 through 2009, and ask that these additional documents be made a part of the interview conducted by you of Mayor Gough. We also request that you provide us copies of all documents you supplied to Eileen Lawrence, Special Counsel to the Lynnwood City Council. Again, we know of no privilege that would prevent the disclosure of these documents to us.

I will be reviewing my notes from the full interview to see what other items we need to provide to you. At this time we ask that you interview Art Ceniza, Assistant Administrator. We believe that no information should be provided about this investigation to anyone until we have had the opportunity to provide answers to your requests and after interviews of witnesses we want interviewed are completed.

A copy of this cover letter is being sent to Katherine F. Weber at Inslee Best.

Sincerely,


Sidney J. Strong

cc: Katherine F. Weber

Kris Cappel - Seabold Group

From: Kris Cappel [kcappel@seaboldgroup.com]
Sent: Sunday, June 20, 2010 3:43 PM
To: Sid Strong
Cc: Kris Cappel; Eric C. Frimodt; Katherine F. Weber
Subject: Re: Stephanie Simpson/Mayor Gough Investigation - Email 1

Dear Sid: Below is my response to your letter dated June 3, 2010. This is one of three emails I am sending you on today's date. Please let me know if you would like to discuss any of this information further.

1. Regarding your statements on the absence of a formal complaint by Stephanie Simpson (page 1, paragraphs 1-2), generally you correctly describe the sequence of events with the exception that a) Ms. Simpson consulted the HR department in 2009 regarding some of her concerns about Mayor Gough and was disappointed with its response; b) I was informed of the possibility that the City would reach a resolution with Ms. Simpson before I returned from my vacation and c) I did not receive a copy of Ms. Simpson's statement until I met with her shortly before I left for vacation. The City, however, also expressed the possibility of continuing the investigation even if a settlement of some sort was reached with Ms. Simpson due to the seriousness of the allegations. We had no involvement in the City's decision to go forward with the investigation.
2. Regarding your request for a copy of Ms. Simpson's statement before Mayor Gough's investigative interview, please be advised that it was my decision not to provide a copy of the actual statement, but instead to provide Mayor Gough with a summary of the allegations, which I provided to you in advance of Mayor Gough's interview. I believe the Mayor had this summary available to him for a month or more before we met for his first interview. It was also my decision not to provide Mayor Gough with documents provided to me by other witnesses or otherwise requested by me before his interview. My decision to provide a summary rather than Ms. Simpson's actual statement and my decision not to provide investigative documents in advance of the Mayor's interview were both consistent with my normal practice of conducting numerous internal investigations. Mayor Gough was not treated any differently than other individuals whom I have investigated and who have been accused of discrimination. My goal here, as in every investigation, was to get unscripted, unrehearsed responses to the allegations. I believe the summary of allegations, combined with other information the Mayor solicited from City employees, provided him with fair notice of the nature of the allegations. Mayor Gough arrived at his interview with numerous documents, including many of the same documents I had planned to show him concerning the ACA hiring process, which further indicates to me that he had a fairly clear expectation of the issues he would be asked about.

As promised, I also provided Mayor Gough with Ms. Simpson's statement on May 27, 2010, following the conclusion of his interview, and to the extent he would like to correct, supplement or amend any information he provided during his interviews, and/or to the extent he wishes to respond further to Ms. Simpson's allegations (or any of the other issues that were discussed during his interview), please ask the Mayor to provide me with his written responses by next Thursday, June 24th.
3. Regarding the documents I showed Mayor Gough during his interview, I am happy to provide copies to him at this point and will make arrangements to get those to you this week. You already have the list of duties that Ms. Simpson alleged she performed for the Mayor in her position as Administrative Assistant. That list is contained within Ms. Simpson's statement. All of the remaining documents relate to the ACA hiring process.
4. With respect to your statement that I would not disclose the names of witnesses or provide you with the details of their statements, that accurately reflects my position, a position that I normally maintain in conducting internal investigations. It is the role of the client, not the investigator to determine what information is disclosed regarding the identity of witnesses and the content of their statements. Numerous witnesses have expressed concerns about the potential of retaliation for candidly participating in this investigation, a legitimate concern raised in almost every investigation.
5. I have or will have interviewed everyone you included in your witness list by the

conclusion of the investigation.

6. I have been informed that I will be asked to provide oral, final findings to both the City Council and the Mayor and from that I will be directed on how to proceed regarding the work product that is generated as a result of this investigation.

7. I have not provided any documents to Eileen Lawrence.

8. Regarding your public records request, please be advised that it is my normal practice to maintain my investigative records and we will respond appropriately to any lawful request.

I hope this information has been helpful.

Respectfully yours,

Kris

Kris Cappel, JD Principal
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On Jun 3, 2010, at 10:49 AM, Sid Strong wrote:

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