



City of Lynnwood/Simpson

Summary Report of Investigation

Prepared by:
Seabold Group
July 30, 2010

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Summary Report of Investigation

Date: July 30, 2010

To: Rosemary A. Larson, Esq.
Lynnwood City Attorney

Investigator: Kris Cappel
Seabold Group

I. SCOPE OF INVESTIGATION & SUMMARY REPORT

Seabold Group was retained to investigate a number of allegations asserted by Stephanie Simpson, a former executive assistant, against Mayor Don Gough and the City of Lynnwood's Human Resources Department ("HR" or "HR department"). In summary, Ms. Simpson alleged that:

- A. Mayor Gough harbors a gender bias, does not respect his female staff and does not like working with strong, assertive women;
- B. During the period February 2007 through February 2009, Mayor Gough engaged in inappropriate and harassing behavior that was motivated in part by Ms. Simpson's gender and her status as a working mother;
- C. In 2009, Mayor Gough inappropriately interfered with Ms. Simpson's application for the Assistant City Administrator ("ACA") position because of Ms. Simpson's gender and status as a working mother;
- D. In April 2009, the City's HR department failed to take Ms. Simpson's concerns about Mayor Gough seriously, failed to intervene appropriately and instead insisted that she address the issues by herself;
- E. Mayor Gough retaliated against Ms. Simpson after she applied for the ACA position and continued to retaliate against Ms. Simpson when she returned from leave in mid-January 2010.

Seabold Group interviewed 37 witnesses, some on multiple occasions, resulting in more than 50 interviews. The witnesses included current and former staff, current and former council members and third parties who have worked with Mayor Gough over a number of years. These witnesses reflect a broad cross-section of individuals who have known and worked closely with both Mayor Gough and Ms. Simpson, individually, and in group settings. Many witnesses expressed the following concerns: 1) that participating in the

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investigation could lead to retaliation; 2) that the final report would be exploited for political gain; and 3) that there was a sense of futility in conducting an investigation against an elected official because there is no realistic remedy. Regarding potential retaliation, witnesses were told that every reasonable effort would be undertaken to maintain the confidentiality of their participation, including the content of their statements, but that absolute confidentiality could not be guaranteed. Nonetheless, the potential for retaliation and the possibility of public disclosure appeared to negatively impact the candidness of some witnesses. In an effort to address the witnesses' and the City's retaliation concerns, significant effort has been undertaken by the investigator to avoid attribution in this summary report. That approach has led to occasionally generalized and conclusory statements throughout the report that under most circumstances would be attributed to the actual source or sources.

In addition to witness interviews, Seabold Group received and reviewed substantial documentation, which included internal personnel records related to the City's hiring of the ACA in 2009, emails, calendars, notes and statements and supporting documentation from both Mayor Gough and Ms. Simpson.

This report is a summary report of factual findings on the above issues. It is not intended and should not be construed as a comprehensive report of all of the information that was considered as part of the investigation. The findings and conclusions in this report are based on the entirety of the record considered by Seabold Group; they are not limited to the factual information contained in the report. Nothing in Seabold Group's summary report is intended to constitute legal conclusions.

During the investigation, several issues arose involving individuals other than Ms. Simpson. The City has been advised of those issues, but they were not included within the scope of this investigation, and were not considered except to the extent that they were deemed relevant to Ms. Simpson's claims. Not all of those additional issues related solely to Mayor Gough. This investigation also did not consider and therefore nothing in this report should be construed as an opinion or commentary of any kind on Mayor Gough's political relationships, policies or his effectiveness in managing City operations. The focus of this investigation was how Mayor Gough treated Ms. Simpson, specifically, and more generally, whether Mayor Gough's actions and words demonstrate that he harbors a gender bias. To address those issues, it was necessary to consider his treatment of and working relationships with other female staff and council members for that limited purpose.

Finally, Seabold Group is aware of the frustration shared by many regarding the amount of time it has taken to conclude this investigation. Many factors contributed to the delay, but it should be clear that based on the information available to the investigator, the parties involved in overseeing the investigation and ensuring the integrity of the process acted in good faith to bring this investigation to a responsible close. Additionally, in fairness to all parties in the investigation, the City Attorney and the City Council were

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specifically requested by the investigator to withhold substantive public comments about the investigation while it was ongoing.

II. THE INVESTIGATIVE PROCESS

A. The Complainant

Ms. Simpson did not file a formal complaint of discrimination. This investigation was triggered by what Ms. Simpson believed was a confidential conversation between Ms. Simpson and another City employee. In that conversation, Ms. Simpson expressed her concerns about Mayor Gough. That City employee reasonably believed that Ms. Simpson's complaints warranted the attention of the City Attorney. The decision to conduct an internal investigation was made at this level of City government and was approved by Mayor Gough. (After approving the investigation, Mayor Gough recused himself and was not involved whatsoever in directing the investigation). Ms. Simpson was upset with the City's decision to conduct an investigation and was extremely concerned that it would irreparably impact her work relationship with the Mayor. Ms. Simpson was directed to participate and is considered by this investigator to be a reluctant complainant. That fact, among others, was relevant to Seabold Group's assessment of Ms. Simpson's credibility. As the complainant, Ms. Simpson bears the burden of persuasion. The burden of persuasion applicable to this investigation is "preponderance of the evidence," commonly defined as "more likely than not." It is not a high threshold of proof.

B. Resolving Factual Disputes - Assessment of Credibility

A number of factual disputes arose in this investigation. Resolving factual disputes or inconsistencies is one of the most challenging elements of any investigation and is accomplished in part by assessing witness credibility. Credibility is not merely a determination of whether a witness is being truthful. Credibility determinations include a consideration of a number of factors, which include without limitation:

1. Ability to observe (goes to one's physical ability to see or hear an event);
2. Ability to recall and consistency of recollection (a witness demonstrates good or bad recollection generally or appears to have selective memory);
3. Truthfulness (known propensity to be truthful or to engage in deceit or manipulation);
4. Statements by other witnesses that test the credibility of the declaring witness (most often considered in the context of prior consistent statements or prior inconsistent statements);

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5. Incidents of self-contradiction (a witness makes a statement and then later contradicts that statement within the same conversation);

6. Existence of bias, which is not synonymous with prejudice. Bias relates to an unusual interest in the outcome of the case or a friendly or hostile association with one of the parties, any of which could result in a person coloring, distorting or falsifying one's statements;

7. The existence of contemporaneous documentation prepared in good faith at or near the time of the event or incident in question; and

8. An individual's conduct during the investigation, particularly conduct that appears to be aimed at obstructing or influencing the outcome of the process.

All of these factors were considered in assessing the credibility of every individual who participated in this investigation, including Mayor Gough and Ms. Simpson.

Additionally, it is Seabold Group's normal practice to accept business records prepared in the ordinary course as conclusive regarding dates and events unless information comes to our attention calling into question the authenticity or accurateness of the record. Many of the internal documents provided by the City, which included personnel records, emails and memos, were deemed conclusive as to the dates and events described in the documents.

C. Seabold Group's Approach

Seabold Group began its investigation by interviewing Ms. Simpson on March 2, 2010. Ms. Simpson was accompanied by legal counsel. In addition to the investigative interview, Ms. Simpson provided the investigator with a lengthy statement in support of her allegations. Shortly after Ms. Simpson's interview, the investigator left on a pre-planned vacation and was out the week of March 8, 2010. During that period, the City entered into a settlement agreement with Ms. Simpson, the terms of which are a matter of public record. The investigator was advised before leaving, that there was a chance the matter would settle, but that even if a settlement was reached with Ms. Simpson, the City might still go forward with the investigation. On March 22, 2010, the City advised Seabold Group that it intended to go forward and directed Seabold Group to investigate the issues raised by Ms. Simpson. Those issues defined the scope of the investigation authorized by the City. Seabold Group had no role in the City's decision to continue the investigation or in determining the scope of the investigation.

Once the City advised Seabold Group of its intent to move forward, Seabold Group undertook several preliminary interviews in preparation for its interview of Mayor Gough. Efforts were made to schedule Mayor Gough's interview for the week of March 29th. Seabold Group was informed that Mayor Gough was unavailable and/or unwilling

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to go forward with his interview that week because he wanted a copy of Ms. Simpson's statement and all investigative documents collected to date. Mayor Gough also wanted additional time to review that material to prepare himself for his investigative interview. The investigator advised Mayor Gough (through his counsel, as were all communications with Mayor Gough with the exception of his investigative interview and one unanticipated meeting in the offices of Lynnwood's HR department) that consistent with its normal investigative practices, Seabold Group was not willing to provide the requested documents prior to the interview, but would provide him with a summary of the allegations in advance. The reason for this practice is to ensure that the witness provides information that is based on personal knowledge and that is unrehearsed, and to minimize the risk of tampering with or the destruction of evidence. Seabold Group had no reason to believe that Mayor Gough would engage in that behavior, but it is a common consideration in any investigation.

In addition, the investigator informed the Mayor that at the conclusion of his interview, he would be provided with a copy of Ms. Simpson's statement and be afforded the opportunity to provide whatever additional information he wished in response to Ms. Simpson's allegations. Mayor Gough was further informed that although no documents would be provided to him, if he wanted to refresh his own personal recollection regarding the dates and sequence of the ACA hiring process, it would be appropriate for him to review internal City documents relating to that subject.

Additional efforts were undertaken to schedule Mayor Gough's interview for April 15, 2010. On April 13, 2010, Mayor Gough was provided with a three-page summary of Ms. Simpson's allegations. (See Attachment A to this report – Summary of Allegations). Mayor Gough's interview was postponed due to the Mayor's schedule and unexpected personal matters and when he became available, eventually rescheduled for May 19, 2010. The interview did not conclude on May 19th and was resumed on May 27, 2010, for a total of 10 hours. Mayor Gough was accompanied by counsel on both occasions and two Seabold Group investigators participated in the Mayor's interviews. On May 19th, the Mayor requested the names of witnesses and the substance of their statements. The Mayor was advised orally that the investigator was not authorized to provide that information. Several times throughout the investigation, Mayor Gough requested that same information or alluded to the fact that it had not been provided to him, usually in the context of stating that the investigative process has been unfair. (See Attachment B – sample correspondence between the investigator and Mayor Gough's attorney regarding that issue).

Since the conclusion of Mayor Gough's interview on May 27, 2010, the Mayor has submitted substantial additional written material for consideration by the investigator. Mayor Gough also identified witnesses he wanted the investigator to interview, all of whom have been interviewed. As of the date of this report, Mayor Gough has not provided a written response addressing the totality of Ms. Simpson's written statement although he was given the opportunity to do so. Regarding Ms. Simpson's statement, it

