

**INVESTIGATIVE REPORT
RE: THE RESIGNATION OF
FRANK STRAUB**



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TO: Investigative Oversight Committee

FROM: Seabold Group

DATE: July 26, 2016

RE: Investigation of the Resignation of Chief Frank Straub

I. INTRODUCTION

On September 22, 2015, Spokane Mayor David Condon announced in a press conference that Police Chief Frank Straub was resigning.¹ In the months before Chief Straub's resignation, it was well known throughout City Hall and the Spokane Police Department (SPD) that media outlets were pursuing various rumors about the relationship between Chief Straub and one of his subordinates, Monique Cotton. In addition to informal media inquiries, Nick Deshais, a reporter with the Spokesman-Review, had filed a public records request on August 18, 2015, seeking information about complaints asserted by Ms. Cotton against Chief Straub. There also had been at least two articles in August raising questions about Ms. Cotton's abrupt transfer out of the SPD into the Parks Division in May 2015.

After reading a short statement during the September 22nd press conference, Mayor Condon fielded questions from reporters. One of the most pointed questions came from an *Inlander* reporter who asked:

"Were there any sexual harassment complaints lodged against Frank?"

Mayor Condon replied, "No."

In response to a follow up question from a KHQ reporter, Mayor Condon added, "[T]here had been no official filings of anything."

In addition to the Mayor's denial during the September 22nd press conference, Theresa Sanders, the City Administrator, publicly denied knowledge of any difficulties between Straub and Cotton and instead portrayed Ms. Cotton's move to Parks as a promotion.

Many weeks later, and after the Mayor's re-election, the City released documents in response to Deshais' August 18th public records request, revealing for the first time that Ms. Cotton had made sexual harassment allegations against Chief Straub in April 2015, and that her transfer to Parks was not a promotion, but rather she was moved because of

¹ Several minutes before that announcement, the City had issued a press release giving conflicting accounts for Chief Straub's sudden departure. It was reported that Chief Straub had "decided to leave the Spokane Police Department to pursue new opportunities and be closer to family." It was also reported that Mayor Condon had received letters from police leadership expressing "concerns about his management style." See Exhibit 1.

Straub's abusive behavior. Those documents also revealed that concerns about Straub's management style were known to the Administration many months before it was originally reported. The City also finally produced text messages between Ms. Cotton and Chief Straub that had been exchanged in August 2013, in which Chief Straub wrote to Ms. Cotton: "Love you You are an awesome partner and best friend. You always will be."² Straub's text message fueled already existing rumors that Ms. Cotton and Chief Straub were involved in a romantic relationship.

The timing of these disclosures set off a public firestorm, eventually leading to an agreement between Mayor Condon and Council President Ben Stuckart to commission an independent investigation into the Administration's handling of the Straub/Cotton personnel matters, as well as a number of other issues.

Seabold Group was retained to lead the investigation. We conducted 50 interviews and reviewed many thousands of pages of documents. This report is lengthy and detailed. The story that emerges is that in his three years as police chief, Frank Straub introduced many new and innovative programs and initiatives to the SPD, and he and his teams were making progress toward reforming and modernizing the department. But those successes came at a significant price for many of the most senior members of the department.

Throughout his tenure, Chief Straub managed by fear and intimidation. This report is filled with the personal experiences of his senior command staff who were often subjected to cruel and demeaning verbal abuse, unpredictable emotional outbursts, and retaliatory personnel moves. In September of last year, senior members of the department joined forces to put the Condon Administration on notice that they had had enough of Chief Straub's inappropriate and abusive treatment. To protect themselves, they provided Mayor Condon with two letters, both dated September 18, 2015. One letter was signed by the leadership of the Lieutenants & Captains Association, and one was signed by Chief Straub's entire executive team. Those letters were a blistering condemnation of Chief Straub's leadership.

It was those letters that prompted Mayor Condon to ask for Chief Straub's resignation. Monique Cotton's sexual harassment allegations played no part in the Mayor's decision. Further, this investigation revealed no evidence in support of her claims and no evidence that Chief Straub sexually harassed any other female employed with the City.

This investigation confirmed what has been reported many times over. Mayor Condon and certain members of his executive staff deliberately concealed Ms. Cotton's sexual harassment allegations against the Chief, and affirmatively misrepresented the circumstances of her transfer to Parks. This was done with the knowledge and apparent counsel of the Mayor's City Attorney. The effort to conceal Ms. Cotton's sexual harassment allegations extended to the delayed production of records that ultimately triggered this investigation.

² Exhibit 3. These text messages were recovered from Captain Dan Torok's work cell phone in September 2015, and are referred to as the Torok "Love you" texts or "Torok texts" throughout the report.

Based on all of the evidence we considered, we conclude that Ms. Sanders and Ms. Isserlis intentionally withheld information from the City Clerk about the existence of the documents at issue with the intent and purpose of delaying the production of those records until after the Mayor's election. We also conclude that Pat Dalton, the senior assistant city attorney, deliberately delayed the release of the Torok text messages without justification until after Mayor Condon's re-election.

II. THE INVESTIGATION SCOPE

The scope of this investigation was determined by the Investigation Oversight Committee ("Committee"). The Committee's original members included: Brian McClatchey, City Council Policy Advisor; Laura McAloon, a private attorney who was recently appointed by Mayor Condon as the new City Attorney; Councilmember Karen Stratton; and Rick Romero, the former Director of City Utility. Councilmember Stratton withdrew from the Committee after being informed that she was a witness in the investigation. She was replaced by Councilmember Breean Beggs.

The issues that were included in the scope of the investigation are described in the attached "Memorandum of Proposed Scope." (Exhibit 2). We attempted to provide every witness who agreed to be interviewed with a copy of the scope document before his or her interview.

After the investigation began, two modifications to the scope were agreed to by the Committee. The first modification was to add a complaint filed with the City by Carly Cortright, alleging hostile work environment, gender discrimination, and retaliation. The written complaint was dated December 21, 2015, and received by the HR Director on or about December 29, 2015. (Exhibit 7).

The second modification was to narrow the scope of "Issue 5," which originally provided:

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?

As we got into the investigation, we learned that there were at least 34 (possibly more) public records requests, resulting in the production of many thousands of pages of records, that were potentially encompassed within the original scope. Such an undertaking would have consumed the investigation budget and likely much, much more. Accordingly, at the investigator's recommendation, the Committee agreed to limit the inquiry to the documents that were produced on November 13, 2015, and November 24, 2015, in response to a records request filed by the Spokesman-Review on August 18, 2015.

For purposes of our report, we have slightly reformatted and re-ordered the issues as they are described in the scope memo. They include the following:

- A. Complaints against Chief Straub That Were Known to the Condon Administration.
- B. The Facts and Circumstances of Carly Cortright's Transfer to City Hall in October 2013.
- C. The Facts and Circumstances of Monique Cotton's Transfer to Parks in May 2015.
- D. Whether the Cortright and Cotton Transfers Were Consistent with City Policies.
- E. The Facts and Circumstances That Led to Chief Straub's Resignation.
- F. The Facts and Circumstances of the City's November 13 and November 24, 2015 Responses to the Spokesman-Review's August 18, 2015 Public Records Request.
- G. Carly Cortright's December 2015 Discrimination Complaint.
- H. Whether the City's Policies and Procedures for Investigating Sexual Harassment Complaints Were Followed in Connection with Ms. Cotton's Complaint.
- I. Summary of Seabold Group's Recommendations Regarding the City's Sexual Harassment Policies and Procedures.

III. THE INVESTIGATIVE PROCESS

Seabold Group was formally retained by the City of Spokane in January 2016. Seabold Group is an investigation consulting firm located in Seattle, Washington. Before this engagement, we had never provided professional services to the City or County of Spokane, and we had never met anyone associated with this investigation. We are independent investigators with no prior connection to any City employee, elected official, or third party involved in the oversight of the investigation. Additionally, before we were contacted in December 2015 to participate in the process of selecting an investigator, we had never heard of Frank Straub or Monique Cotton, and knew nothing about the circumstances of Chief Straub's resignation, or the issues that arose between the Mayor's Administration and the City Council thereafter.

Throughout the investigation, we communicated with the Oversight Committee on average every few weeks either by telephone or in-person meetings to provide updates and status reports. Except for some limitations described below, we were given absolute discretion in terms of the witnesses we wanted to interview and the documents we requested to review.

We interviewed 43 witnesses, some on more than one occasion. A list of those witnesses is attached as Appendix A.³

Initially, City employees were compelled to participate. Midway into our interviews with police personnel, the City made participation voluntary and agreed to extend whistleblower protections to any City employee who elected to participate in the investigation. It is our understanding that those protections also apply to individuals who were compelled to participate.

There were several important witnesses who declined to participate in the investigation. They include:

- Frank Straub
- Monique Cotton
- Nancy Isserlis
- Erin Jacobson
- Pat Dalton
- Mary Muramatsu
- Meghann Steinolfson
- Selby Smith

There also were a few witnesses who participated on a limited basis, but who provided sufficient information for our purposes.

Many of the key documents on which we relied in reaching our factual findings are referenced throughout the report, and copies are attached as Exhibits to Appendix B.

As has been reported by the press many times throughout the investigation, there have been significant challenges and delays in receiving the documents we requested from the City. The vetting process has been cumbersome and slow; first, because the City elected to treat our requests as public records requests. That is not ideal for a workplace investigation. The City concluded the process was necessary to preserve the City's privileges and to protect the privacy of employees potentially affected by the disclosure of these records. The production of records was further delayed by the review that was conducted by the City's outside attorneys.

In addition, some number of documents have been withheld or redacted on the basis of attorney-client privilege. We had several discussions with the Mayor proposing limited waivers of the privilege. It is our understanding that the Mayor declined our requests based on the advice of counsel. At the time of this report, we don't know the full scope or general content of documents that have been withheld from us or redacted on the basis of attorney-client privilege.

³ We mistakenly informed the Committee that we had interviewed 49 witnesses. We interviewed 43 witnesses, some on more than one occasion for a total of 50 interviews.

In the last four to six weeks, we began to receive the documents we requested in March, April, and May 2016. We were able to review most, but not all of those documents before finalizing this report. Those we were able to review included the 7,000 emails that have been referenced in various news articles. The City's outside lawyers are still in the process of reviewing documents that were redacted or withheld for privilege to determine if any of those records were mistakenly designated or over-redacted. The City's outside lawyers are also in the process of preparing a privilege log with the goal of narrowing the number of documents that have been designated privileged for further discussion.

Finally, the City is still providing Straub/Cotton-related emails to public records requestors. We received two recent installments but have not had the opportunity to review those records.

With the above limitations, we want to emphasize that the factual findings in this report are based on the information that was available to us. That includes statements from the witnesses who agreed to participate and the documents that we have been able to review. It is very possible that the witnesses who chose not to participate have information that would impact our factual findings. It is equally possible that information contained in the documents that have been withheld, redacted, or that we have not yet had the opportunity to review could also impact our factual findings.

Furthermore, notwithstanding the length of this report, it is intended to be a summary report. It is not intended as a comprehensive detail of all of the information that was collected, reviewed, and considered as part of the investigation. The factual findings in this report are based on the entirety of the record considered by Seabold Group and are not limited to the factual information referred to in the body of this report.

Finally, our factual findings are based on a "preponderance of evidence" standard, which means that based on the credible evidence gathered during the investigation, it is "more likely than not" that a particular event occurred or did not occur as alleged.

IV. EXECUTIVE SUMMARY

A. Complaints against Chief Straub That Were Known to the Condon Administration.

1. Sexual Harassment Complaints

- 1) Ms. Cotton was the only City employee to make sexual harassment allegations against Chief Straub. She first raised those complaints in April 2015 with Mayor Condon and Ms. Sanders, following an incident on March 31, 2015.
- 2) The investigation did not reveal any evidence to support Ms. Cotton's sexual harassment allegations.

- 3) The investigation also did not reveal any evidence that Chief Straub engaged in conduct toward any other City employee that is prohibited by the City's sexual harassment policies.
- 4) There was substantial evidence from multiple sources that Chief Straub and Ms. Cotton had a close, mutually friendly work relationship for a period of time, and that during that period Chief Straub was perceived as being overly protective of Ms. Cotton.
- 5) However, the Straub/Cotton work relationship eventually became strained and Ms. Cotton was subjected to similar verbal abuse and emotional outbursts reported by other members of Chief Straub's senior leadership team. It appears that the shift in their relationship had occurred by December 2014, and possibly earlier. By February 2015, Ms. Cotton was exploring opportunities to work outside the department and away from Chief Straub.

2. The City's Response to Ms. Cotton's Sexual Harassment Allegations

- 1) Mayor Condon and Ms. Sanders consulted Nancy Isserlis, the City Attorney, about Ms. Cotton's allegations but not Heather Lowe, the HR Director.
- 2) Ms. Cotton demanded that the City **not** investigate her complaints and said she would not participate in an investigation if one were to be initiated. Ms. Cotton also demanded that the City keep her sexual harassment allegations confidential.
- 3) Mayor Condon, Ms. Sanders, and Brian Coddington, the Communications Director each promised Ms. Cotton that they would keep her sexual harassment allegations confidential. The promises of confidentiality were shared with Ms. Isserlis and Erin Jacobson, an assistant city attorney. According to the Condon Administration witnesses, the lawyers did not express any concerns or counsel against promising Ms. Cotton absolute confidentiality.
- 4) Ms. Isserlis and Ms. Jacobson conducted a limited investigation of Ms. Cotton's allegations. They interviewed Chief Straub on April 14, 2015, and informed him of Ms. Cotton's allegations. Chief Straub denied the sexual harassment allegations. According to Mayor Condon and Ms. Sanders, Chief Straub told the attorneys that he and Ms. Cotton had a "mutually flirtatious" relationship that had ended long before Ms. Cotton came forward with her allegations. The attorneys shared that information verbally with the Mayor and Ms. Sanders on April 17, 2015.
- 5) Mayor Condon and Ms. Sanders met with Chief Straub on April 21, 2015, and again confronted him about Ms. Cotton's sexual harassment allegations. According to Mayor Condon and Ms. Sanders, Chief Straub also told them that he and Ms. Cotton had a "mutually flirtatious" relationship that had ended long before Ms. Cotton made her complaints.

- 6) The investigation revealed credible information that was inconsistent with the Mayor and Ms. Sanders' statements regarding what they and the attorneys were told by Chief Straub when he was confronted with the sexual harassment allegations. However, we were unable to corroborate that information through other sources of evidence. We believe Ms. Isserlis and Ms. Jacobson have relevant information regarding this subject, but they were unavailable to us.
- 7) After speaking with Chief Straub, Mayor Condon and the attorneys concluded that Ms. Cotton's sexual harassment allegations were unsubstantiated.

3. Concerns that Chief Straub and Ms. Cotton Were Involved in a Romantic Relationship

- 1) Mr. Coddington informed the investigator that he has heard rumors of an affair between Ms. Cotton and Chief Straub since 2013 from multiple sources. He said he shared that information with Mayor Condon and Ms. Sanders contemporaneously with learning it himself.
- 2) Mayor Condon said he didn't recall learning of rumors of an affair or inappropriate relationship. The most that he had heard was that Chief Straub showed favoritism toward Ms. Cotton.
- 3) Ms. Sanders said she heard many, many rumors about Ms. Cotton and Chief Straub, but didn't recall when she first learned of the rumors or from whom.
- 4) In August 2013, in the context of discussing communications with the media regarding a murder investigation, Chief Straub sent Ms. Cotton a text stating: "Love you You are an awesome partner and best friend. You always will be." Captain Torok was included, inadvertently, in that exchange. Chief Straub quickly sent several additional texts to both Ms. Cotton and Capt. Torok in an apparent effort to minimize the import of his text to Ms. Cotton. Capt. Torok shared the Chief's texts with Lieutenant Joe Walker and Captain Brad Arleth near the time that they were received by Capt. Torok.
- 5) In 2014, Lt. Walker raised concerns, but did not file a complaint, that Chief Straub and Ms. Cotton were too close. He (and others) expressed those concerns to Ms. Jacobson, Ms. Lowe, and Gita George-Hatcher, the HR analyst assigned to SPD.
- 6) Lt. Walker also told Ms. Lowe and Ms. Jacobson about the Torok "Love you" texts in 2014. It is likely that other members of the City Attorney's office, to include Ms. Isserlis and Ms. Muramatsu, were also generally aware of the existence of potentially inappropriate text messages between Ms. Cotton and Chief Straub.
- 7) It does not appear that anyone in the Mayor's Administration undertook any effort to address the persistent rumors of a romantic relationship between Chief Straub and Ms. Cotton or to investigate the facts and circumstances of the Torok texts until after

Ms. Cotton asserted her sexual harassment allegations in April 2015. If Chief Straub and Ms. Cotton were involved in a romantic relationship, it would have been in violation of the City's Nepotism policy.

4. Whistleblower Complaint

- 1) In November 2014, Lt. Walker filed a whistleblower complaint that named Chief Straub, among others. The complaint involved the seizure of cash. The City hired an outside law firm to investigate the complaint. We did not independently investigate the complaint, and nothing in this report is intended to express any opinion about the merits of the complaint or the investigation findings.

5. Concerns about Chief Straub's Management Style

- 1) There was substantial evidence from multiple sources that at times throughout his tenure Chief Straub (1) was abrasive, unprofessional, and verbally abusive toward members of his senior leadership team; (2) had a volatile and unpredictable temper; (3) used threatening, demeaning, profane and vulgar language; (4) created a hostile work environment in violation of the City's general harassment policies; and (5) made arbitrary personnel moves to punish members with whom he was angry or distrusted.
- 2) As early as the fall of 2013, the Administration and members of the City Attorney's office were generally aware that Chief Straub had an explosive temper, that he sometimes mistreated his staff, and that he had an unprofessional management style.
- 3) It does not appear, however, that the Condon Administration or the lawyers knew about or fully appreciated the depth and breadth of the SPD's concerns about Chief Straub's leadership until the meetings with the Association and the executive team in September 2015.
- 4) The investigation revealed substantial evidence from multiple sources that Chief Straub made extensive changes to the SPD's organizational structure early and often, leading to widespread and intense frustration among members of the SPD.
- 5) The frequent organizational changes and the resulting frustration were well known by many members of the Mayor's Administration to include: Mayor Condon, Ms. Sanders, Mr. Coddington, Mr. Cooley (CFO), Ms. Lowe, Ms. Isserlis, Ms. Jacobson, and Ms. Muramatsu (SPD legal advisor).
- 6) By February 2014, four out of five of Chief Straub's original executive team had self-demoted (Assistant Chief Craig Meidl and Lt. Joe Walker); been demoted (Capt. Brad Arleth); or transferred out of the SPD (Carly Cortright). It was reported that the self-demotions were unprecedented in the history of the department.

- 7) Members of the Condon Administration (and City Council) were not alarmed by the turnover; they were viewed as a natural consequence of new leadership and introducing change to the SPD.
- 8) The public messaging around those personnel moves was that people were leaving because of the work demands or to pursue new opportunities.
- 9) Privately, two members of Chief Straub's executive team shared with various members of the Mayor's staff and members of the legal department that they had concerns about Chief Straub's decision-making and management style, which contributed to their decision to step down or transfer.
- 10) Lt. Walker told Ms. Lowe and Ms. Jacobson in 2014 that his self-demotion was not only because of the work demands, but also because of Chief Straub's abusive management style. He shared the details of Chief Straub's inappropriate and demeaning comments and described Chief Straub as a bully. Lt. Walker also informed Ms. Lowe and Ms. Jacobson that Chief Straub engaged in retaliatory actions.
- 11) Lt. Walker never filed a formal complaint against Chief Straub regarding the concerns he shared with Ms. Jacobson and Ms. Lowe, and they never initiated any kind of inquiry to determine the merits of Lt. Walker's allegations.
- 12) In 2013 and 2014, Ms. Cortright shared her concerns that Chief Straub was unprofessional and abusive with Ms. Muramatsu, Ms. Jacobson, and Ms. Lowe during informal conversations or after-hours social gatherings. Ms. Cortright did not file a formal complaint until December 2015.
- 13) Other witnesses said they too shared concerns about the disruption created by Chief Straub's organizational changes and his emotional outbursts with Ms. Sanders, Ms. Isserlis, Ms. Jacobson, Ms. Muramatsu and Ms. Lowe at different times throughout 2014 and 2015, but they never filed a formal complaint or requested these individuals to take action.
- 14) It appears that the earliest date that Mayor Condon and Ms. Sanders confronted Chief Straub about his inappropriate behavior was in April 2015, after Ms. Cotton had come forward with her complaints.

B. The Facts and Circumstances of Carly Cortright's Transfer to City Hall in October 2013.

- 1) In or about the summer of 2013, Chief Straub asked Ms. Sanders to find another position in the City for Ms. Cortright. At the time, Ms. Cortright was the Director of Business Services and had some responsibilities for the SPD budget. Chief Straub told Ms. Sanders that he was frustrated with Ms. Cortright and needed someone who was more innovative.

- 2) Ms. Sanders agreed to find another position for Ms. Cortright. She contacted Jonathan Mallahan, Director of Neighborhood and Business Services Division, about assigning Ms. Cortright to oversee *My Spokane* 311.
- 3) Ms. Cortright was informed of the *My Spokane* project by Chief Straub one week after he had threatened to fire her during an angry outburst in a meeting with Capt. Arleth. Ms. Cortright discussed the project with Ms. Sanders and Mr. Mallahan and voluntarily agreed to the reassignment.
- 4) Ms. Cortright reasonably believed the reassignment was temporary and that she would be allowed to return to the SPD after the project was completed. Ms. Cortright was willing to make the move because her work relationship with Chief Straub had become contentious and unhealthy for her.
- 5) Chief Straub and Ms. Sanders always intended that the reassignment would be permanent, but they did not share that information with Ms. Cortright.
- 6) Within a week of transferring to City Hall in October 2013, Ms. Cortright learned that Chief Straub had removed her from the SPD's organizational chart, indicating to Ms. Cortright that she was being pushed out of the department. Ms. Cortright met with Chief Straub and told him that she would not be returning to the SPD. Ms. Cortright said she voluntarily left the SPD because she wanted to be in control of her future in the City.
- 7) In December 2014, Ms. Cortright accepted the position of Customer Service Program Director in the Community & Neighborhood Services Division, a position she currently holds. Ms. Cortright's salary was funded through the police budget from October 2013 through December 2014.

C. The Facts and Circumstances of Monique Cotton's Transfer to Parks in May 2015.

- 1) Ms. Cotton's request to be transferred out of the SPD and away from Chief Straub was triggered by a March 31, 2015 incident involving Chief Straub and several other members of the SPD.
- 2) The March 31st meeting is described in detail in the body of the report. In summary, Chief Straub verbally attacked Ms. Cotton (and others) in a profanity-laced outburst about an overtime decision he made that had nothing to do with Ms. Cotton.
- 3) Ms. Cotton hired an attorney after the March 31st incident and her attorney arranged a private meeting between Mayor Condon and Ms. Cotton. In that meeting, Ms. Cotton told Mayor Condon about the March 31st incident and asked to be transferred to another position in the City. That is also when Ms. Cotton first raised the sexual harassment allegations addressed above.

- 4) Mayor Condon agreed to find another position for Ms. Cotton and referred the matter to Ms. Isserlis and Ms. Sanders. Ms. Sanders first met with Ms. Cotton on April 13th. She had follow-up communications with Ms. Cotton in texts and by telephone, and some of those communications were documented in hand-written notes. Ms. Sanders also saved her text messages with Ms. Cotton.
- 5) Ms. Isserlis and Ms. Jacobson were directed to investigate the March 31st incident. Mayor Condon, Ms. Sanders, Ms. Isserlis, and Ms. Jacobson were all aware that the issues with Chief Straub's management style were broader than the March 31st incidents, but it was decided, by someone unknown to us, to limit the inquiry to the March 31st meeting.
- 6) From April 14 – 16, 2015, Ms. Isserlis and Ms. Jacobson interviewed Chief Straub, Assistant Chiefs Rick Dobrow and Selby Smith, Lt. Mark Griffiths, Capt. Eric Olsen, and Tim Schwering, the Director of Strategic Initiatives. Mr. Schwering was not present at the March 31st meeting but had heard about it right after it happened.
- 7) Mr. Schwering told the lawyers that the issues were much broader than the March 31st incident and that in his view Chief Straub was a liability to the City. Even after speaking with Mr. Schwering, the inquiry was limited solely to the March 31st meeting.
- 8) The lawyers did not interview Ms. Cotton even though she had informed Ms. Sanders that she was willing to participate in an investigation related to the March 31st meeting, as well as other times that Chief Straub had berated her and other staff.
- 9) Ms. Isserlis and Ms. Jacobson verbally debriefed Mayor Condon and Ms. Sanders on April 17, 2015, confirming that Chief Straub had engaged in inappropriate behavior.
- 10) Ms. Isserlis and Ms. Jacobson intentionally did not document any of their interviews or their discussions with Mayor Condon and Ms. Sanders. Mayor Condon and Ms. Sanders also did not document any of their discussions related to Ms. Cotton's complaints other than the handwritten notes prepared by Ms. Sanders referenced above.
- 11) We conclude that the absence of documentation was intentional to avoid creating a public record of Chief Straub's inappropriate behavior, as well as Ms. Cotton's complaints.
- 12) Mayor Condon and Ms. Sanders met with Chief Straub on April 21st. He did not deny the allegations about his behavior during the March 31st meeting, but said it was an aberration. Chief Straub was emotional, contrite, and apologetic. Mayor Condon told Chief Straub his actions were unacceptable and Ms. Sanders told him to "get straight with his people." Chief Straub did not request an investigation of Ms. Cotton's sexual harassment allegations or the March 31st incident.

- 13) During the time that the lawyers were interviewing witnesses about the March 31st incident, Ms. Sanders was pursuing options for reassigning Ms. Cotton. She spoke to Leroy Eadie, the Director of Parks & Recreation, about placing Ms. Cotton in Parks. Mr. Eadie had been in negotiations with an individual outside of the City to become a project employee to assist Parks with their communications and marketing needs. That opportunity fell through near the time that Mr. Eadie was contacted by Ms. Sanders.
- 14) It was undisputed that Parks had a legitimate need for a communications and marketing professional at the time of these discussions. Mr. Eadie and his deputy, Jason Conley, met with Ms. Cotton. They both believed that she had the skills and experience they needed and they supported Ms. Cotton's reassignment to Parks. There was no open position in Parks at the time so Ms. Cotton's position was funded through the police budget until January 2016.
- 15) In her discussions with Ms. Sanders, Ms. Cotton insisted that her reassignment had to appear to be a promotion. To accommodate Ms. Cotton, Ms. Sanders agreed to a pay increase to support the messaging that Ms. Cotton was being promoted.
- 16) Mr. Coddington, along with Ms. Lowe, Ms. Steinolfson, and Ms. Cotton, participated in drafting a letter for the Mayor's signature memorializing the terms of Ms. Cotton's transfer to Parks. Ms. Sanders was also involved in the review of that letter, which went through five drafts.
- 17) Ms. Cotton was permitted to offer revisions highlighting her unique skills and extraordinary accomplishments in the SPD. That was the letter that Mayor Condon signed on April 22, 2015. Ms. Cotton's transfer took effect May 4, 2015, and was accompanied by an internal City-wide email drafted by Mr. Coddington that announced Ms. Cotton's move to Parks.
- 18) The Spokesman-Review published a short article on May 4, 2015, regarding Ms. Cotton's transfer. The article included quotes from the Mayor that were emailed to the Spokesman-Review.
- 19) As of May 2015, the Condon Administration had transferred Ms. Cotton to Parks, and successfully portrayed the move as a promotion. The Administration had also avoided any disclosure of Ms. Cotton's complaints, as well as any negative publicity about Chief Straub's inappropriate behavior.
- 20) Ms. Cotton performed well in her new position and there were no further complaints from Ms. Cotton regarding Chief Straub after the transfer took effect.

D. Whether the Cortright and Cotton Transfers Were Consistent with City Policies.

- 1) Ms. Cotton and Ms. Cortright were both exempt, general-funded employees at the time of their transfers. There are no City policies that directly address the inter-departmental transfer or loan of exempt employees, and therefore, no City policies were violated as a result of those transfers. Additionally, it appears that inter-departmental loans and transfers involving exempt employees are common in the City to meet a variety of legitimate business needs, and are clearly within the Mayor's discretion.

E. The Facts and Circumstances That Led to Chief Straub's Resignation.

- 1) After confronting Chief Straub about the March 31st incident, Ms. Sanders monitored his behavior throughout the summer by talking with various members of the SPD. She learned initially that Chief Straub's behavior improved.
- 2) Later that summer, Ms. Sanders began to hear from different sources that Chief Straub was falling back into inappropriate behaviors. She shared that information with Mayor Condon and it was agreed that they would schedule a meeting to provide members of the SPD command staff an opportunity to discuss their concerns about Chief Straub. The Mayor's office combined that meeting with a regularly scheduled budget meeting that the Mayor routinely has with various unions.
- 3) On September 8, 2015, Mayor Condon and Ms. Sanders met with members of the Lieutenants & Captains Association. The Association leadership knew ahead of time that it would be given an opportunity to talk to the Mayor about Straub-related concerns.
- 4) It was estimated that 14-16 Association members attended the budget meeting. After the budget presentation, members began sharing their individual experiences working with Chief Straub. Most everyone in the room had a story to share. The overwhelming feedback was that Straub was an ineffective and abusive leader. Mayor Condon informed the group that he would be following up on their concerns. He didn't make any promises and gave no indication regarding his next steps.
- 5) Ms. Sanders invited members of the Association to meet with her privately to continue the discussion regarding Chief Straub. It was estimated that 8-10 members took advantage of the offer and met with Ms. Sanders one-on-one. They confirmed what was shared in the September 8th meeting and provided additional details about their personal experiences. The individual feedback was also overwhelmingly negative.
- 6) Mayor Condon scheduled a second meeting with the members of Chief Straub's executive team. He and Ms. Sanders met with them on September 10, 2015. Chief

Straub knew about the meeting but was purposely excluded. Members of the executive team all echoed concerns similar to those expressed by the Association.

- 7) During a September 17, 2015 labor-management meeting, members of the Association leadership and the executive team discussed their meetings with the Mayor and Ms. Sanders. Through those discussions, the two groups ultimately decided to memorialize the concerns they shared with the Administration. That resulted in the September 18, 2015 letters.
- 8) Although each group prepared their own letter, there was collaboration insofar as the documents were both dated September 18, both addressed to the City Attorney, and both designated as attorney-client privileged. The impetus for memorializing their complaints was to protect the members of the SPD who came forward in the event that Mayor Condon failed to address their concerns. They feared that Chief Straub would retaliate if he learned about the complaints but nothing was done to address them.
- 9) The two groups also wanted to put the Condon Administration on notice that they were not going to tolerate Chief Straub's inappropriate behavior any longer. They designated the letters privileged because they did not want to make their concerns public. They wanted to address the issues internally.
- 10) The September 18th letters were hand-delivered to Ms. Isserlis that same day. She immediately showed them to the Mayor, which is what ultimately prompted the Mayor to act.
- 11) Ms. Isserlis met with three members of the Association the following morning, Saturday, September 19th to discuss the Association letter. They also discussed whether the members thought the relationship with Chief Straub could be repaired. No one expressed the view, at that meeting or in any of the other meetings with the Mayor and Ms. Sanders, that Chief Straub could recover from the loss of trust and confidence that existed among the entire senior leadership team.
- 12) The Mayor also convened a meeting on either Saturday the 19th or Sunday, September 20th with Ms. Sanders, Ms. Isserlis, Ms. Jacobson, and then Assistant Chief Dobrow to discuss Chief Straub's future with the City. Mayor Condon was considering whether to terminate Straub or demand his resignation. There was no option being discussed that would have resulted in Straub remaining the Chief of Police. Ultimately, Mayor Condon decided to demand Chief Straub's resignation.
- 13) Chief Straub was asked to meet with Mayor Condon and Ms. Sanders early Monday morning, September 21st. Chief Straub was informed of the existence of the letters and told that he had lost the confidence and support of his entire command staff. Mayor Condon told Straub he needed to resign or he would be terminated. During that meeting, Chief Straub requested the City to investigate the concerns alleged in the September 18th letters. That request was denied.

- 14) Mayor Condon, Ms. Sanders, Mr. Coddington, Ms. Jacobson, and possibly Ms. Isserlis, met with the City Council in executive session on the afternoon of September 21st to inform the Council that the Mayor had asked for Chief Straub's resignation. Councilmember Stratton asked in words or substance whether the Mayor's decision had anything to do with Monique Cotton. Most attending the meeting recalled he said no.
- 15) Mayor Condon's statement to the Council was truthful. Ms. Cotton was not a factor in the Mayor's decision to ask for Chief Straub's resignation. Ms. Cotton's sexual harassment allegations also were not a factor in the Mayor's decision. Those allegations were considered unsubstantiated based on the interview of Chief Straub, and Ms. Cotton's transfer to Parks was deemed a success.
- 16) The determinative factor leading to Mayor Condon's decision to demand Chief Straub's resignation was the September 18th letters. It is uncertain whether the Mayor would have pursued the same course of action without the letters, but the fact that the Association, and particularly the executive team, were willing to put their complaints in writing was pivotal. Two days after receiving the letters, Mayor Condon demanded Frank Straub's resignation.
- 17) On September 22, 2015, Mayor Condon informed his cabinet during a regularly scheduled cabinet meeting that he had asked for Chief Straub's resignation, and was awaiting a response.
- 18) Later on September 22nd, Mr. Coddington was directed to contact Chief Straub to discuss the City's proposed press release, which the City planned to publish later that day. For several hours, the City and Chief Straub negotiated the terms of the press release. Chief Straub objected to the City's drafts that included a reference to the September 18th letters.
- 19) The City issued its press release at 4:37 p.m. and convened a press conference at approximately 4:45 p.m. during which Mayor Condon announced Chief Straub's resignation and answered several questions posed by various media outlets.
- 20) Chief Straub signed his letter of resignation on October 6, 2015, and his last date of employment with the City of Spokane was January 1, 2016.

F. The Facts and Circumstances of the City's November 13 and November 24, 2015 Responses to the Spokesman Review's August 18, 2015 Public Records Request.

- 1) Nick Deshais of the Spokesman-Review filed a public records request on August 18, 2015. Among other things, he requested documents "related to or discussing" Ms. Cotton's transfer to Parks, documents related to complaints made by Ms. Cotton or against Chief Straub, and text messages to and from Ms. Cotton and Chief Straub.

- 2) During the period September 5, 2015 – October 20, 2015, the City received at least six additional public records requests seeking the same documents, including an October 20th request from Straub's attorney specifically requesting communications between the City and Ms. Cotton's attorney.
- 3) Consistent with well-established and longstanding practices, the City Clerk distributed the requests, all seven, to the relevant parties directing them to search for and produce responsive documents.
- 4) Notices of these requests were sent to members of the City Attorney's Office (Ms. Isserlis, Mr. Dalton, Ms. Muramatsu, and Ms. Jacobson), and the Mayor's office, including Mr. Coddington and Ms. Sanders, among many others.
- 5) All City staff, including the Mayor, have an obligation to make good faith efforts to search for records and to notify the Clerk if such records exist. Mayor Condon largely relies on his staff to inform him of the requests and conduct searches for responsive documents.
- 6) It is common for City staff to alert the Clerk that records exist even if they are not sure whether the documents are responsive. In those cases, the Clerk typically requests the employee to forward the documents for her review, and she or a lawyer in the City Attorney's office will make the determination.
- 7) It is also common for the City to produce records in installments as soon as they become available. In response to Deshais' August 18th request, the City produced its first installment on August 25, 2015.
- 8) On Friday, September 18, 2015, Mr. Dalton, a senior attorney in the City Attorney's office, directed the City Clerk to forward all Straub/Cotton documents to the City Attorney's Office for review in connection with "pending litigation." Mr. Dalton told the Clerk he was acting at the direction of Ms. Isserlis.
- 9) There was no "pending litigation" involving Chief Straub or Ms. Cotton at the time of this directive.
- 10) The directive was a deviation from the Clerk's standard practices.
- 11) As of September 18, 2015, the City Attorney's office, not the Clerk's office, controlled what documents were released to requestors and when.
- 12) Ms. Isserlis was closely monitoring Straub/Cotton public records requests and release dates, and was involved in the review process, which was unusual. Ms. Isserlis was also in communication with Ms. Sanders about Straub/Cotton record requests. She specifically requested to speak with Ms. Sanders on September 14th regarding the Brian Breen request.

- 13) Mr. Coddington was also closely monitoring the Straub/Cotton public records requests and was included in many of the communications between the Clerk and the City Attorney's office. He was alerted to what was going to be released and when.

1. The Torok "Love you" Texts – Produced November 13, 2015

- 1) Members of the City Attorney's office knew about the Torok texts by mid-September 2015, at the latest. Ms. Muramatsu personally contacted Mr. Schwering to inform him that Capt. Torok likely had text messages that were responsive to Straub/Cotton public records requests.
- 2) Mr. Schwering located and produced an extraction report containing the "Love you" texts, among many others, to Ms. Muramatsu and the City Clerk on September 30th. The City Clerk forwarded the report to Mr. Dalton that same day.
- 3) On September 29th, Mr. Schwering emailed three screenshots of just the "Love you" texts to the Clerk and Ms. Muramatsu. It does not appear that copies of those screenshots were ever produced to any requestor.
- 4) In mid-October 2015, two weeks after receiving the Torok texts, and at the Clerk's urging, Mr. Dalton authorized the Clerk to send 10-day notices to Straub and Cotton. Those letters stated that the texts existed, were responsive, and would be released on **October 29, 2015**, unless they sought an injunction. They did not, and the City Clerk was prepared to release the Torok texts to Mr. Deshais and many others on Friday, October 29, 2015, five days before the election.
- 5) On the morning of October 29, 2015, Mr. Dalton told the Clerk he needed more time to review certain Straub/Cotton records, including the Torok texts. Accordingly, he did not authorize the Clerk to release the Torok texts that day.
- 6) We are not aware of any legitimate reason for withholding those texts beyond October 29th. They had been reviewed by both the City Clerk and Mr. Dalton, determined to be responsive, and no injunction had been sought.
- 7) The Torok texts were finally released on November 13, 2015, two months after they were received by the City Attorney's office, two weeks after they were originally scheduled to be released, and ten days after the Mayor's re-election.

2. Documents Released on November 24, 2015

- 1) The documents that were released on November 24, 2015, included Ms. Sanders' handwritten notes and text messages with Ms. Cotton regarding her sexual harassment and other complaints against Chief Straub and the discussions regarding her transfer to Parks. In May 2015, Ms. Sanders had given Ms. Isserlis her originals

of these documents so Ms. Isserlis was the only one who had copies of Ms. Sanders texts and notes.

- 2) The documents released on November 24 also included correspondence and emails to and from Ms. Cotton's attorney, Mayor Condon, Ms. Sanders, and Ms. Isserlis regarding Ms. Cotton's attempts to be reimbursed for her legal fees associated with her complaints about Straub and efforts to be transferred to another position in the City.
- 3) On November 10, 2015, Ms. Jacobson, who was filling in for Mr. Dalton, produced the Sanders notes and texts and some of the correspondence with Cotton's attorney to the City Clerk. Ms. Jacobson informed the Clerk that the documents were responsive to Mr. Deshais' August 18th request, as well as ~~six~~ other requests.
- 4) The evidence is inconclusive regarding how Ms. Jacobson came into possession of these documents, but it appears that either she discovered them among Mr. Dalton's records on or about November 10th or Ms. Isserlis provided them to Ms. Jacobson on or about November 10th.
- 5) November 10th was the *first* time that the City Clerk was informed of the existence of these records. Upon reviewing them the Clerk contacted the Mayor's office and the City Attorney's office to request that they search further for responsive records. That effort resulted in the discovery of another letter between the Administration and Cotton's attorney (June 8 letter), which was produced by the Mayor's office, and emails between Ms. Isserlis and Cotton's attorney, which were produced by Ms. Isserlis' executive assistant. Those records were also determined to be responsive to Mr. Deshais' and others' requests.
- 6) Ms. Isserlis was in control and/or possession of all of the November 24 documents as early as *June 2015*. There is no evidence that came to our attention that she ever informed the Clerk about the existence of these records or that she directed her staff to search for and produce them to the Clerk until November 10th at the earliest.
- 7) Ms. Isserlis affirmatively stated on at least two separate occasions that she had no records that were responsive to Mr. Deshais' request or similar requests filed by others.
- 8) It appears that Ms. Isserlis undertook no effort to search for emails or to inform IT that emails existed that were responsive to public records requests until her assistant was specifically requested to do so by the City Clerk on November 11, 2015.
- 9) Ms. Sanders was aware that the November 24 records existed but never informed the City Clerk. She affirmatively represented that she had no responsive records or that her records were forwarded to legal in connection with potential litigation. Ms. Sanders did not describe the records she forwarded. Ms. Sanders also never requested her staff to search for the relevant correspondences, which were stored electronically

and in hard copy in the Mayor's office, and produced to this investigator by the Mayor's staff within an hour of requesting the documents.

- 10) Mayor Condon was generally aware that Ms. Sanders had taken some notes of her conversations with Ms. Cotton, but there was no direct evidence that he ever reviewed those documents before they were released. He was also aware of the legal correspondence with Cotton's attorney, but had turned his copies over to Legal and was relying on them to determine whether they were responsive to public records requests.
- 11) Mr. Coddington was also generally aware that Ms. Sanders had text messages from Ms. Cotton and that she had taken some notes of their conversations. He knew that those communications related to the sexual harassment allegations and the transfer to Parks. Mr. Coddington also knew that Ms. Sanders had turned those records over to Legal and he was relying on Legal to make the determination of whether the records were responsive to public records requests.

3. Factual Findings and Conclusions

- 1) Based on all of the evidence we considered, we conclude that the Torok "Love you" texts and the other documents described above that were released on November 24, 2015, were deliberately withheld until after the Mayor's re-election.
- 2) Mr. Dalton intentionally delayed the release of the Torok text messages. We don't know if he acted alone or at the direction of someone else in the City. The evidence is inconclusive regarding whether Mr. Dalton knew of the other documents and/or whether he was involved in the delay in releasing those records.
- 3) We also conclude that Ms. Isserlis and Ms. Sanders deliberately withheld information from the City Clerk regarding the existence of the November 24 documents with the intent and purpose of delaying the production of those records until after the Mayor's re-election.

G. Carly Cortright's December 2015 Discrimination Complaint.

- 1) Ms. Cortright filed a formal complaint with the City in a letter dated December 21, 2015, alleging hostile work environment, gender-based pay discrimination, and retaliation.
- 2) Ms. Cortright did not allege gender-based hostile work environment. Rather, her factual allegations fall within the City's general harassment policies. The evidence gathered in this investigation established that during the period of approximately March 2013 through August 2013, Chief Straub engaged in conduct that violated the City's general harassment policies and that Ms. Cortright was adversely impacted by his actions.

- 3) Ms. Cortright's gender-based pay discrimination claims were not supported by the evidence.
- 4) Ms. Cortright's retaliation claims also were not supported by the evidence. She failed to allege facts that, even if true, constituted a violation of the City's retaliation policies.

H. Whether the City's Policies and Procedures for Investigating Sexual Harassment Complaints Were Followed in Connection with Ms. Cotton's Complaint.

- 1) The City and SPD have different and in some ways conflicting policies and procedures governing the complaint process and the investigation of sexual harassment allegations. There was disagreement among HR witnesses regarding which policy applied to Ms. Cotton's situation (civilian employee in the SPD represented by a non-police union alleging sexual harassment against the police chief), and the policies themselves do not address that issue.

1. City Policies and Procedures - Sexual Harassment Complaints

- 1) The City's administrative policies and procedures are ambiguous. One interpretation is that the City will attempt to resolve sexual harassment complaints informally at the lowest level possible. If the informal resolution is unsatisfactory, the employee is given the discretion whether to push forward with an investigation. If an employee chooses that path, under the plain language of the policy, the supervisor ***shall immediately*** conduct an investigation and is required to provide "official findings" to the complainant within ten days of the original complaint.
- 2) An equally plausible, alternative interpretation of the City's administrative policies is that if an employee merely notifies a supervisor of sexual harassment allegations, an investigation (and all the procedural requirements described in the policy) is mandatory.
- 3) Neither of these conflicting interpretations match the City's actual practices. HR analysts, not supervisors, are given the discretion whether to address complaints informally or conduct an investigation, with or without the approval of the HR Director or Legal, or even notification, according to Ms. Lowe. There are no internal guidelines, formal or informal, governing which course of action is appropriate under any given circumstances. The City's practices appear to have led to the inconsistent enforcement of City policies with no meaningful oversight or accountability.
- 4) It also appears that the City, in practice, requires employees to put their complaints in writing before the City will formally address them.

2. SPD Policies and Procedures - Sexual Harassment Complaints

- 1) SPD policies are generally clearer about roles and responsibilities of employees and supervisors, key terms are less ambiguous, and the procedures for responding to allegations are more coherent overall.
- 2) SPD policies also encourage informal resolution at the lowest level but do not leave it to an employee's discretion regarding whether the allegations will be investigated. If a member of the SPD notifies a supervisor of sexual harassment allegations, supervisors must determine if there is any basis for the allegation and proceed with a resolution, which doesn't necessarily require a formal investigation.
- 3) SPD policies provide for a "supervisory resolution" or a "formal investigation" if the matter cannot be resolved informally, and provides guidance on who has investigative authority, confidentiality, retaliation, and classifications for the disposition of complaints.

3. Resolution of the Cotton Sexual Harassment Allegations

- 1) The City's response to Ms. Cotton's sexual harassment allegations was unusual because it was managed by the Mayor, Ms. Sanders, and the City Attorney without involving Human Resources or Internal Affairs.
- 2) Ultimately, the City resolved the complaint informally to the satisfaction of both Ms. Cotton and Chief Straub, and the resolution was effective. There were no subsequent issues between Chief Straub and Ms. Cotton after she was transferred to Parks in May 2015. That was consistent with City and SPD policies both of which advocate informal resolution at the lowest level.
- 3) The City also conducted a limited investigation of Ms. Cotton's complaints based on the information she was willing to provide. Chief Straub was confronted with the allegations and given an opportunity to respond. As a result of his interview, the allegations were considered unsubstantiated. Although limited in scope, the investigation complied with City policies to the extent that mere notification triggers a requirement to conduct an investigation. Not all of the procedural steps referred to in the policy were followed such as documenting the complaint, forwarding it to HR, or providing written findings to the complainant, but it appears that those steps are routinely overlooked by the City.

I. Summary of Seabold Group's Recommendations Regarding the City's Sexual Harassment Policies and Procedures.

- 1) Mayor Condon, Ms. Sanders, and Ms. Lowe all expressed concerns that requiring the City of Spokane to investigate every employee complaint is likely to have a chilling effect on the willingness of some employees to come forward with concerns. Especially for those who do not want the publicity or stigma that can sometimes result from investigations. In many cases, the employee just wants the problem fixed.

- 2) The Administration's concerns are well-founded. Many workplace complaints can be adequately addressed without conducting a full-blown, formal investigation. And in our experience, no employer formally investigates every employee complaint, even those alleging harassment or discrimination. While formal investigations may not be warranted in every case, the City should nonetheless address every complaint in some manner, whether an employee makes the concerns known verbally or in writing.
- 3) For the purposes of responding to employee complaints, the City should have processes in place that are thoughtful, deliberate, consistent, and fairly and evenly applied. Employees should not have to hire attorneys to get the attention of the Administration or the HR Department.
- 4) Accordingly, we recommend that the City establish internal guidelines for responding to all employee complaints that are flexible enough to reasonably accommodate the wishes of the employee, but that also meet the City's duty to prevent and correct inappropriate behavior in the workplace. To that end, we recommend the following:

a) Revise written policies

- The City should revise its Administrative and SPD sexual harassment policies and procedures to make them consistent and to reflect its internal guidelines for responding to sexual harassment allegations. Spokane's policies should reflect actual practices.
- Those revised policies should clearly describe how employee complaints will be received (the intake process), who will have the authority to investigate the complaint or refer it for informal resolution, and a general description of the investigative process that will be followed in the event that a complaint is referred for a formal investigation.

b) Identify roles and responsibilities

- The policies should establish and define the roles and responsibilities of individuals who will be involved in the decision of whether to formally investigate an employee complaint or refer it for informal resolution.
- Develop and implement a "case team" approach that would include the HR Director or designee, a lawyer from the City Attorney's Office, and a division supervisor or manager. The case team would be responsible for intake, scoping, and assigning an investigator if it is determined that an investigation is warranted.
- The case team would also be responsible for overseeing the investigation, determining whether a written report is necessary, reviewing the investigation report, making disciplinary recommendations if warranted, and overseeing the debriefing of the parties and closure of the investigation.

c) Document throughout the process

- Complaints should be documented even if they don't result in an investigation, as should the case team's reasons for referring or not referring a matter for investigation. This will assist in transparency and consistency in the application of City policies.
- The scope of the investigation should be documented to provide the investigator and the parties clear notice of the issues that will be addressed in the investigation.
- Investigation interviews should be documented. The original documentation should be preserved and become part of the permanent investigation file.

d) Establish clear confidentiality guidelines

- Parties to an investigation should be informed that the City will maintain the confidentiality of employee complaints to the extent possible and consistent with state and federal law. Employees should be informed that the City cannot guarantee confidentiality.

e) Ensure all personnel are adequately trained

- All City personnel should receive training on the City's updated policies. Training should facilitate an understanding of staff's responsibilities under the policy, how to raise concerns, and provide a general idea of what staff can expect in response from the City when concerns are raised.
- The appropriate City personnel (city administrator, directors, supervisors, HR staff, and members of the City Attorney's office with responsibility for overseeing investigations) should undergo training related to the new internal guidelines and procedures.
- Those who have responsibility for conducting investigations should be experienced and receive ongoing training.

V. BACKGROUND

A. The Condon Administration

David Condon was elected Mayor of Spokane in November 2011 and for the first time since 1973, re-elected to a second term on November 3, 2015.

Theresa Sanders has served as the Mayor's City Administrator during both of his terms. She is the Mayor's confidant and gatekeeper. Ms. Sanders supervises the individual

members of the Mayor's cabinet and meets with them regularly. Ms. Sanders is and has been intimately involved in the day-to-day operations of Spokane City government and instrumental in carrying out the Mayor's agenda and initiatives. She sees her role as "blocking and tackling."

Brian Coddington was hired as the City's Communication Director in February 2013. Mr. Coddington is also a member of the Mayor's inner circle of advisors. He and the Mayor meet regularly to discuss and strategize on matters involving communication, messaging, and public relations.

B. The Spokane City Council

Five current and former City Councilmembers were interviewed in this investigation: President **Ben Stuckart**, Councilmember **Mike Fagen**, Councilmember **Karen Stratton**, Councilmember **Candace Mumm**, and former Councilmember **Mike Allen**. All but Councilmember Allen answered questions about the September 21, 2015 executive session during which Mayor Condon informed the Council that he had asked Chief Straub to resign.⁴

C. The Spokane City Attorney's Office

During the time periods relevant to this investigation, **Nancy Isserlis** was the City Attorney for Spokane, a position she has held since April 2, 2012. Ms. Isserlis was also one of the Mayor's closest advisors and appears to have had a very close working relationship with Ms. Sanders as well. She was consulted by Mayor Condon and Ms. Sanders regarding all of the relevant Straub/Cotton personnel matters.

Erin Jacobson was the Labor & Employment lawyer in the City Attorney's Office (CAO). Ms. Jacobson said her primary area of responsibility was labor negotiations. Ms. Jacobson also served as the City's acting HR Director from June 2010-May 2011.⁵

Ms. Jacobson was an important figure in the timing of the release of public records at issue in this investigation.

Both Ms. Isserlis and Ms. Jacobson resigned from the City while the investigation was pending. Ms. Jacobson's resignation was effective May 7, 2016; Ms. Isserlis' last day was reported to be July 1, 2016.

⁴ Former Councilmember **Jon Snyder** also expressed a willingness to be interviewed, but in light of the information that was obtained from other witnesses, this investigator determined that his information would likely be cumulative on the issue of what was discussed during the September 21, 2015 executive session.

⁵ We spoke to Ms. Jacobson on January 28, 2015, for background information. She generally described her role as an employment attorney for the City, the public records process, and her role in reviewing the Cotton/Straub records that were produced on November 24, 2015.

Pat Dalton is the Senior Assistant City Attorney in the CAO and he is primarily responsible for the legal oversight of the City's public records responses. He works closely with the City Clerk's Office. Mr. Dalton went on an extended vacation beginning November 9, 2015, and returned to the office on November 27 or 30, 2015. Ms. Jacobson covered his public records responsibilities while he was gone. The records at issue were released by the City during the period that Ms. Jacobson was filling in for Mr. Dalton.

Mary Muramatsu is an Assistant City Attorney and was the legal advisor to the SPD at all times relevant to this investigation. As reported by several witnesses, Ms. Muramatsu attended Chief Straub's executive team meetings and CompStat⁶ meetings on a regular basis for a period of time. Witnesses believed that Ms. Muramatsu witnessed some of Chief Straub's unprofessional behaviors as early as the fall of 2013 and reported her concerns about Chief Straub's behavior to Ms. Isserlis.

Ms. Muramatsu also provides legal advice regarding public records requests involving police records, and was included in a number of communications regarding the numerous public records requests relating to Ms. Cotton and Chief Straub.

None of lawyers identified above agreed to participate in this investigation. Ms. Isserlis provided the investigator with an April 27, 2016 letter explaining their decision not to participate. (Exhibit 4).

D. The Human Resources Department

Heather Lowe is the Human Resources Director. She has held that position since May 2011. Ms. Lowe supervises sixteen staff and is primarily responsible for overseeing all of the City's personnel matters, including internal investigations of alleged misconduct. Ms. Lowe estimated the City had conducted approximately 40 investigations during the period 2011 – 2015.

Ms. Lowe was not consulted by the Mayor regarding Chief Straub's resignation. Ms. Lowe also was not informed about Ms. Cotton's sexual harassment complaints or the promises of confidentiality that were extended to Ms. Cotton by the Mayor and Ms. Sanders.

Ms. Lowe tendered her resignation during this investigation. Her last day at the City is reportedly August 3, 2016.

Gita George-Hatcher was an HR analyst assigned to fire and police from 2009 or 2010 to August 2014. She reported to Heather Lowe from approximately 2011 through August 2014, when she became the Chief Hearing Examiner in the City's Civil Service

⁶ CompStat was first developed by the New York City Police Department in the early 1990's. It is a performance management and accountability system of real-time crime data analysis, and rapid response using the best available tactics and resources. "CompStat: Its Origins, Evolution, and Future in Law Enforcement Agencies" (Police Executive Resource Forum 2013) CompStat was introduced to the SPD by Chief Straub.

Commission. Ms. George-Hatcher said her primary responsibilities as an HR analyst included labor negotiations, investigation of employee complaints, and overseeing pre-discipline hearings. For a period of time, Ms. George-Hatcher regularly attended morning command staff meetings at the SPD, at least for a portion of the meetings. Other than hearing Chief Straub use “F-bombs,” Ms. George-Hatcher did not recall observing any behavior by Chief Straub that she believed was inappropriate.

Meghann Steinolfson was hired in December 2014 as a senior HR analyst and assigned to fire and police. Ms. Steinolfson declined to participate in the investigation.

E. Office of the City Clerk

Terri Pfister is the Spokane City Clerk, a position she has held for 20 years. Ms. Pfister oversees five staff. Her responsibilities include: public records administration, records management, City Council support, contract administration, as well as a number of other administrative functions. The Deputy City Clerk, **Laurie Farnsworth**, is primarily responsible for the Public Records function, but receives back up from Ms. Pfister and others as necessary.

The City Clerk’s Office has well-defined policies and procedures for responding to public records requests. They also have standard practices that appear to work well for the office. As we discuss in some detail in this report, the delay in producing the records at issue was not because of inadequate policies or procedures, or a lack of resources in the Clerk’s Office. The delay was solely attributable to the City Attorney’s Office.

F. Former Police Chief - Frank Straub

Frank Straub was sworn in as Spokane’s Police Chief on October 8, 2012.⁷ It is undisputed that Chief Straub was hired to change the culture of the Spokane Police Department, and with that mandate, the Condon Administration fully anticipated that Chief Straub’s leadership would likely make some members of the SPD uncomfortable.

Chief Straub introduced many new programs and initiatives. He developed a strategic plan that focused on reducing crime rates; implementing the numerous recommendations of the Mayor’s Use of Force Commission; and restoring community trust in the SPD. Chief Straub enlisted the assistance of the Department of Justice’s Office of Community Oriented Policing Services (COPS) to conduct a broad-based assessment of various department policies and procedures in an effort to update and modernize those policies. That process resulted in a lengthy report and a number of additional recommendations that the SPD was given 18 months to implement.

⁷ According to payroll records, his effective date of employment with Spokane was September 24, 2012.

Chief Straub also introduced numerous organizational changes that fundamentally altered the department. During 2013 into 2014, Chief Straub introduced one organizational change after another in rapid succession. These were not minor revisions to his organizational structure; rather, they were wholesale changes that resulted in physical relocations and changes to the command structure.

Publicly, it appeared that Chief Straub was making great strides toward reforming and modernizing the department. Internally, however, Chief Straub was creating what was described as chaos in the organization, and within six months of becoming Chief, he began to exhibit abusive and emotionally volatile behaviors that reportedly got worse in time. Within his first 18-months (October 2012 to February 2014), Chief Straub had lost all but one of his original executive team members through self-demotions, demotion, or transfer.

During Chief Straub's tenure, the department was in constant flux - Chief Straub frequently promoted, demoted, transferred, and re-assigned personnel, often unencumbered by Civil Service rules. He soon developed a reputation for being punitive and vindictive. If he didn't like someone or felt they were disloyal or had betrayed him in some fashion, he made it known and used his authority to transfer those individuals to less desirable assignments.

The Condon Administration knew early on about the intense frustration with the constant organizational changes. That was not a secret to anyone in the City. By early 2014, members of the Administration were also aware of Chief Straub's temper and abrasive style.

Not until Ms. Cotton came forward after the March 31, 2015 incident, did the Mayor, for apparently the first time, confront Chief Straub about his treatment of his staff. In April 2015, Chief Straub was verbally admonished to "get straight with his people."

By the time Chief Straub was asked to resign in September 2015, he had lost the confidence and support of his entire senior leadership team.

G. Monique Cotton

Ms. Cotton began working for the SPD as a contract employee in March 2012. She provided consulting services to the SPD primarily in the area of social media. The initial contract was for five months and was renewed in July 2012 for an additional six months through December 2012. Ms. Cotton originally reported to Officer Jennifer DeRuwe who was the Public Information Officer at the time. Officer DeRuwe had held that position for over seven years.

Effective January 2013, Chief Straub converted Ms. Cotton from a contract employee to a temporary seasonal employee with the intention of promoting her to his executive team. Ms. Cotton became the SPD's Communications Manager in April 2013 after several new

positions were approved by the City Council.⁸ Ms. Cotton replaced Officer DeRuwe who was re-assigned to a variety of positions over the following months. Ms. Cotton became one of two civilian members of the Chief's original executive staff.

In May 2015, Ms. Cotton transferred to the Spokane Parks & Recreation Division. The facts and circumstances of that transfer will be addressed in detail below. The transfer became effective May 25, 2015, according to personnel records.

Ms. Cotton tendered her resignation to the City in a letter dated February 1, 2016. Her last day with the City was February 12, 2016.

H. Carly Cortright

Ms. Cortright has worked for the City of Spokane since 2003. Until the fall of 2012, she worked in the SPD as a police planner. Chief Straub promoted Ms. Cortright to Director of Business Services in January 2013.

From January 2013 through October 2013, Ms. Cortright served on the Chief's executive team. At the Chief's urging in or about August 2013, Ms. Cortright agreed to be loaned to City Hall temporarily to oversee a *My Spokane* project. Unknown to Ms. Cortright, Chief Straub and Ms. Sanders intended that loan would be permanent. Further details of that transfer will be address later in this report.

I. Chief Straub's Original Executive Team

One of Chief Straub's first priorities was to form his senior command staff (referred to as the "executive team" or "E-team"). The members of his original E-team included:

Assistant Chief -- Craig Meidl

Craig Meidl has been with the SPD for over 22 years. He is currently the interim assistant chief. At the time Straub was hired, AC Meidl was a major, a position that Straub eliminated as part of one of his many re-organizations. Chief Straub promoted AC Meidl to be his first assistant chief in January 2013. A year later, AC Meidl self-demoted three steps to lieutenant.

Commander – Joe Walker

Joe Walker has been with the SPD for 28 years. He is currently a lieutenant assigned to the Patrol Division. Chief Straub promoted Lt. Walker from lieutenant to commander in January 2013. Eight months later, Lt. Walker rolled back voluntarily to captain. Based on Straub's reaction to his decision to self-demote, Walker requested to roll back even further to lieutenant.

Commander – Brad Arleth

⁸ The City's payroll records indicate the effective date of her new position was May 26, 2013.

Brad Arleth has been with the SPD for 24 years. He is currently a captain assigned to the downtown precinct. Chief Straub promoted Capt. Arleth to commander in January 2013 and demoted him to captain a year later, under what Chief Straub characterized as another reorganization of the department.⁹

Director, Business Services – Carly Cortright

As noted above, Chief Straub promoted Ms. Cortright to Director of Business Services in January 2013. Nine months later, Chief Straub asked Ms. Sanders to find a position for Ms. Cortright outside the SPD.

Communications Manager – Monique Cotton

Ms. Cotton served on Chief Straub's executive team from January 2013 until May 2015. In April 2015, Ms. Cotton requested a transfer out of the SPD because she said she could no longer work for Chief Straub.

J. Chief Straub's Second Executive Team

Assistant Chief – Rick Dobrow

Rick Dobrow had been with the SPD for 22 years before he retired in March 2016. Chief Dobrow was appointed assistant chief by Chief Straub in February 2014, replacing former AC Meidl. Chief Dobrow became the interim Police Chief after Straub resigned, and was that was the position he held when he retired in March.

Assistant Chief – Selby Smith

Selby Smith was hired in February 2014 as a civilian director. Soon after being hired he became a commissioned officer and was promoted to assistant chief over investigations. AC Smith is a former Drug Enforcement Administration official. AC Smith left the SPD in or about January 2016.

Director of Strategic Initiatives – Tim Schwering

Tim Schwering was hired on August 5, 2013, as the Deputy Director of Tactical and Strategic Operations, a civilian position in the SPD. He was originally hired to create and supervise a new asset forfeiture unit. Within a short time, however, he became the interim Director of Strategic Initiatives, and was promoted to the permanent position in January 2014. Mr. Schwering said Chief Straub made him a member of his executive team right away so Mr. Schwering had some overlap with the members of Chief Straub's original E-team.

Deputy Director of Strategic Initiatives – Sarah Lynds

⁹ The demotion was effective January 7, 2014, according to Capt. Arleth.

Ms. Lynds was hired in June 2014 as the Deputy Director of Strategic Initiatives. Ms. Lynds is a civilian employee and originally reported to Mr. Schwering. Within several months, Chief Straub had Ms. Lynds report to him directly, which is when she officially became part of his executive team. She essentially replaced Ms. Cortright's function as the "Director of Business and Finance," a working title that Chief Straub gave Ms. Lynds shortly after she was hired.

VI. INVESTIGATIVE FINDINGS

A. Complaints about Chief Straub That Were Known to the Condon Administration (2012 – 2015)

We were requested to investigate the facts and circumstances of any complaints, written or verbal, that were asserted against Chief Straub by City employees during his entire tenure (October 2012 through September 2015). We were also asked to investigate when the Condon Administration first learned about employee complaints, and what, if any, action was taken to address them.

For our purposes the Mayor's Administration includes: the Mayor, Ms. Sanders, Mr. Coddington, the HR Director and her staff, and the City Attorney and her staff.

1. Ms. Cotton Is the Only City Employee Who Made Sexual Harassment Allegations against Chief Straub.

In April 2015, in discussions with Mayor Condon and Ms. Sanders, Ms. Cotton alleged that Chief Straub had sexually harassed her. Ms. Cotton claimed that he tried to kiss her and slapped her on the butt. Ms. Cotton refused to make a written complaint, demanded that the City not investigate her allegations, and said she would not cooperate with an investigation of her sexual harassment allegations if one were to be initiated. Ms. Cotton also demanded assurances from the City that it would keep her sexual harassment allegations confidential.¹⁰

Ms. Cotton's April 2015 allegations were the first and only notice to the Condon Administration that Chief Straub had allegedly engaged in sexual harassment of a City employee.

2. The Investigation Found No Evidence to Support Ms. Cotton's Sexual Harassment Allegations or That Straub Sexually Harassed Any Other City Employee.

None of the witnesses interviewed in this investigation ever observed Chief Straub engage in unwelcome touching of Ms. Cotton or any other female employee. There also was no evidence (outside of Ms. Cotton's unsubstantiated allegations) that Chief Straub

¹⁰ Ms. Cotton was represented by counsel at the time she came forward. Ms. Cotton's attorney has never requested an investigation of Ms. Cotton's complaints.

made unwanted sexual advances, engaged in conversations including sexual innuendo, made sexually suggestive jokes or comments, or that he engaged in any other behavior prohibited by the City's sexual harassment policies.¹¹

The investigation also revealed that there were no female SPD employees (except Ms. Cortright) who complained about Chief Straub outside the department. All of the female witnesses interviewed in this investigation (except Ms. Cortright) said that Chief Straub treated them respectfully and professionally.¹² Ms. Cortright, however, has never alleged sexual harassment against Chief Straub.

3. The Investigation Revealed that Ms. Cotton and Chief Straub Had a Close, Mutually Friendly Working Relationship that Eventually Became Contentious Because of Chief Straub.

The substantial facts gathered in this investigation from multiple sources, indicate that Ms. Cotton and Chief Straub had a close, mutually friendly working relationship for a substantial period of time. Members of Straub's original executive team reported that Ms. Cotton and Chief Straub seemed inseparable at times. And based on their observations (and that of many other witnesses), Ms. Cotton and Chief Straub appeared very comfortable working together.

During Chief Straub's early tenure (2013-14), Ms. Cotton was described as "untouchable," and the Chief was said to be overly protective of her. Some witnesses said they quickly learned that they should not criticize Ms. Cotton or complain to the Chief about her performance.

At some point, that close working relationship soured. Ms. Cotton became another target for Chief Straub's outbursts and disparaging comments, similar to other members of his senior command staff. That change had occurred by December 2014, and possibly earlier.

A number of witnesses noticed the shift in Chief Straub's attitude. He routinely criticized Ms. Cotton's performance. He told some witnesses that he wanted her out of the department. He referred to her as a drama queen, and told staff he couldn't fire Ms. Cotton but he was going to make arrangements to transfer her to City Hall. Several witnesses saw Ms. Cotton in tears after various interactions with the Chief. In short, by the time Ms. Cotton came forward in April 2015 with her complaints about Straub, her working relationship with him was severely degraded, but April 2015 was the earliest that Ms. Cotton informed the Condon Administration about her concerns involving Chief Straub.

4. Concerns Shared with the Condon Administration During 2013-2014 by Other City Staff.

¹¹ Chief Straub did frequently use profane and vulgar sexual terms with his employees, men and women, but it was usually in anger or frustration.

¹² The witnesses who were willing to address this issue included Officer Fuller, Officer DeRuwe, Angie Napolitano, Ms. Sanders, Ms. Lowe, and Ms. George-Hatcher.

We interviewed every member of Chief Straub's original executive team except Ms. Cotton. There was a consensus among those witnesses that Chief Straub's behavior started to change in negative ways in or around March 2013, and that the abrasive behavior got more frequent and more pronounced through the summer, fall, and winter of 2013.¹³

Members of the original executive team also reported that they began to splinter in the spring and into the summer of 2013. By November 2013, the work environment had deteriorated significantly and Straub was reportedly leading his command staff through fear and intimidation. Members of his leadership team were afraid of making mistakes or appearing disloyal. They also mistrusted each other and Straub is said to have perpetuated that mistrust intentionally.

By February 2014, four members of the original executive team had self-demoted (Meidl and Walker), been demoted (Arleth), or transferred out of the department at Straub's urging (Cortright). Only Ms. Cotton remained as one of the original members of Chief Straub's executive team.

Below we describe in some detail what was shared with us by the witnesses. Much of this information was later shared with Mayor Condon and Ms. Sanders in the weeks before Straub was asked to resign.

a. *Craig Meidl*

AC Meidl said he first started to observe Straub's anger about three months after Straub was hired. "By six months, it . . . seemed to be a fairly regular occurrence," but it was aimed only at his executive staff. (Meidl Tr. 18). Straub's anger was not targeted at any one person; it was more a case of whose turn was it this week.¹⁴

If the team tried to suggest a different way of doing business or if they tried to slow down all of the organizational changes, Straub responded with anger. He interpreted their suggestions as subversive and thought the team was intentionally trying to undermine him. AC Meidl said that was not the case. The executive team was genuinely trying to help Straub implement his vision.

AC Meidl self-demoted to lieutenant in February 2014, which was a 3-step demotion, resulting in a significant pay cut (estimated in the tens of thousands of dollars). AC Meidl said he self-demoted because of Straub's emotional outbursts, anger, and yelling. AC Meidl also said he did not trust Straub to be consistent or truthful. "I got to the point

¹³ One witness reported that it was drama and chaos from the very beginning, and that some members of the E-team were resentful and jealous of one another right away.

¹⁴ AC Meidl said Mary Muramatsu and Monique Cotton seemed to be somewhat immune from Straub's angry outbursts. (Meidl Tr.19). Meidl also said that for a period of time, Ms. Muramatsu regularly attended executive team meetings so she was present at least on a few occasions when Straub acted out. (Meidl Tr. 20).

where I felt like what was said in one meeting wasn't the same as what was said in other meetings." (Meidl Tr. 13).

Meidl said he endured Straub's behaviors and constant organizational changes for months and finally decided he could no longer fill the role that Straub was demanding of him without sacrificing his own integrity.

I felt like I was in a position where I either had to support some of the untruths that were being said in those meetings as his second and sacrifice my integrity, or I had to make a stand.

(Meidl Tr. 16-17). Meidl said there were times when Straub's conduct was unethical in his opinion. He gave several examples in his interview. (See Meidl Tr. 27-30). Meidl was also troubled by Chief Straub's lack of overall professionalism. Chief Straub regularly used profanity with his command staff, more than Meidl has experienced from any other Chief he has served under. The profanity wasn't directed at any one person or gender, it was directed at "whoever he was upset with at the time." (Meidl Tr. 42).

When AC Meidl told Straub he was self-demoting, Chief Straub didn't take it well. He lectured Meidl for 20 minutes. Then he followed Meidl back to his office to continue the lecture. Chief Straub accused Meidl of rolling back because he didn't want to work the hours. AC Meidl repeatedly corrected Straub, saying he was self-demoting because of a profound difference in their management styles.

[Straub] asked for an example. And at that time he had the raised voice. At one time he'd come right up to the desk and kind of leaned over the desk. And I said this is the difference in our styles, what you're doing right now.

So he [Straub] said you worked on the street. You've been cussed at and yelled at. And I said, yes, I'm not working on the street right now. He said, you were in the Marine Corps. You've been cussed at, yelled at. Yes, I'm not in the Marine Corps.

And then . . . he made a comment, I just remember him saying, I'll bet you prayed about this. And I said, yes, I did, for six months. And then he just said, go home. I don't want to see you the rest of the day.

(Meidl Tr. 23-24).

Meidl did not share the true reasons he self-demoted with anyone outside the department and no one from the Condon Administration asked him why he was stepping down. The public message was that Meidl wanted to spend more time with his family.

b. *Brad Arleth*

Capt. Arleth was asked to describe Straub's leadership style while he was a member of Straub's executive team. He said:

[T]here was really two different leadership styles. [F]rom October until, probably, March or April, things were – were fine. There was a lot of collaboration, a lot of input, a lot of listening. We had some good discussions, and it seemed like, you know, the department was going to turn and go in the right direction. He was definitely asking a lot of the right questions, implementing some things that needed to be implemented and changed.

(Arleth Tr. 7-8).

Arleth said the first time he saw the other side of Straub was in March 2013 during an NCAA basketball tournament. A few college players got into a bar fight downtown and it resulted in a lot of media coverage. Straub contacted Arleth and Walker and said he wanted them to return to the Public Safety Building right away to participate in a press conference. Arleth told the Chief that they didn't have much information at that point and pushed back when Straub insisted on giving a press conference. When Arleth and Walker returned to the office, Straub pulled them into his office and started yelling at them.

[I]t pretty quickly dissolved [to] us being told that we were grade schoolers and we didn't understand . . . police operations and how satellite trucks were going to be there soon, because these guys were going to be eligible for the NBA draft... So, yeah, he got angry and said he would do it himself, and he did.

(Arleth Tr. 9-10). That was the first time Arleth experienced that kind of anger and belittling by Straub but he said it was a harbinger of what was to come.

[A]s the summer progressed, there became a real different baseline, and it was, you know, generally about how stupid we were and how much of a backwater town Spokane was and how the City Council was inept and he could run circles around them, and how people at City Hall thought they were – you know, the city administrator thought she was the master of the universe, ... and just on and on.

(Arleth Tr. 11-12).

Capt. Arleth said that Straub was also deliberately turning members of the executive team against each other.

[S]tarting in mid summer, . . . he was playing divide and conquer with the executive staff while – while trying to make people think that he was just watching out for their best interests.

(Arleth Tr. 12-13). Arleth described a senior staff retreat in June 2013 in which he believed Straub intentionally set AC Meidl up to look bad. He had encouraged Meidl to

raise concerns he had with Walker, Arleth, and Cortright going around him and undermining his authority, and then Straub didn't support Meidl in the meeting.

The following day, Straub told Walker and Arleth that he did that on purpose because he wanted them to see what he had to put up with every day. Straub said Meidl was "an over reactive, suspicious, paranoid person that . . . was being crazy." (Arleth Tr. 14). Chief Straub told Arleth and Walker to show AC Meidl "some deference" because he was the assistant chief, but as to operational matters they should "keep [Straub] in the loop directly on the side." (Arleth Tr. 14-15).

At the same time, Arleth said he learned that Straub was bad-mouthing Arleth and Walker to Cortright and vice versa. Chief Straub often got angry at Ms. Cortright when she cautioned him about his budget and his spending. "He'd just get all pissed off" at her, and "after the meeting, he'd make comments to us, like, . . . 'I can't deal with any more of this bitchiness.'" "I can't take anymore of her c*ntish behavior." "I've had it." (Arleth Tr. 15-16).¹⁵

Cpt. Arleth also described a meeting that Straub convened with Arleth, Cortright, and Ms. Cotton after a CompStat meeting in late July or early August 2013. Straub had seen Arleth and Cortright exchange joking glances during the CompStat meeting and said he wanted to see them afterwards. He asked Ms. Cotton to join them.

[Straub] closes the door and turns around, and instantly, he is red in the face and he is just going off.

And he's pointing his finger at me, from about two or three feet away, and he basically says, 'If you ever do that again, I will immediately demote you,' and then he points at Carly, and he goes, 'And I [will] fire you the same day.' . . . He goes, 'You sit in there rolling your eyes at her' -- gestures to Carly -- 'while Monique is talking.' I'm like, 'We didn't do that. I have no idea what you're talking about.'

And then he just launches into this tirade. He goes, 'Don't stand there and pump your chest out at me like you're something.' . . . 'I'll tell you what; I'm a real c*cks*cker. . . . [Y]ou're about to find out what kind of a dick I can be. You can call people for a reference in Indianapolis if you want to.'

(Arleth Tr. 19-20). Arleth said Straub continued down the path of expletives and false accusations, and then he just suddenly stomped out.

In September 2013, after Capt. Arleth had attended training and done a site visit of the Los Angeles Police Department (at Straub's direction), he met with Straub, ostensibly to discuss information he had learned on his trips. Instead, Arleth said Straub spent almost two hours excoriating him.

¹⁵ The interview transcript reflects that Arleth said "conscious behavior" but after reviewing interview notes, Capt. Arleth said "c*ntish behavior."

I got blasted ... [about going to LA with Walker and Torok] [Straub] said I have to divorce myself from them, even if they are my friends, because they're holding my career back, ... Then it went into how I was inept, how I was incompetent, how I didn't get anything done, how the SWAT team was in disarray. ... It just went on and on.

(Arleth Tr. 25-26). After the meeting, Arleth learned that Straub did the same thing to Torok and Walker. He had apparently concluded that there was something nefarious about the fact that they visited LAPD together.

Not long after that meeting, Straub said he was going to make changes to the organizational structure; he was going to have two assistant chiefs, Meidl and Arleth. Chief Straub announced those proposed changes throughout the department, and then came back and said, "I can't have two assistant chiefs, so . . . we'll have one commander and one assistant chief." (Arleth Tr. 27).

Arleth said things got even more "vitriolic" through the months of October, November, and December 2013. While he was on vacation between Christmas and New Year, he received a series of calendar appointments – three days in a row that included staff who didn't report to him. Capt. Arleth showed up for the first meeting on January 6, 2014, and was presented with one of three blue binders that Straub said he had prepared over the weekend. Chief Straub announced that he was going to go with a precinct model in 2014. He told Arleth that he would be supervising the precinct captains: Cummings, Richards, and Carl, as a commander.

The next day, Straub told Arleth that he changed his mind. Straub decided to eliminate the commander rank, and told Arleth he was going to be demoted to his former civil service grade of captain, and assigned to the Investigative Unit. Chief Straub told Arleth that "City Hall was unhappy with the executive staff's performance," and they had urged him to bring in outside help. Chief Straub said he was bringing in a civilian director of investigations to whom Capt. Arleth would report. (Arleth Tr. 33). That turned out to be Selby Smith.

So, boom, ... Three hours later, ... I'm demoted.

(Arleth Tr. 33). The Mayor's Office put out a press release that the demotion was mutually agreed-upon under the department's reorganization. Capt. Arleth sent Mr. Coddington an email telling him that was not accurate; it was not mutually agreed-upon. Capt. Arleth said Mr. Coddington never responded to his email.

Capt. Arleth said he had regular conversations with Ms. Muramatsu as the department's legal advisor, but he never specifically complained to her about Straub. There were times they just talked about some of the "crazy behavior" but it was in the context of talking about police-related matters.

Capt. Arleth reported that Ms. Muramatsu “was at several either senior staff or CompStat meetings when . . . there was one in particular when he – when Straub unloaded on Captain Cummings.” (Arleth Tr. 37). There was also another time that Straub tore into a crime analyst for jokingly suggesting that people in Spokane should buy newer cars to bring down the stolen car crime rate. “[H]e just went off.” (Arleth Tr. 38). That analyst reportedly stopped coming to CompStat meetings.

Capt. Arleth didn’t know if Ms. Muramatsu attended that particular meeting, but said she attended them fairly regularly, so it was likely that she would have seen Straub’s attacks and belittling behavior.

Capt. Arleth acknowledged that he didn’t recall having any specific conversation with Ms. Muramatsu about her observations or opinions about Chief Straub, and he did not take his concerns about Straub outside the department until he met with the Mayor in September 2015.

c. Joe Walker

Lt. Walker said things went fairly smoothly with Chief Straub for the first six months. But by the middle of 2013, things started to unravel.

Lt. Walker produced typed notes regarding his interactions with Straub during the period October 2013 through November 2014 that were produced in response to a public records request. Walker informed the investigator that his notes were recorded near the time of the incidents and communications described in the notes, or they were taken contemporaneously. Lt. Walker said the notes that were produced in response to public records requests were not all of his notes. He also keeps detailed notes on personnel issues, budget, union activity, and cases he oversees. The notes he produced related to specific requests for notes about Straub during a certain time period.¹⁶

i. October 2013 - Walker told Chief Straub he wanted to self-demote to captain.

Walker first informed Straub he wanted to self-demote in mid-October 2013. He said he was stepping down because of the conflict within the executive team and Chief Straub’s constant changes to the organizational structure. He also told Straub that his “time expectations were unattainable.” According to Walker (and several other witnesses), Straub did not take the news well.

A couple of months later, while having coffee with Capt. Torok and Chief Straub, Straub expressed frustration with Lt. Walker’s decision to self-demote.¹⁷ He said that Walker and Torok were the only ones who could get things done. He referred to Arleth as “the

¹⁶ A copy of the notes, as well as additional notes that Lt. Walker provided to this investigator, are attached as Exhibit 6.

¹⁷ Walker’s notes reflect the meeting was on December 16, 2013; Torok’s notes indicate the meeting was on December 19 or 20, 2013. Torok’s notes are attached as Exhibit 5.

guy that couldn't finish anything" and AC Meidl as a "deaf mute." Both Arleth and Meidl were still members of his executive team at the time. During that meeting, Straub said he was going to demote Meidl and that he would promote Walker to assistant chief if he wanted it. Walker said he wasn't interested.

ii. January 9, 2014 - Straub verbally attacked Walker in front of his peers.

On January 9, 2014, AC Meidl informed Walker that he was going to be demoted to lieutenant because the time expectations for captains would be similar to commander and Walker had said he didn't want to be a commander anymore. Meidl emphasized that the demotion was not disciplinary.

Meidl's announcement triggered a number of meetings with Walker and his union representatives at the time (Dan Torok and Rick Dobrow), HR, Legal, Straub, and Meidl. One such meeting occurred the same day (January 9) in the Chief's office with Walker, Torok, Dobrow, and Meidl present.

According to all who attended that meeting, Chief Straub went on a lengthy, profanity-laced tirade, personally attacking Walker and making a number of odd and inappropriate comments.

Comments attributed to Straub by the witnesses during that meeting included:

- Walker was a quitter and the Mayor and Ms. Sanders had no respect for him.
- Walker had "shit himself" by self-demoting.
- The Mayor did not have any balls to be a leader.
- The Mayor expects his cabinet to be "balls to the walls."
- The Mayor didn't give two shits about families and divorces.
- Theresa Sanders didn't need her job because she is a Microsoft millionaire.
- Straub wanted to "choke" that "f*cking fat as*," referring to Capt. Cummings.

Lt. Walker compared his experience to that of Capt. Cummings who had been verbally attacked after a CompStat meeting in 2013 in front of thirty people.¹⁸

The meeting with the Chief on January 9, 2013, ended with no resolution and Walker didn't know where he was going to be assigned. The following day, January 10, 2014, Chief Straub informed Lt. Walker that he would not be demoted to lieutenant; he would remain a captain. He reminded Walker that he was still on probation.

iii. January 9, 2014 – Walker told Ms. Jacobson about the meeting with Chief Straub that same day.

¹⁸ Walker said the attack on Cummings was so bad that Ms. Muramatsu who was present reported it to her boss who was believed to have counseled Chief Straub about his inappropriate behavior. Lt. Walker said he had a few conversations with Ms. Muramatsu about Straub's inappropriate behavior (tone, language, belittling staff) and she told him she didn't care for it and there was no place for it. (Walker Tr. 34-35).

After the meeting with Straub on January 9, 2014, Lt. Walker called Ms. Jacobson to tell her about the meeting.¹⁹ He said he shared the details of what Straub said at that meeting. Ms. Jacobson is reported to have told Lt. Walker that others in the City were frustrated with Straub's changes in the department and that they had heard about Straub's temper and the way he mistreats his employees. Walker asked Ms. Jacobson why no one had addressed the issues. Ms. Jacobson did not respond. Lt. Walker said he also told Ms. Jacobson that Straub was using personnel moves to push people out of the department.

iv. January 15, 2014 – Walker told Ms. Jacobson and Ms. Lowe about Straub's behavior.

After the Chief's comments on January 9 and 10, 2014, which Walker perceived to be threatening, Walker decided to roll back further to lieutenant to put even more distance between himself and Chief Straub.

Walker, Torok, and Dobrow met with Ms. Jacobson and Ms. Lowe on January 15, 2014, to inform them of Walker's decision. During that meeting, Walker said the group discussed the details of the January 9, 2014 meeting with Chief Straub (this would have been the second time that Walker shared those details with Ms. Jacobson). According to Walker, they responded that they would address it. However, he was never informed one way or the other whether there was any follow-up with Chief Straub about his behavior on January 9, 2014.

Over the course of the next few days, Ms. Lowe took care of all of the administrative steps to implement the demotion, working with Chief Straub and Civil Service. Ms. Lowe told the investigator that Chief Straub wanted to discipline Lt. Walker during this time and she had to talk him out of it because there was no legitimate basis to discipline Lt. Walker.

[T]here was nothing to corroborate the discipline. There was nothing in writing, there was no statement, there was nothing. And that's going to be challenged all day long and overturned.

(Lowe Tr. 75). Chief Straub's desire to discipline Lt. Walker without any factual support did not seem to concern Ms. Lowe other than it would not survive a challenge by the union. The issue of retaliation did not occur to her at the time.

Walker said over the next few months and into 2015, he was constantly moved around to the point that he kept his personal things in a moving box in his car. Walker believed that Straub was behind these many transfers and that they constituted retaliation, a claim he later made to both Ms. Lowe and Ms. Jacobson.

¹⁹ Lt. Walker has worked with Ms. Jacobson for a number of years and believed they were on good terms. He said that she was well liked and respected, and he felt comfortable talking to her about his concerns.

d. *Tim Schwering*

Mr. Schwering said Chief Straub became fixated on Lt. Walker after he decided to roll back. Straub felt it was a betrayal, which Schwering described as Straub's "Achilles heel."

[Straub] was always concerned that . . . people were out to get him . . . And if people were out to get him, they needed to be dealt with.

(Schwering Tr. 50). Mr. Schwering said that Chief Straub created the new Civil Enforcement Unit and he wanted a lieutenant running the unit.

[H]e said in front of both me and Rick Dobrow . . . [t]hat was his chance [of] putting his foot on Joe's neck. And basically, we can watch him . . . and just ramp up the pressure on him. It was a bizarre way of doing things.

(Schwering Tr. 51).

e. *Carly Cortright*

Ms. Cortright's duties and responsibilities included some oversight of the SPD budget. As a member of the Chief's executive team, Ms. Cortright also attended daily executive team meetings. Her early experiences with Chief Straub included an incident in January 2013 that Cortright said was deeply troubling and a sign of what was to come.

As described by Ms. Cortright, she and Chief Straub were driving back from a meeting at City Hall and as they crossed the Post Street bridge, Chief Straub "made a comment . . . along the lines of, 'Well, that was just like we went and masturbated each other.'"

(Cortright Tr. 30).

Ms. Cortright said she was stunned and didn't know how to respond. She believed they had just met with Theresa Sanders and possibly Gavin Cooley on budget issues.²⁰

i. March 2013 – Ms. Cortright starts to observe increasingly unprofessional behavior from Chief Straub.

Ms. Cortright said the Chief became increasingly impatient around March 2013. His number one priority at the time was reducing the crime rate. Chief Straub had introduced CompStat to track and address certain types of crimes. He was unhappy with the results and according to Ms. Cortright kept shifting strategies mid-stream. This was causing a lot of frustration with everyone.

It was also about this time (March 2013) that Ms. Cortright began to observe some significant changes in Chief's Straub's professionalism and language. According to Ms. Cortright, one of the things he did was make thinly veiled reference to penis sizes.

²⁰ Two witnesses said Cortright shared that story with them near the time it happened.

Numerous times ... We've all seen it – where he would make reference to, 'Let's us take out and measure,' and then he'd slam his forearm down on the table in an apparent reference to measuring penis size.

[He would] flop it (his arm) down like he was graphically trying to display slapping his penis down on the table.

(Cortright Tr. 26 - 27).²¹ Ms. Cortright also said that Chief Straub had a favorite expression: "circle jerk."

[H]e would usually say that in reference to, like, cabinet meetings, where he'd come back from them and say, 'Everyone just sat around and laughed at jokes, and it was like a giant circle jerk.'

(Cortright Tr. 28).

- ii. Ms. Cortright felt punished by Straub for pushing back on his spending and personnel moves.

Ms. Cortright said Chief Straub became increasingly frustrated and angry with Ms. Cortright when she told him he didn't have the money to spend or that he couldn't spend it the way he wanted because of City policies or other funding limitations.

In Ms. Cortright's opinion, Straub also was not interested in following Civil Service rules or in performance management. He was constantly reorganizing the department and moving personnel through re-assignments, promotions, and demotions, but he did not want to be hampered by Civil Service rules. He preferred to take short cuts such as eliminating positions instead of managing performance.²²

Ms. Cortright said she often reminded Chief Straub that he was obligated to follow City policies and civil service rules. Straub responded by telling her that she was stuck in the past and getting in her own way. (Cortright Tr. 35). According to Ms. Cortright, Chief Straub didn't like the red tape and blamed her personally when he couldn't make the moves he wanted to make.

- iii. July/August 2013 - Straub threatened to fire Ms. Cortright.

²¹ Capt. Olsen recalled a similar experience in a senior staff meeting. Lt. McCabe challenged Chief Straub about something he said, and Straub made a comment implying they should compare penis sizes. (Olsen Tr. 21-23). He also said the gesture described by Ms. Cortright sounded familiar to him as well.

²² Cortright said that the Chief had no patience for managing poor performers. His preference was to circumvent City policies and Civil Service rules by eliminating positions and laying off staff. (Cortright Tr. 52-53). By way of example, Ms. Cortright said that police planner positions were eliminated to get rid of one planner, and the remaining police planner was given no option but to be promoted to Deputy Director of Business Services, a position he did not want or ask for, and which meant the loss of Civil Service protections. That individual self-demoted within weeks, taking a position that removed him from the Public Safety Building. He told the investigator he took the demotion because of the poor work environment.

Ms. Cortright also recalled the meeting in late summer 2013 described by Capt. Arleth.

So we step into the room. He closes the door and yells. I mean, turns bright red. And I'll never forget it because I've never had a boss speak to me in such a horrible manner. I mean, it was just – and he yelled at us and said, 'if either one of you ever disrespect another member of this command staff ever again, I will fire you' – and he pointed at me – and then 'I'll demote you,' pointed at Brad, and then said, 'If you don't believe me, call Indianapolis, because I'm a real c*cks*cker.'

(Cortright Tr. 38).

iv. Straub encouraged Ms. Cortright to take a “temporary” assignment outside the SPD.

Ms. Cortright said a week after Chief Straub threatened to fire her he approached her to say that Theresa Sanders wanted to talk to her about a “temporary” project. He was enthusiastic and said he thought it was a great idea and a great opportunity. Ms. Cortright was suspicious right away: “I don't believe in those types of coincidences.” (Cortright Tr. 55).

Ms. Cortright said she met with Ms. Sanders. She too was very encouraging and told Ms. Cortright that she had the right skill set to take on the project, but that it was ultimately up to Ms. Cortright. Ms. Sanders also said if Cortright wanted to create a job at the end of the assignment, she was free to do that. Ms. Cortright said she told Ms. Sanders that she appreciated the offer and was happy to work on the project temporarily, but long-term she was happy working in the SPD.²³

Ms. Cortright was told she would be reporting to Jonathan Mallahan. That was the end of the discussion with Ms. Sanders. Ms. Sanders did not indicate that she needed to speak with the Mayor or HR, or anyone else to effectuate the transfer; it was simply an interdepartmental “loan” from the SPD. There was no paperwork and Ms. Cortright was told that she would continue to be paid at the same rate.

According to Ms. Cortright, neither Ms. Sanders nor Chief Straub ever told Ms. Cortright that the move was permanent or that Ms. Cortright would not be allowed to return to the SPD.

Cortright, on the other hand, genuinely believed that her transfer to City Hall was temporary.²⁴ She was willing to make the move because she knew Straub was unhappy with her and she was equally unhappy with him.

²³ Ms. Sanders had no recollection of meeting with Ms. Cortright.

²⁴ Cortright produced an email she sent to her colleagues dated September 9, 2013, that clearly demonstrates she believed the re-assignment was temporary. That email is attached as Exhibit 62.

Within a week of physically moving to City Hall, one of her co-workers showed Ms. Cortright what was then the latest SPD organizational chart, one that unmistakably eliminated her position from the organization. (Exhibit 63). Ms. Cortright had a meeting planned with the Chief the following day on another matter. During that meeting, Cortright told the Chief:

‘So it looks like you’re reorging, you know, me out of the department.’ And he said, ‘Well yes, you’re going to be gone for a while. I need to keep doing business as usual.’ And I said, ‘Okay. You know, I understand that.’ ... I guess we should probably just plan on me not coming back. I think that would be easier for everybody.

(Cortright Tr. 55-56). Ms. Cortright said she wanted to leave on her own terms. Once she saw the new org chart, she knew that Straub never intended to bring her back to the department and she wanted to be in control of her future. “I was tired of being played like a pawn, and so I was going to take matters into my own hands.” (Cortright Tr. 56). The day after her conversation with Straub, Cortright’s security access to the Public Safety Building and her access to shared SPD drives were suspended.

Cortright lamented that after ten years, “[N]o goodbye, ... no party. It was just she’s out the door, out of mind.” (Cortright Tr. 56).²⁵

v. Other witnesses confirmed Straub wanted Cortright out of SPD.

Capt. Arleth said he knew that Chief Straub was unhappy with Cortright and that he was behind her transfer to City Hall.

[Straub] came up with his plan to loan Cortright to City Hall [saying] Theresa Sanders had asked for somebody very skilled, and ... he had really fought against it, but, ... he thought it would probably be good to develop her career if she went down and helped them get this 311 program started

[S]o essentially, by October, he had shipped her to City Hall. By January of ’14, he had demoted me, ... And so he had made good on his threat from August, ... to demote me and get rid of her. He just – he did it the long way.

(Arleth Tr. 28-29).

Lt. Walker said Chief Straub appeared to turn on Ms. Cortright because she continued to caution the Chief about his budget and spending. According to Walker, Straub got more and more dismissive. By the middle of 2013, she was being “pushed away.” (Walker Tr. 23).

²⁵ Several witnesses who worked with Ms. Cortright said she was devastated by what happened and that it was clearly not her choice to leave the department permanently.

He was not nice to her. And – so there were a couple of times, ... I saw her in her office. She was crying or upset. ... it was, you know, the chief yelling at her or getting on her about something.

(Walker Tr. 24). Straub told Walker that he wanted to move Cortright to City Hall. Straub claimed the move was temporary, but Walker said he knew it was permanent. “[I]t was clear she was done working here.” (Walker Tr. 26).

vi. At Chief Straub’s request, Ms. Sanders facilitated Ms. Cortright’s transfer out of SPD.

Ms. Sanders acknowledged she helped orchestrate the Cortright transfer to City Hall at Chief Straub’s request. Straub approached her during the budget season (July – August 2013) and asked Ms. Sanders to find other work for Ms. Cortright so “he could bring in somebody that could work on budget.” (Sanders Tr. 26). Straub said Cortright was not a “good fit.” (Sanders Tr. 24-25). Straub also complained that Ms. Cortright was inflexible. He wanted someone who could think more innovatively. (Sanders Tr. 26).²⁶

Ms. Sanders agreed to help. She contacted Jonathan Mallahan about taking Ms. Cortright on to assist with the *My Spokane* initiative. “[H]e was more than willing to take Carly on as a resource to help him do that.” (Sanders Tr. 27).²⁷ Ms. Sanders believed it was a great career opportunity for Ms. Cortright.

Ms. Sanders always considered the transfer to be permanent - Cortright would be running *My Spokane*, but Ms. Sanders did not recall having that specific conversation with Ms. Cortright. (Sanders Tr. 28). Ms. Sanders said that before Straub’s resignation, she had never been informed by Ms. Cortright or by anyone on her behalf that she had issues with Chief Straub or that he had mistreated her.

vii. Ms. Cortright had informal conversations in 2013 and 2014 with Mary Muramatsu, Heather Lowe, and Erin Jacobson regarding Straub.

After she transferred, Ms. Cortright said she thought about filing a complaint but eventually ruled that out. She conceded that her first “formal” complaint was the December 21, 2015 letter sent to Ms. Lowe.²⁸

Ms. Cortright explained:

²⁶ Ms. Sanders said this was consistent with what she knew about Chief Straub; he would promote people and then move them backwards. Ms. Sanders was not troubled by this management approach.

²⁷ Mr. Mallahan confirmed that he approved the transfer and was happy to have Ms. Cortright take on the project. Mr. Mallahan said he was familiar with Ms. Cortright and believed she was a talented manager.

²⁸ Ms. Cortright also signed a sworn declaration to the same effect at the request of the City’s outside counsel who represented Spokane in the lawsuit filed by Straub. The declaration is attached as Exhibit 64.

And at the end of the day, it was sort of like, I have a job. I'm away from him. I – I don't—no one is going to believe me. I mean, which I think the crux of this whole investigation is, it's the chief. He's the hand-picked chief by the Mayor, and me going and saying that he treated me this way and said these things, nothing is going to happen. And I have a job. It's paying the same. I'm going to – I'm going to let it go.

(Cortright Tr. 78).²⁹ Ms. Cortright said that even though she didn't file an "official" complaint, she did have informal conversations with Ms. Muramatsu, Ms. Lowe, and Ms. Jacobson about Straub's behavior.

Ms. Cortright's Conversations with Ms. Muramatsu

Ms. Cortright said not long after she transferred to City Hall, possibly November 2013, she had coffee with Ms. Muramatsu and the topic of her transfer came up. Ms. Cortright said a lot of people were surprised by the move, including Ms. Muramatsu. Ms. Muramatsu told Cortright that she was alarmed at how Chief Straub treated female employees in the department. Cortright didn't recall that Ms. Muramatsu shared any details and Ms. Cortright didn't recall asking for any.

Ms. Cortright's Conversations with Ms. Lowe and Ms. Jacobson

Ms. Cortright informed the investigator that she, Ms. Lowe, and Ms. Jacobson were part of a group of City employees who socialized outside of work from time to time. Ms. Cortright said there were times that the conversation turned to Straub and that she shared information about her negative experiences.

Heather was aware of some of the treatment ... the belittling. The ... getting upset with me about when I would tell him no. I don't think I ever referred to the gender discrimination because she was part of that. I mean she's the one that designs the job specs. You know, I mean, she's complicit to that extent. And that's her job as the HR director, to make the department heads happy.

(Cortright Tr. 87).

Ms. Cortright also said that during one of their after-hours gatherings, she learned that Ms. Lowe's husband had told Ms. Lowe that he learned in the Academy that if you tell the Chief "no" you get "Carlied," meaning you get transferred or terminated.

[I]t came up that (Ms. Lowe's husband) was having lunch with Dave Overhoff, who is a sergeant out there (the Academy) who is – I would consider a friend of mine. ... That Dave had told [Ms. Lowe's husband] that ... he basically had warned him. You don't want to tell the chief no or he will Carly you was how ... Heather explained it to me.

²⁹ Ms. Cortright also expressed the view to the investigator that she thought Chief Straub was an equal opportunity abuser; she did not believe his mistreatment of her was gender-based. (Cortright Tr. 86).

(Cortright Tr. 90-91). Ms. Cortright believed these conversations with Ms. Lowe occurred in 2014. She said Erin Jacobson also attended these after-hours social events, and sometimes they devolved into “bashing on the chief.” (Cortright Tr. 92). Ms. Cortright said the group eventually disbanded and they have not gotten together since September 2015.³⁰

Ms. Lowe’s Response to Ms. Cortright’s Statements

Ms. Lowe acknowledged participating in after-hour social outings that included Ms. Cortright and at times, Ms. Jacobson (and others). It was “just friends getting together having drinks.” (Lowe Tr. 143-44). Ms. Lowe said the group sometimes engaged in informal, off-the-record venting about working for the City.

Ms. Lowe confirmed that Ms. Cortright talked about her experiences with Chief Straub during those informal dinners. Similar to Ms. Cortright, Ms. Lowe recalled that those discussions occurred in 2014, and included Ms. Cortright sharing her belief that she was transferred from the SPD because she got on Straub’s bad side. Ms. Lowe denied using the term “Carlied” with Ms. Cortright and believed it was a term used only by Ms. Cortright. Even so, Ms. Lowe said it became very clear that Ms. Cortright had some very bad feelings about why she felt she was moved out of the police department,

Ms. Lowe also shared, somewhat reluctantly, that she was aware from several sources, including her husband, that many people tried to keep their heads down to stay off of Chief Straub’s radar, and intentionally tried to work in locations away from Chief Straub, saying there is a “feeling of protection to know we’re arm’s length away.” (Lowe Tr. 144). Despite knowing this information, Ms. Lowe said nothing that was discussed at those informal gatherings or that she learned from her husband and others created any red flags for her. And if there had been red flags at the time, Ms. Lowe said she would have referred the issues to others because she had recused herself from all police matters during the time that her husband worked in the department.³¹ Ms. Lowe had no recollection of ever having referred any issues to other City staff regarding Chief Straub.

viii. Chief Straub used vulgar and demeaning language in reference to Ms. Cortright.

Capt. Torok and Lt. Walker both reported that Chief Straub made inappropriate and vulgar comments about Ms. Cortright.³² Ms. Lynds also reported that Chief Straub made

³⁰ Ms. Cortright said this group tried to get together twice a month. The group included those identified and several members of the fire department. Occasionally other HR employees joined the group, including Chris Cavanaugh and Meghann Steinolfson.

³¹ Ms. Lowe formally recused herself from participating in labor negotiations with the Guild while her husband was employed with the SPD, but otherwise, Ms. Lowe was heavily involved in a number of police matters, including hiring, promotions, demotions, reorganizations, and overseeing an investigation of Ms. Cotton in 2014.

³² In an after hours conversation, when Ms. Cortright was still a member of his executive team, Straub told Walker and Torok that the only reason Ms. Cortright gets anything is because of her “big t*ts.” (Walker Tr.

inappropriate and vulgar comments about Ms. Cortright long after she had left the SPD.³³ Chief Straub never made these comments directly to Ms. Cortright; they were always made outside her presence.

5. 2013 - Early Retirements Attributed to Straub

Witnesses identified several former SPD employees who they believed were targeted by Chief Straub that led to early retirements. We interviewed two who were willing to participate in this investigation.³⁴

a. Bill Drollinger

Bill Drollinger said he had a 26-year career with the SPD. He said his was a “Disneyland career.” He was productive, happy, and had received a number of awards. Mr. Drollinger told the investigator that he retired early because he feared that Chief Straub was going to ruin his career and jeopardize his pension if he didn’t leave voluntarily. The effective date of his retirement was July 1, 2013. Mr. Drollinger believed he was one of Straub’s first targets.

When Chief Straub was hired, Mr. Drollinger was number one on the captain’s promotional list. Drollinger soon learned that Chief Straub had promoted certain members to captain (and other ranks) outside of the Civil Service rules and without requiring them to sit for the exam.

Mr. Drollinger asked to meet with Straub to talk about the recent promotions. He said Chief Straub was short and agitated from the beginning of the meeting. He wanted to know how long it was going to take because he had something else scheduled. There was an uncomfortable pause as Mr. Drollinger stood near Chief Straub’s conference table; he didn’t know whether to sit or remain standing. Suddenly, Straub said, “get out of my office.” “You’re trying to intimidate me.” The next day, Straub sent Mr. Drollinger a text message asking him to meet Straub in his office, saying they had gotten off to a bad start.

Before that follow-up meeting, Capt. Cummings asked to meet with Mr. Drollinger. Cummings told Drollinger to “prepare yourself.” He was about to have a difficult conversation with the Chief. Cummings told Drollinger that the Chief was going to ask him to leave the department. Mr. Drollinger asked, what if I say no? Cummings replied that the Chief planned to make it very difficult for Drollinger if he stayed.

27; Torok 2/22/16 Tr. 61-62). In another conversation, Straub expressed frustration with Cortright because of her “c*ntish” behavior and “bitchy attitude.” (Walker Tr. 28; Arleth Tr. 16-17).

³³ Ms. Lynds said Chief Straub made disparaging comments to her about Ms. Cortright’s figure and referred to her as a c*nt on one occasion. (Lynds Tr. 59).

³⁴ These individuals made it known that they were willing to be interviewed. There were other former employees whose names were mentioned, but we intentionally did not contact everyone who was identified. There were also at least two former employees who informed us through an intermediary that they felt targeted by Straub, but did not wish to participate in the investigation.

Mr. Drollinger said Chief Straub had already started doing that by moving him around. He was one of the most senior lieutenants at the time and had been assigned to night shift and denied a requested transfer. Chief Straub had also called Drollinger out in a meeting while he was assigned to the Academy. According to Mr. Drollinger, Straub was rude and treated Drollinger with disdain. Mr. Drollinger thought it was because he had dared to question one of Straub's ideas for promoting the SPD. From that point forward, Chief Straub cut him out of Academy-related decisions and communications, and instead went to Mr. Drollinger's subordinate for information.

When he met with Chief Straub the day after being tossed from his office, Straub told Drollinger that he had been around too long and needed to go. But then he offered to re-hire Drollinger as a background investigator for much less money. In that conversation, Straub offered him a buyout of \$48,000, but to accept, Mr. Drollinger had to agree to leave the department within two weeks (he was told he had to be gone by July 1st).³⁵

There was no formal exit interview, but Mr. Drollinger said he spoke to someone from HR while he was signing the retirement documents. He did not recall the name of the HR representative, but said it was obvious that something wasn't right with his sudden retirement. The HR analyst sensed something was wrong and asked Drollinger whether he wanted to talk about it. Drollinger responded that he didn't think it would do any good and that was the end of it.

Drollinger was also generally aware that someone took their concerns to the Civil Service Examiner at the time and they were told there was nothing they could do unless someone filed a formal complaint.³⁶

Mr. Drollinger concluded by saying it was a humiliating and degrading way to leave the department. He had devoted his prime years to the SPD and all of a sudden, he was on the outside because of Straub. Straub showed no concern for his many years of service; to him it was all about "you've been here too long; your time is up and you need to get out."

b. *Sean Nemec*

Sean Nemec was a member of the SPD from 1986 until he retired in January 2014. Mr. Nemec was a sergeant when Chief Straub was hired. He was at the top of the lieutenant's promotional list, which was about to expire. Mr. Nemec said he contacted Capt. Arleth to ask whether he anticipated any upcoming promotions. He asked because of the significant time commitment to study for the lieutenant's exam. Capt. Arleth reportedly responded that there were no plans and no money for promoting new lieutenants. According to Nemec, the day after the promotional list expired, two members were promoted to lieutenant.

³⁵ Drollinger said he told the Chief's executive assistant at the time that he was taking the buyout and she started to cry, saying "you're one of the good guys." Then she expressed the opinion that the Chief was going to do the same thing to her.

³⁶ The former Civil Service Examiner was Glenn Kibby. We did not attempt to interview Mr. Kibby.

Nemec asked to meet with Chief Straub, which was the first time Nemec had ever met the Chief. In that meeting, Nemec said Straub was very nice and complimentary. He was told that he had a great reputation and was known to do great work. Straub said he would love for Nemec to make lieutenant. Mr. Nemec shared his conversation with Capt. Arleth and Chief Straub replied, "That's how things happen" without any further explanation.

Mr. Nemec said he intentionally did not press Chief Straub for more answers at the time. He wanted to look into the situation. Nemec went to the guild and was told there was nothing they could do. He also spoke to the Civil Service Examiner and he too said there was nothing he could do. The department was allowed to let the list expire. Mr. Nemec said he also went to HR and spoke with possibly Heather or Trish. He explained what happened and said it seemed odd that Traci Meidl got promoted so quickly.

The day after Nemec went to HR, he was called into Straub's office. Mr. Nemec reported that Chief Straub "laid into" him. He was "red hot" and gave Nemec a "butt chewing." Mr. Nemec said that the Chief went on and on about making a complaint about the promotions, crying to people, and making a fool out of himself. Straub told Mr. Nemec he was a "despicable excuse for a sergeant." Straub also said if he ever caught Mr. Nemec opening his mouth about the promotion again, he would have "his ass."

Straub immediately transferred Mr. Nemec from his burglary assignment to swing shift patrol. Nemec said he was the third most senior sergeant at the time, and he felt the move was retaliatory. He feared that if he stayed with SPD, Chief Straub would keep going after him and potentially mess up his pension. Mr. Nemec said he planned to retire at 30 years, but decided to leave two years early because of Chief Straub. Mr. Nemec did not ever share his concerns about Straub with anyone outside the department, apart from the questions he raised about the promotional process.

6. Late 2013 – Straub Verbally Attacked Captain Cummings at a CompStat Meeting – Ms. Muramatsu was Present.

Keith Cummings has been with the SPD since 1990. He was a lieutenant when Straub was hired and Straub promoted him to captain in June 2013. In late fall 2013, during a CompStat meeting, Cpt. Cummings said that Chief Straub verbally attacked him after his presentation about crime trends in the North Precinct.

Anyway, I - I did a very poor job of communicating [the information] . . . And I don't recall the exact words, but it was a public evisceration about how incompetent I was and I didn't know what I was doing and this is not the way we're supposed to do business....

The long and short of it was, after the meeting, I had a number of the federal officers, as well as the other guys in the department, kind of, patting me on the shoulder saying, 'Wow, sorry about that.' And it was – embarrassing.

I think we all learned very quickly that you did not – you didn't offer an opposing opinion to Frank Straub or you were screamed and yelled at. It was very - it was the first time I've ever experienced this in my 33 years wearing a badge.

I think most of us in the leadership positions learned very early on that you did not offer an opposing opinion. And it was – it was interesting because if you - if people did – and I am – I'm probably going off base here - but there seems to be a pattern with those that offered opinions on where they ended up within the next six months.

I mean, one only has to look at the assistant chief stepping down, a captain stepping down, another captain being removed. I mean, it['s] just one after another after another.

(Cummings Tr. 8-10).

After that CompStat meeting, Ms. Muramatsu came to Cummings and said, "I think what happened to you was absolutely ridiculous," and she indicated that she was going to talk to somebody about it. (Cummings Tr. 11).³⁷ Capt. Cummings assumed she was going to talk to Nancy Isserlis or Theresa Sanders, but he didn't ask and she didn't say. Neither of them (Isserlis or Sanders) ever talked to Cummings about Straub's behavior, but not long after that meeting, Chief Straub apologized. "It seemed to me that he was asked to do that, because I could see that it was – it pained him to apologize." (Cummings Tr. 12).

Capt. Cummings believed that Straub's behavior during that CompStat meeting became well known inside and outside the department even though he never personally discussed it with anyone outside the department except Ms. Muramatsu.

Other witnesses corroborated Capt. Cummings' description of Straub's outburst during the CompStat meeting and agreed that it was over-the-top inappropriate. They also said that Straub continued to make disparaging comments about Capt. Cummings outside his presence and at times seemed obsessed with Capt. Cummings.

7. In February and March 2014, Lt. Walker Raised Concerns with HR About Straub and His Relationship with Monique Cotton.

On February 27, 2014, Lt. David McCabe, on behalf of the Lieutenants & Captains Association, filed two complaints against Monique Cotton. The complaints alleged dishonesty in connection with reporting damage to her City vehicle and communications with Capt. Torok. The underlying complainants were Lt. Walker and Capt. Torok. The complaints were referred to the City's HR department for investigation. Ms. Lowe assigned the investigator, Patricia Hammett, and oversaw the investigation.

³⁷ Cummings said that although Ms. Muramatsu did not attend every CompStat meeting, she did attend them on a fairly regular basis so she would have observed Straub's behavior on a number of occasions.

Chief Straub believed the complaints were frivolous. Initially, he wanted one to be handled by IA and he wanted the second complaint addressed administratively. Then he changed his mind and did not want either complaint investigated by IA. Instead he wanted them opened and closed, and said he would address the second complaint administratively.

After some discussion between Straub and Legal (Muramatsu and Jacobson), it was decided that both complaints would be referred to HR for investigation. Based on their communications, it is clear that Chief Straub and members of the CAO all prejudged the complaints to be frivolous. (The relevant email communications are attached as Exhibit 8). Ms. Lowe added:

[T]hat was a very common thought from several individuals that it [the complaint] was crap and that it was a waste of time and that they were trying to get Monique because they didn't like her, that *they thought she was too close to the chief, whatever that means*, they – they never accepted her as part of one of their own.

(Lowe Tr. 69-70)(emphasis added). Ms. Lowe said she also didn't think it was a legitimate complaint.

In a labor-management meeting on February 26, 2014, one day before McCabe formally filed the complaints with IA, Chief Straub announced he knew about the complaints and asked whether they could be addressed at the management level. McCabe said no, he thought they should be handled by IA. According to Walker, Straub immediately turned and glared straight at him and said, "I see where this is going." Walker perceived the statement as threatening.

- a. *February 28, 2014 - Walker informed Gita George-Hatcher of concerns about Straub.*

Lt. Walker

On February 28, 2014, two days after the meeting with Straub, Lt. Walker said he and McCabe met with Ms. George-Hatcher who was the HR analyst assigned to SPD at that time. Walker told Ms. George-Hatcher that he didn't want to file a complaint, but he wanted HR to know of their concerns about Chief Straub. Walker said he told Ms. George-Hatcher about the January 9, 2014 meeting with Straub to discuss his self-demotion, and expressed concerns about retaliation for making the recent complaint about Ms. Cotton.

Walker said he also raised a concern about the relationship between Straub and Cotton. He told Ms. George-Hatcher that Chief Straub was very protective of Ms. Cotton and they spent a lot of time together at work. Ms. George-Hatcher asked Walker if he believed anything illegal or unethical going on. Walker said no, but he wanted her to know about his retaliation concerns because the Chief was so protective of Ms. Cotton. Ms. George-Hatcher said she would pass the information on to Ms. Lowe.

Ms. George-Hatcher

Ms. George-Hatcher recalled that she met with Walker, and she thought Torok, in February 2014.³⁸ Ms. George-Hatcher said they raised some concerns about Chief Straub and Ms. Cotton spending a lot of time together. She asked whether they were aware of anything illegal or unethical going on and they said they didn't know. Ms. George-Hatcher said she would pass the information on to Director Lowe, which she did in a verbal conversation.

And at the time when Walker and Torok had met with me ... when they said something about them spending a lot of time together. I do remember going to Heather and saying, 'this is what they are saying. And I told them that I would let you know.'

(George-Hatcher Tr. 31). Ms. George-Hatcher didn't recall how Ms. Lowe responded and didn't know what, if anything, Ms. Lowe did to follow up on the information she provided. That was the end of Ms. George-Hatcher's involvement with those allegations. Nothing more was filed or brought to her attention after she passed it on to Ms. Lowe.

Ms. George-Hatcher also informed the investigator that she did not recall being contacted by any other SPD employees with issues or concerns about Straub while she was the HR analyst.

Ms. Lowe

Ms. Lowe had no recollection of being contacted by Ms. George-Hatcher about her conversation with Lt. Walker. Ms. Lowe also said that if Ms. George-Hatcher felt there was something that needed to be investigated, she had the ultimate discretion and authority to initiate an investigation, even if it involved investigating the chief of police.

Ms. George-Hatcher, on the other hand, said that she would never initiate an investigation involving a superior; she would always involve Ms. Lowe in those discussions and either Ms. Lowe would conduct the investigation or it would be handled by an outside investigator. In any event, Ms. George-Hatcher was certain that she shared with Ms. Lowe the details of her conversation with Lt. Walker concerning Chief Straub and Ms. Cotton.

It appears that Ms. Lowe did not follow up nor did she share the conversation she had with Ms. George-Hatcher with anyone in the Mayor's Administration.

8. March 17, 2014 – Ms. Lowe Invited Lt. Walker to Coffee to Talk About the Cotton Investigation -- Walker Shared Concerns about Straub and Cotton's Relationship, Including the Torok "Love you" Text Messages.

³⁸ It was actually McCabe who accompanied Walker to the meeting with Ms. George-Hatcher.

The Association's complaints against Ms. Cotton were determined to be unfounded. Lt. McCabe was informed of the investigation results in a March 10, 2014 email. He knew at the time that neither Torok nor Walker had been interviewed as part of HR's investigation. He met with Ms. Lowe and Ms. Jacobson on March 14, 2014, to share his disappointment about the process and the findings. After that meeting with McCabe, Ms. Lowe sent the following email to Lt. Walker:

Hi Joe,

Can we meet for coffee on Monday? I'd like to get any additional information on the complaint and to touch base to see how you are doing.

Thanks!

(Exhibit 9).

Lt. Walker

Lt. Walker said he and Ms. Lowe met on Monday, March 17, 2014, at Hallett's Coffee House. Walker told Ms. Lowe he didn't want to talk about the Cotton complaint, but he was concerned about retaliation from the Chief because there had been several occasions the year before when Chief Straub was "very protective and defensive of Monique." Walker said he told Ms. Lowe about the text messages sent by Straub to Ms. Cotton saying he loved her and other inappropriate comments to a subordinate. Walker emphasized that it appeared that something was going on between them, but he didn't know "if it's mutual one way or the other." (Walker Tr. 71).

According to Lt. Walker, Ms. Lowe assured him that she would look into the information and monitor the situation going forward. Lt. Walker never received any follow-up from Ms. Lowe and he did not know whether Ms. Lowe shared their conversation with anyone else. Lt. Walker memorialized his conversation with Ms. Lowe after their meeting.

Ms. Lowe

Ms. Lowe had no recollection of inviting Lt. Walker to coffee to discuss the Cotton investigation, but her email (Exhibit 9) makes it clear that she did. Ms. Lowe recalled meeting with Lt. Walker to have an informal, "off-the-record" conversation about his demotion, but she thought he invited her to coffee. Ms. Lowe also had no recollection of being told by Lt. Walker that he was concerned about retaliation,³⁹ that the Chief was overly protective of Ms. Cotton,⁴⁰ or that he discussed the Torok text messages with her.

³⁹ Ms. Lowe said if Walker raised concerns about retaliation, she would have informed him of the process for filing a complaint, but that until it happens there is nothing she can do. Apparently, Ms. Lowe does not believe the City has an obligation to prevent retaliation and did not counsel Chief Straub to avoid acts of retaliation or the appearance of retaliation.

⁴⁰ Ms. Lowe said that she heard through "rumors" that Chief Straub and Ms. Cotton were too close. She didn't recall the source of the rumor or when she first heard it. Ms. Lowe was familiar with the City's nepotism policies, but never felt that she needed to follow up in any way on those rumors.

All Ms. Lowe recalled about the conversation was that Lt. Walker emphasized he just wanted to be a cop and was frustrated with all of the Chief's re-organizations.⁴¹

Later in the interview, Ms. Lowe reported that she and Lt. Walker also talked a bit about Chief Straub's sometimes harsh and abrasive style, but "nothing that would send up a red flag." (Lowe Tr. 39). When pressed for more details about her meeting with Lt. Walker, Ms. Lowe stated:

[H]e basically wanted to be as far away from Straub as possible because he didn't like him and he didn't like his style, he wanted to work on nights and just wanted to do his job and be left alone.

(Lowe Tr. 57).

Ms. Lowe believed she shared her conversation with Lt. Walker with Ms. Jacobson because they were having a lot of conversations at the time about all of the self-demotions and what was going on in the department. Ms. Lowe learned from Ms. Jacobson that Lt. Walker was also frequently contacting Ms. Jacobson during this period as well.⁴²

Ms. Lowe said she also had conversations with Ms. Sanders about the frustration of police staff and how they could promote better working relationships between Chief Straub and his staff.

9. April 28, 2014 – Walker Spoke to Ms. Jacobson Again About Straub Concerns.

In early April 2014, Ms. Cotton contacted Ms. George-Hatcher to complain that she was being subjected to a hostile work environment by members of the SPD. Ms. George-Hatcher scheduled an interview with Ms. Cotton that Ms. Cotton canceled, explaining to Ms. George-Hatcher that she had spoken to Chief Straub about her concerns and wanted to give him an opportunity to address them before moving forward with any kind of formal complaint. Ms. George-Hatcher confirmed with Ms. Cotton that she did not want Ms. George-Hatcher to take any action and she also contacted Chief Straub, who similarly confirmed to Ms. George-Hatcher that he was aware of the issues and that he had told Ms. Cotton that he would address them. (The emails between Ms. Cotton and Ms. George-Hatcher are attached as Exhibit 10).

On April 28, 2014, Lt. Walker contacted Ms. Jacobson after learning that Ms. Cotton was considering filing a hostile workplace lawsuit against Torok and him. Walker said Ms. Jacobson laughed and said she hadn't heard anything like that. Ms. Jacobson was aware

⁴¹ Ms. Lowe said on one occasion when Chief Straub wanted to eliminate a rank, she told him, no, he had to stop "because people are living in chaos." (Lowe Tr. 64).

⁴² Ms. Lowe did not want to disclose her conversations with Ms. Jacobson because she believed they were privileged conversations.

that Ms. George-Hatcher was supposed to meet with Ms. Cotton but Ms. Cotton canceled or never showed up.

Walker reminded Ms. Jacobson that he had taken two demotions to get away from Straub because of his “bullying and harassment,” and asked whether there was anything that could be done to make sure others at City Hall knew about Straub’s behavior. Ms. Jacobson reportedly replied that they were aware and had heard “things.”

10. July 2014 - Walker Raised Concerns with Ms. Muramatsu About the Chief’s Use of Seizure Funds and the New Civil Enforcement Unit.

Chief Straub created a Civil Enforcement Unit and assigned Walker to supervise it. After taking over the unit, Walker talked to Ms. Muramatsu about his concerns involving how seizure funds could be used and the Chief’s motive for creating the unit. Reportedly, Ms. Muramatsu also expressed some concerns and said she would monitor the situation. Ms. Muramatsu also reportedly told Lt. Walker that she had been keeping Ms. Isserlis informed about things going on in the department. No details were provided.⁴³

11. November 2014 – Walker Filed a Whistleblower Complaint with Ms. Jacobson and Told Her About Straub’s “Love you” Text to Ms. Cotton.

In November 2014, Lt. Walker filed a whistleblower complaint with Ms. Jacobson related to a seizure of funds.⁴⁴ Lt. Walker said that during his conversation with Ms. Jacobson about the complaint, he told her about the text message that had been mistakenly sent to Torok from the Chief that was meant for Ms. Cotton. He told Ms. Jacobson that the Chief said he loved Ms. Cotton and that she was his best friend. Walker said he further told Ms. Jacobson that the Chief’s behavior was getting worse and he thought it was going to end up in lawsuits.

Ms. Jacobson reportedly assured Lt. Walker once again that others above her were aware of his behavior.

12. Capt. Torok – Straub Experiences

Capt. Torok has been with the SPD since 1989. He is currently assigned to Patrol. Capt. Torok was an officer in the Lieutenants & Captains Association during the time that Walker self-demoted. He said he observed several incidents involving Chief Straub that he believed were inappropriate, including the public dressing down of Capt. Cummings, the attack on Lt. Walker on January 9, 2014, and several instances in which he thought Chief Straub made inappropriate and offensive comments.

⁴³ Ms. Cortright said she also raised issues with Ms. Muramatsu about how the Chief wanted to use seizure funds. Ms. Muramatsu concluded that the Chief’s spending was an appropriate use of those funds. (Cortright Tr. 40-41). We did not independently investigate this issue.

⁴⁴ That complaint was investigated by an outside law firm. We did not independently investigate Walker’s claims and we have no opinion on the merits of the complaint or the investigation findings.

Capt. Torok described one occasion when Chief Straub, Capt. Torok, and Lt. Walker met for lunch. Straub volunteered that he had recently had dinner with Ms. Isserlis and her husband. He said, “She sure likes to talk about you” (referring to Torok). “I think it makes her nipples hard.” (Torok 2/22/16 Tr. 63). Torok thought the comment was weird and highly inappropriate for the CEO of an organization. On another occasion, in front of the senior staff, while addressing achievements in the South Perry district, Chief Straub volunteered that they were “so happy with him he could probably have any woman he wanted up there.” (Torok 2/22/16 Tr. 64-65).

Capt. Torok also described comments Straub made about Ms. Cortright when she was still a member of his executive team that are addressed earlier in this report.

a. *Capt. Torok’s 2014 conversations with Ms. Isserlis regarding Straub*

Capt. Torok said that he and Ms. Isserlis went to coffee periodically (every couple of months). He believes he talked to her about Chief Straub’s inappropriate behavior in the January 9, 2014 meeting with Walker, and maybe shared the incident when Ms. Cotton was observed wearing the Chief’s police jacket during the 2013 or 2014 Bloomsday Race, which Torok said he found to be very odd. They also talked about the constant “musical chairs” in the department.

Capt. Torok also said he had coffee with Ms. Isserlis not long after the Cotton IA complaints had been filed. He expressed his opinion that the HR investigation was a joke. Torok commented that Ms. Isserlis said “something about you guys need to stop fanning the flames.”

That irritated me. I don’t know that I had coffee with her for six or seven months after that, maybe eight.

It was a period of time after that, because the insinuation was we’re trying to be disruptive to the organization, when, in essence, you know what I mean, when you have a senior member of the executive staff who, in my opinion, has an integrity issue – that is incumbent upon us to raise.

(Torok 5/25/16 Tr. 8-9).

Capt. Torok did not recall whether he shared the Straub “Love you” texts to Ms. Cotton with Ms. Isserlis. If he did, it would have been around the time he was asked to produce his old cell phone for examination (September 2015).

A week to ten days before the September 8, 2015 Lieutenants & Captains Association meeting with Mayor Condon and Ms. Sanders, Capt. Torok said he had a conversation with Ms. Isserlis during which, “I basically threw up on Nancy with information.” (Torok 5/25/16 Tr. 11). She didn’t take any notes but said she would get something going. Torok believes his conversation with Ms. Isserlis may have triggered the Administration’s request to meet with the entire Association on September 8th.

13. Lt. McCabe – Straub Experiences

Lt. McCabe has been with the SPD for over 27 years. He is the president of the Lieutenants & Captains Association and said most of his interactions were in his capacity as a union representative. He described the relationship with Straub as “strained.” When they discussed individual members, Chief Straub often made rude and disparaging comments. It wasn’t always, but it was often enough that it stood out.

Lt. McCabe also said he had a few uncomfortable personal experiences. On one occasion during a May 15, 2014, labor-management meeting, McCabe asked a clarifying question of Straub and he responded by “ripping into” McCabe and his Association friends. This was on the heels of the Association’s complaints against Ms. Cotton, and Lt. McCabe believed Straub’s behavior was related to that as he and the Association disagreed about how to address the complaints. During that same meeting, Chief Straub made inappropriate comments about a medical issue involving McCabe. Lt. McCabe believed it was a deliberate effort to embarrass McCabe in front of his peers. Straub reportedly did something similar in an August 2015 in-service that McCabe did not attend but was informed of.⁴⁵

Lt. McCabe said that Ms. George-Hatcher was also at the May 15, 2014 meeting and the following week, invited Lt. McCabe to have coffee. She referenced the Chief’s inappropriate comment about his medical condition, and asked how he was doing. McCabe got the impression that she was checking up on him to see if he was going to take the matter any further by filing a complaint. He had no plans to file a complaint and Straub’s comments didn’t come up directly with Ms. George-Hatcher.⁴⁶

Lt. McCabe also said that Chief Straub was the most vulgar chief he has ever dealt with.

[T]he thing that set Chief Straub apart was he was not afraid to use vulgarity or profanity in professional meeting circumstances.

I had never heard a chief or any member of command staff refer to another member of command staff as a fat f*ck. I mean ... there are certainly ways to voice your displeasure or irritation with someone without resorting to name-calling.

He is fond of the phrase ‘getting f*cked in the a*s’ and he typically uses that when something happens that either doesn’t make him look good or a decision doesn’t go his way.

(McCabe Tr. 23-24).

⁴⁵ Other witnesses confirmed that Straub made inappropriate remarks clearly aimed at Lt. McCabe’s medical condition during an August 2015 in-service.

⁴⁶ Ms. George-Hatcher did not recall this meeting with Lt. McCabe.

Lt. McCabe said he participated in at least one conversation that included Ms. Jacobson and Lt. Walker. He thought the meeting occurred in the summer or fall of 2014, following a labor-management meeting.

[W]e made sure Erin knew all the goofy stuff that was going around the department, all the several personnel changes, the chief's behavior, and the way that he spoke to people.

(McCabe Tr. 28). He recalled that Ms. Jacobson said that city hall was aware of what was happening with Chief Straub, and "that steps had been taken to try to fix it." (McCabe Tr. 30).

Lt. McCabe said he also talked to President Stuckart about Straub. "We wanted to make sure that people in the upper levels of city hall knew what they had gotten with Chief Straub." (McCabe Tr. 31).⁴⁷

B. The Facts and Circumstances of Ms. Cortright's Transfer to City Hall.

The circumstances of Ms. Cortright's transfer are addressed above at pages 41-45.

C. The Facts and Circumstances of Ms. Cotton's Transfer to the Parks Division.

Ms. Cotton was reassigned to the Parks Division as a result of complaints she raised about Chief Straub in April 2015. Those complaints included allegations of sexual harassment and offensive and inappropriate treatment by Chief Straub during a meeting on March 31, 2015. Ms. Cotton's complaints were shared with Mayor Condon in a private meeting at Ms. Cotton's attorney's office, and with Ms. Sanders in a series of in-person meetings, telephone calls, and text messages.

Ms. Cotton refused to participate in an investigation of her sexual harassment allegations and demanded assurances from the Administration that it would keep those allegations confidential. Ms. Cotton also asked to be moved to another position within the City, and insisted that the reassignment had to look like a promotion; it could not appear that she had done anything wrong or that she was being "kicked out" of the SPD.

At the Mayor's direction, Ms. Sanders agreed to find Ms. Cotton a suitable position away from Chief Straub. Ms. Sanders also agreed to a positive message that would highlight Ms. Cotton's skills and give the appearance that the transfer was a promotion. Mayor Condon, Ms. Sanders, and Mr. Coddington all promised Ms. Cotton that the City would keep her sexual harassment allegations confidential.

1. *The March 31, 2015 Incident*

⁴⁷ None of the issues raised by McCabe involved how Straub was interacting with his female staff or implicated the City's sexual harassment policies.

Chief Straub convened a meeting with ACs Dobrow and Smith, Lt. Mark Griffiths, Capt. Eric Olsen, and Ms. Cotton on the morning of March 31, 2015, to talk about two one-hour requests for overtime submitted by Lt. Griffiths (for a total of two hours). That overtime had been approved by Capt. Olsen, Griffiths' direct supervisor, and then rejected by Capt. Torok who was serving in an administrative position charged with the review of all overtime requests. Chief Straub accepted Torok's recommendation and denied Griffiths' overtime request. Following a CompStat meeting on March 31, 2015, Chief Straub ordered Griffiths, Olsen, AC Dobrow, AC Smith, and Ms. Cotton to meet with him in AC Smith's office to talk about the overtime issue.

We interviewed Lt. Griffiths, Capt. Olsen, and Chief Dobrow.⁴⁸ They each described Straub's behavior during that March 31st meeting as extremely inappropriate and unprofessional. As reported, Chief Straub verbally attacked Griffiths, Olsen, and Cotton, using a stream of profane and vulgar language. He was threatening and emotionally out of control. The witnesses said that Chief Straub, at times, was screaming at the top of his lungs, and at other times, he was so emotional that he couldn't talk at all. Straub's outbursts were also heard by members who happened to be outside AC Smith's office at the time, and news of the incident quickly spread inside and outside of the SPD.

Lt. Griffiths

Lt. Griffiths said the March 31st meeting with Straub started out calm, but then Straub quickly became enraged. He was yelling and cursing at Griffiths. At one point, Lt. Griffiths told the Chief he was not going to sit and listen to Straub's verbal attacks and he began to stand up to leave the room. That infuriated Chief Straub and he threatened Griffiths with insubordination if he left.

According to Lt. Griffiths, after he threatened insubordination, he turned his attention to Ms. Cotton:

[Straub] said that she knew more and she should have told him. She said that Chief Smith told her that the issue between Griffiths and Torok was being handled. She also said she did not have all the facts and that she was not in my chain of command so it was not appropriate for her to get involved... [Straub] continued to yell at her, saying that she 'f*cked him,' made him 'look like a f*cking asshole' and that she 'f*cked him in the a*s and broke the dick off.' Director Cotton was tearing up and it appeared that she was fighting back from crying at that point and he continued to yell at her. Twice she motioned with her hands in a 'time out motion' and said 'why am I even here?'

(Griffiths' Notes, Exhibit 11. Griffiths confirmed the accuracy of his notes in his investigative interview).

Lt. Griffiths reported that in 22 years of police service, he had never before been treated so disrespectfully "by any SPD supervisor, much less the Chief of Police."

⁴⁸ Straub, Cotton, and Smith were unavailable.

Capt. Olsen

Eric Olsen has been with the SPD for 26 years. He was promoted to captain approximately two years ago and at the time of his interview, he was captain of investigations.

Capt. Olsen said he met with Chief Straub and AC Smith before the CompStat meeting on March 31st. He wanted to talk about Griffiths' overtime to try to persuade the Chief to reinstate and approve the request.

And Chief Straub I could see kind of got ramped up and really started going off on me at that point. That's when he made the comment to me that if I had any balls, I would step up and take out the leadership of my association [referring to Walker and McCabe] as they had already taken a shot at me once, and now they're taking a shot at others in the association [referring to Griffiths].

(Olsen Tr. 26-27). Capt. Olsen said he didn't understand why Straub went into that topic; it was not something he wanted to discuss and he didn't bring it up. Chief Straub did not address Capt. Olsen's request to reinstate Griffiths' overtime request. Instead, after CompStat that morning, Olsen was told to get Griffiths and to meet in AC Smith's office. When he and Griffiths arrived, everyone else was already present. Capt. Olsen said he was surprised to see Ms. Cotton there.

[A]lmost immediately he began berating all of us. It was – it was almost bizarre. I have never been a party to anything like that before or since. Repeatedly yelling at us, all of us. I believe he used the term 'we f*cked him in the ass.'

(Olsen Tr. 30). Capt. Olsen said he tried to interject but Straub continually cut him off.

I was trying to tell him that, you know, I was going through my chain of command and I believe he said, 'F*ck the chain of command. You could have come over to my house . . . You could have come over and had a beer. We could have talked about it.' I thought that was really weird that he was going down this road like we were going to be friends while he was eviscerating me there in the room.

(Olsen Tr. 30). Olsen said that the Chief continued to yell at all of them and then turned his anger at Ms. Cotton. She was crying and tried to explain that she had nothing to do with the overtime issue. Capt. Olsen stated, "Chief Straub was very angry. It seemed like he was just almost 'out of control' is the phrase I would use." (Olsen Tr. 32).

After the meeting ended, Olsen sat in the office with AC Smith. He said Smith was completely beside himself. "[H]e figured he was done there too, because he'd lost credibility with everyone." (Olsen Tr. 33).

Capt. Olsen was scheduled to facilitate a meeting right after the blow up with Straub. He told Griffiths to write down what had happened and then went to his next meeting. While he was chairing that meeting, Olsen said he scribbled some notes. (Exhibit 12). Capt. Olsen also reported that he called Ms. Jacobson that same day to tell her about the meeting. Ms. Jacobson was on vacation when Capt. Olsen reached her. Ms. Jacobson was unavailable to us, therefore we do not have any information regarding, what, if anything, she did upon being notified of the March 31st incident.

Chief Dobrow

Chief Dobrow said initially he didn't know why Chief Straub wanted to meet on March 31, 2015. He recalled that soon after the meeting started, Straub started making accusations against Ms. Cotton that she had withheld information from him. Lt. Griffiths tried to stick up for Ms. Cotton, which seemed to "provoke the Chief even more." (Dobrow Tr. 28). Lt. Griffiths stood up to leave and Straub told Griffiths he would go after him for insubordination. Lt. Griffiths had a look of total disbelief and Chief Straub interpreted the look as a smirk. Straub "screamed at him, basically, at the top of his lungs," stating, "Wipe that smirk off your face." (Dobrow Tr. 28).

Chief Dobrow said he left the meeting with Chief Straub. He told the investigator, "I was just trying to calm him because he was so emotionally out of control." (Dobrow Tr. 28).

Tim Schwering

Mr. Schwering was at CompStat on March 31, 2015, and thought he too was supposed to be in the meeting that was being convened in AC Smith's office. Before he got there, Smith told him, "You don't want to be a part of this." So Mr. Schwering went to another meeting he had scheduled. Within about 20 minutes, he got a text from Craig Meidl asking Schwering if he was okay. He later learned that Straub's "yelling was loud enough that people inside the Gardner Building could hear him going off on the people in that room." (Schwering Tr. 30).

Schwering talked to AC Smith sometime later and was told that he had been caught off guard by Straub and that "Frank lost his mind" during that earlier meeting.

Mr. Schwering ran into Ms. Cotton the following day at the Academy. She was still teary eyed and upset. Ms. Cotton told Mr. Schwering what Straub had said to her during the meeting the day before. They didn't have time to talk in detail because they were both going into a meeting. Sometime later that day, Mr. Schwering asked Ms. Cotton if she wanted to file a complaint. Ms. Cotton said no.

Mr. Schwering followed up with AC Smith and he confirmed what Ms. Cotton had told Schwering. Mr. Schwering said he also told Ms. Muramatsu what had happened, and said he believed it was an EEO issue that should be addressed.

Mr. Schwering spoke to Ms. Cotton again. He told her she could file a complaint and that if she wanted, he would go with her to City Hall. AC Smith apparently made the same offer. Ms. Cotton told both of them that she did not want to file a complaint at that time.

Mr. Schwering said even though Ms. Cotton didn't want to file a complaint, he felt he needed to do something because in his role he oversees Internal Affairs investigations. He was unsure how to proceed given that the allegations involved the Chief. Mr. Schwering had a meeting scheduled with Gavin Cooley, the City's Chief Financial Officer, and took that opportunity to raise the March 31st incident with him to get some guidance.

So I met with him and just said, you know, you have a – a giant liability with your chief of police. I mean he's saying, you know, I basically gave him a brief rundown of what happened with Monique. And then we ... talked about it.

(Schwering Tr. 34). Mr. Schwering subsequently learned that Mr. Cooley shared the information with Ms. Sanders.

Mr. Schwering told the investigator that the March 31st incident "was kind of the exclamation point on Frank." (Schwering Tr. 37).

For months before this incident, members of the executive team had been gathering together in the morning to make sure everyone was on the same page before meeting with Straub. Schwering said it became somewhat of a joke – "who's going to get the ace of spades, who's going to get killed by Frank today?" (Schwering Tr. 38). If Straub felt threatened or was in a bad mood he would target staff and intentionally embarrass them in front of their peers. "And it wouldn't necessarily come from any place of reason.... It would just be ... [for example] Selby's the person I'm going to behead today, and that's going to be it." (Schwering Tr. 39).

Mr. Schwering believed people in City Hall were aware of Chief Straub's bad behavior, but maybe didn't appreciate the depth of the issues at the time of the March 31st incident. Mr. Schwering said he had conversations with Ms. Sanders well before this incident and shared some of his ongoing frustrations, which were mostly related to the constant organizational changes and the fact that "the target" was always changing whether it was DOJ, body cameras, or any of the other myriad of projects they were working on at the time.

And although he didn't recall specific conversations with Ms. Sanders, Schwering believed that Ms. Sanders and others in City Hall knew Chief Straub was a bully, that he had a temper, and that he treated his staff poorly.⁴⁹

⁴⁹ Ms. Lynds shared similar information with the investigator. She said that in meetings with Ms. Sanders, she and Mr. Schwering shared concerns about Straub's behavior, and believed they used terms like "bullying" and "retaliation." Ms. Lynds could not recall when they first started sharing that information with Ms. Sanders, but it was during their regularly scheduled bi-weekly meetings.

[I] think everyone ... was aware of Frank.... And I think Gavin probably put it the best Frank's an asshole but he's our asshole. And that was ..., I think, the view held by city hall is that, yeah, he's kind of an ass, but,... I don't think they quite realized it was at that level that it was.

(Schwering Tr. 47). Mr. Schwering also believed he shared the situation involving Lt. Walker and his assignment to the Civil Enforcement Unit with Ms. Sanders and that he described the move as retaliatory.

Mr. Schwering explained that the SPD was in a difficult situation. There had been "one stumble after another" before Straub was hired and then "Frank comes in . . . and he was given a lot of latitude" by the Administration. (Schwering Tr. 49). Consequently, Schwering and others were very cautious about raising complaints about Straub unless they were absolutely certain that there was a serious issue. They were fearful that the City would do nothing about their complaints and then those who came forward would suffer retaliation by Chief Straub.

2. Mayor Condon Met with Ms. Cotton Privately in Her Attorney's Office.

Mayor Condon said Ms. Cotton's attorney asked him to meet with a City employee at the lawyer's office. Mayor Condon agreed without knowing who he was meeting or what the issues were.

Never before or since has the Mayor been asked to meet with an employee privately in his or her lawyer's office.

It wasn't until Mayor Condon entered the lawyer's conference room that he learned he was meeting with Monique Cotton. Mayor Condon didn't recall if he was aware of the March 31st incident before he sat down with Ms. Cotton. Mayor Condon also did not recall much detail about the meeting other than Ms. Cotton was quite emotional. She told the Mayor that her work relationship with the Chief had become difficult. Ms. Cotton said she loved working for the City and wanted to continue, but that she could not continue to work with Chief Straub.

Mayor Condon said Ms. Cotton shared some details about the March 31st meeting and made some reference indicating that Chief Straub had touched her in a manner that made her uncomfortable. Mayor Condon did not recall that she used the term sexual harassment. Mayor Condon said he didn't ask her any questions about her sexual harassment allegations then or ever. He told Ms. Cotton he would look into the information she shared, and assured her that he would find a safe work environment for her. No specific details were discussed at the time.

Mayor Condon said he did not agree to pay Ms. Cotton's legal fees and was not aware that Ms. Sanders had ever agreed to pay Ms. Cotton's legal fees. Mayor Condon also said there were no promises of confidentiality at that initial meeting. When he left, Mayor Condon said it was his intent to investigate her claims.

The chronology prepared by the Condon administration in their December 11, 2015, response to the City Council, reported that Mayor Condon's meeting with Ms. Cotton happened on April 3rd. Based on information we reviewed, we believe it is more likely that the meeting occurred on April 10th.⁵⁰

3. Mayor Condon Said He Had No Prior Knowledge of Any Complaints against Chief Straub.

Mayor Condon said he was generally aware that there was a lot of frustration in the SPD (and other departments – HR and Finance) related to the many organizational changes introduced by Chief Straub. He was aware that staff in and outside of the SPD were struggling to keep up with all of those changes. At the same time, according to Mayor Condon, he was hearing from the command staff that they were pleased with the programmatic changes, and the overall direction of the department.

Mayor Condon acknowledged that he knew Chief Straub had a temper and could be demanding. The Mayor said he and Straub had some heated exchanges from time to time. He also saw Chief Straub become demanding with other cabinet members. But Mayor Condon said he was not aware that any City employee had ever raised claims of harassment, retaliation, or bullying against Chief Straub, formally or informally, before he met with Ms. Cotton in April.⁵¹

Mayor Condon also said no one ever raised a concern with him that Chief Straub and Ms. Cotton were in a romantic or otherwise inappropriate relationship. Through "hearsay" and "rumors" he heard that she was treated "differently" or something like that. (Condon Tr. 64). But Mayor Condon said he had no information from any source to indicate that Chief Straub ever violated the City's nepotism policy, which prohibits a supervisor from being romantically involved with a subordinate.⁵²

Mayor Condon also said that before his interview with this investigator, he had never seen the Torok "Love you" text messages between Chief Straub and Ms. Cotton, and he could not recall when he first learned of their existence. He said it might have been from Ms. Sanders when she was meeting with individual members of the department during the summer of 2015, but he was not certain.

4. Mayor Condon Asked Ms. Sanders and Ms. Isserlis to Follow Up on Ms. Cotton's Complaints.

⁵⁰ There were emails between Sanders and Cotton on April 6, 2015, in which Ms. Cotton was asking about a potential public safety communications position in City Hall. This was an extension of discussions they had in February 2015. There is no mention of the March 31st incident or the meeting with the Mayor. (The emails are attached as Exhibit 13). Also, late in the afternoon on Friday, April 10 2015, the Mayor sent out a meeting invite to Sanders and Isserlis. (Exhibit 14). That is likely when he shared the details of his meeting with Ms. Cotton. Ms. Sanders then met with Ms. Cotton the following Monday, April 13th.

⁵¹ That included Lt. Walker. Mayor Condon said he was not aware that Lt. Walker had complained about Chief Straub.

⁵² The City's policy is attached as Exhibit 15.

Mayor Condon asked Ms. Sanders and Ms. Isserlis to follow up on the information he shared with them after meeting with Ms. Cotton. Mayor Condon said he expected there would be an investigation of some kind. He also asked Ms. Sanders to find another position in the City for Ms. Cotton.

Ms. Sanders said she was aware that Mayor Condon was meeting with an employee privately, and they spoke about it after the fact. That is when she learned the meeting was with Ms. Cotton and that she was complaining about Chief Straub. Ms. Sanders already knew about the March 31st incident and immediately assumed the complaints related to that meeting. Ms. Sanders said she learned about the March 31st incident from Mr. Schwering:

Tim said Frank lost his shit and screamed at staff and used very profane language, which he quoted, and he told me that [it] is a sexual harassment claim. And I asked him, what do you mean by that and he goes, you cannot scream profanities with women in the room. And I said, well, that's the boss being a jerk.

(Sanders Tr. 42). Ms. Sanders said she reacted by shaking her head and commenting, "Seriously?" (Sanders Tr. 42). Ms. Sanders did not recall sharing the information with anyone and had no plans to address it, stating "that is the sort of thing I would comment that I'm hearing Frank had an episode." (Sanders Tr. 43).

Ms. Sanders was asked if she had seen or heard of similar "episodes" involving Chief Straub. She replied:

Not an episode of that magnitude. So I would say generally that ... Frank's a difficult personality, and he's a demanding person. So I had never prior to that incident heard of him just unleashing on staff like that.

(Sanders Tr. 43). Ms. Sanders further acknowledged that she knew Straub was "impatient, demeaning at times to the executive staff," and that he was constantly shifting personnel.

When she met with the Mayor and Ms. Isserlis, Sanders learned that Ms. Cotton had characterized the issues she had with Straub as "harassing." Ms. Sanders was asked to meet with Ms. Cotton to look into her concerns. According to Ms. Sanders, Ms. Isserlis reminded her about Ms. Lowe's conflict with working on police-related matters (her husband worked for SPD), and Ms. Sanders was told she could not include HR at that point.

5. Ms. Sanders' Communications with Ms. Cotton

Ms. Sanders first met with Ms. Cotton on April 13, 2015, the Monday after her meeting with the Mayor and Ms. Isserlis.

Ms. Sanders and Ms. Cotton had several communications during the period April 13 – 16, 2015. They included telephone calls, text messages, and in-person meetings. Ms. Sanders took notes of some of those communications and saved several text messages. (Ms. Sanders' handwritten notes and text messages with Ms. Cotton are attached as Exhibit 16 and 17, respectively).

Ms. Sanders said she doesn't normally take notes or save her text messages. She did so in this situation because she was "dubious" of Ms. Cotton's claims.

I do recall that I was dubious but I didn't believe it was relevant. I believed it was my obligation to take care of her and get her placed.

My impression was that both were overstated [referring to Ms. Cotton's complaints about the March 31st incident and the sexual harassment allegations]. That was my feeling, that it was overly dramatic. But again, I didn't feel it was in any way relevant, what my ... opinion was.

(Sanders Tr. 65).

Ms. Sanders also said she asked Mr. Coddington to sit in on her telephone calls with Ms. Cotton, stating:

I felt uncomfortable with the conversation. I wanted to make sure that as the conversation unfolded, I felt as if I was being set up, I'm sorry to say, and so I wanted to make sure that somebody else was hearing the same thing that I was hearing and that I was documenting also. I mean, I – I will tell you I never take notes.

(Sanders Tr. 58). Ms. Sanders said she provided Ms. Isserlis with her original notes and texts documenting her conversations with Ms. Cotton. She asked Ms. Isserlis to retain the documents because they related to "potential litigation." According to Ms. Sanders, she gave those documents to Ms. Isserlis in April or May 2015 (Sanders Tr. 59).⁵³

In the initial discussion with Ms. Sanders, Ms. Cotton alleged that Chief Straub had "grabbed her ass" and "tried to kiss" her. She also said she had text messages, implying that they would support her claims. Ms. Cotton did not volunteer and no one in the City asked for any further details about her sexual harassment allegations. For instance, Ms. Cotton was never asked when the alleged conduct occurred, how many times, the circumstances and context, or whether there were any witnesses. Ms. Cotton also never volunteered nor was she asked to produce her text messages.

Ms. Cotton told Ms. Sanders that she was raising the sexual harassment complaints merely as "context" for what happened in the March 31st meeting, with no further explanation, and none was requested.

⁵³ Both Mayor Condon and Mr. Coddington said they were aware of the existence of Sanders' notes and text messages, and that she gave those documents to Ms. Isserlis.

In her April 13, 2015, text to Ms. Sanders, which followed her first meeting with Ms. Sanders, Ms. Cotton wrote:

My transfer into a new position has to be viewed as advancement; without any hint that it is for any reason other than as a promotion for my past performance. I'm happy to participate in an investigation regarding the way I was berated on 3/31, and other times I was berated however [sic] cannot cooperate with any investigation regarding the matters I presented confidentially to the Mayor and you because of the inevitable publicity and disclosures that will impact me and my life in every way – physically, emotionally, and professionally. I never intended to assert a claim and did not do so specifically to avoid becoming part of any investigation into confidential matters and be victimized all over If the City is unable to accommodate my request for confidential assistance along the lines we discussed and to ensure future confidentiality without my privacy and reputation impacted, then I feel I'm left with few options.

(Exhibit 17).

Ms. Sanders and Ms. Cotton spoke by telephone on April 14, 2015. Ms. Cotton then sent the following text:

I want to make sure I am very clear that I do not want an investigation into harassment and do not feel an investigation into this subject is necessary because I have not filed a claim. I want my reassignment and advancement to be one based on merit.

I will assist in an investigation regarding yelling, berating of employees and berating of me.

(Exhibit 17).

6. Ms. Cotton Was Assured by the Condon Administration that Her Sexual Harassment Allegations Would Remain Confidential.

Mayor Condon said he didn't recall making any firm promises directly to Ms. Cotton that the City would keep her sexual harassment allegations confidential, but he viewed it as a personnel matter and knew that Ms. Cotton had asked for confidentiality.

[S]he had asked for it, and we were doing it to the best of our abilities. I couldn't single-handedly do it, but – you know, that there was going to be some other people involved, but – she had asked that it – like I said, repeatedly that she didn't want – you know, she wanted the least amount of people to know about this and that she just wanted to work for the city.

(Condon Tr. 98-99). Mayor Condon said he didn't direct his staff to keep Ms. Cotton's complaints confidential but it was understood.

As a personnel matter, I just – you know, this – or the – you know, the – so I guess to me I don't know whether I – I directly said it, but it definitely -- it was what she requested of me, so I would have referred -- I would have referenced that when I explained it to Theresa that, 'She doesn't want anybody to know about this,' that – you know, because she had repeatedly said that to me in the first meeting.

(Condon Tr. 100).

Ms. Sanders, on the other hand, said she personally assured Ms. Cotton that her sexual harassment allegations would be kept confidential.

She begged me to not discuss it, and particularly around her not wanting to launch an investigation, and I assured her that I wouldn't.

She was very, very, very concerned and adamant that any concerns about sexual harassment were never discussed.

(Sanders Tr. 75-76).⁵⁴ Ms. Sanders said she shared her promise of confidentiality with Mayor Condon, Mr. Coddington, Ms. Isserlis, and Ms. Jacobson, and they too apparently agreed not to disclose the fact that Ms. Cotton had alleged sexual harassment against Chief Straub.

Ms. Sanders was never advised by the City's lawyers that the City's policies required an investigation of Ms. Cotton's claims or that it would be imprudent to guarantee confidentiality as a public employer.

And I have to tell you I had many follow-up conversations, and I still don't think anybody feels that I should have breached confidentiality, and I'm having ... my own concerns about in general what conversations can I have with employees that are confidential.

(Sanders Tr. 76). Ms. Lowe, the HR Director, was not consulted on any of the issues related to Ms. Cotton's sexual harassment allegations (including whether the City had an obligation to investigate or the promises of absolute confidentiality).

7. Ms. Isserlis and Ms. Jacobson Were Tasked with Fact-Finding.

Mayor Condon and Ms. Sanders directed the City Attorney's Office to look into Ms. Cotton's concerns. To that end, Ms. Isserlis and Ms. Jacobson interviewed Chief Straub,

⁵⁴ Ms. Cotton, however, did not express any concerns about maintaining the confidentiality of the March 31st incident. Ms. Sanders believed she would have been okay to discuss that incident. (Sanders Tr. 75-76).

AC Dobrow, AC Smith, Lt. Griffiths, Capt. Olsen, and Tim Schwering during the period April 14–16, 2015.

Ms. Isserlis and Ms. Jacobson interviewed Chief Straub on April 14, 2015.⁵⁵

Ms. Cotton was never interviewed as part of their inquiry.⁵⁶

On April 13, 2015, before starting the interviews, Ms. Jacobson asked the City Clerk about an earlier public records request seeking text messages between Straub and Cotton. She told the Clerk she wanted copies of what was released, saying it “[m]ay be relevant to another issue that I’m working on.” (Exhibit 19). She was provided with copies of records that were released in 2014, but those records did not include the Torok texts.

It appears that Ms. Sanders, Ms. Isserlis, and Ms. Jacobson met early Tuesday morning, April 14th, presumably to talk about the interviews and the issues that would be investigated. (Exhibit 20).

The attorneys limited their questions to the March 31st meeting with all of the witnesses except Straub.⁵⁷ According to Mayor Condon, Chief Straub was also asked about Ms. Cotton’s sexual harassment allegations. (Ms. Sanders said she didn’t recall that the lawyers interviewed Chief Straub, but it’s clear that they did.) We were unable to determine with any certainty whose decision it was to limit the inquiry to the March 31st incident.⁵⁸

a. *Witness interviews were not documented.*

According to the witnesses, Ms. Isserlis and Ms. Jacobson did not take any notes during their interviews and none have been produced to this investigator or as far as we know in response to public records requests. The lawyers also did not ask for copies of notes taken by any of the participants, and according to Capt. Olsen, they said no when he asked whether they wanted copies of his notes.⁵⁹

⁵⁵ Exhibit 18.

⁵⁶ Ms. Cotton told Ms. Sanders that she was willing to participate in an investigation of the March 31st incident. According to statements attributed to Ms. Cotton by the media, she fully expected that the City would undertake a broader investigation of Chief Straub’s abusive management style.

⁵⁷ Ms. Isserlis and Ms. Jacobson knew that Ms. Cotton had alleged sexual harassment but did not ask any of the witnesses about that subject or any other subject other than the March 31st incident. They also knew that the March 31st incident was not an isolated incident, but did not ask the witnesses about any other incidents or any other potential concerns related to Chief Straub.

⁵⁸ Mayor Condon and Ms. Sanders both said they left it up to the lawyers to decide who to interview and what to ask. But Ms. Sanders also said she never considered broadening the inquiry because she wasn’t aware of any other issues. Ms. Sanders’ statement to the investigator was contradicted by Ms. Sanders’ notes, which indicate that Ms. Cotton said the issues were broader, and also by Mr. Schwering who said he had raised additional concerns with Ms. Sanders even before the March 31st incident.

⁵⁹ Capt. Olsen said in his meeting with the lawyers he remembered “offering something in writing and they said they didn’t need it.” (Olsen Tr. 37).

The absence of documentation appears to have been deliberate to avoid creating a record of Ms. Cotton's complaints and Chief Straub's inappropriate behavior. The absence of documentation also appears to be a common practice within the Mayor's Administration. The only notes that were produced to this investigator by anyone in the Mayor's Administration relating to the Straub/Cotton matters were those prepared by Ms. Sanders regarding her communications with Ms. Cotton in April 2015.

8. *The Lawyers Provided a Verbal Report of Their Findings to Mayor Condon and Ms. Sanders.*

On April 17, 2015, Ms. Isserlis and Ms. Jacobson provided a verbal report to Mayor Condon and Ms. Sanders. Regarding the March 31st incident, Mayor Condon recalled he was told that Ms. Cotton's account of Chief's Straub's behavior was substantiated by the witnesses. (Condon Tr. 80).

Ms. Sanders' recollection was similar.

[Ms. Isserlis] said that she was able to confirm that each of the people that they interviewed had indicated that Frank's behavior was inappropriate, unprofessional, and that the words that had been quoted to us, the profane language that he used, was confirmed by each of the people that were interviewed.

(Sanders Tr. 82-83).

Regarding Ms. Cotton's sexual harassment allegations, it is uncertain whether Chief Straub was ever informed of Ms. Cotton's specific allegations that he tried to kiss her and slapped her on the butt, and that the conduct was unwelcome.

Mayor Condon was asked the question several times, and finally said after some effort on this line of questioning, that Straub admitted to a work relationship with Ms. Cotton that he "had to bring back to a more professional level." (Condon Tr. 84-90).⁶⁰

In the end, what Mayor Condon recalled was that Chief Straub denied he ever had an inappropriate sexual relationship with Ms. Cotton or that he sexually harassed Ms. Cotton.

9. *Mayor Condon and Ms. Sanders Met with Chief Straub on April 21st.*

On April 21, 2015, Mayor Condon and Ms. Sanders met with Chief Straub to address Ms. Cotton's complaints. The meeting was scheduled for 30 minutes; it's unclear if it went longer than that. (Exhibit 21).

⁶⁰ Mayor Condon struggled to distinguish between what he was told by Ms. Isserlis about her interview with Chief Straub, and what he learned from Straub directly when they met on April 21, 2015.

Mayor Condon said Chief Straub didn't deny his behavior, including the use of profane and vulgar language, but he said it was out of character for him and the result of being under intense stress. (Condon Tr. 83-84).

Ms. Sanders said:

So Frank sat down. We were in the mayor's office. Exchanged a couple of pleasantries. Frank said, okay I know why we're here. . . . We talked about Monique's concerns. We talked about the March 31st meeting. He indicated that he had a mutual flirtation with Monique that had ended quite a long time ago. He denied, as did she later, that they had any sexual relationship.

The bulk of the conversation was about the March 31st meeting, how it was perceived by staff. He – he was in tears. He admitted that it was really inappropriate.

(Sanders Tr. 84-85).

[W]e let Frank know that . . . really unacceptable behavior, because we were trying to build a team and change the Police Department. That's not how you build morale.

And Frank was emotional . . . he basically asked us, what would you like me to do, and do you want me to write a letter of apology? And I said, no, I don't believe in forced apologies, but I want you to get straight with your people.

(Sanders Tr. 18).

Ms. Sanders told the investigator that she has never learned from any source that Chief Straub has said anything inconsistent with what he told Ms. Sanders and Mayor Condon in their April 21 meeting about the nature of his relationship with Ms. Cotton. In that meeting, according to Ms. Sanders, Straub said only that they had a "mutually flirtatious" relationship.

So there's lots of rumors, but nobody has ever said anything to me. I mean, Frank has never said anything. I haven't heard anything relayed that's inconsistent with what I've heard, but I've heard many, many, many rumors.

(Sanders Tr. 86-87). Ms. Sanders was also asked whether she had any information from any source that Chief Straub ever violated the City's nepotism policies, and she said, "No." (Sanders Tr. 53).

In pleadings filed as part of his lawsuit, Chief Straub claimed that he was never informed of the details of Ms. Cotton's allegations and that he demanded an investigation of her sexual harassment claims, which the City refused to undertake.

Ms. Sanders told the investigator that she and the Mayor did not confront Chief Straub with Ms. Cotton's specific allegations of unwelcome touching. But he was told that Ms. Cotton alleged sexual harassment and had "refused to file a complaint." (Sanders Tr. 86). Mayor Condon, on the other hand, believed they did ask him about Ms. Cotton's allegations of unwelcome touching, which Straub denied.

Mayor Condon didn't recall that Chief Straub requested an investigation. Ms. Sanders was more certain; she said that Chief Straub never requested an investigation of Ms. Cotton's sexual harassment complaints. Rather, he was contrite and apologetic and wanted only to know what he could do to fix the problems.

Mayor Condon said he considered the meeting with Chief Straub to be disciplinary and that termination was within the scope of his thinking at the time, but he ultimately determined the March 31st incident was an isolated incident. He reportedly told Straub that his conduct was not acceptable for a member of his cabinet and that he needed to change. Mayor Condon's remedy was to monitor Chief Straub through the summer.

Regarding the sexual harassment allegations, Mayor Condon concluded it was a "he said, she said" situation with no way to navigate the impasse because Ms. Cotton refused to participate in an investigation.

Ms. Sanders said the meeting with Chief Straub was not disciplinary and there was no thought or discussion that the Chief's conduct warranted termination. Ms. Sanders said they made it clear that he needed to repair his relationships with his senior staff. He was also told that Ms. Cotton was not coming back to the department and that he would be required to fund her position, at least in the short term. Chief Straub did not object to that course of action.

10. Ms. Sanders Offered Ms. Cotton a Communications Position in the Parks Division, a Two-Step Increase in Her Compensation, and Positive Messaging that the Transfer was a Promotion.

According to Ms. Sanders' April 16, 2015 notes, she "offered Parks" with the "same job description," "same pay, same level of reporting." She also told Ms. Cotton that the City would do "really positive messaging" and that Ms. Cotton would be involved in framing that message.

It was pointed out that according to her notes, Ms. Sanders offered Ms. Cotton a position in Parks before Mr. Eadie, the Parks Director, had met with Ms. Cotton. Ms. Sanders responded that it was not a firm offer on April 16; she was just explaining an opportunity. According to Ms. Sanders, the ultimate decision rested with Mr. Eadie.

It is undisputed that the Parks & Recreation Division had a legitimate need for a public relations professional at the time Ms. Cotton came forward with her complaints against Chief Straub. The Parks Community Affairs Coordinator was on an extended leave with

no firm return date.⁶¹ There was also an existing need for additional communication and public outreach related to the Riverfront Park redevelopment project. Mr. Eadie had been in discussions with an individual outside the City to do public relations project work, even before he learned of Ms. Cotton's availability. However, that opportunity fell through because the applicant could not get out of his employment contract.

Mr. Eadie said he and Jason Conley, the Executive Officer in Parks, met with Ms. Cotton to discuss the position they were trying to fill. Mr. Eadie said they both concluded that Ms. Cotton had the appropriate skills and experience to meet their needs at the time.

Mr. Eadie shared his views with Ms. Sanders and asked about funding Ms. Cotton's reassignment. Ms. Sanders told Mr. Eadie that Ms. Cotton's salary would be funded by the SPD, at least in the short term.

In addition to her normal step increase due on Ms. Cotton's anniversary date, Ms. Sanders approved an "add-to-pay" increase, resulting in a salary of \$86,025, approximately \$8,765 more than she was making as the SPD communications manager.⁶² Ms. Sanders said Ms. Cotton requested the increase to support the messaging that her reassignment was a promotion.

Several individuals were involved in drafting and finalizing the letter memorializing the terms of Ms. Cotton's new assignment. That letter went through at least five drafts. Mr. Coddington was the primary author, with both Ms. Lowe and Ms. Steinolfson contributing to the text.⁶³ Ms. Sanders was also included in the review, as was Ms. Cotton. **Ms. Cotton** added the following language to what became the final letter:

The Spokane Police Division has made substantial positive progress in the areas of citizen engagement, media relations, re-branding, marketing, public relations, and social media during your time leading these efforts. Your exceptional talents and skills, along with tenacious work ethic have made a dramatic impact on rebuilding relationships between the Spokane Police Division and the community it serves. Additionally, your experience managing communications and public relations for corporate and non-profit organizations prior to your employment with the City of Spokane makes you the ideal choice to lead the efforts to help bring such an important citizen priority to fruition.

(April 22, 2015 Draft revised by Ms. Cotton, Exhibit 22).

The final letter also stated that Ms. Cotton was being selected by Mayor Condon to manage communication, media relations, and serve as a community outreach liaison for

⁶¹ We are aware that the community affairs coordinator resigned and has filed a tort claim against the City. The facts and circumstances of that claim are not within the scope of this investigation, and nothing in this report is intended to express any opinion or finding regarding the merits of that claim.

⁶² These amounts were taken from payroll records provided by the City. The "add-to-pay" increase was in the amount of \$3,382.

⁶³ Ms. Lowe wrote in an email that she was concerned that the letter not be an "offer letter."

the Parks and Recreation Division” in the “*newly created position of Division Communications Manager.*” (Exhibit 22)(emphasis added). There was no such position in Parks at the time. The letter goes on to say that “[w]e will begin the process of creating a new position in the division and, once that has been completed, will officially present it to you in a formal offer letter.”⁶⁴ The Mayor signed Ms. Cotton’s letter on April 22, 2015, and she was supposed to begin her new position on April 27, 2015, a date that was subsequently extended to May 4, 2015.

On May 4, 2015, Mr. Coddington distributed a City-wide internal email formally announcing Ms. Cotton’s transfer from the SPD to Parks. (Exhibit 23). There was also a news article published on May 4th by the Spokesman-Review announcing Ms. Cotton’s transfer that included a quote from Mayor Condon. (Exhibit 24). There was no mention of the March 31st incident, Chief Straub’s abusive management style, or the issues between Ms. Cotton and Chief Straub that were the true reasons for Ms. Cotton’s transfer.

After the news article was published, Ms. Isserlis and Ms. Sanders exchanged congratulatory emails:

Monday, May 4, 2015 12:22 p.m.

Ms. Isserlis to Ms. Sanders

“Excellent spokesman story on new parks employee.”

Monday, May 4, 2015 12:39 p.m.

Ms. Sanders to Ms. Isserlis

“I’m reminded of the song in My Fair Lady, ‘with a little bit of bloomin’ luck’”

(Exhibit 25).

While the Administration had successfully portrayed Ms. Cotton’s transfer as a promotion, there were a number of people in the SPD who knew or assumed the transfer was actually triggered by the March 31st incident.

11. Ms. Cotton was Told She Would Have to Compete for the Permanent Parks Position.

⁶⁴ Copies of the drafts, email, and final letter are attached as Exhibit 22. The earliest draft is dated April 17, 2015, one day after Ms. Sanders’ notes indicate an “offer” to Ms. Cotton, and ten days before Mr. Eadie interviewed Ms. Cotton. Despite the timing of these letters, Mr. Eadie has said that the final decision about Ms. Cotton’s transfer rested with him.

Members of the Parks Board didn't hear about Ms. Cotton's transfer until after it was agreed to by Mr. Eadie. (See Exhibit 26). The Parks Board president expressed concerns about the appearance that Ms. Cotton was assuming a position that had not been approved by the Board. There were ongoing discussions between the Parks Board president and Mr. Eadie on this issue. Mr. Eadie assured the president that he was working on a job description to present to the Board for its approval. (Exhibit 27).

Mr. Eadie included a new "division communications manager" position in his June 2015 draft budget to the Parks Board.⁶⁵ He and Ms. Sanders both told the investigator that they made it clear to Ms. Cotton all along that she would have to compete for the permanent position if and when it was approved by the Parks Board.

Mr. Eadie said that Ms. Cotton was "a little disappointed that she was going to have to compete for that position." He has said publicly many times that Ms. Cotton did "great, professional communication and marketing work for Parks and Recreation," but that since he has been Director, "all of our exempt positions, we advertise the position, we recruit, we interview, and usually there's a couple levels of interviews." (Eadie Tr. 19).

Ms. Cotton told Mr. Eadie she believed Ms. Sanders had presented the transfer to Parks as a more permanent solution.

That was part of her response. Her disappointment was that she believed in her conversations that she had with Theresa that - that it was more of a permanent solution for her. And ... I just told Monique. I said, well, that's not how I have understood it, and that's not how the process works.

And I assured her that I believed she would compete very well in the process, . . . because she was doing excellent work for us - I mean, really great work.

(Eadie Tr. 20).⁶⁶

12. May/June 2015 - Ms. Cotton Sought Reimbursement from the City for Her Legal Fees.

At the end of May 2015, either Ms. Cotton or her attorney contacted Ms. Sanders to request reimbursement of her legal fees. Ms. Sanders and Ms. Isserlis exchanged emails on May 27, 2015, about this request. Ms. Isserlis told Ms. Sanders that she couldn't talk to Ms. Cotton, but Ms. Sanders could. Ms. Isserlis wrote: "I have an outline of what you need to say, and what we can, and cannot do." (Exhibit 28).

It appears that Ms. Sanders met with Ms. Cotton on June 2, 2015. (Exhibit 29).

⁶⁵ That was in addition to the communication coordinator position.

⁶⁶ Ms. Cotton eventually competed for the new position but resigned before the second round of interviews was completed.

Ms. Cotton's attorney hand-delivered a letter to Mayor Condon and Ms. Sanders on June 8, 2015, requesting payment for his legal fees in the amount of \$13,276.89. In his letter, he claimed that the City had agreed and promised to reimburse Ms. Cotton for "certain fees and expenses incurred" relating to her "accommodation," which was a reference to the fact that Ms. Cotton was transferred to Parks after she complained about Chief Straub. (The letter is attached as Exhibit 30).

The Mayor and Ms. Sanders both said they turned their only copy of the letter over to legal. They also both reported that they were not familiar with the office's process and procedures for logging or filing legal correspondence and did not know if there were duplicates retained in the Mayor's office.

That same day, June 8, 2015, Ms. Isserlis asked her administrative assistant to schedule a telephone call with Ms. Cotton's attorney "to discuss his recent correspondence to the mayor." It's unclear whether they ever spoke by telephone, but there were a series of emails exchanged between Ms. Isserlis and Ms. Cotton's attorney from June 8 – June 11. (Exhibit 31).

Ms. Cotton's attorney was suggesting a reimbursement agreement in lieu of being required to file a tort claim, to avoid creating a public record. Ms. Isserlis rejected that option, stating that it would violate the City's code of ethics (as well as the rules of professional responsibility and possibly State law). In a subsequent email, Ms. Cotton's attorney asked for an update and said his request needed to be addressed "before it turns into a Police Ombudsman headline." It does not appear that Ms. Isserlis responded to that email.

On June 11, 2015, Ms. Sanders requested her executive assistant to set up a meeting with Ms. Cotton for Monday June 15th. Ms. Isserlis was tracking this effort and asked Ms. Sanders in a June 12, 2015 email whether Sanders had talked to Cotton. Ms. Sanders told her it was on her calendar. (Emails attached as Exhibit 32).

Ms. Cotton's attorney hand-delivered a second letter to Mayor Condon and Ms. Sanders, cc'ing Ms. Isserlis, dated June 17, 2015. In that letter, he complained that Ms. Cotton had been told by the City that she had to file a formal claim to be reimbursed for her legal fees. He wrote:

[I]nsistence upon a formal tort claim is not only unnecessary, but counterproductive to all concerned. The City should know by now that I have absolutely no problem filing tort claims against it. However in this situation, that was not the course my client wanted to pursue, nor was it the agreement.

The attorney continued by stating that if he was forced to submit a formal claim, it would read:

... that the City and specifically Mayor Condon knew or should have known about the candidate's personal relationship improprieties with female subordinates, yet

nonetheless intentionally ignored such information while personally choosing to recruit and hire that person into a high level City Department Head position, and then despite such notice, did nothing to supervise or monitor that hire's subsequent predatory and sexually inappropriate misconduct and outrageous interactions, including physical and emotional assaults with and against subordinate female City employees; causing and creating a work environment so sexually charged and hostile that it caused the constructive discharge of my client who suffered significant emotional injury and upset such that it required health counseling, etc.

(Exhibit 33)(italics in the original). Ms. Cotton's lawyer closed by threatening to make his request public if the City continued to insist that he file a formal claim.

Ms. Isserlis responded in a letter dated June 18, 2015. She reminded Ms. Cotton's attorney that Ms. Cotton "repeatedly informed Ms. Sanders that she does not want any publicity" and refused to participate in an investigation into the "conduct that you referenced in your hypothetical claim language." "The City immediately accommodated her request for reassignment, and it appears that she is doing well in her new role."

Ms. Isserlis acknowledged that the City had received "copies of the expenses for which your client is seeking reimbursement," but further stated that Ms. Cotton had been informed that she must file a claim. A blank preprinted claim form was included with Ms. Isserlis' letter. (Exhibit 34).

Both Mayor Condon and Ms. Sanders denied that they promised unconditionally to reimburse Ms. Cotton for her legal fees. Ms. Sanders said Ms. Cotton provided her with an envelope full of receipts, which she turned over to Ms. Isserlis. Ms. Sanders said she told Ms. Cotton that she would have to file a claim to be reimbursed.

When I received the receipts from her, I didn't agree to anything. But I had a subsequent conversation with Nancy and related to these letters, and she said the city can't pay anything without – our concern was that you're asking me to pay you dollars, and I have – I have no complaint. I have no claim, no nothing, and so I can pay a claim if you will make a claim.

(Sanders Tr. 102).⁶⁷

As of the date of this report, the investigator has no information that Ms. Cotton pursued the matter further or that she has filed a tort claim against the City.

13. There Were No Further Complaints by Ms. Cotton against Chief Straub After She Transferred to Parks.

⁶⁷ Ms. Sanders said in one of her meetings with Ms. Cotton she was handed an envelope with receipts for her legal fees. Ms. Sanders said she gave that original envelope to Ms. Isserlis. Those documents to our knowledge have never been produced in response to any of the public records request.

It is undisputed that there were no further incidents between Ms. Cotton and Chief Straub after she transferred to Parks. Ms. Cotton was not required to work with Chief Straub again, and they both seemed satisfied with the resolution of Ms. Cotton's complaints.

It also appears that Ms. Cotton performed well in her new position. Mr. Eadie was extremely happy with her contributions and thought she could continue to thrive in the position.

D. Whether the Cortright and Cotton Transfers Were Consistent with City Policies.

Ms. Cortright and Ms. Cotton were both general-funded, exempt employees at the time of their transfers. There are no City policies governing the inter-departmental transfer or loan of employees with that classification. Accordingly, no City policies were violated. Additionally, it appears that inter-departmental transfers and loans are common within the City to address a wide-range of legitimate business needs, and such personnel moves are clearly within the discretion of the Mayor.

E. The Facts and Circumstances of Chief Straub's Resignation.

1. Events Leading Up to Chief Straub's Resignation

Ms. Sanders said she monitored Chief Straub's behavior after they met with him on April 21, 2015. She did that through her bi-weekly meetings with Chief Straub, Ms. Lynds, and Mr. Schwering.⁶⁸ From those discussions, she learned that things were settling down a bit.

Mr. Schwering confirmed that following the March 31st incident, Ms. Sanders began scheduling regular bi-weekly meetings with him and Ms. Lynds. He believed Ms. Sanders wanted to be more involved in communications about police operations and she also wanted updates on Chief Straub. Mr. Schwering referred to that as being on "Frank watch." He said that there was a dramatic improvement in Chief Straub's behavior. He was much calmer and there were no major outbursts for most of the summer. Eventually, however, by the middle to late summer 2015, Mr. Schwering saw that Chief Straub was sliding back into his old behaviors.

Other witnesses shared that they too noticed a cooling off period when Chief Straub was nicer and less volatile. Those who knew about the March 31st incident assumed that the Mayor had counseled Chief Straub about his behavior. They also said, however, that Chief Straub slowly returned to his former abusive management style.

Ms. Sanders said she eventually learned that Chief Straub was unable to sustain the good behavior.

⁶⁸ Ms. Sanders said Lynds and Schwering "were really my bellwether for what was going on in the department." (Sanders Tr. 21-22).

I'm not sure exactly what happened honestly. We saw a bunch of . . . public records requests and media leaks, which in my organization is a sign that somebody's trying to get something out of the organization . . . that they don't want to say.

(Sanders Tr. 19). She also started to hear from Ms. Lynds and Mr. Schwering that they had concerns about Chief Straub falling back into his old ways. Ms. Sanders said she didn't recall the details of how she learned the information, but it became clear to her that other members of the department also had concerns about Straub, and that the administration "needed to give them an opportunity to voice their concerns." (Sanders Tr. 19-20). Ms. Sanders said that coincided nicely with budget meetings that were scheduled or about to be scheduled with the unions.⁶⁹

2. The September 8, 2015 Meeting with the Lieutenants & Captains Association

On August 28, 2015, the Mayor's Office sent an email to the leadership of the Lieutenants & Captains Association inviting "the executive board, as well as all PD Lieutenant's & Captains" to discuss the City's 2016 budget "***and any other areas of interest.***" (Exhibit 35)(emphasis added).

The Association leadership believed this was an invitation to share their concerns about Chief Straub. Association members met before the September 8 meeting to talk about whether they were willing to discuss their concerns with Mayor Condon. Their reluctance stemmed from a fear that the Condon Administration would not undertake any meaningful action to address the issues, which would leave members vulnerable to retaliation. After some deliberation, the Association members decided that they would share their concerns with Mayor Condon.

It was reported that 75-80% of the membership attended the September 8, 2015 budget meeting, which was unprecedented. Usually only a few of the E-board attends the Mayor's budget presentation. We interviewed ten witnesses who were present at that meeting (not including Condon and Sanders). This investigation revealed division and disagreement among members of the Association on a variety of issues, most of which were not relevant to the work we were asked to do. But one thing that the membership all agreed on was that Chief Straub was perceived to be an abusive leader who had lost the trust and respect of his senior command staff.

In the meeting with the Mayor, many of the members in attendance shared their personal stories of abuse, humiliation, and frustration. And while the members also spoke well of some of the programs and initiatives introduced by Chief Straub, the overwhelming feedback was negative. Much of what is detailed in this report from various SPD

⁶⁹ Brandy Cote, the Executive Assistant for the Mayor's Office, said Ms. Sanders specifically asked her to extend invitations to the entire membership of the Lieutenants & Captains Association to attend the budget meeting with the Mayor. She was also asked to encourage as many of the members as possible to attend that meeting.

witnesses was also shared in some degree in the meeting with Mayor Condon and Ms. Sanders.

The witnesses informed the investigator that Mayor Condon and Ms. Sanders were attentive and genuinely appeared to be engaged and listening. Ms. Sanders asked most of the follow-up questions, which included a pointed question to one of the members about whether the relationship with Chief Straub was salvageable. The response was no, and witnesses present reported that no one in the room disagreed.

Mayor Condon and Ms. Sanders told the members that they would be looking into the information more closely. Ms. Sanders extended an offer to meet with members individually. (Exhibit 36). It was reported that 8-10 Association members took her up on that offer after the September 8, 2015 meeting. They shared additional details of their personal experiences working with and for Chief Straub. That information echoed what had already been discussed in the larger meeting.

The Mayor did not make any promises or give any firm commitments about how he planned to address their concerns or his next steps.

3. The September 10, 2015 Meeting with the Executive Team

Mayor Condon also scheduled a meeting with Chief Straub's executive team. They too knew that it would be an opportunity to discuss their concerns about Chief Straub who was intentionally excluded from the meeting.⁷⁰ It was Mayor Condon's intent to have a conversation with the E-team similar to what he had done with the Association. The feedback from the E-team was nearly identical, but according to Mayor Condon, even more impactful because they had been hand-picked by Chief Straub, and three of them were brought in from outside of the SPD.

4. The September 17, 2015 Labor-Management Meeting

Chief Straub was on vacation the week of September 14, 2015. During a regularly scheduled labor-management meeting on September 17th, the meetings with Mayor Condon were discussed. Both sides revealed what they had shared with Mayor Condon at their respective meetings. The message was consistent - there was widespread concern about Chief Straub's leadership of the department. There was also a deep fear that the administration would not act. Calling for a vote of "no confidence" against the Chief came up as a possible option. Lt. Lundgren said no one was ready to go there because of the unwanted publicity it would generate for the department. "[I]t was fair to say that people didn't have confidence in the chief, but we didn't – we weren't interested in going forward and publicizing that." (Lundgren Tr. 47).

⁷⁰ Schwering said that Straub was aware of their meeting with the Mayor, and made side comments to the effect that he knew it was a ruse to talk about him. The day after their meeting with the Mayor, Chief Straub assembled the entire executive team and questioned them about what they told the Mayor. They said everything was fine, not wanting to get into the true details of what was discussed.

5. The September 18, 2015 Letters from the Lieutenants & Captains Association and the SPD Executive Team

Discussions between Mr. Schwering and Lt. Lundgren led to the preparation of the September 18, 2015 letters that were signed on behalf of the executive team and the Lieutenants & Captains Association, respectively. (Exhibit 37). The letters describe the Chief in extremely critical terms and portray a hostile work environment under Chief Straub that had existed for years, but gone unaddressed.

Representatives of the Association and E-Team collaborated to produce the letters. Both were dated September 18, 2015, addressed to the City Attorney, and designated as “Confidential Attorney-Client Privileged Communications.” The primary author on behalf of the Association was Lt. Lundgren who was assisted by Lt. Griffiths and Capt. Olsen.⁷¹ The primary author on behalf of the E-team was Tim Schwering who drafted the letter in consultation with all of the other members of the executive team.

No one in the Condon Administration had any involvement in the preparation of the September 18th letters. They did not request the letters. They did not provide any input into the substance of the letters, and they did not review or know of the existence of the letters until they were hand-delivered to Ms. Isserlis by Mr. Schwering on September 18, 2015.

a. Tim Schwering

Mr. Schwering believed he was the first one to suggest documenting concerns about Chief Straub in a conversation with Lt. Lundgren. He believed that conversation contributed to the Association’s decision to draft a letter listing the concerns they had raised verbally with Mayor Condon and Ms. Sanders.

All four members of the executive team met together to prepare their letter. Mr. Schwering thought he had a copy of the Association’s letter with him at the time. The E-team’s letter included a bullet list of issues they had with Chief Straub. Mr. Schwering said that the individual bullets were included only if everyone could recall an example of the behavior or incident that is described. If even one member didn’t have personal knowledge of the issue, it wasn’t included on the list.

Mr. Schwering also said it was his idea to designate the letters as “Attorney-Client Privileged” and to deliver them to Ms. Isserlis with a request “Please advise.” This was intentional to avoid public disclosure of what were obviously very serious concerns about the Chief of Police.

[W]e did this as an initial . . . we’re going to put this in writing so you’re aware of it, but – and that’s why we put ‘please advise’ at the end.

⁷¹ Other members of the Association who were interviewed in this investigation said that while they may not have seen the letter until after it was finalized, no one expressed any disagreement with the content of the letter or objected to giving it to the Condon Administration.

If they wanted to do another investigation, if they wanted – we didn't know. We didn't want to force their hand. It's, like, this is what we know. If you want to come talk to us, you're more than welcome to. But it was kind of a case of it's in your hands how you want to deal with it.

(Schwering Tr. 64). Mr. Schwering described the letter as drawing a line in the sand, and said he was of the view that Chief Straub could not recover from these issues.

Mr. Schwering said he hand-delivered both of the September 18, 2015 letters to Ms. Isserlis on Friday, September 18th. She was downtown attending a CLE. Mr. Schwering called her ahead of time to let her know he would be delivering the documents. He said they discussed the letters briefly, but he did not know how they would ultimately be received by the Administration or whether their concerns would be addressed further.

b. *Lt. Lundgren*

Lt. Lundgren explained the reason for documenting the Associations' concerns:

[S]o our plan was to make sure that – one way or another that some of the things that were going on in the workplace didn't continue. And so we had shared with Theresa and the mayor on the meeting on the 8th.

Then the following week or, I guess, nine days later on September 17th we had a labor-management meeting, which is when the executive staff of the department meets with the Lieutenants and Captains and we discuss anything that has to do with the relationship between those two groups.

And so we [referencing the Association] provided a synopsis verbally to them [the executive team] – of what we had told the mayor and Theresa in our meeting. And so the idea behind this letter was to make sure that the city attorney's office was also aware.

[W]e wanted to make sure that Nancy Isserlis and everyone down at city legal was also aware so nobody's getting blindsided; they all have the same information. And what we had decided was that if . . . in the event that nothing does happen, we would have everybody notified and we have our documents in order.

(Lundgren Tr. 33).

Lt. Lundgren also said the letter was a way to emphasize what they had previously shared with the Administration – “we're not going to tolerate it happening again.” The

Association was “putting people on notice that we needed a change in what was going on.” (Lundgren Tr. 34).⁷²

Lt. Lundgren was asked why the letter was designated “Attorney-Client Privileged?”

We became aware that the executive team was also going to be drafting a letter. And so I communicated with Tim Schwering about . . . the two letters, and we went and wrote our own letter as to our own experiences . . . [T]hey had a lot more exposure to Chief Straub than we did, and so they had seen as much, if not more and worse, behavior.

So the idea was that we don’t like being the attention of media focus. It makes the officers who are responding to calls – makes their job more difficult when we have this – this constant pounding of media, negative media attention.

So we did not want to publicize this situation in any way, shape or form.

(Lundgren Tr. 35-36).

Lt. Lundgren said even though he was aware that the E-team was drafting its own letter, that did not influence the Association’s letter. Each side was documenting their own experiences.

So I think we were supporting each other because we knew that it could get . . . ugly if things were to go sideways. So we were one united front because we both were seeing the same issues, but these (indicating the Association letter) were the association’s issues and those (indicating the E-team letter) were the issues of the executive team.

(Lundgren Tr. 38).

6. The September 18, 2015 Letters Prompted Mayor Condon’s Decision to Ask for Chief Straub’s Resignation.

On September 11, 2015, Ms. Sanders forwarded an article to Mayor Condon and Mr. Coddington reporting that Cincinnati’s Police Chief had been recently terminated for behavior that was strikingly similar to that reported about Chief Straub. (Exhibit 38). That was the only evidence that we saw indicating that Mayor Condon may have been considering termination before he received the September 18th letters. But it wasn’t until he received the September 18th letters that he initiated steps to dismiss Chief Straub. We believe the letters ultimately prompted Mayor Condon to act, and within 48 hours of receiving those letters, Mayor Condon told Chief Straub that he must resign or be fired.

⁷² Lt. Lundgren shared some of his own concerns about Chief Straub, which included his failure to timely refer a matter involving a perceived “friend of Straub” to internal affairs, and his refusal to investigate allegations of discrimination asserted against IA investigators.

- a. *Saturday, September 19th - Ms. Isserlis met with the Association leadership.*

Ms. Isserlis shared the September 18 letters with Mayor Condon and Ms. Sanders right after she received them. The next morning, Saturday, September 19th, Ms. Isserlis met with three members of the Association leadership: Lt. Lundgren, Lt. Griffiths, and Capt. Olsen. They reported that Ms. Isserlis wanted to discuss the letter and she asked for more details about the issues that had been previously discussed with Mayor Condon and Ms. Sanders.

Lt. Lundgren recalled that Ms. Isserlis also asked for their opinion about what could be done to address the issues.

I think we proffered to have an investigation into what occurred. And, you know, one of the things that I stressed to Nancy is that I didn't want to see a huge news story. We didn't want to have . . . a big to-do about the situation and have it be something that was going to be front-page news for weeks on end.

So we recommended having an investigation done externally to see where that investigation led and then to, you know, release – at the end of that, release the results and figure out where they needed to go.

(Lundgren Tr. 40-41). Lt. Griffiths said he suggested to Ms. Isserlis that the City put Straub on administrative leave and conduct an investigation. Capt. Olsen said Ms. Isserlis thanked them for putting their concerns in writing, indicating that it provided the Administration with something that was now “actionable.” (Olsen Tr. 50). All three expressed the opinion that Chief Straub had lost the ability to effectively lead the department and that he would not be able to repair relationships or restore trust.

Ms. Isserlis told the group that she would be talking with Mayor Condon and Ms. Sanders, and that there was going to be some action taken. She did not share what that was going to be.

- b. *Mayor Condon met with his legal advisors, Ms. Sanders, and Chief Dobrow to discuss his options for terminating Chief Straub.*

Chief Dobrow said he was summoned to the Mayor's house over the weekend of September 19-20 by Ms. Sanders.⁷³ Also present were Ms. Isserlis and Ms. Jacobson.

It was basically a meeting where they were kind of thinking out loud . . . They were pretty much trying to decide what their course of action was going to be based upon allegations of misconduct.

⁷³ There was a difference of recollection among the witnesses regarding whether this meeting happened on Saturday, September 19, or Sunday, September 20.

And they . . . just wanted to know whether I would be willing to step in to the position of interim

(Dobrow Tr. 13). Chief Dobrow said the Mayor commented that Chief Straub could not continue as the police chief. The group was discussing whether to put Chief Straub on administrative leave, fire him right away, or confront him with the information they had and request his resignation.

The Mayor had not reached a decision on how to proceed by the time Chief Dobrow left his house that day, but Ms. Sanders contacted Chief Dobrow later to inform him that the Mayor was going to ask Straub to resign.

Both Ms. Sanders and Mayor Condon confirmed that the decision to ask for Chief Straub's resignation was made that weekend.

7. September 21, 2015 – Chief Straub is Told to Resign or Be Fired.

Chief Straub was asked to meet with Mayor Condon and Ms. Sanders early Monday morning, September 21st. They met in Ms. Sanders' office. Chief Straub was informed that Mayor Condon had received letters from the Lieutenants & Captains Association and the executive team that were highly critical of his management style. Mayor Condon told Chief Straub that he had lost the support of his senior leadership team, and that he needed to resign or face imminent termination.

[T]he meeting with Frank that morning was quite emotional He alluded to . . . that they were out to get him I had referenced that I had these meetings and . . . said, 'Frank, . . . they can't work for you anymore.'

It went on for quite some time. I'd say an hour plus. And so the – at that time he asked for . . . an investigation of all these claims In my sense I had done that . . . [I]t was a moot point.

(Condon Tr. 116).

Ms. Sanders confirmed that they told Chief Straub about the letters and said he needed to resign. He was told that the "leadership of the entire Police Department had lost confidence and that he couldn't continue." (Sanders Tr. 15). Ms. Sanders also reported that they made it clear – Chief Straub's choices were resign or be fired.

And to clarify, Frank was asking at one point, is there something else I could do? Is there? It's like, no, we don't have a place for you.

(Sanders Tr. 16).

8. September 21, 2015 - Mayor Condon Informed the City Council in Executive Session That He Had Asked for Chief Straub's Resignation.

On the afternoon of Monday, September 21, 2015, Mayor Condon met with the City Council in executive session. He was joined by Ms. Sanders, Mr. Coddington, Ms. Jacobson, and possibly Ms. Isserlis.

Based on all of the interviews of individuals who were present in that meeting and who were willing to talk about it, Mayor Condon informed the Council that he had recently received letters from the Lieutenants & Captains Association and Straub's executive team indicating Chief Straub had lost their support and confidence. Some recalled that the letters were handed out to Council members; others recalled that the letters were only referenced.

Mayor Condon informed the Council that he had asked for Chief Straub's resignation. There were some differences in recollection regarding whether the Mayor provided a timeline for Straub to respond. Some said Mayor Condon expected Straub's response the following day – Tuesday, September 22nd. Others, including the Mayor, recalled that he said he expected a response within the next couple of days.

At some point, Councilmember Stratton asked the Mayor whether his decision or the complaints about Straub had anything to do with Monique Cotton. Some recalled that Mayor Condon said, "no." Others recalled that he said in words or substance that Ms. Cotton was involved only insofar that she was one of the people who were subjected to Straub's abusive treatment.

Mayor Condon and Ms. Sanders both said Mayor Condon made it clear to the Council that Straub would no longer be employed as the Chief of the Spokane Police Department.

9. Chief Straub's Resignation Was Announced at a Press Conference on Tuesday, September 22, 2015.

Mr. Coddington sent a draft press release to Chief Straub at 1:31 p.m. on Tuesday, September 22nd. Over the next couple of hours, Mr. Coddington and Chief Straub exchanged several drafts. Chief Straub was most troubled by the City's proposed reference to the September 18th letters it received from his senior leadership raising concerns about his management style. He pleaded with the Administration to remove all references to those letters. (Exhibit 71).

President Stuckart was contacted by Mr. Coddington that afternoon and asked to join them in the Mayor's suite. Mr. Coddington told him there would be some kind of resolution with Straub and they expected a press conference later that day. Mr. Coddington asked President Stuckart to attend the press conference and stand with the Mayor.

President Stuckart said he was in Ms. Sanders' office from about 1:30 p.m. until the press conference was convened. He said members of the Administration (Mayor Condon, Ms.

Sanders, Ms. Isserlis, Ms. Jacobson, and Mr. Coddington) were in and out of the office all afternoon.

President Stuckart was present for telephone calls with Chief Straub's lawyer, and then calls with Chief Straub and his wife, without his lawyer. President Stuckart said most of the discussions were about the language in the press release and working out the terms of Straub's resignation. As reported by President Stuckart, Chief Straub objected to the press release proposed by the Administration, especially the reference to the September 18th letters.

The final press release was issued by the City at approximately 4:37 p.m. and a press conference was announced to begin at 4:45 p.m.

During the press conference, Mayor Condon was asked:

"Were there any sexual harassment complaints lodged against Frank?"

Mayor Condon replied, "No."

In response to a follow up question from a KHQ reporter, Mayor Condon added, "[T]here had been no official filings of anything."

In his investigative interview, the Mayor was asked and answered the following questions:

Q: Did you consider what she [Ms. Cotton] was telling you – and that is that she was sexually harassed by Straub. Did you consider that she was making a complaint?

A: In the sense I – yes. I turned that over to – to – to Theresa to – to further take through the process, yeah.

Q: So you did – you did think that Monique was making a complaint? She was complaining about something?

A: She was complaining about something, yes.

(Condon Tr. 44-45).

10. Ms. Cotton Was Not a Factor in Mayor Condon's Decision to Ask for Straub's Resignation.

The substantial facts that were considered in this investigation establish that Mayor Condon's decision to part ways with Chief Straub was prompted by the two letters he received on September 18, 2015, from Straub's executive team, and the Lieutenants & Captains Association. Those letters were a scathing condemnation of Chief Straub's

leadership, and they served as written notice to the Administration that members of the SPD were not going to continue to tolerate Chief Straub's inappropriate behavior.

Whether Mayor Condon would have acted as he did without those letters is unknown. But the fact that the entire leadership of the SPD was willing to put their concerns in writing, especially the members of Chief Straub's hand-picked executive team, was impactful to Mayor Condon. He determined that he could not further delay a decision regarding Chief Straub's future with the SPD.

Monique Cotton was a non-factor in this process. Her allegations of sexual harassment and the circumstances of her transfer to Parks did not come up in any of the discussions with Mayor Condon on September 8th with the Association or September 10th with the executive team. She also was not a topic in any of the conversations that were reported to this investigator between and among Mayor Condon's Administration and other witnesses during the time that Mayor Condon was deliberating about what to do with Frank Straub. At most, if Ms. Cotton was mentioned at all during the discussions that preceded Mayor Condon's decision to ask for Straub's resignation, it was in the context of the March 31st incident.

It is also the case that Ms. Cotton's sexual harassment allegations were considered unsubstantiated by the Condon Administration based on their interviews with Chief Straub. And her transfer to Parks was seen as a success. She was thriving in her new position, and there had been no additional incidents between Ms. Cotton and Chief Straub after she was removed from the SPD.

That's not to say that Ms. Cotton was not the subject of discussion within the Condon Administration during the period before and after Chief Straub's resignation, but it was for entirely different reasons, all of which were related to media inquiries and public records requests. Those discussions are addressed below.

11. Mayor Condon Truthfully Responded to the Council's Question about Ms. Cotton During the September 21, 2015 Executive Session.

The controversy surrounding the September 21st executive session can be reduced to one question that Councilmember Stratton posed to Mayor Condon after he told the Council he had asked for Straub's resignation.

Councilmember Stratton asked in words or substance whether Mayor Condon's decision to ask for Straub's resignation related to Monique Cotton or rumors relating to Monique Cotton. He responded, "No." As discussed above, that was a truthful answer. Ms. Cotton was not a factor in the Mayor's decision. At most, she was one of many who had been exposed to Chief Straub's abusive management style.

F. Facts and Circumstances of the City's November 13 and November 24, 2015 Responses to the Spokesman-Review's August 18, 2015 Public Records Request.

We were asked to investigate the facts and circumstances surrounding the production of certain records on *November 13, 2015*, and *November 24, 2015*, in response to the Spokesman-Review's *August 18, 2015*, records request.

1. The Spokesman-Review's August 18, 2015 Public Records Request

Nick Deshais of the Spokesman-Review filed a records request with the City on August 18, 2015. It was an 8-part request. (Exhibit 39). For purposes of the investigation, the relevant requests included:

- (1) documents relating to Ms. Cotton's transfer to Parks, including documents related to her pay increase;
- (2) documents relating to complaints by Ms. Cotton or against Chief Straub; and
- (3) text messages between Ms. Cotton and Chief Straub.

In addition to Mr. Deshais' request, from September 5, 2015, through October 20, 2015, there were at least *six* other public records requests that closely mirrored or were copycat requests of Deshais' request, but with extended dates.⁷⁴

That included an October 20, 2015 records request from Chief Straub's attorney sent directly to Pat Dalton and Erin Jacobson, requesting "any and all information in the City's possession related to any complaint made or filed at any time by Monica [sic] Cotton against Frank Straub, including any letter(s) the City received from any attorney on her behalf, and any correspondence back from the City or resolution to such." (Exhibit 40).

Each time a record request was received, the City Clerk diligently emailed notices to City staff asking them to search for responsive documents. Those notices went to the Mayor, Ms. Sanders, Ms. Isserlis, and Mr. Dalton, as well as other members of the City Attorney's office, and a number of other City staff. Even if the request was a duplicate request, the City Clerk still sent notices to these individual each and every time a new request was filed.

2. The Documents Produced on November 13 and November 24

The records that were produced on November 13 and November 24 and that are at issue in this investigation included:

a. Documents produced November 13, 2015

⁷⁴ The requests included: Breen 9/5/15; Snyder 9/16/15; Ryals/Inlander 9/23/15; Erickson/KHQ 9/23/15; Nadrich/KREM 9/24/15; and Schultz 10/20/15. (Exhibit 40)

- The Torok “Love you” texts. August 2013 text messages between Chief Straub, Ms. Cotton, and Capt. Torok. The texts related to the release of information regarding a murder investigation. Ms. Cotton sent a text to Straub indicating she had released information. He thanked her; she replied, “Very important for community to know the amazing work we are doing to keep city safe.”

Chief Straub responded with a text to both Torok and Cotton, “***See you soon. Love you You are an awesome partner and best friend. You always will be!***”⁷⁵

Straub then followed with a string of texts, which Torok believed were an effort to obscure the text he sent to Ms. Cotton but accidentally included Torok.

(Exhibit 41)(emphasis added).

b. *Documents produced November 24, 2015*

-April 2015 texts between Ms. Sanders and Ms. Cotton documenting Ms. Cotton’s sexual harassment claims and including discussions about her transfer to Parks (Exhibit 17)(“Sanders Texts”).

-Handwritten notes taken by Ms. Sanders regarding her discussions with Ms. Cotton in April 2015 that document her sexual harassment claims and her transfer to Parks. (Exhibit 16)(“Sanders Notes”).

-June 2015 emails between Ms. Isserlis and Ms. Cotton’s attorney regarding his request to be paid attorney’s fees in connection with the City’s “accommodation” of Ms. Cotton as a result of Chief Straub’s inappropriate behavior. (Exhibit 31)(“Isserlis Texts”).

-June 2015 letters to and from Ms. Cotton’s attorney, the Mayor, Ms. Sanders and Ms. Isserlis regarding Ms. Cotton’s sexual harassment complaints, transfer to Parks, and her request to be reimbursed for attorney’s fees related to the same. (Exhibits 30, 33, and 34)(“Cotton Legal Correspondence”).

3. *There Was an Elevated Level of Media Interest in Ms. Cotton and Chief Straub During the Summer of 2015.*

Mr. Deshais and other media outlets had been making inquiries about Ms. Cotton and Chief Straub’s rumored relationship even before the August 18th request. Ms. Cotton herself had been contacted for comment about an alleged relationship with Chief Straub and the reasons for her transfer to Parks.

⁷⁵ It was during this period that there was significant rumor and speculation that Ms. Cotton and Chief Straub were involved in a romantic relationship.

Ms. Sanders, Mr. Coddington, and Ms. Isserlis were all aware that the media was looking into rumors of a romantic relationship between Cotton and Straub, and also pursuing the circumstances of her transfer to Parks earlier that year. City Council members and a number of SPD witnesses said they too were aware of the ongoing media interest.

Those inquiries were being made throughout the summer of 2015, both before and after Mr. Deshais' August 18th request. In sum, the Cotton/Straub matter was an active topic within City Hall and the SPD.

- a. *The August 19, 2015 Spokesman-Review article: "Job Transfer between city departments raises questions."*

Mr. Deshais published an article on August 19th raising questions about Ms. Cotton's transfer to Parks, noting that it was the second time in recent history that a police employee had been transferred outside the department, but whose salary continued to be funded through the police budget. The article highlighted the fact that the Parks Board was not included in the discussions surrounding Ms. Cotton's transfer, and only learned of it after the fact. No one in the Condon administration was available for comment, according to the article.

The day the article was published, Ms. Cotton forwarded a link to Deshais' August 19th article to Ms. Sanders without comment. (Exhibit 42).

- b. *The August 20, 2015 Spokesman- Review article: "Spokane city administrator defends transfer of spokeswoman Monique Cotton."*

In a follow-up article, Mr. Deshais reported on his conversation with Ms. Sanders who defended Ms. Cotton's transfer. She is quoted as saying that Ms. Cotton's pay increase was an "enticement" and necessary to convince Ms. Cotton to accept the position. (Exhibit 43). Subsequently, Ms. Sanders also affirmatively represented that she was not aware of any problems between Ms. Cotton and Chief Straub. Ms. Sanders' statements became the subject of an ethics complaint and Ms. Sanders stipulated that the comments constituted dishonesty under the City's ethics code.⁷⁶

Mayor Condon is also quoted in the August 20th article. Neither Mayor Condon nor Ms. Sanders revealed the true reason for Ms. Cotton's transfer. Instead, their communications were a continuation of the Administration's efforts to conceal Ms. Cotton's sexual harassment allegations and to instead portray Ms. Cotton's re-assignment as a promotion.

4. *August 21, 2015, Ms. Cotton Demands an Investigation into Rumors of an Affair Allegedly Being Shared with President Stuckart by Members of SPD.*

On August 21, 2015, Ms. Cotton sent Ms. Sanders an email stating:

⁷⁶ An ethics complaint was filed against Ms. Sanders on October 12, 2015. The Commission's Findings & Conclusions are attached as Exhibit 44.

I received information today that four ‘high ranking’ uniformed personnel with the Spokane Police Department had spoken to Council President Ben Stuckart and informed him that I had been discharged from my position at the Spokane Police Department because I had had an affair with the Chief. This is blatantly false, inflammatory and slanderous and I request the City investigate and reveal the identities of these individuals, their motives and take appropriate disciplinary action.

(Exhibit 45).

Ms. Sanders said she would look into the matter. On Monday, April 24, she requested a meeting with President Stuckart. (See Exhibit 45).

a. *President Stuckart*

President Stuckart said in late August 2015, he got a message that Ms. Sanders wanted to see him right away. Stuckart said before he was asked to meet with Sanders he had received separate inquiries from KXLY and the Spokesman-Review, asking about “rumors” related to Ms. Cotton and Chief Straub. When he met with Ms. Sanders she said, “I have heard that you have been spreading rumors about Chief Straub and Monique Cotton.” (Stuckart Tr. 12). He responded:

What rumors have I been spreading about Monique Cotton? And she said ‘Well, tell me what you’ve heard.’ And I go, ‘Well, first I’m hearing it from the press. I’m not telling it to the press.’ . . . ‘Here’s what I’ve heard . . . Straub and Cotton had a relationship. They broke up. There was a fight in April, and that’s why she got transferred.’ . . . ‘I heard that from KXLY.’

And I said, ‘The Spokesman, what I’ve heard is, is that Straub was hitting on Cotton and being sexually inappropriate, and that’s why she got moved.’

‘Those are the rumors I’m hearing. Is there any truth to them?’ And Theresa Sanders said, ‘Absolutely not. There is nothing true about those.’

(Stuckart Tr. 12).

b. *Ms. Sanders*

Ms. Sanders confirmed she had a meeting with President Stuckart after receiving Ms. Cotton’s email. That meeting occurred on Monday, August 24th.

Monique mentioned that she was told that uniformed – that Ben Stuckart was meeting with uniformed officers and engaging in discussions about her. And so I have a relationship with Ben. Ben, have you been meeting with uniformed officers and talking about personnel issues?

(Sanders Tr. 113). She said they also talked about “where is all this media coming from” about Straub and Cotton. President Stuckart shared the rumors he was hearing with Ms. Sanders. That was the end of the discussion.

Ms. Sanders sent Ms. Cotton an email on August 25, 2015, reporting that she had met with President Stuckart and that he denied talking to SPD employees about her. (Exhibit 45). Ms. Sanders told Ms. Cotton there was nothing more she could do and Ms. Cotton thanked her for looking into the matter.

On August 25, 2015, Ms. Sanders forwarded her email communications with Ms. Cotton to Ms. Isserlis. (Exhibit 46).

5. Rumors of a Romantic Relationship Between Ms. Cotton and Chief Straub Had Persisted for Years and Were Known to the Condon Administration.

- a. *Mr. Coddington has been aware of the rumors since 2013 and said he shared the information with Mayor Condon and Ms. Sanders.*

Mr. Coddington said as part of his job, he carefully monitors all forms of media coverage involving the City of Spokane, and that includes social media and bloggers, as well as the traditional news outlets.

In connection with answering questions about the Torok “Love you” text messages between Cotton and Straub, Mr. Coddington said:

So we, and me in particular, had been fielding questions for a long time about their [Cotton/Straub] relationship and had made a very concerted effort not to comment on those because we weren’t aware of any relationship.

So to hear that there may be a text message now that, at least on its face, would indicate something otherwise was pretty shocking to me and to all of us.

(Coddington Tr. 76).

Mr. Coddington went on to say that for a couple of weeks to a couple of months before Straub’s resignation, the media had been pursuing the rumors. Reporters for the Spokesman-Review and the Inlander had contacted Mr. Coddington with questions such as: “Are you aware of rumors of an affair between Monique and Frank?” These inquiries started in the summer of 2015 and picked up by mid-summer 2015.

Mr. Coddington said he had been hearing rumors of a close relationship from other members of the community and bloggers since the early summer, late fall of **2013**.

I’d heard rumblings and questions about their involvement together from the community previously.

So mostly posting on social media with the community and some from in the department. I would hear comments occasionally in passing or people that know my proximity to the mayor and to the cabinet would make comments about Frank and Monique and their – how close they seem to be and make kind of offhanded remarks.

I started in February, and I would say by the late summer/early fall of 2013 I was starting to hear those types of remarks. And at that point it was just from people in the police department.

I probably heard it ten to 12 times and a couple of people probably repeated it, but it was – I would say it was probably eight to ten different people.

(Coddington Tr. 79).

Mr. Coddington said he shared the information with Ms. Sanders and Mayor Condon. According to Mr. Coddington, both responded that they were not aware that there was anything to the rumors, but he also conceded that he was not aware of any effort to confirm the rumors one way or another until after Ms. Cotton alleged sexual harassment.

b. *Mayor Condon*

Mayor Condon denied hearing about rumors of an inappropriate relationship between Straub and Cotton before Ms. Cotton made her sexual harassment allegations. He said all he had heard was that she was treated more favorably.

c. *Ms. Sanders*

Ms. Sanders said she had heard many, many rumors about Cotton and Straub but didn't know when she heard them for the first time or from whom.

6. *September 18, 2015 - Ms. Cotton Forwarded a Blog Post that Alleged She Had an Affair with Straub to Ms. Sanders and Ms. Isserlis.*

On September 18, 2015, Ms. Cotton forwarded to Ms. Isserlis and Ms. Sanders a blog published by Scott Maclay. Mr. Maclay wrote, among many other things, that Ms. Cotton and Chief Straub had an affair. In her email to Ms. Isserlis and Ms. Sanders, Ms. Cotton wrote:

This was sent to several reporters yesterday and is also posted on Facebook. It is not only slanderous and libelous, but also untrue. Both the author and Nick Deshais have contacted my ex-husband – also completely inappropriate.

(Exhibit 47).⁷⁷ Ms. Cotton copied her lawyer on the email she sent to Isserlis and Sanders.

7. Shortly after Receiving Cotton's September 18th Email, the City Attorney Directed the City Clerk to Forward All Straub-Cotton Records to the CAO for Review Before They Were Released to Requestors.

We have no record that Ms. Isserlis or Ms. Sanders responded to Ms. Cotton's September 18th email, but within two hours of receiving it, Mr. Dalton sent the City Clerk the following email:

Terri,
Nancy has asked that before you respond with records to any of the requestors on this topic ["Straub – Cotton PRR's"] that I check them to be sure that our response does not implicate any *pending* litigation.

Thanks,
Pat

(Exhibit 48)(emphasis added). There was no "pending" litigation involving Cotton or Straub at the time Mr. Dalton sent this email. And while this was also the day that Mr. Schwering hand-delivered the September 18th letters to Ms. Isserlis, it is believed that Ms. Isserlis had not yet received those letters before Mr. Dalton sent the email to the Clerk.

8. The City Attorney's Directive Deviated from the City Clerk's Standard Practices.

The City Clerk's Office has clear policies, procedures, and practices in place for responding to public records requests and diligently adheres to those practices. Throughout this investigation, we have personally observed on many occasions the process that the Clerk's Office normally follows to respond to records requests. Typically, the Clerk's office receives the request, sends a notice to the potential record holders, collects responsive documents, and reviews those records for redactions and applicable exemptions. It is normal for the City Clerk to seek assistance from the City Attorney's office on occasion, but it is not their practice to forward all responsive records to the CAO for review before they are released.

The City Clerk said Mr. Dalton's request was a deviation from their normal practice. She could recall only one other time that the CAO had directed the Clerk to forward all documents to their office for review, and that was in connection with the Scott Stephens litigation. We don't know if litigation had already been filed at the time the CAO gave that direction.

⁷⁷ Ms. Cotton forwarded another Spokesman-Review article on September 30, 2015, this time adding Mr. Coddington, and again cc'ing her attorney. That article described clashes between Ms. Cotton and members of the police union. (Exhibit 49).

9. *The City Attorney's Office, Not the City Clerk's Office, Was Responsible for Delaying the Release of Straub-Cotton Records Until After the Mayor's Election.*

In response to the Spokesman's August 18, 2015, request, the City has produced records in a number of installments.⁷⁸ The City Clerk prepared a spreadsheet describing the documents that were produced in each installment, the date the records were received by the City Clerk, whether the documents were forwarded to Legal, whether 10-day notifications were sent, and the date that the records were produced to Mr. Deshais.⁷⁹

- a. *The CAO knew about the Torok "Love you" text messages, possessed copies as early as September 30, 2015, but did not authorize the release of those documents until November 13, 2015.*

In mid-September 2015, Ms. Muramatsu personally contacted Mr. Schwering to ask about the Torok text messages. Mr. Schwering recalled:

Mary Muramatsu, who again is the department legal advisor, came to me and said that she thought that Captain Dan Torok had a responsive record . . . He had received a text message from Frank inadvertently that was supposed to be directed to Monique that basically said "I love you."

(Schwering Tr. 88).⁸⁰

Mr. Schwering contacted Capt. Torok on September 17, 2015, and learned that he still had the text messages saved on an old cell phone. Capt. Torok showed him the messages and Mr. Schwering took screenshots of the relevant texts. Mr. Schwering said, "I knew the 'I love you' one was sort of kind of a big deal, so I took a picture of that," using his work cell. (Schwering Tr. 89).⁸¹

Mr. Schwering emailed the screenshots to Ms. Muramatsu and Ms. Pfister right away. Mr. Schwering later learned that the email got hung up in his outbox. Mr. Schwering resent the email with the attachments to Ms. Muramatsu and Ms. Pfister on September 29, 2015.⁸²

⁷⁸ The City is still producing emails to Mr. Deshais related to his August 2015 requests. We have been provided with copies of the last two installments but have not had an opportunity to review those records.

⁷⁹ The Clerk's spreadsheet is attached as Exhibit 50.

⁸⁰ We don't know how Ms. Muramatsu knew about the Torok texts, but there are many possibilities. She may have been told about them by a member of the SPD or learned about them from other lawyers in the CAO. Lt. Walker told Ms. Jacobson about the Torok texts in 2014, and Capt. Torok said he may have told Ms. Isserlis about the texts. We also believe the existence of the texts was well known throughout the SPD.

⁸¹ Mr. Schwering said, "we had the Inlander, we had the Spokesman. We had – it seemed like every citizen in Spokane was doing public records requests on the Frank and Monique issues." (Schwering Tr. 88).

⁸² Mr. Schwering's emails with the screenshots are attached as Exhibit 51.

After speaking with Capt. Torok, Mr. Schwering also took possession of Torok's old cell phone and provided it to the SPD's IT unit to conduct a data extraction. They generated an extraction report that also contained the "Love you" texts between Straub and Cotton, among many others. Mr. Schwering emailed the extraction report to Ms. Muramatsu and Ms. Pfister on September 30, 2015. We don't know what Ms. Muramatsu did with her copy of the extraction report, but Ms. Pfister forwarded it to Mr. Dalton the same day it was received from Mr. Schwering.

Several weeks after forwarding the screenshots of the text messages, Mr. Schwering asked Ms. Muramatsu why the text messages hadn't been released to the media. Ms. Muramatsu didn't know the answer, but also seemed puzzled that they had not been released. Mr. Schwering also asked the City Clerk the same question.

I think that's when I found out at that point that law was going to be reviewing all the text messages . . . I think they were concerned about anything that might have been confidential . . . that they wanted to . . . review.

My concern was . . . that I had done my due diligence to make sure that they received the information.

(Schwering Tr. 91).⁸³

Mr. Coddington said he learned about the Torok texts from Mr. Schwering near the time of Straub's resignation. He shared the information with Ms. Sanders, and said she appeared shocked to hear the information. (Coddington Tr. 75)

- b. *Two weeks after receiving the Torok texts, Mr. Dalton directed the City Clerk to send Straub and Cotton 10-day notices.*

It wasn't until two weeks after receiving the Torok texts, that Mr. Dalton finally directed the City Clerk, at her request, to send Straub and Cotton 10-day notices that the texts would be released unless they sought an injunction. Both letters were dated October 14, 2015, and provided in relevant part:

[T]his is to notify you that responsive text messages to several of the records requests have been located on a City-issued cell phone assigned, as I understand it, to one of the Captains in the Police Department. ***Upon review of the texts, no information had been determined to be exempt from disclosure***

You have 10 business days from today's date, or until October 28, 2015, to seek an injunction preventing the release of the requested text messages. ***If we have not received an injunction . . . the City Clerk's Office plans to release the text***

⁸³ Mr. Schwering said around the same time he talked to Torok, he also discovered that Ms. Cotton had left her SPD work cell in her old office. He submitted that phone for data extraction as well, but was informed that it had been reset to factory settings, meaning it had been manually wiped clean. (Schwering Tr. 93).

messages to the various requestors on October 29, 2015, or as soon thereafter as possible.

(Exhibit 52)(emphasis added). It appears that Mr. Dalton may even have drafted the 10-day notice.

Accordingly, by October 14th, the Torok “Love you” texts had been reviewed by Legal and the City Clerk, and a determination had been made that there was no basis to redact or withhold those documents. Additionally, Cotton and Straub both informed the City Clerk that they did not intend to seek an injunction before the scheduled release date. The City Clerk notified Mr. Dalton on the morning of October 28, 2015, that she was prepared to release the Torok texts, as well as several other records, on Friday, October 29, 2015.⁸⁴ In the email, she specifically told Mr. Dalton that she was including the Torok texts even though they had been provided to him before.

There were a number of additional emails between Mr. Dalton and the City Clerk specifically addressing the Torok texts.⁸⁵ Those documents make it clear that Mr. Dalton knew the City Clerk was planning to release the documents on October 29th and that there was no legitimate basis to delay the production of those records any longer.

c. *Mr. Dalton delayed the release of the Torok texts without explanation.*

On October 29, 2015, at 8:13 a.m., Mr. Dalton emailed the Clerk to report that he needed more time to review documents that were scheduled for release on October 29th, including the Torok texts. He did not authorize the City Clerk to release the Torok texts and gave no explanation why he needed more time to review those documents.⁸⁶

As a result, the City Clerk sent emails to a number of requestors informing them that the CAO had requested more time to review records, and she anticipated releasing the documents on November 6, 2015. Copies of all of those notices were also shared with Mr. Dalton, Ms. Isserlis, and Mr. Coddington.

Mr. Dalton never completed his review of those records. He left on an extended vacation without authorizing the Clerk to release the Torok texts or any of the other records that were in his possession and control. His public records responsibilities fell to Ms. Jacobson during his absence.

After failing to hear from Mr. Dalton before he left on his extended vacation, the City Clerk contacted Ms. Jacobson requesting to speak with her about pending records requests. They spoke on November 10, 2015, and within three days, Ms. Jacobson not

⁸⁴ The other documents were draft offer letters to Ms. Cotton related to her transfer to Parks, and cell phone records. They apparently had not yet been reviewed by Legal.

⁸⁵ There were a number of communications between the Clerk and Mr. Dalton indicating that Mr. Dalton was aware of the texts and understood their significance. (See Exhibit 65).

⁸⁶ The email exchange between Mr. Dalton and the City Clerk is attached as Exhibit 53.

only reviewed the full Torok extraction report, *again*, she reviewed and authorized the release of the additional records that Mr. Dalton was apparently unable to review after many days if not weeks.

The Torok “Love you” text messages were finally released on November 13th, six weeks after they were provided to the CAO, and two weeks after they were originally scheduled to be released. Predictably, the release of those texts generated instant media attention.

- d. *The CAO had exclusive possession and control of the Sanders texts and notes since at least May 2015, but did not inform the City Clerk of their existence until November 10, 2015.*

Ms. Sanders told the investigator that she gave her only copy of the text messages and handwritten notes relating to her communications with Ms. Cotton to Ms. Isserlis in April or May 2015. Mr. Coddington reported that he was aware that Ms. Sanders had turned those records over to Legal. Mayor Condon knew of the existence of notes taken by Ms. Sanders but had not reviewed their content.

In a November 10, 2015, email from Ms. Jacobson to the City Clerk, Ms. Jacobson forwarded “two sets of documents” that she concluded were responsive to *seven* public records requests dating back to August 18, 2015. In the email she wrote:

Terri, here are two sets of documents that are responsive to the Schultz request, and to several of the other requests as well.

The first are letters sent to/from [Ms. Cotton’s attorney], in the scope of his representation of Monique.

The second are text messages between Theresa Sanders and Monique Cotton, captured from Theresa’s personal cell phone, as well as handwritten notes taken by Theresa Sanders of conversations with Monique Cotton.

(Exhibit 54). Ms. Jacobson further wrote that the two sets of documents were responsive to the following requests:

Breen – documents related to transfer and informal complaints
Schultz – documents related to any complaint, including letters between the attorneys
Erickson – documents related to transfer and complaints
Snyder – copy of whatever goes to Breen
Deshais – documents related to transfer and complaints, plus any other requests re Frank
Ryals – match Deshais
Nadrich – match Spokesman

(Exhibit 54)(emphasis added). **November 10, 2015**, was the first time that the City Clerk was informed of the existence of these documents.

We don't know when or how Ms. Jacobson discovered the Sanders texts and notes. It appears that Ms. Jacobson met with Ms. Isserlis on November 10th and then sent an email to the City Clerk stating, "I now have copies of the other texts/notes to review for a determination of whether they are responsive." (Exhibit 54). We believe she is referring to the Sanders texts and notes. We don't know if Ms. Isserlis provided the documents to Ms. Jacobson that day or if Ms. Jacobson found them among Mr. Dalton's records.

Ms. Sanders and Ms. Isserlis both knew of the existence of these texts and notes and knew or should have known they were responsive to a number of public records requests, but they did not inform the Clerk. Instead both Ms. Isserlis and Ms. Sanders affirmatively represented that they had no responsive records.⁸⁷

- e. *The CAO had knowledge, possession, and control of the Cotton legal correspondence since June 2015, but failed to disclose their existence to the City Clerk until November 10, 2015.*

There were three letters to and from Cotton's attorney, the Mayor, Ms. Sanders, and Ms. Isserlis:

June 8 – letter to the Mayor and Ms. Sanders (Exhibit 30)

June 17 – letter to the Mayor and Ms. Sanders, copying Ms. Isserlis (Exhibit 33)

June 18 – letter from Ms. Isserlis to Cotton's attorney (Exhibit 34)

Ms. Sanders and Mayor Condon said they turned over their copies of the June 8 and June 17th letters to Ms. Isserlis right after they were received. They both said they didn't know whether there were any other copies of those correspondences maintained in the Mayor's office.

Before November 10th, when Ms. Jacobson produced the June 17th and June 18th letters to the City Clerk, there is no evidence that Ms. Sanders or Ms. Isserlis had informed the City Clerk that the letters existed.⁸⁸ There is also no evidence that Ms. Isserlis or Ms. Sanders requested their support staff to search for the letters.

The investigator interviewed Brandy Cote who is the executive assistant to Mayor Condon and Ms. Sanders. She explained that the Mayor's Office has a standard practice of date stamping legal correspondence received by the office, and that the documents are then scanned and uploaded to a shared drive. Ms. Cote said they log the correspondence

⁸⁷ See Exhibit 66.

⁸⁸ The City Clerk informed the investigator that Ms. Isserlis commented to her that she might have documents responsive to the Shultz request, but Ms. Isserlis was not specific and there is no evidence that Ms. Isserlis followed up with any records before November 11.

by date received, from whom, and a general description. The originals are forwarded to the City Attorney's office. Ms. Cote said they also save hard copies in a file cabinet organized by month and year.

Ms. Cote was able to search for, locate, and produce the June 8th and June 17, 2015, letters to the investigator in less than an hour. (Exhibit 55). Ms. Cote did not recall ever being asked by Ms. Sanders, or anyone else, to search for those documents before her interview with this investigator. Ms. Sanders was asked directly in an October 21, 2015 email from the Deputy Clerk whether she had records responsive to Straub's attorney's October 20th request for communications between the City and Cotton's attorney. Ms. Sanders responded she had no records, failed to inform the Clerk that the letters existed, and did not request her staff to search for the letters.

- f. *The CAO never produced the June 8 letter from Ms. Cotton's attorney; the City Clerk had to track it down from the Mayor's staff.*

After the City Clerk received the June 17th and 18th letters from Ms. Jacobson on November 10th, she noticed a reference in the June 17th letter to a "June 8 request." The Clerk contacted Ms. Isserlis' executive assistant, Roxanne Imus, and the Mayor's office to specifically request that both offices search for June 8th emails or correspondence. Angela Pashon in the Mayor's office located a copy of the June 8th letter and forwarded it to the City Clerk on November 11th. It does not appear that the CAO ever produced a copy of the June 8th letter. (Exhibit 59). Ms. Imus and Ms. Pashon were interviewed and both said they were not requested to search for the relevant correspondence until November 11th, and even then, the request came from the City Clerk, not the Mayor, Ms. Sanders, or Ms. Isserlis.

- g. *Ms. Isserlis was aware of the June 2015 "Isserlis emails" but undertook no effort to search for those records until her office was contacted by the City Clerk on November 11, 2015.*

After the City Clerk contacted Ms. Imus on November 11th about the June 8th communication, Ms. Imus apparently conducted or requested IT to conduct an email search of communications involving Cotton's lawyer. (Exhibit 70). That search produced several emails between Ms. Isserlis and Cotton's attorney in June 2015. Ms. Imus hand-delivered the emails to the City Clerk on November 11, 2015, and those are the emails that were eventually released on November 24, 2015.

Prior to November 11, 2015, there is no evidence that Ms. Isserlis undertook any effort to search for her email communications with Cotton's attorney or that she requested IT to search for those records.

- h. *Mayor Condon's administration was closely monitoring the release of Cotton/Straub records.*

We viewed numerous internal emails relating to the release of Cotton/Straub documents that also copied Mr. Coddington, Ms. Isserlis, Mr. Dalton, and Ms. Jacobson.

Mr. Coddington acknowledged that he was closely following the release of those records and that he was in communication with Ms. Cotton during this period to keep her informed about when to expect that certain documents would be disclosed. That was true of the Torok texts and the Sanders notes and texts. She questioned why they were being released. Mr. Coddington also said he and Ms. Sanders had “informal” discussions about the fact that certain records might be releasable, but it would be up to Legal to make that determination.

Certainly once the news of Frank’s separation from employment and the public records came in there was discussion about whether or not those records [referring to Sanders texts and notes] would be releasable.

And that was not in any way related to whether or not we should release, just those are probably going to be part of a public records request and legal will have to review those to determine whether they are or aren’t.

(Coddington Tr. 110-111).

Ms. Isserlis was also closely monitoring the release of Cotton/Straub documents and was personally involved in the review of those records, which was unusual. (Exhibit 57). Ms. Isserlis sent an email to Ms. Sanders as early as September 14th stating that they needed to talk about Brian Breen’s public records request, which closely mirrored, but was even broader than Deshais’ August 18th request. (Exhibit 68). Four days later, Ms. Isserlis directed the City Clerk to forward all Straub/Cotton records to the CAO for review.

On November 23, 2015, expecting the release of documents the following day, Ms. Jacobson emailed the City Clerk, asking “could you just let me know what time you expect to release the documents tomorrow so I can *warn* a few people.” (Exhibit 56)(emphasis added).

The Mayor’s office issued a press release on November 25th, explaining their reasons for withholding information revealed in the November 24th production. (Exhibit 69).

10. The Administration Admitted It Knowingly and Intentionally Withheld Information Regarding Ms. Cotton’s Sexual Harassment Allegations.

Mayor Condon admitted he and his staff, to include Ms. Sanders and Mr. Coddington, knowingly and intentionally withheld information from the public (and the City Council) regarding Ms. Cotton’s sexual harassment allegations.

Ms. Sanders stipulated to violating the City Code of Ethics prohibiting dishonesty, and Mr. Coddington admitted in his investigative interview that he knowingly concealed information from the media relating to Cotton’s sexual harassment allegations.

The Condon Administration also on several occasions knowingly misrepresented the facts and circumstances of Ms. Cotton's transfer to Parks. And while Ms. Isserlis and Ms. Jacobson never commented publicly about the circumstance of Ms. Cotton's transfer to Parks, they too was aware that the Condon administration had misrepresented and concealed the true reasons for Ms. Cotton's transfer.

11. The Mayor's December 11, 2015 Letter to the City Council was Misleading Regarding the Reasons for the Delay in Responding to the August 18, 2015 Public Records Request.

Mayor Condon submitted a response to questions from the City Council in a letter dated December 11, 2015. That letter and other public statements attributed to the Mayor suggested that the delay in producing records in response to Deshais' August 18th request was because of the City Clerk's workload and lack of resources. That is not factually accurate. The City Clerk's Office was not the cause of the delay. It was the City Attorney's Office that controlled the timing of the release of Straub/Cotton records, a fact that was omitted in the Mayor's letter, along with other relevant information known to the CAO. We address that section of the Mayor's letter below.

Regarding the August 18, 2015 public records request, the City Council posed the following questions:

- Why did it take three months for the release of documents responsive to a media public records request regarding Ms. Cotton?
- When were the documents released by the City on Nov 24 actually discovered?
- If these documents were discovered prior to November 24, why were these documents not released when they were discovered?
- Please explain when responsive documents were provided to the City Clerk for review and release?

Mr. Dalton drafted the section of the Mayor's letter addressing the Council's questions, which appears at pages 5-8 of Attachment A.⁸⁹

Mr. Dalton did not consult or involve the City Clerk's Office in drafting his substantive responses to the Council's questions.⁹⁰ Mr. Dalton also did not share a draft of his response with the City Clerk before the letter was finalized. We don't know who else in the CAO, if anyone, contributed to this section of the Mayor's letter.

We conclude that the following statements were misleading or omitted material facts:

⁸⁹ The entire letter with both attachments is attached as Exhibit 58.

⁹⁰ At most the Clerk's Office was asked to provide statistics regarding the number of request received and the time for responding to certain requests.

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“Often, if records may need redacting, the Clerk’s Office contacts this Office for assistance. That happened in this case.”

That statement accurately described the City Clerk’s normal practices but failed to disclose that the CAO deviated from that practice by directing the Clerk to forward all responsive Cotton/Straub documents to the CAO for review before releasing records. From that point forward (September 18, 2015), the CAO dictated what documents were released and when.

“The records that were released on November 24 were the last of those requested to be released (except for the email search, which is ongoing).”

That statement may be accurate as to the Griffith and Olsen notes, also produced on November 24th, but the statement is misleading as it relates to the other records. The CAO knew about the other records for five months before the Clerk was informed of their existence on November 10th, and the CAO controlled the timing of when those documents were disclosed to the City Clerk for her review.

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“The records released on November 24 in response to Mr. Deshais’ requests were not initially determined to be responsive. Mr. Deshais had asked for records “related to complaints” made by Ms. Cotton or against Mr. Straub. Neither the Human Resources Department nor the Spokane Police Division had any record of any “complaints” by Ms. Cotton or against Mr. Straub. To the best of our understanding, no “complaint” was ever filed by Ms. Cotton or against Mr. Straub. It was only when “all records” relating to any communications about Mr. Straub or Ms. Cotton were sought that those records became relevant and responsive. All records, were collected, reviewed by the Clerk’s Office and the City Attorney’s Office, and released.”

The letter fails to state who in the CAO made the determination that the November 24 documents were not responsive to Deshais’ requests. It also omits that Ms. Jacobson concluded the documents were responsive to the Deshais request and six other public records requests, which is why they were eventually released.

Further, the response states that HR and the SPD didn’t have records of complaints “filed” by Ms. Cotton, which is not what Mr. Deshais requested.

More significantly, the response fails to mention that the November 24 documents came from the CAO and had been in their possession for months before they were released.

Finally, we have not located a public records request that sought “all records” relating to “any communications” about Mr. Straub or Ms. Cotton as referenced in the Mayor’s response, and which purportedly accounted for the timing of the release of the November 24 records.

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The letter states that the required 10-day notifications resulted in the delay in producing the records until November 24.

This statement is misleading and omits a material fact. The 10-day notifications delayed the production of records until November 24th only because the City Clerk was not told about the records until November 10th. Once she learned of these records, she immediately sent out 10-day notices to the relevant parties. The CAO, on the other hand, knew about these documents since June 2015.

G. Carly Cortright’s December 2015 Discrimination Complaint.

Ms. Cortright submitted a written complaint to Ms. Lowe in December 2015. The complaint is dated December 21, 2015, and Ms. Lowe believed she received it on December 29, 2015. (Exhibit 7). In her complaint, Ms. Cortright alleges hostile work environment, gender discrimination, and retaliation. The December 2015 complaint is the first time Ms. Cortright has asserted these specific allegations in a formal complaint.

1. Ms. Cortright’s Hostile Work Environment Claim

Ms. Cortright alleges that Chief Straub created a hostile work environment, citing his generalized hostility and dismissiveness toward her, profane and vulgar comments he made to her or in her presence, and an incident that occurred in late July or early August 2013 when he threatened to fire her.⁹¹ Ms. Cortright is not alleging that the hostile work environment was motivated by her gender.

The City does not have a stand-alone policy addressing “hostile work environment.” Instead, hostile work environment is subsumed within the City’s general harassment and sexual harassment policies. (See 5.1 and 4.2(c), respectively). Ms. Cortright did not allege sexual harassment, therefore our discussion focuses on the City’s general harassment policy, which provides in part:

4.1 Harassment is defined as any unwelcome action by any person whether verbal or physical, *on a single or repeated basis*, which humiliates, insults or degrades.

⁹¹ Ms. Cortright also alleges that Chief Straub used vulgar language to reference her to other members of his executive team, which is supported by the facts, but those comments were not made directly to Ms. Cortright. She learned about the comments after she had transferred out of the SPD. We find that those comments, even though inappropriate, are not relevant to her hostile work environment claim.

“Unwelcome” or “unwanted” in this context means any action which the harasser knows or should reasonably know are not desired by the victim of the harassment.

4.2 Verbal Harassment: Verbal threat toward persons or property; the use of vulgar or profane language toward others, disparaging or derogatory comments or slurs, verbal intimidation, exaggerated criticism, and name calling.

ADMIN 0620-05-53 (emphasis added).

The evidence that was gathered in this investigation regarding Ms. Cortright’s experiences working under Chief Straub is discussed in detail earlier in this report. There was substantial factual support for many of Ms. Cortright’s allegations that Chief Straub was frustrated with her, used profane and vulgar language, and was dismissive of her and abrasive towards her. Based on the information she and others provided, during the period March 2013 through August 2013, Chief Straub created a hostile work environment in violation of the City’s general harassment policies. His actions had an adverse impact on Ms. Cortright. Ms. Cortright said that she suffered from stress-related health issues and that the environment was so toxic that she eventually agreed to transfer out of the department permanently to get away from Chief Straub.

2. Ms. Cortright’s Gender Discrimination Claim

Ms. Cortright alleges that Mr. Schwering was hired as a deputy director with no direct reports, but was classified in the same salary range as Ms. Cortright even though she was a director, had been with the City longer, and supervised staff. Ms. Cortright also alleged that Mr. Schwering replaced her when she transferred to City Hall and was paid \$18,000 more in salary. Ms. Cortright believes that it was always Chief Straub’s intent to replace her with Mr. Schwering.

Ms. Cortright was promoted to “Business Services Manager” effective May 26, 2013. Director of Business Services was a working title. The promotion placed her at Grade 53, Step 1, earning \$80,555.04 annually.⁹² Mr. Schwering was hired three months later to fill the position of Deputy Director, Tactical and Strategic Initiatives at the same Grade, Step, and annual salary, reporting to Commander Walker. Mr. Schwering was originally hired to set up the asset forfeiture unit, a position that involved entirely different duties and responsibilities.

After Ms. Cortright transferred to City Hall, Mr. Schwering was promoted to Director of Strategic Initiatives, effective December 22, 2013, also a position with entirely different, and significantly more duties and responsibilities than Ms. Cortright’s former position of Business Services Manager. That promotion resulted in a \$15,000 annual increase.⁹³

⁹² Her prior position was police planner, a Grade 35, Step 6. The promotion resulted in more than an \$18,000 annual increase.

⁹³ The organizational chart showing the areas over which Mr. Schwering had responsibility is attached as Exhibit 63.

Ms. Lowe was responsible for determining the Grade and Step classification for both Ms. Cortright and Mr. Schwering. She stated that salary classifications are based on duties and responsibilities, not titles. She also said that Mr. Schwering was not initially hired to replace Ms. Cortright, but after she left the organization, due to business necessity, Mr. Schwering inherited her functions along with several others.

Based on the above, we conclude that the facts do not support Ms. Cortright's gender-based pay discrimination claim.

3. Ms. Cortright's Retaliation Claim

Ms. Cortright alleges that Chief Straub retaliated against her because she constantly told him that he was obligated to follow City personnel and accounting policies. The actions that Ms. Cortright alleges were retaliatory included his overall mistreatment and actions he took to push her out of the SPD permanently.

The City's anti-retaliation policies are incorporated in the general harassment and sexual harassment policies. The language is the same in both policies and provides that:

No individual will be retaliated against or otherwise adversely affected in employment as a result of making a harassment [or sexual harassment] complaint or for participating in a complaint investigation or as a result of being erroneously accused of harassment.

(ADMIN 0620-05-53, 6.1.9; ADMIN 0620-05-35, 6.1.9).

Ms. Cortright's factual allegations do not constitute a recognizable claim under the City's policies. The only other retaliation policy is set forth in the City's whistleblower protection policy, ADMIN 0620-15-37.

In a letter to Ms. Lowe, Ms. Cortright expressly declined to file a whistleblower complaint. That letter is attached as Exhibit 61.

Accordingly, we find that Ms. Cortright has not sufficiently alleged a violation of the City's anti-retaliation policies.

H. Whether The City's Policies and Procedures For Investigating Sexual Harassment Complaints Were Followed In Connection With Ms. Cotton's Complaint.

1. The City and the SPD Have Different (and Conflicting) Sexual Harassment

Policies

City Administrative Policies and Procedures (ADMIN 0620-05-35) and SPD Policies (328) provide different procedures for addressing allegations of sexual harassment. Neither the City's policies nor the Police Department policies indicate whether departmental or city policies take precedence in the event of a conflict. HR witnesses interviewed were asked which policy would apply in a situation like this, when a civilian Police Department staff made an allegation to members of the City's executive team about the Police Chief. The witnesses provided different answers. Ms. George-Hatcher believed that the City policies would apply, but it had never come up in her experience. Ms. Lowe did not provide a clear response regarding her views on which policies would apply to the situation – she postulated that since CBAs take precedence over City policies in the event of a conflict, SPD policies would likely prevail. Ms. Lowe was not sure, however, whether the SPD policies applied to both uniformed and civilian Police staff.

Below we address the City's response to Ms. Cotton's sexual harassment complaint under both policies.

2. City of Spokane Sexual Harassment Policy and Complaint Procedure

The City of Spokane Sexual Harassment Policy (ADMIN 0620-05-35)⁹⁴ is clear in stating that "there shall be no discrimination or harassment of any employee based on sex," and that the City, "does not condone and will not permit sexual harassment of any employee." The policy also states: "All employees are expected to abide by this policy." It also includes consequences for anyone who violates the policy.

While the City's policy against sexual harassment is clear, the procedure for enforcing it is ambiguous and in some areas, can be read as internally conflicting.

The procedure initially states: "Violations of this policy will *ideally* be resolved at the lowest appropriate level, informally and effectively. All employees of the City are encouraged to use the internal complaint procedure whenever it is believed that sexual harassment has occurred." (ADMIN 0620-05-35, 6.1.4)(emphasis added).

A series of progressive steps follow the initial statement at 6.1.4 that violations will be resolved at the "lowest appropriate level, informally and effectively." The procedures section goes on to state at 6.1.5 that an employee who experiences unwelcome sexual behavior "may assertively tell the offending person that the conduct is unwelcome and must stop immediately."

The next section, 6.1.6, reads:

⁹⁴ The City's General Harassment and Sexual Harassment policies are very similar and outline identical procedures. The two policies are referred to in conjunction where noted.

If the above step in 6.1.5 [the affected employee asking the offending person to stop] is not effective or feasible **and the employee desires an internal resolution** to the complaint, the process outlined below **shall** be followed:

- a. The complainant should bring the issue to his/her immediate supervisor's attention in a timely manner. If the supervisor is the one engaging in the sexually harassing conduct, or the individual does not wish to tell the supervisor, the situation should be brought to that person's supervisor.
- b. When supervisors are **notified** of alleged sexual harassment, they **shall immediately**:
 1. Document and report the incident to the department head.
 2. Investigate the complaint.
 3. Take appropriate corrective action.
 4. Forward the results of the investigation to HR.
 5. Provide official findings and comments to the complainant, in writing, within ten (10) working days of the receipt of the complaint.

(emphasis added).

a. *Application of the policy*

Ambiguities in the plain language and the absence of definitions for some key terms in the procedure leave the City's sexual harassment policy open to different interpretations.

First, at 6.1.4, the procedure states: "violations of the policy will be resolved at the lowest appropriate level." The term "violations" is confusing at this early stage in the procedure, as it indicates that the policy has been *violated*, as opposed to indicating simply that there has been a *complaint* or allegation that the policy has been violated. The language of the text indicates *violations* will ideally be resolved at the lowest appropriate level. However, as will be discussed further below, in practice the policy has been interpreted to mean *complaints* will be resolved at the lowest appropriate level.

One interpretation is that the policy encourages complaints to be resolved at the lowest level, and also gives an employee the discretion to push it forward for internal resolution. If the employee chooses that path, the process outlined at 6.1.6 then becomes mandatory.

A different interpretation is also available due to the absence of a clear definition of the term "complaint." Because the term "complaint" is not defined, and the policy refers to both "complaint" and "notice" it is possible that if an employee simply *notifies* a supervisor of allegations of sexual harassment, the steps at 6.1.6 in the policy become mandatory.

The procedure also refers to a requirement that when supervisors are notified, they "shall" "investigate the complaint." (ADMIN 0620-05-35, 6.1.6 (b)(2)). The term "investigate" is not defined and it is unclear what constitutes an "investigation" under the

policy. In addition, the plain language indicates that it is the supervisor's responsibility to "investigate," though in practice "supervisors" are not the individuals who conduct "formal" investigations into sexual harassment allegations.⁹⁵

As will be discussed further below, these ambiguities leave the policy vulnerable to various interpretations and have resulted in inconsistencies in the City's practices around how it responds to allegations of sexual harassment (and likely other types of workplace complaints as well).

b. *Past practices under Ms. Lowe's leadership*

i. What constitutes a "complaint"?

The City's general harassment (ADMIN 0620-05-53) and sexual harassment (ADMIN 0620-05-35) policies as written, do not define the term "complaint."

Ms. Lowe explained, "an official complaint is one which the employee actually fills out a form. That's considered the official complaint." (Lowe Tr. 83). She also noted, "an official complaint would be something in writing, usually using the form that is attached to the policies. There's a form specifically . . . with the sexual harassment policy . . . Or, I would also accept a written letter . . . to indicate an official complaint." (Lowe Tr. 84).

Ms. George-Hatcher also distinguished between a "complaint" and a "formal complaint." She explained that one would be someone coming into the office and saying "I'm having an issue," then she would sit them down and talk with them and ask them how they want it resolved. If the person said something like, "I want this to stop," she would let the person know they can follow up with a formal resolution, or they could do something informally. However, she explained that if it rises to the level of something unethical or something that is a violation of policy, "it would automatically be looked at as a formal complaint, whether the individual filed the formal complaint or not." (George-Hatcher Tr. 27). She says that has been her practice while she's been at the City of Spokane, and she is sure that Ms. Lowe is aware that was her practice. (George-Hatcher Tr. 28).

Ms. Lowe and Ms. George-Hatcher seem to agree that the City distinguishes between "informal" and "formal" complaints, and both agree that there are certain issues that will generally trigger an investigation whether the complaint is "formal," meaning reduced to writing, or not. While this was described as practice, it is not referenced in the City's Administrative Policy and Procedures. It also appears to us that the City does not regularly respond to verbal complaints. Employees are required to put their concerns in writing before the City will address them formally.

ii. What is an "investigation" under the City's policies?

The City's general harassment (ADMIN 0620-05-53) and sexual harassment (ADMIN

⁹⁵ Ms. Lowe said that those types of investigations are generally outside the "bandwidth" or skillsets of supervisors, and "formal investigations" are all conducted through Human Resources. (Tr. Lowe 91-92).

0620-05-35) policies also do not define or outline what constitutes an “investigation,” nor do the policies differentiate between formal or informal investigations. Ms. Lowe and Ms. George-Hatcher however, indicated that in practice HR staff differentiates between “informal” and “formal” investigations.

Ms. Lowe described an “informal investigation” or “informal inquiry” as one where she would talk to “just a couple individuals, maybe writing down some notes,” and get an idea of what is happening and what has been going on. She noted in some cases, an informal inquiry may launch a formal investigation.

A formal investigation was described as involving interviews with the complainant, subject, and others who are identified as having witnessed the events, reviewing materials, and writing a final report with recommendations, which is passed along to the Director of HR and City Attorney’s office. (George-Hatcher Tr. 34).

iii. Who decides when to initiate an “investigation” and what type of investigation is appropriate?

Ms. Lowe explained that each situation is “unique and different.” (Lowe Tr. 89-90). She pointed out that the standard protocol is to try to resolve issues at the lowest possible level. She said if employees have an issue, they can go directly to their supervisors to resolve the issue, and HR encourages employees to talk to their supervisors. She believes the supervisors are generally “all very good” about contacting HR Analysts if an employee comes in with claims involving issues like harassment or hostile work environment. She says supervisors have the “discretion” to conduct initial investigations (not formal investigations), but she believes most of them involve HR very early on in the process. Ms. Lowe’s interpretation seems to conflict with the plain language of the policy at 6.1.6 which states, “supervisors . . . shall . . . investigate the complaint.” Ms. Lowe also said HR analysts have the discretion to decide whether to initiate an investigation or not, and they can make that decision without consulting her or Legal.⁹⁶

Ms. Lowe stated that it is not the City’s practice or policy to *only* investigate a complaint that has been reduced to writing. Ms. Lowe says she has investigated oral complaints. Though she could not estimate how many times that has happened, she said she had one recently that was prompted by an email from a supervisor who emailed her indicating something had happened with an employee. Ms. Lowe called the employee and had a conversation with her. She described that instance as “an informal complaint and an informal investigation.” (Lowe Tr. 85).

She also indicated that it is not the City’s policy or practice to completely leave the decision of whether or not there will be an investigation to the employee, even though one reading of the City’s policy seems to leave it up to the employee to decide if there will be an investigation. “So if we see someone is making an allegation that there is a

⁹⁶ Based on the interviews conducted in this investigation, the degree to which HR consults law before, during, or after an investigation, formal or informal, is inconsistent and largely left up to the supervisor or HR analyst.

violation of city policy, and whether that is an accounting policy or an HR policy, we will look into it. We will investigate it. We will find out the facts and then we will come up with a resolution to correct the issue . . .” (Lowe Tr. 88).

Ms. Lowe represented that there are some cases when employees will come to them and say they do not want HR to investigate, but if they communicate something that “throws up a red flag,” they will investigate, *whether or not the employee is willing*. (Lowe Tr. 86). However, Ms. Lowe could not recall a situation when the City investigated a complaint against the wishes of the complainant. She had not had an experience when an employee made claims of sexual harassment, discrimination, or hostile work environment, then said he or she would not participate in an investigation. (Lowe Tr. 87). Ms. George-Hatcher also could not recall an instance where that had occurred.

3. *SPD Sexual Harassment Policy and Complaint Procedure*

SPD’s Discriminatory Harassment policy (328) clearly prohibits discrimination and harassment, as the City’s policy does. However, there are some key differences between the procedures in the SPD policy and the City policy. The SPD policy is generally clearer about roles and responsibilities of employees and supervisors, key terms are less ambiguous, and the procedure for responding to allegations is more coherent overall.

The SPD policy clearly articulates the supervisor’s responsibilities upon “receiving information regarding alleged violations” of the policy, as opposed to a formal complaint. In addition, there is no reference to the complainant’s desires in terms of when and what responsibilities are imposed on SPD supervisors and managers – the policy is clear that the receipt of information requires them to determine if there is any basis for the allegation and to proceed with a “resolution.” (328.4 Responsibilities).

The policy provides and allows for “various methods of resolution.” (328.5 Investigation of Complaints). However, it also clearly states: “It is the policy of the Department that all complaints⁹⁷ of discrimination or harassment shall be fully documented, and promptly and thoroughly investigated.”

Although the term “investigate” is not explicitly defined in this policy, under “Investigation of Complaints (328.5), the policy provides for either a “Supervisory Resolution” (328.5.1) or a “Formal Investigation” (328.5.2). The “Supervisory Resolution” section explains that members who believe they are experiencing harassment are encouraged to inform the individual that the behavior is unwelcome. If the member is uncomfortable communicating that, or if the communication does not resolve the concern, “assistance should be sought from a supervisor or manager . . .” (328.5.2). The next option for resolution, is “Formal Investigation” and provides: “If the complaint

⁹⁷ While the SPD policy is somewhat ambiguous in that it refers to both “complaints” and “concerns,” the context and references throughout the policy indicate that an employee’s concerns or allegations need not be communicated formally (as in writing or using a specific form) to constitute a “complaint.” A fair reading is that learning information regarding an alleged violation of the policy requires the supervisor to investigate whether there is any basis for the allegation.

cannot be resolved through the process above, a formal investigation will be conducted.” The policy does not outline each step that will occur in a formal investigation, but does provide guidance on investigative authority, confidentiality, retaliation, and classifications for the dispositions of complaints.

4. *The Administration Conducted a Limited Investigation of Ms. Cotton’s Complaints but Ultimately Resolved the Allegations Informally by Transferring Her to a New Position, Which was Effective.*

As discussed in further detail at above, Ms. Cotton alleged sexual harassment by her supervisor, Chief Straub. She brought her allegations to the attention of his supervisors, Mayor Condon and Ms. Sanders, neither of whom consulted HR, but they did consult their legal advisors.⁹⁸

Ms. Cotton said she did not want an investigation and would not participate if one were initiated. Nonetheless, it is fair to say that the City’s lawyers, Ms. Isserlis and Ms. Jacobson, conducted a limited investigation of Ms. Cotton’s harassment claims by interviewing Chief Straub. As we noted above, we don’t know whether Chief Straub was provided with the details of Ms. Cotton’s accusations, but he was told that she alleged sexual harassment, and given an opportunity to respond.

Chief Straub denied Ms. Cotton’s allegations, and according to Mayor Condon and Ms. Sanders, told them that he and Ms. Cotton had a “mutually flirtatious” relationship that had ended long before she came forward with her complaints. In light of his denials, Ms. Cotton’s allegations at that point were unsubstantiated. Additionally, Ms. Cotton had refused to provide any additional details to support her allegations, so it became a classic “he said, she said.”

In addition to the limited inquiry of Chief Straub, the City undertook efforts to resolve Ms. Cotton’s claims informally. That approach is emphasized in both the City’s and SPD’s policies, and according to HR witnesses is a common approach to employee complaints. Considerable effort was undertaken to find Ms. Cotton a new position. That effort was effective in resolving the conflict between Straub and Cotton. Ms. Cotton did not raise any new concerns about Chief Straub after she transferred to Parks.

I. Summary of Seabold Group’s Recommendations Regarding the City’s Sexual Harassment Policies and Procedures.

1. *EEOC Guidance*

It is well-established that employers have a duty to “exercise reasonable care to *prevent* and *correct* promptly any sexually harassing behavior.”⁹⁹ Having an effective anti-

⁹⁸ It does not appear that Mayor Condon or Ms. Sanders consulted or considered what was required under the City’s or SPD’s policies at the time they were deciding how to address Ms. Cotton’s complaints.

⁹⁹ *Burlington Industries, Inc. v. Ellerth*, 526 U.S. 742 (1998)(italics added); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

harassment policy and enforcing it are two of the most important steps that employers can undertake to meet its duty of care.

The EEOC enforcement guidance on sexual harassment states that “reasonable care generally requires an employer to establish, disseminate, and enforce an anti-harassment policy and complaint procedure and to take other reasonable steps to prevent and correct harassment.” The EEOC recommends that an anti-harassment policy and complaint procedure should contain the following elements:

- A clear explanation of prohibited conduct;
- Assurance that employees who make complaints of harassment or provide information related to such complaints will be protected against retaliation;
- A clearly described complaint process that provides accessible avenues of complaint;
- Assurance that the employer will protect the confidentiality of harassment complaints to the extent possible;
- A complaint process that provides a prompt, thorough, and impartial investigation; and
- Assurance that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.

(Quoted from EEOC, Enforcement Guidance 915.002 (6/18/99)).

2. City of Spokane’s Current Sexual Harassment Policy Does Not Conform to Best Practices

The City of Spokane’s stated policy on sexual harassment is clear in its prohibition against discrimination or harassment based on sex. However, the policy does not contain all of EEOC’s recommended minimum elements. As discussed above, the procedures articulated for responding to allegations or complaints of sexual harassment are not clearly described in the City’s policies. The policies also contain ambiguities and lack important definitions. In addition, the complaint process outlined in the City’s policies seems to give the employee, not the City, the discretion to initiate an investigation.

Based purely upon a plain language reading, the City of Spokane’s policies on sexual harassment as they currently exist do not fully conform to recommended best practices, particularly in the area of procedures for responding to notice of allegations. The ambiguities and absence of important definitions in the policy leave it open to interpretation in some key areas. These interpretations can leave, (and in some cases have been left), open to the discretion of the individual reporting the allegations and/or to the individual receiving the allegation.

3. Recommendations

To better conform with best practices and to ensure consistency in its responses to allegations, Seabold Group recommends the City revise its Administrative and SPD policies with the assistance of legal and HR professionals.

The City should always respond to sexual harassment allegations (as well as other EEO type complaints) in some manner to determine whether harassing behavior is occurring in the workplace. The response may be characterized as an investigation, an inquiry, an examination, fact-finding, or something else.

The EEOC's recommendation that the complaint process provide for a prompt, thorough, and impartial investigation, does not necessarily impose an obligation to conduct full-blown, formal fact-finding investigations of every allegation. The key consideration is that the City should have clearly defined internal processes and guidelines that it follows consistently when employees provide notice of potential violations. Those processes and guidelines may provide for informal resolution so long as the employer satisfies its duty to address and correct inappropriate behavior.

If it is determined that a more formal investigation is warranted, the City should develop investigation processes and procedures that are consistently followed. A formal investigation process generally includes five separate stages: 1) intake, 2) scoping, 3) investigating, 4) reporting results, and 5) follow-up and closure. (A recommended process is outlined in a flow chart attached as Exhibit 67).

SPD's Anti-Harassment policy (328) contains many of these recommended elements. It should serve as a strong example from which the City could model its updated Administrative Policy and Procedure.

Seabold Group has identified the following areas as particularly important for the City to focus on in its efforts to strengthen the current harassment policy:

a. *Revise written policies*

As discussed in additional detail above, the City's policy is ambiguous and open to various interpretations. In revisiting the policy, the City should consider defining key terms like "complaint" and "investigate." and allow for different levels of investigation (i.e. a preliminary inquiry vs. a formal fact-finding).

The policies should outline a clear process that will be followed *each* time notice of a potential policy violation is received by supervisory or managerial staff. The revised policies should clearly describe how employee complaints will be received (the intake process), who will have the authority to investigate the complaint or refer it for informal resolution, and a general description of the investigative process that will be followed in the event that a complaint is referred for a formal investigation.

b. *Identify roles and responsibilities under the policy*

In order for the updated policy to be most effective and to alleviate some of the issues the City has encountered in consistently responding to employee complaints, it is important to ensure that it is clear what all City employees' responsibilities are under the policy. Employees should understand whether they have an obligation to report behavior under the policy (some policies we reviewed require employees to report when they experience or even merely witness harassment in the workplace.)

The guidelines should also establish and define the roles and responsibilities of individuals who will be involved in receiving complaints, and the decision of whether to formally investigate an or refer it for informal resolution. Seabold Group recommends that the City implement a "case team" approach to handling concerns raised by staff. A case team would include the HR Director or designee, a lawyer from the City Attorney's Office, and a division supervisor or manager. This group would be responsible for intake, scoping, and assigning an investigator if it is determined that an investigation is warranted. The case team would also be responsible for overseeing the investigation, determining whether a written report is necessary, reviewing the investigation report, making disciplinary recommendations if warranted, and overseeing the debriefing of the parties and closure of the investigation.

c. Document throughout the process

The policy implemented should contain a provision to ensure that all complaints are documented, even if they do not result in an investigation. The case team's reasons for referring or not referring a matter for investigation should also be documented. This will assist in transparency and consistency in the application of City policies.

If a matter is referred for investigation, it is also important to maintain an investigation file. The scope of the investigation should be documented to provide the investigator and the parties clear notice of the issues that will be addressed in the investigation. All investigation interviews should be documented. The original documentation should be preserved and become part of the permanent investigation file.

d. Establish clear confidentiality guidelines

The updated policy should also contain a clear statement on confidentiality. As part of the process, parties to an investigation should be informed that the City will maintain the confidentiality of employee complaints to the extent possible and consistent with state and federal law. However, employees should be informed that the City **cannot guarantee** confidentiality.

e. Ensure all personnel are adequately trained

Finally, once policies and procedures are updated, all City personnel should receive training on the City's latest policy. Training should facilitate an understanding of staff's

responsibilities under the policy, how to raise concerns, and provide a general idea of what staff can expect in response from the City when concerns are raised.

The appropriate City personnel (city administrator, directors, supervisors, HR staff, and members of the City Attorney's office with responsibility for overseeing investigations) should undergo training related to the new internal guidelines and procedures. Those who have responsibility for conducting investigations should be experienced and receive ongoing training.