

August 5, 2016

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CONFIDENTIAL

TO: The Honorable Scott Korthuis, Mayor, City of Lynden

FROM: Barbara J. Kastama

RE: Investigation of Gender and Age Discrimination Claims against City Administrator Mike Martin

I. INTRODUCTION AND SUMMARY

On June 6, 2016, the City of Lynden retained Barbara J. Kastama, J.D., of Corr Cronin Michelson Baumgardner Fogg & Moore LLP, to conduct a factual investigation of gender and age discrimination complaints made by three former City of Lynden employees: Amy Harksell, former Planning Director; Teresa Camfield, former Finance Director; and Linda Peterson, former Deputy City Clerk/Human Resources Manager (the “Complainants”). The Complainants allege that Mr. Martin subjected each of them to discrimination and hostile treatment because of their gender and age. Ms. Harksell also alleges that Mr. Martin and the City retaliated against her because of her complaints of discrimination against female department directors.

The following is a summary of the allegations and my conclusions.

Ms. Peterson

Allegation: Mr. Martin discriminated against Ms. Peterson by treating her less favorably than males or younger employees, and by subjecting her to harassment because of her gender and age.

Conclusion: The facts do not substantiate Ms. Peterson’s gender and age discrimination allegations. Ms. Peterson’s allegation that Mr. Martin required women, but not men, to leave at 5:00 p.m., is not substantiated. The facts show that Mr. Martin required both male and female employees to go home at 5:00 p.m., and that males and females also stayed after 5:00 p.m. The facts also show that Mr. Martin’s discipline of Ms. Peterson, and his review of her work product, were performance-based. The facts also do not substantiate the claim that Mr. Martin harassed Ms. Peterson because of her gender or age. There is no evidence that Mr. Martin made any ageist or sexist comment or joke to or about Ms. Peterson, or engaged in any other offensive behavior towards her because of her gender or age.

Ms. Camfield

Allegation: Mr. Martin discriminated against Ms. Camfield by treating her less favorably than men or younger employees and by subjecting her to harassment because of her gender and age.

Conclusion: The facts do not substantiate Ms. Camfield's gender and age discrimination allegations. The facts show that Mr. Martin's discipline of Ms. Camfield and his request for external review of the City budget were performance-based. The facts also do not substantiate the claim that Mr. Martin harassed Ms. Camfield because of her gender or age. There is no evidence that Mr. Martin made any ageist or sexist comment or joke to or about Ms. Camfield, or engaged in any other offensive behavior towards her because of her gender or age.

Ms. Harksell

Allegation 1: Mr. Martin discriminated against Ms. Harksell by treating her less favorably than males or younger employees, and by subjecting her to hostile treatment because of her gender and age.

Conclusion: The facts do not substantiate Ms. Harksell's gender and age discrimination allegations. The facts show that Mr. Martin's discipline of Ms. Harksell for rudeness and insubordination was based on her conduct, and not her gender or age. There is no evidence that a male director or manager engaged in similar conduct as Ms. Harksell. The facts also do not substantiate the claim that Mr. Martin disregarded Ms. Harksell's work requests or recommendations because she was female or over 40 years old. The facts also do not substantiate the claim that Mr. Martin harassed Ms. Harksell because of her gender or age. There is no evidence that Mr. Martin made any ageist or sexist comment or joke to or about Ms. Harksell. His use of the name "Noreen" to refer to Ms. Harksell is a stray comment, made over two years ago.

Allegation 2: Mr. Martin and Mayor Korthuis retaliated against Ms. Harksell because of her complaints of Mr. Martin's gender and age discrimination.

Conclusion: The facts do not substantiate Ms. Harksell's allegation of retaliation. There is no evidence of a factual link between Ms. Harksell's anonymous gender discrimination complaint to an outside consultant, and Mr. Martin's subsequent discipline of Ms. Harksell for rudeness and insubordination. There are also no facts that suggest that the City's decision to place her on a one-day paid leave pending a decision to investigate an employee complaint against her was retaliatory.

II. INVESTIGATIVE PROCESS

A. Interviews.

I first reviewed documents regarding the organizational context and background of the matter under investigation: organization charts from 2012 to 2016; personnel policies and the employee handbook; and the Complainants' and Mr. Martin's personnel files. I also spoke with Mayor Korthuis to obtain a broad chronology of events.

I then requested to interview persons who directly report to Mr. Martin, and/or were peers of the Complainants; persons who directly reported to Complainants; and persons identified in documents or by witnesses as having knowledge of facts pertinent to the investigation.

In conducting this investigation, I interviewed 32 individuals. These interviews were conducted in-person, except for one, as noted below.

Name	Position
Gary Baar	Fire Chief, City of Lynden
Steve Banham	Public Works Director, City of Lynden
Gary Bode	City Councilmember, City of Lynden
Pamela Brown	Deputy City Clerk, City of Lynden
Laura Burford	Public Works Administrative Office Manager, City of Lynden
Dave Burns	City Councilmember, City of Lynden
Stacy Christensen	Senior Accounting Technician, City of Lynden
Sandra Dalessandro	Fire Support Services Manager, City of Lynden
Ron DeValois	City Councilmember, City of Lynden
Tamara DeZeeuw	Court Services Coordinator, City of Lynden
Jack Foster	Police Chief, City of Lynden
Tobey Gelder	City Councilmember, City of Lynden
Tamara Graham	Court Services Coordinator, City of Lynden
Linda Handy	Accounting Technician, City of Lynden
Lori Jilk	Public Works Administrative Assistant, City of Lynden
Scott Korthuis	Mayor, City of Lynden
Gerald Kuiken	City Councilmember, City of Lynden
Nick Laninga	City Councilmember, City of Lynden
Brent Lenssen	City Councilmember, City of Lynden
Mike Martin	City Administrator, City of Lynden
Vern Meenderinck	Parks & Recreation Director, City of Lynden
Nicholas Miener	Network Administrator, City of Lynden
Jaimie Noteboom	Accounting Technician, City of Lynden
Dale Purcell	GIS Coordinator, City of Hallendale Beach, Florida; former Planner I/GIS, City of Lynden
Vanessa Roebuck	Human Resources Manager, City of Lynden
Sheri Russell, J.D.	Bellingham Mediation (via telephone)

Sirke Salminen	Finance Director, City of Lynden
Korene Samec	Planning Technician, City of Lynden
Mark Sandal	Program Manager, City of Lynden
Linde Schreifels	Accounting Operations Supervisor, City of Lynden
Dave Timmer	Planner, City of Lynden
Holly Vega	Police Support Services Manager, City of Lynden

The breakdown of the 32 individuals interviewed in terms of position, age, and gender is as follows:

- 22 City staff
 - City Administrator
 - 5 Department Directors (4 men, 1 woman, all over the age of 40 years)
 - 16 City staff members in positions below the director level (13 women and 3 men; 10 over the age of 40 years)
- One former City employee (male, over the age of 40 years)
- 7 Councilmembers
- The Mayor
- Outside Consultant/Mediator

The Human Resources Manager scheduled the City Council and staff interviews for the period of time that I requested. I emailed the Investigation Notice, attached at Appendix 1, to each interviewee prior to his or her interview.

The intent of the interviews was to gain insight into what was known or observed to determine if there was a factual basis for the gender and age discrimination complaints. Some questions were common to all interviews, but other questions were tailored to the interviewees based on their position or to verify specific information. On average, interviews lasted about one hour, but some took two to four hours, and others, less than 30 minutes. I conducted follow-up interviews with certain individuals, either in-person or by telephone.

The face-to-face interviews were held at the City Hall Annex and the City Library. Two follow-up interviews were held in the first floor conference room at City Hall, and two were conducted by telephone. The persons interviewed in-person were provided an opportunity to review the interviewer's notes for accuracy after the interview concluded. In most cases, the notes were reviewed in-person, immediately following the interview. In a few cases, due to the interviewee's need to leave immediately after the interview, time was scheduled to review the notes at a later time, either by phone or in-person. The interviewee had the opportunity to make changes, amendments, and additions to the notes. I requested the interviewees to review, sign and date the "Review of Interview form," stating that the notes accurately reflected what they told me. This form is also attached at Appendix 1.

The City of Lynden placed no restrictions on any interview in terms of scope of questioning or time allotted. If the interview was not completed within the scheduled time, it was continued and completed at a later date.

In addition to the witnesses employed by the City of Lynden, I interviewed a former employee in-person, and interviewed an independent consultant, Sheri Russell, J.D., of Bellingham Mediation, by telephone.

B. Complainants' Denial of Interview Requests.

I requested interviews of Ms. Harksell, Ms. Camfield, and Ms. Peterson. They declined to be interviewed, for the following reasons.

Ms. Harksell's attorney, Ms. Carrie Coppinger Carter, sent a letter dated May 27, 2016 to Ms. Elena Bundy, attorney for Clear Risk Solutions, declining my request to interview Ms. Harksell.¹ She suggested that I listen to the previously recorded interview of Ms. Harksell by investigator Alan Key.² I could then contact her if I needed additional information, and she would determine whether to make Ms. Harksell available for an interview.

On June 1, 2016, I e-mailed Ms. Peterson and requested an interview. Ms. Peterson was not represented by counsel at that time. On June 3, 2016, I left Ms. Peterson a voice message. I did not receive a response.

By a letter dated June 7, 2016, Ms. Bundy responded to Ms. Coppinger Carter and urged her to reconsider her denial of my request to interview Ms. Harksell.

On June 7, 2016, I received and listened to the audiotape of the Key interview.

On June 10, 2016, I sent an email to Ms. Coppinger Carter, identifying the additional interview subjects for my interview of Ms. Harksell and requesting copies of the documents referenced in the audiotape.³ I also asked to interview Ms. Harksell and Ms. Camfield during the following week of June 13.

On June 10, 2016, Ms. Bundy emailed me stating that she had received a letter from Karen Phillips of Coppinger Carter P.S. Ms. Phillips stated that she represented Ms. Peterson,

¹ The letters and emails regarding my request to interview Complainants are attached at Appendix 2.

² That interview was conducted on March 15, 2016, at the offices of Coppinger Carter P.S. Ms. Karen Phillips, attorney for Ms. Harksell, was also present. Ms. Harksell provided documents to Mr. Key at the interview.

³ These additional subjects included events post-dating the Key investigation, the corrective action and the basis for the claim of disparate treatment, and the factual basis for Ms. Harksell's retaliation claim.

and that both Ms. Peterson and Ms. Camfield were available for an interview on either June 28 or June 29.

On Monday, June 13, I telephoned Ms. Phillips. We agreed to interviews of Ms. Peterson and Ms. Camfield on June 29.

Later on June 13, I received an email from Ms. Coppinger Carter, declining my request to interview Ms. Harksell.

On June 21, 2016, Ms. Coppinger Carter sent an email to Ms. Bundy and me, stating that Ms. Harksell was declining to participate “as she already voluntarily and cooperatively subjected to the Russell investigation where she shared her concerns, and to a lengthy interview with investigator Mr. Key on the same issues and her complaints in particular.” She requested that I provide to her a copy of all materials I received from Mr. Key, so that she can determine if he has provided everything Ms. Harksell provided to him. She also sought clarification as to the purpose of my interviews as it appeared to her that my contract with the City stated that I would not be making any recommendations or findings as to the gender and age discrimination issues.

On June 23, 2016, I sent an email to Ms. Coppinger Carter, stating that I was conducting an independent factual investigation into her clients’ allegations of gender and age discrimination and would not be making legal conclusions or recommendations. I stated that my purpose in interviewing her clients was to understand their gender and age claims so that I could investigate those claims.

On June 27, 2016, I received an email from Ms. Coppinger Carter’s office, requesting confirmation of Ms. Peterson and Ms. Camfield’s interviews on June 29. I responded and provided confirmation.

Later on June 27, 2016, I received an email from Ms. Coppinger Carter, cancelling the Peterson and Camfield interviews and stating:

It is unclear to me how this investigation would be of any benefit to our clients at this late date after their respective constructive discharges, especially if you are not making any recommendations to the City based on your investigation.⁴

Any investigation being done for the City to address or protect the City from future claims should find sufficient information in the exit interviews done by the Mayor for Ms. Camfield and Ms. Peterson, the Russell investigation from last fall, Mr. Key’s investigation as well as our Notices of Claim containing fairly detailed facts.

⁴ The scope of my engagement is to conduct a factual investigation, and to make factual findings and conclusions as to whether the Complainants’ gender and age discrimination claims are substantiated.

On June 28, 2016, I confirmed by email to Ms. Coppinger Carter that Ms. Camfield and Ms. Peterson had declined to be interviewed. I also confirmed that information relevant to Ms. Peterson and Ms. Camfield's claims is detailed in the Notices of Claim, the Mayor's exit interviews of Ms. Peterson and Ms. Camfield, and Mr. Key's and Ms. Russell's investigations.

On June 29, 2016, Ms. Coppinger Carter responded, acknowledging these confirmations.

On July 1, 2016, Ms. Bundy sent a letter to Ms. Coppinger Carter, enclosing the documents provided by Ms. Harksell to Mr. Key during his interview. She requested that Ms. Coppinger Carter review the documents and let her know as soon as possible if anything had been omitted.

On July 12, 2016, Ms. Bundy provided me with the documents provided by Ms. Harksell to Mr. Key.

C. Documents Reviewed.

As stated above, I first requested and reviewed organizational charts, the City's personnel policies and employment handbook, and the personnel files of the Complainants and Mr. Martin.

During the interviews, some witnesses provided documents to me. Others emailed documents to me after their interview. I also made additional requests for documents and information to the City's Human Resources Manager.

I reviewed the documents identified by Ms. Coppinger Carter as containing information regarding her clients' allegations:

- The audiotape of the March 15, 2016 interview of Ms. Harksell by Alan Key, investigator, Clear Risk Solutions (the "Key Interview");
- The Notices of Claim, dated June 10, 2016, for Teresa Camfield, Amy Harksell, and Linda Peterson;
- The Performance Evaluation Report for City Administrator Mike Martin, dated November 3, 2015, by Sheri Russell, J.D., Bellingham Mediation;
- Written notes of the exit interview of T. Camfield, by S. Korthuis, dated June 6, 2014;
- Written notes of the exit interview of L. Peterson, by S. Korthuis, dated June 9, 2014;
- Documents provided by A. Harksell to A. Key at the March 15, 2016 interview:
 - Background Information/timeline;
 - March 2, 2016 written complaint to S. Korthuis from A. Harksell;
 - February 22, 2016 Corrective Action Notice;
 - February 22, 2016 email exchange between A. Harksell to V. Roebuck re: Interview Confirmation;
 - February 12, 2016 memo from A. Harksell to M. Martin re: Written reprimand;
 - February 5, 2016 email from A. Harksell to M. Martin re: Questions;

- February 5, 2016 email from M. Martin to G. Baar re: Meeting at 4 p.m. Feb. 5 in Mayor's Office;
- February 4, 2016 email from A. Harksell to S. Korthuis re: I really need to speak to you;
- Statement of A. Harksell re: Council Committee changes and meeting with City Councilor Gary Bode;
- February 4, 2016 Verbal Warning – Report of Conference, and Attachment to Verbal Warning;
- February 2 and 5, 2016 email exchange between A. Harksell and M. Martin re: Meeting invitation;
- January 20, 2016 email from A. Harksell to S. Korthuis and T. Gelder re: Community Development Committee;
- February 8, 2016 memorandum from M. Martin to A. Harksell re: Written reprimand;
- October 5, 2015 email from A. Harksell to S. Korthuis re: Budget question;
- October 5, 2015 email from A. Harksell to S. Korthuis re: HarksellA_ReactionPaper2 96(1);
- September 21, 2015 email from A. Harksell to S. Korthuis re: 2016 Budget Memo.docx; 2016 Department Budget.xlsx;
- July 2, 2015 email exchange between A. Harksell and M. Martin re: Workplan attached;
- May 5, 2015 email from A. Harksell to S. Korthuis attaching CA Performance Feedback Form.pdf;
- May 5, 2015 email from A. Harksell to S. Korthuis re: Meeting;
- April 15, 2015 email from A. Harksell to S. Korthuis and M. Martin re: Community Development Committee member; and
- Memorandum from A. Harksell to S. Korthuis re: Employee Handbook.

I also reviewed the following documents, which were provided to me by the Human Resources Manager or by witnesses during or after their interviews:

- Organization charts, City of Lynden, from 2012 to 2016;
- 2016 Staff List spreadsheet;
- 2016 Staff List spreadsheet: female employees and birthdates;
- 2016 Staff List spreadsheet (with birthdates);
- *Personnel Policies and Procedures*, City of Lynden (February 2007);
- *Employee Handbook*, City of Lynden (February 2007);
- *Personnel Policies and Procedures*, City of Lynden (November 2015);
- *Employee Handbook*, City of Lynden (November 2015);
- Diversity in the Workplace PowerPoint, Clear Risk Solutions;
- Diversity Training roster, February 2016;
- The Performance Evaluation Report for City Administrator Mike Martin, dated November 3, 2015, by Sheri Russell, J.D., Bellingham Mediation;

- Mediation Summary and Report by Sheri Russell, J.D., Bellingham Mediation, dated October 12, 2016;
- Personnel file of Teresa Camfield;
- Personnel file for Amy Harksell;
- Personnel file for Linda Peterson;
- Personnel file for Mike Martin;
- Corrective action section, personnel files of directors and acting directors;
- Corrective action notices, dated December 17, 2015, February 17, 2016, and June 6, 2016;
- M. Martin task notes on the budget from 2013 to 2014;
- M. Martin supervisor notes for L. Peterson;
- M. Martin supervisor notes for T. Camfield;
- M. Martin supervisor notes for A. Harksell;
- M. Martin email exchange with R. Baker, March 19, 2014 and April 8, 2014;
- Handwritten notes by Vanessa Roebuck:
 - meeting with M. Martin, A. Harksell, and V. Roebuck, dated 11:00 a.m., February 2, 2014;
 - meeting with M. Martin, A. Harksell, and V. Roebuck, dated 4:00 p.m., February 2, 2014;
 - meeting with M. Martin, A. Harksell, and V. Roebuck, dated February 4, 2016;
 - telephone call with A. Harksell, dated February 4, 2016;
 - meeting with M. Martin, A. Harksell, and V. Roebuck, dated 8:40 to 9:00 a.m., February 8, 2016;
 - meeting with M. Martin at 9:00 a.m., and S. Korthuis, at 9:50 a.m., February 8, 2016;
 - meeting with M. Martin, A. Harksell, and V. Roebuck, dated 4:45 p.m., February 8, 2016;
 - notes dated February 16, 2016;
 - telephone call with K. Turner, dated February 17, 2016;
 - notes of discussion with M. Martin, and telephone call to S. Korthuis, dated February 17, 2016;
 - telephone call from S. Korthuis, dated February 19, 2016; and
 - telephone call with L. Peterson, March 23, 2016 and notes of discussion with P. Brown, March 23, 2016;
- Written notes of the exit interview of D. Purcell, by V. Roebuck, dated November 5, 2015;
- Voicemail from M. Martin to V. Roebuck, February 7, 2016;
- February 22, 2016 email exchange between A. Harksell and V. Roebuck re: Interview Confirmation;
- February 22, 2016 email exchange between V. Roebuck, A. Harksell, S. Banham, L. Burford, M. Sandal, and A. Harksell re: PW Interview Lunch Order – Please complete!;

- March 2, 2016 written complaint to S. Korthuis from A. Harksell;
- March 4, 2016 letter from S. Korthuis to A. Harksell re: Receipt of Written Complaint;
- March 4, 2016 letter from S. Korthuis to C. Coppinger Carter re: A. Harksell;
- March 10, 2016 email exchange between A. Harksell and V. Roebuck re: Bi-weekly meeting;
- March 28, 2016 memorandum from M. Martin to S. Korthuis and V. Roebuck re: Notes from March 25 Interview of Laura Burford re: Amy Harksell;
- March 28, 2016 letter from S. Korthuis to A. Harksell re: Notice of Allegation and Investigation;
- March 31, 2016 and April 6, 2016 email exchange between A. Harksell and V. Roebuck re: Follow-Up Meeting Postponed;
- June 1, 2016 Phone List, City of Lynden;
- S. Salminen and M. Martin email exchange, September 24, 2015;
- Materials provided by T. Gelder at interview on June 9, 2016 re: Firefighter pay issue:
 - June 1, 2015 Council Meeting Agenda No. 5-C; and
 - June 29, 2015 LFD Admin Wage 2011-2015 chart;
 - Presentation Notes of 7/6/2015;
 - July 26, 2015 SAO Quicklist;
 - October 21, 2015 Management Letter from Washington State Auditor's Office to Mayor and City Council;
- June 10, 2016 email from S. Korthuis, attaching June 10, 2016 letter of resignation from A. Harksell to S. Korthuis;
- July 7, 2016 email from M. Martin to B. Kastama, attaching supervisor notes for Ms. Peterson and Ms. Camfield;
- December 28, 2011 letter from B. Verwolf to N. Miener re: Change in Employment Status;
- April 18, 2014 letter from M. Martin to N. Miener re: Position Offer
- June 13, 2016 email from M. Martin to B. Kastama re: FW: The notes you asked for and additional handwritten notes, attaching the following:
 - Amy attachment to disciplinary action Feb 4 2016;
 - Amy Harksell Verbal-Warning-02032016;
 - Amy letter from Scott March 28 2016;
 - Amy letter from Scott rev 1 March 28 2016;
 - Amy notes for disciplinary action Feb. 4, 2016;
 - Amy notes for second disciplinary action Feb 5 2016;
 - Amy notes re hostile work place allegations March 24 2016;
 - Amy notes re hostile workplace allegations March 25 Laura Burford 2016;
 - Amy notes sent to Kastama June 13 2016;
 - Amy supervisor notes from Mike Feb 24 2016; and
 - Amy Written Reprimand Feb 8 2016;
- January 26, 2016 emails between S. Banham and V. Roebuck re: GIS testing;

- February 22, 2016 emails between M. Martin, V. Roebuck, and A. Harksell re: interview confirmation;
- June 14, 2016 email from T. Gelder to A. Harksell and S. Salminen Fwd: Lynden Tribune Article 6-14-2016;
- June 16, 2016 email from V. Roebuck to B. Kastama re: Finance Director Recruitment;
- June 17, 2016 email from M. Martin to B. Kastama, re: Contact for HR manager in Burién; and
- June 18, 2016 email from T. Gelder to B. Kastama attaching Minutes from a Mark Martin Meeting with City Staff dated 11/3/2015.

III. BACKGROUND FINDINGS

Below is a brief organizational overview and chronology. The purpose of this section is to provide an overview of the context of the Complainants' gender and age discrimination claims.

A. City Government and Structure.

The City of Lynden has a mayor-council form of government. The mayor is elected at-large, and serves as the City's chief administrative officer, while the seven-member council serves as its legislative body. The City has a city administrator, who reports to the mayor and is responsible for the day-to-day supervision of City operations and staff.

The City is divided into seven departments: Administration, Finance, Fire, Police, Parks & Recreation, Planning, and Public Works.⁵ The City Administrator heads the Administration office. A director heads each of the other six departments.

The City Administrator reports to the Mayor. The six directors report to the City Administrator. The staff in each department reports to the director. Staff in the Administration department either report directly to the City Administrator, or to a manager who reports to the City Administrator.

From 2013 to the present, the directors of the Planning and Finance departments have been women and the directors of the Fire, Police, Parks & Recreation, and Public Works departments have been men. From 2013 to the present, all of the directors were over 40 years of age.⁶

⁵ The Council is organized into five committees, which each correspond to a City department: the Wage/Personnel/Finance, Community Development, Parks, Public Safety, and Public Works committees. The Community Development committee corresponds to the Planning Department.

⁶ Ms. Harksell is 47 years old; Finance Director Ms. Salminen is 53 years old; Public Works Director Steve Banham is 58 years old; Parks & Recreation Director Vern Meenderinck is 68 years old; Fire Chief Gary Baar is 65 years old; and Police Chief Jack Foster is 68 years old.

Since 2013, two directors have resigned – Finance Director Ms. Camfield in June 2014, and Planning Director Ms. Harksell in June 2016. Since 2013, one manager has resigned – Deputy City Clerk/Human Resources Manager Ms. Peterson in June 2014.⁷ Currently, Ms. Samec is Interim Planning Director.⁸ The City hired Sirke Salminen, a woman, to replace Ms. Camfield as Finance Director, and Vanessa Roebuck, a woman, to replace Ms. Peterson.⁹

B. City Administrator Mike Martin.

On June 18, 2013, the City hired Mike Martin as City Administrator. His employment began August 5, 2013. Immediately prior, he was City Administrator for the City of Burien.

Mr. Martin succeeded retiring City Administrator Bill Verwolf. Mr. Verwolf was City Administrator for over ten years, from 2002 until August 2013.¹⁰

Mr. Martin directly supervises the directors, and holds bi-weekly meetings with each. Soon after he started at the City, he established a Leadership Team, comprised of Mr. Martin and the six department directors.¹¹ He also has conducted annual performance evaluations of his direct subordinates for each year since he started.¹²

C. Former Deputy City Clerk/Human Resources Manager Linda Peterson.

In December 2008, the City hired Ms. Peterson as the City’s “Deputy City Clerk/Human Resource Manager.” At that time, it was a new City position within the Administrative department, reporting to the City Administrator. It was not a director-level position.

Ms. Peterson worked under Mr. Verwolf for four years, until he retired. Thereafter, she reported to Mr. Martin.

⁷ Ms. Peterson is 73 years old.

⁸ Ms. Samec is 42 years old.

⁹ Ms. Roebuck is 29 years old.

¹⁰ Witnesses report that Mr. Verwolf and Mr. Martin’s management styles are very different. Witnesses describe Mr. Verwolf’s style as “hands-off.” Some liked this style. Others state that Mr. Verwolf was ineffective during his last five years, and, in particular, failed to manage the directors, who ran their departments as they saw fit. Mr. Martin’s style is more “hands-on” and he directly supervises the directors. Some witnesses welcome this, stating that he is finally holding people accountable, while others describe him as a “micro-manager” with a “my way or the highway” management style.

¹¹ In February 2015, the Human Resources Manager joined the Leadership Team.

¹² The personnel files reviewed do not contain any performance evaluations by Mr. Verwolf. Long-serving employees, such as Ms. Camfield and Ms. Harksell, have performance evaluations in their files pre-dating 2002, by then-City Administrator Stephan Jilk.

On February 26, 2014, Mr. Martin conducted Ms. Peterson's performance evaluation. [REDACTED] Ms. Peterson submitted a written comment, [REDACTED] and signed the evaluation.

On April 4, 2014, Mr. Martin requested that Ms. Peterson take minutes of an upcoming Council meeting, because the employee who normally did so would be absent. Ms. Peterson refused on the ground that this was not within her job duties.

On April 8, 2014, Mr. Martin gave a disciplinary letter to Ms. Peterson for insubordination. Ms. Peterson refused to sign the letter. Mr. Martin placed the letter in Ms. Peterson's file.

Three weeks later, on April 29, 2014, Ms. Peterson gave notice of her resignation. Her given reason for resigning was a new job.

On June 9, 2014, Mayor Korthuis conducted an exit interview of Ms. Peterson. Her last day of employment was June 16, 2014.

D. Former Finance Director Teresa Camfield.

Ms. Camfield was hired in 1997 as Finance Director. Ms. Camfield served as Finance Director under three City Administrators: Stephan Jilk, Bill Verwolf, and Mike Martin.¹³

Mr. Martin began his employment with the City in August 2013. In mid-October 2013, Mr. Martin states that he learned of a "structural budget deficit." [REDACTED]

Ms. Camfield has had three performance evaluations, in 1997, 2001, and the third, in February 2014, by Mr. Martin. Mr. Martin's evaluation states that [REDACTED]

[REDACTED] Ms. Camfield's written comment to the evaluation states [REDACTED]

On May 2, 2014, Ms. Camfield submitted her resignation, effective on June 6, 2014. She did not state a reason, other than that it was time to "seek new challenges."

On June 6, 2014, Mayor Korthuis conducted an exit interview of Ms. Camfield.

¹³ Ms. Camfield's personnel file contains "Professional Finance Officer" awards for every year from 1999 to 2013 and the Distinguished Budget Award, from 1998 to 2006, by the Washington Finance Officer Association.

E. Finance Director Sirke Salminen.

In November 2014, Ms. Salminen began her employment as the City's Finance Director. Her working relationship with Mr. Martin soon deteriorated. Ms. Salminen felt that Mr. Martin did not understand finance, and would ask her to take actions that were against statute or policy. She also states that he repeatedly asked her for information or documents that she had previously provided. Ms. Salminen states that Mr. Martin made several inappropriate comments.¹⁴ In late September 2015, Ms. Salminen states that she was very upset following a meeting with Mr. Martin because she felt he had falsely accused her of failing to provide information and budget documents.

On October 13, 2015, at the Mayor's direction, Ms. Salminen and Mr. Martin participated in a mediation to address their workplace issues. Sheri Russell, J.D., of Bellingham Mediation, conducted the mediation.

After the mediation, Mr. Martin and the Mayor decided that the Mayor would temporarily supervise Ms. Salminen. At present, Ms. Salminen reports to the Mayor.¹⁵

F. The Russell Performance Evaluation.

In October 2015, Ms. Russell also conducted a performance evaluation of Mr. Martin, on the Mayor's request. She interviewed the seven Councilmembers and the nine City employees who directly report to Mr. Martin. Her written report to Mayor Korthuis, dated November 3, 2016, summarized the interview results and identified common themes. The interviewees' feedback was anonymous.

G. Former Planning Director Amy Harksell.

Ms. Harksell worked for the City of Lynden for 23 years. Ms. Harksell states that in about 2003, she was promoted to Planning Director.

Ms. Harksell had five performance evaluations prior to 2002. Her next performance evaluations were in 2014 and 2015, both by Mr. Martin. Ms. Harksell states that both were "reasonable."¹⁶

¹⁴ Ms. Salminen states that Mr. Martin suggested she take stronger medicine for a back injury, including codeine. When she said that doing so would put her asleep "under the desk," she states Mr. Martin responded that if so, he would take a picture. She also states that he does not want anyone to stay past 5:00 p.m. She worked on a Sunday once to catch up on work, and on Monday, she states Mr. Martin told her that he had a dream that she came into work on a weekend.

¹⁵ Ms. Salminen was interviewed in this investigation, and provided details and a document regarding her complaints against Mr. Martin. The facts show that Ms. Salminen and Mr. Martin's workplace issues and disagreements are performance-based. The comments about offering stronger painkillers and a dream are isolated, stray comments.

¹⁶ Audiotape of Key Interview, at 22:37.

In early 2016, the Mayor reassigned Councilmembers to committees. Councilmember Gary Bode replaced Councilmember Jerry Kuiken as Chair of the Community Development Committee. Two Councilmembers observed that Ms. Harksell was upset by Mr. Bode's assignment. Ms. Harksell states that the Mayor should have given her advance notice of this change.

On February 2, 2016, Mr. Bode came to Ms. Harksell's office to request the minutes of prior committee meetings. Later that day, Mr. Bode told Mr. Martin that Ms. Harksell had been rude to him.

On February 4, 2016, Mr. Martin and Ms. Roebuck met with Ms. Harksell regarding Mr. Bode's complaint. Later that day, Mr. Martin provided a "Verbal Warning – Report of Conference" to Ms. Harksell, requiring that she "sincerely apologize" to Mr. Bode, in the Mayor's presence, on February 5, 2016.

On February 5, 2016, Ms. Harksell went to the Mayor's office to apologize. The Mayor and Mr. Bode were present. She read her apology. She then "tore up her notes" and stated, "This concludes my obligation to Mr. Martin."¹⁷

On February 8, 2016, Mr. Martin issued a written reprimand to Ms. Harksell for the manner in which she apologized. Ms. Harksell submitted a written response, stating that the written reprimand contained insulting and subjective language. Mr. Martin withdrew the February 8, 2016 written reprimand, and replaced it with one dated February 22, 2016, omitting the language identified by Ms. Harksell. Ms. Harksell was (1) placed on unpaid administrative leave for two days; (2) required to attend interpersonal training; and (3) required to maintain a professional demeanor.

On March 2, 2016, Ms. Harksell submitted a written complaint to the Mayor, asserting gender discrimination by Mr. Martin.

By letter dated March 4, 2016, Mayor Korthuis told Ms. Harksell that the City would be conducting an independent investigation to address the concerns she raised, and that the investigator would be Alan Key from Clear Risk Solutions.

On March 15, 2016, Mr. Key interviewed Ms. Harksell at her attorney's office. He recorded the interview. Mr. Key thereafter conducted interviews of certain City employees.

On March 28, 2016, the Mayor and Human Resources Manager Vanessa Roebuck met with Ms. Harksell. The Mayor provided her a letter stating that Ms. Harksell had approached at least two staff members about their interviews with Mr. Key, and that the investigation would be

¹⁷ Key Interview, at 47:48. Ms. Harksell and the witnesses differ as to how she tore up the paper and what else was said.

expanded into allegations that Ms. Harksell had created a hostile work environment. The letter directed her not to discuss the investigation with any employee, or engage in behavior that could be perceived as retaliatory.

Ms. Harksell responded by letter, also dated March 28, 2016, stating that “the City is engaging in an increased pattern of retaliatory actions against me based on my contributions to Mr. Martin’s earlier performance evaluation and my written complaint regarding Mr. Martin’s discrimination and hostile behavior.”

On or about May 6, 2016, Ms. Harksell took medical leave. On June 10, 2016, she emailed a letter of resignation to Mayor Korthuis.¹⁸ Her resignation was effective on June 16, 2016, the last day of her accrued leave.

IV. RELEVANT CITY POLICIES

A. Harassment and Discrimination Policy.

The City has an official policy forbidding discrimination and/or harassment on the basis of gender, age, race, religion, national origin, sexual orientation, or veteran status or disability.¹⁹

The policy states that “verbal, visual or physical conduct of a harassing nature will constitute harassment when a person involved feels compelled to submit to that misconduct in order to keep his/her position, to receive appropriate pay, or to benefit from certain employment decisions.”²⁰ The *Employee Handbook* defines harassment as:

verbal or physical conduct that demeans or shows hostility toward another person. Examples include offensive or demeaning comments, jokes, display of offensive materials, or other behavior likely to offend the other person. This conduct is unlawful discrimination when it is based on the person’s race, age, gender, ethnic background, disability, religion or other factor protected by law.²¹

Employees who experience or witness conduct they believe is harassment or discrimination are encouraged to report that conduct to supervisors or managers. The City

¹⁸ Ms. Harksell stated in her letter that, [REDACTED] she was “forced to resign,” and “this is necessary due to the City’s failure to address ongoing discrimination and retaliatory behavior by City Administrator Martin. The retaliatory attacks that occurred after I filed my complaint about Mr. Martin’s conduct added to the emotional and physical stress that I have experienced.”

¹⁹ *City of Lynden Personnel Policies and Procedures*, Policy AD-11, “Harassment and Discrimination,” (November 2015), pages 18-19, adopted by Council Feb. 5, 2007 (hereinafter “Harassment and Discrimination Policy”) (attached at Appendix 3).

²⁰ Harassment and Discrimination Policy.

²¹ *City of Lynden Employee Handbook*, §3.02, “Harassment and Discrimination” (November 2015) (attached at Appendix 3).

prohibits retaliation against an employee for filing a complaint under this procedure or for assisting in a complaint investigation.

B. Corrective Action.

The City has an official policy regarding how to address unacceptable employee conduct.²² The express purpose is to ensure that employees are informed exactly of the behavior to be corrected and the measures the employee must take to correct the behavior, and give the employee adequate opportunity to correct the situation.

The policy sets out a three-step Corrective Action Process. The first violation is a “Conference and Record of Conference (Verbal Reprimand).” The second violation is a “Written Reprimand.” The third violation involves an investigatory interview by the supervisor and department head with the employee to discuss the continuance of the specific behavior for which Steps One and Two were taken, and whether discipline, up to and including demotion and termination, is warranted.

Corrective action may begin at any step depending on the nature and seriousness of the employee’s action. In each step, the supervisor must identify the behavior, obtain the employee’s side of the story, and make a determination regarding the behavior.

V. DETAILED FINDINGS AND CONCLUSIONS

The Complainants are three women who held management-level positions at the City of Lynden. They allege that Mr. Martin discriminated against them because of gender and age by (1) treating them less favorably than men and younger employees; and (2) subjecting them to harassment and thereby creating a hostile work environment because of their gender and age. Ms. Harksell also alleges retaliation.

The following summarizes my findings and conclusions regarding each Complainant’s allegations.

A. LINDA PETERSON

Allegation: Mr. Martin discriminated against Ms. Peterson by treating her less favorably than males or younger employees, and subjecting her to harassment because of her gender and age.

Ms. Peterson’s Allegation.

Ms. Peterson states that she had a good working relationship with Mr. Verwolf based on mutual respect, and enjoyed her first four years of City employment.

²² *City of Lynden Personnel Policies and Procedures*, HR-05, pages 75-78, adopted by Council Feb. 5, 2007 (attached at Appendix 4).

Ms. Peterson asserts that Mr. Martin “targeted her for discipline over trivial matters” because of her gender. She stated that within the first two weeks of his employment, Mr. Martin came into her office and told her in an angry tone to “go home.”²³ She was a salaried worker, and states that she regularly worked past 5:00 p.m. when finishing a project. She states that she thought he was joking, but he continued to insist for the next several days that she go home at 5:00 p.m.

Ms. Peterson states that, in the morning of August 27, 2013, Mr. Martin came into her office visibly angry and threatened to write her up for insubordination because she had worked past 5:00 p.m. She states that she told him that she was finishing a project he had assigned her. She states that he told her that she was at fault for not completing her work on time. She states that he told her that she “lacked initiative, could not change, and that he saw her only as ‘someone who does as you’re told.’” She states she told him all that she had done for the City’s Human Resources program over the past four years, but that he responded by “warn[ing]” her that she would have to show him a “different side” of her, and prove “her worth and abilities.”

Ms. Peterson states that two weeks later, Mr. Martin “verbally berated” her and other female employees chatting in the parking lot after 5:15 p.m., and allegedly asked them “don’t you have personal lives?” Ms. Peterson states that meanwhile, male staff vehicles were seen in the parking lot, but Mr. Martin did not direct male staff to go home.²⁴

Ms. Peterson states that during a meeting with Ms. Camfield and Ms. Peterson, Mr. Martin asked Ms. Peterson a question, and when she started to answer, slammed his fist on the table and shouted “let me speak!” She also states that he “disrespected her” by refusing to allow her to participate in management meetings, allegedly stating that she was “not ready” despite her years of senior management experience. She states that he also “insult[ed]” her by telling her that she was not a “team player,” had “no sense of humor” and that she would have to “prove him wrong” and it was up to her “to improve her behavior.” She states that it was clear to her that she could do no right in his eyes.

She states that he was also dismissive of her work in a way that he was not with male directors and managers. She provides three examples.

First, she states that he regularly contacted males to verify that information Ms. Peterson had provided to him was correct before he would accept her answers to his questions.

²³ Unless otherwise indicated, the quoted words or phrases are from Ms. Peterson’s Notice of Claim, at pages 4 and 5.

²⁴ Ms. Peterson states that, in contrast to how Mr. Martin treated her, Mr. Martin befriended the young I.T. assistant and drove him to Portland to buy a motorcycle. She states that Mr. Martin later promoted the I.T. assistant without posting the position or interviewing other candidates.

Second, she states that she provided a comparative cost of living report to him at his request during labor negotiations. She states he looked at the report for less than five minutes and then rejected it, without any questions, input or research, and allegedly stated, "This information does not feel right to me. I can't use this."

Third, she states that he asked Ms. Peterson to arrange a panel interview for an open I.T. position. He then came into the first panel interview, looked at the materials she "had meticulously prepared" and said "I am taking over." She states that he then conducted the interview himself without using her materials, thereby undermining her expertise and humiliating her in front of staff.

[REDACTED]

In April 2014, Ms. Peterson states that Mr. Martin wrote her up for "insubordination" over what she states was a "trivial incident," in which he requested that she take minutes at a City Council meeting. She states this was not part of her job duties. She states she explained to him that that task had already been delegated to an administrative assistant. She states further that when he insisted, she asked him if he would have forced another manager to do such a task. Mr. Martin allegedly told her this was a "serious infraction" and that she was not a team player.

She states that Mr. Martin's treatment [REDACTED] [REDACTED]. Her last day was June 16, 2016. She states that she had planned to work for two more years. She states she told Mayor Korthuis and Councilmember Tobey Gelder at her exit interview about "all of her negative experiences with Mr. Martin." She states no one from the City ever followed up with her about Mr. Martin, but that a Councilmember allegedly thanked her "for surviving as long as she did."

Mr. Martin's Response.

Mr. Martin states that he told all staff, regardless of gender, that work-life balance was essential, and to please honor his request to leave at 5:00 p.m. unless they had to stay later. He states that Ms. Peterson continued to stay after 5:00 p.m., and he therefore stopped by her desk, and told her jokingly that she was "bordering on insubordination" and that "I keep telling you to leave." He states that his purpose was to reinforce the point that work-life balance was important to him. He states that he would "never discipline someone for working too hard."

He does not recall telling staff gathered in the parking lot to go home, but he could have done so. He states that he has told Public Works Director Steve Banham and a male Public Works manager to go home at 5:00 p.m. He denies that males' cars were in the parking lot after 5:00 p.m. Currently, he knows that two Finance employees are staying late. One is working on the payroll conversion, and he has encouraged her to get out on time.

Mr. Martin states that Ms. Peterson's title was "Deputy City Clerk/Human Resources Manager." When he started at the City, he looked through the personnel files of key staff and noticed that performance evaluations had not been conducted "for decades." Ms. Peterson did not seem "alarmed" by the lack of performance evaluations. According to Mr. Martin, the Human Resources Manager was there to take care of personnel matters, including union negotiations, performance evaluations, and updated personnel policies, but that "none of this was happening." He states he also discovered that job descriptions had not been updated in twenty years, and a formal salary survey had not been performed in years. He states that he told Ms. Peterson to start updating the job descriptions. He states that they agreed that she would complete four each month, but she soon fell behind.

Mr. Martin states that he asked Ms. Peterson to substitute for another employee and take minutes at an upcoming Council meeting, because Ms. Peterson was the Deputy City Clerk. Ms. Peterson refused. According to Mr. Martin, Ms. Peterson stated that Mr. Verwolf was going to change the job title. She then "yelled" at him, and he told her that her behavior at the meeting was insubordinate. He states that he told her that it was her job and if she can't do her job she needs to think about this. This meeting took place on a Friday.²⁵ On Monday, they could not come to an agreement. He put a letter in her personnel file, stating that he would take "Deputy City Clerk" out of her job description and find someone else to substitute. He states that he did not see this is a capitulation to her position, but an acknowledgement that her reaction was so strong that they were not going to be able to reach an agreement.²⁶

Mr. Martin denies he submitted Ms. Peterson's work to males for verification. He states that he rejected a comparative cost report prepared by Ms. Peterson for a labor contract negotiation because he did not think she had correctly determined the actual cost.²⁷ He recalls the panel interview for the I.T. position. He states he would have looked for consensus in the

²⁵ He states that he then called Ms. Peterson on Saturday morning, and left a message that they had a difficult meeting but he did not want her to "obsess" about it and they would discuss it on Monday.

²⁶ Ms. Peterson's personnel file contains a memorandum dated April 7, 2014 from Mr. Martin to Ms. Peterson, "Re: Disciplinary letter regarding insubordinate behavior." Mr. Martin stated in the letter that Ms. Peterson threatened to resign if Mr. Martin insisted that she fill in for the City Clerk and that her demeanor was "highly confrontational." He instructed her to remove "Deputy City Clerk" from her title, and to instruct [Employee B] to resume looking for a substitute for the June Council meeting. The letter did not provide for disciplinary action (*i.e.*, suspension) or corrective action. Handwriting on the bottom of the document by Mr. Martin states "Linda came to my office at 4:30 as arranged and refused to sign or comment."

²⁷ Mr. Martin's supervisor notes on Ms. Peterson contain an April 2, 2014 entry, in which he stated that he reviewed a matrix prepared by Ms. Peterson comparing the cost of the City's last proposal to the firefighters to their last proposal. The notes state, "The matrix had a number of material inaccuracies, including a supposed offer of a CPI in years 2015-17 (we had made no such proposal, rather we said we would negotiate it in 2014). There was no mention of the lump sum offer we had. Etc. She also didn't realize they had gone backwards in their final offer from their previous offer for wages. There was also no financial evaluation."

hiring decision and denies humiliating Ms. Peterson, but, ultimately, he is responsible for the hire.

Mr. Martin denies ever slamming his fist or hand on the table, at any time in his career. He states that he did not put Ms. Peterson on the Leadership Team because she was not a leader. She was “bickering” with the women in the court department, as well as Ms. Camfield.

He states that he had daily, collegial interactions with Ms. Peterson. He recalls getting impatient with her, because of the unreliability of the data she provided to him in labor negotiations, and the slow pace and average work product of her revised job descriptions.

Other Witnesses and Documents.

Employee A is a salaried employee in the Administrative department, reporting directly to Mr. Martin.²⁸ He is under the age of 40. He states that Mr. Martin has a firm rule about work-life balance, and does not want people staying after 5:00 p.m. Mr. Martin told him “a couple of times” to go home.²⁹ He recounts that once, when he and Ms. Peterson were in the office at 5:30 p.m., Mr. Martin told them both to go home in a “light manner.” Employee A states that he agreed to do so, but Ms. Peterson stated that she was working on matters. Employee A states that Mr. Martin then told Ms. Peterson in a “commanding” voice that “it did not matter” and she should go home.

Employee A also states that he was on the interview panel for the I.T. position in 2014. The other panel members were Ms. Peterson, the assistant police chief, and “probably” Mr. Martin. The witness does not recall Mr. Martin stating, “I am taking over.” He remembers that Mr. Martin wanted the interviews to be conversational, rather than the “strict questions and answer” format developed by Ms. Peterson. He states that Ms. Peterson was unhappy with this, but that Mr. Martin was not going to change his position. According to Employee A, Ms. Peterson told him at lunch that day that Mr. Martin was “taking over.” He states that the interview panel decided to merge approaches, because Ms. Peterson’s questions were the best way to grade the candidates, but the conversational, introductory questions helped calm nervous candidates.³⁰

²⁸ This report identifies City employees by pseudonyms, other than directors and the Human Resources Manager.

²⁹ Mr. Martin states that he rides motorcycles. He took a vacation day to go to Portland and look at a motorcycle that Employee A was interested in buying.

³⁰ The exit interview notes contain this notation: “Example: Hiring the IT person. - Limited field to 4 individuals. – Standard questions + score sheet not followed.” It is unclear what this is an example of, but the notation is in the upper right hand margin to the question regarding what was the one thing that the City could have done “to have kept you from making the decision to leave?” A note reads, “Treat her as a respected professional. Mike caused trouble; expect Linda to clean up.”

Employee B is an employee in the Administration department. In 2013, she reported to Ms. Peterson. She states that, within two weeks of starting at the City, Mr. Martin told her and Ms. Peterson that he wanted them to get ready to go, and then stated, "I want you out and I mean it." Employee B states that once, when she and Ms. Peterson left at 5:00 p.m., she observed that cars belonging to Mr. Banham and Finance Department employees were still in the City Hall parking lot.³¹ She states that she observed that Mr. Martin did not seem to like Ms. Peterson, although the witness does not know why. Employee B reports that she has a good relationship with Mr. Martin.

Employee B also states that her duties include taking minutes at City Council meetings. In the event of her absence, one of two employees from Public Works department substitute for her. In April 2014, Employee B states that she was present at the start of the meeting between Mr. Martin and Ms. Peterson. She heard Mr. Martin tell Ms. Peterson to substitute for Employee B at a Council meeting, and Ms. Peterson respond that this not her job duty, she was not trained, and a Public Works employee knew how to do it.³² Employee B then left the meeting. Employee B was surprised that Mr. Martin asked Ms. Peterson to substitute at the Council meeting, because Ms. Peterson had never done so before.³³

³¹ The Finance department in 2013 had five employees, all women.

³² Mr. Martin's supervisor notes for Ms. Peterson contain an entry dated April 4, 2014 that describes this meeting. The notes state that at 10:40, Linda and [Employee B] came to his office to follow up on an email he sent regarding how to back up the deputy clerk position. Both were visibly upset, and after 2-3 minutes [Employee B] asked to be excused. The notes state that Mr. Martin asked "why we were preparing [a Public Works employee] or someone else to perform the Deputy Clerk function when [Employee B] is out for her training," and that "in each department we were running into people who wanted to rewrite their job descriptions so that things they didn't like doing were excluded and vice versa. I said I can't allow that in our department but not allow it in others." The notes state that Ms. Peterson told Mr. Martin she was not trained, asked Mr. Martin how she would acquire those skills, and said that she would resign before doing it.

³³ Ms. Peterson's personnel file contains the Position Description for Deputy Clerk/Human Resources Manager in 2008. The Position Description identifies essential duties as court administration, management of the administration office, and human resources management. Management of the administrative office included "[a]ssur[ing] that assigned areas of responsibility are performed with regard to Council meeting agenda and staff attendance at meetings for the purpose of set-up and taking of minutes."

Mr. Martin's February 2014 performance evaluation of Ms. Peterson addresses the deputy clerk duties. Mr. Martin wrote that

[REDACTED] As
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Steve Banham, Public Works Director, states that Mr. Martin emphasized work-life balance, and did not want City employees to believe that they had to work long hours to be successful. Mr. Martin told him on several occasions to leave at 5:00 p.m. He told Mr. Martin that he would try to do so, but that the only quiet time he had to catch up was after 5:00 p.m. He typically stays until 6 p.m. He states that Ms. Salminen and a Finance department female employee are also in the office late on occasions. He recalls seeing Ms. Camfield stay late but does not remember if that was when Mr. Martin was City Administrator.

Employee C, a male manager in the Public Works department, states that he typically leaves at 4:30 p.m. He does not recall anyone telling him to leave at 5:00 p.m.

Employee D is a member of the Public Works department. She states that it is not uncommon for members of the department to be talking in the parking lot after work, and for Mr. Martin to come out and tell them to go home. She also states that once, she was speaking to a Finance employee at 5:01 p.m., and Mr. Martin turned off the lights, stating, "No overtime, ladies."

Employee E is an employee in the Finance department. She states that she usually leaves at 5:10 or 5:15 p.m., and is typically closing up her work after 5:00 p.m. She states that Mr. Martin has "popped his head" into the Finance department at 5:00 p.m. and said that it was time to go home. She states that she has not been reprimanded for staying past 5:00 p.m. and sees Mr. Martin's statements as a "gentle reminder." She states that Ms. Salminen and another Finance employee have been working long nights on the budget recently. She recalls that Ms. Camfield had to stay late at times as well.

Employee F is an employee in the Finance department. She states that soon after Mr. Martin was hired, she met with him, Ms. Peterson, and Ms. Camfield to discuss the relationship between Human Resources and payroll. Mr. Martin asked Employee F a question. In the middle of her answer, he "slammed his hand down on the table" and said in "firm" voice, "Let me speak." She states that he has not repeated this behavior to her, and she has not heard of him acting in a similar manner to anyone else. She reports a good working relationship with Mr. Martin.

Ms. Roebuck is the Human Resources Manager. She states that Mr. Martin put her on the Leadership Team in February 2015, about six months after she started. She reports a good working relationship with Mr. Martin.

Councilmember Brent Lenssen states that he met with Ms. Peterson at her request. She told him that Mr. Martin had written a letter to her file two weeks after he was hired because she would not leave at 5:00 p.m., and said she was incompetent. He states that she described Mr. Martin's tone as "abusive."

Councilmember Tobey Gelder states that former City Administrator Bill Verwolf did not treat Ms. Peterson well and "excluded her from everything." He states that Mr. Martin

“excluded her from meetings.” He states that Ms. Peterson told him that Mr. Martin came to her office at 5:15 p.m. and said that she was insubordinate because she was working past 5:00 p.m. Ms. Peterson told him that Mr. Martin would come in at 3:00 p.m. and give her a task that she was to give him at 8 a.m. the next day. He states that she told him that this backed up her workload, and she needed to stay after 5:00 p.m.

Councilmember Jerry Kuiken states that Ms. Peterson told him that Mr. Martin told her to go home at 5:00 p.m., and she thought he was joking, but he was serious, and that upset her.

Factual Findings and Conclusion.

1. The facts do not substantiate that Mr. Martin treated Ms. Peterson less favorably than men or younger employees.

City policy prohibits discrimination because of gender or age. The facts do not substantiate that Mr. Martin treated Ms. Peterson differently because she was a woman or because of her age.

The facts show that Mr. Martin told Ms. Peterson to go home at 5:00 p.m. on several occasions. The facts do not support a finding, however, that he wrote her up for insubordination for staying after 5:00 p.m. He denies that he did, there is no disciplinary letter in her personnel file for failing to go home at 5:00 p.m., and her February 2014 performance evaluation makes no mention of this issue.

The facts do not show that Mr. Martin told Ms. Peterson to go home at 5:00 p.m. because she was female. The evidence shows that Mr. Martin told men and women to go home at 5:00 p.m., but that men and women also stayed after 5:00 p.m. There is no evidence that Ms. Peterson’s age played any role in his instruction to her to leave at 5:00 p.m.

The facts do not substantiate Ms. Peterson’s claims that Mr. Martin was dismissive of her work, in a way that he was not of males. No evidence was found regarding her statement that Mr. Martin accepted her work only after male employees verified it. The facts show that Mr. Martin found material inaccuracies in her comparative cost-of-living report, as detailed in his supervisor notes. The facts also show that Mr. Martin and Ms. Peterson disagreed as to the approach to use in the I.T. interviews. There is no evidence that shows that Mr. Martin’s conduct was motivated by gender or age bias.

Mr. Martin’s disciplinary letter for insubordination is also performance-based. He and Ms. Peterson disagreed regarding whether her job duties included taking minutes at Council meetings. The April 2014 disciplinary letter addresses Ms. Peterson’s refusal to take minutes as requested and the manner in which she refused. The investigation did not discover any comparative situation, in which Mr. Martin treated a male differently. (Mr. Martin issued a corrective notice to a male director for insubordination, but for reasons other than refusing a direct instruction.) There is no evidence that links the disciplinary letter to Ms. Peterson’s age.

The facts also show that Mr. Martin's refusal to include Ms. Peterson on the Leadership Team is based on his assessment of her leadership skills, and not her gender or age. He placed her successor, a woman, on the Leadership Team. The facts show that Mr. Verwolf similarly excluded her from meetings, although Ms. Peterson reports a good working relationship with Mr. Verwolf.

2. The facts do not substantiate that Mr. Martin subjected Ms. Peterson to harassment and hostile treatment because of her gender and age.

City policy states that harassment is (1) conduct directed towards a person because of their gender or age that is unwelcome that (2) could reasonably be expected to alter the conditions of the victim's employment.

Looking at all of Ms. Peterson's allegations in their context, there is no factual basis to conclude that a hostile work environment existed. Mr. Martin did not call Ms. Peterson any ageist, sexist, or derogatory names. His comments that she lacked initiative, had no sense of humor, was not a team player, and needed to prove her worth to him, are on their face, gender-neutral and age-neutral terms. There is no fact that suggests that they are other than negative feedback about her job performance.

Ms. Peterson describes an intimidating incident in which Mr. Martin interrupted her by pounding his fist on the table and shouting "Let me speak!" Mr. Martin denies this happened. The facts show a similar incident occurred, but was not directed at Ms. Peterson. Employee F recounted an incident in which Mr. Martin interrupted her by hitting the table with his hand and stating "let me speak." Employee F states that Ms. Peterson was present at this meeting. It is possible, in fact, that both Employee F and Ms. Peterson are referencing the same meeting. No other interviewee described similar behavior. Furthermore, Ms. Peterson complained to the Mayor and two Councilmembers about Mr. Martin's conduct, but none of these witnesses recounted that she told them that Mr. Martin had slammed his fist on the table. If this incident did happen as alleged, it is an isolated event that did not alter the conditions of Ms. Peterson's employment.

Conclusion: The facts do not substantiate Ms. Peterson's gender and age discrimination allegations. Ms. Peterson's allegation that Mr. Martin required women, but not men, to leave at 5:00 p.m., is not substantiated. The facts show that Mr. Martin required both male and female employees to go home at 5:00 p.m., and that males and females also stayed after 5:00 p.m. The facts also show that Mr. Martin's discipline of Ms. Peterson, and his review of her work product, were performance-based. The facts also do not substantiate the claim that Mr. Martin harassed Ms. Peterson because of her gender and age. There is no evidence that Mr. Martin made any ageist or sexist comment or joke to or about Ms. Peterson, or engaged in any other offensive behavior towards her because of her gender or age.

B. TERESA CAMFIELD

Allegation: Mr. Martin discriminated against Ms. Camfield by treating her less favorably than males or younger employees, and by subjecting her to harassment and hostile treatment because of her gender and age.

Ms. Camfield's Allegation.

Ms. Camfield states that, within three weeks of starting at the City, Mr. Martin "chastised" her for setting up a meeting he had requested, bursting out with "I'm in charge!"³⁴ She took this as an indication that in his opinion, Ms. Camfield had overstepped her boundaries in setting up the meeting.

She states that, although Mr. Martin had just started at the City in August 2013, he wrote her up in October 2013 for alleged performance problems. She alleges that he accused her of hiding a budget deficit and told her that she did not know how to do her job, although she states that it was clear to her that Mr. Martin had not yet learned that the City's accounting practices differed from his previous employment and had confused the issues.

She states that Mr. Martin then humiliated her by contacting the Mayor of Ferndale to ask if their Finance Director (a male) could review her work. She states that he made the same request to the State Auditor's Office and also threatened to hire Deloitte & Touche to review her work. She alleges that he then transferred oversight of the Enterprise Funds to Public Works Director Steve Banham.

Ms. Camfield states that she spoke to Mayor Korthuis about this behavior but he told her that "I hired him and I have to stand by him." She also states that she asked Councilmembers for help dealing with the situation, and that some Councilmembers agreed that Mr. Martin seemed to be bullying her.

Ms. Camfield states that Mr. Martin assigned her additional work and then demanded that she complete it on an unrealistic time frame. She also states that he warned her not to work past 5:00 p.m. and yelled at other women if they did so, but allowed men to use their judgment as to whether they wanted to work past 5:00 p.m.

She states that Mr. Martin accused her of having poor communication skills. She asserts that, during meetings he would take "copious notes" and then read them back to her out of context. She claims she requested that a third party be present at the meetings, and then attempted to communicate by email only. She states that she spent an "inordinate amount of time" doing so, in order to be "extremely careful" to craft her emails so she would not say something he could "twist and use against her later."

³⁴ Unless otherwise indicated, the quoted words or phrases are from Ms. Camfield's Notice of Claim, at pages 2-4.

She states that, as a result of her work situation, she experienced frequent flare-ups of a serious medical condition that she previously had under control. As a result, she claims that she gave notice in May 2014, two years earlier than when she had intended to retire.

Mr. Martin's Response.

Mr. Martin denies that he stated to Ms. Camfield, "I'm in charge!" He recalls a meeting in which Ms. Camfield stated that there were competing priorities, and that he told her what needed to be done.³⁵

Mr. Martin states that the 2013 budget message contained two contradictory statements: first, that the City was drawing down its reserves to pay for expenditures, and second, that it intended to hire a police officer from savings. When questioned by Ms. Camfield, he states that she would say one thing – the City is going into the red – and then state another – that she did not know anything about the budget because it was Mr. Verwolf's responsibility. There was "no doubt" in his mind that there was a deficit in October 2013. He told Ms. Camfield that the City would have to borrow \$450,000 to fund the balance.³⁶

He states that he has budgeting experience but was unfamiliar with the City's accounting practices. He asked Ms. Camfield to contact the City of Ferndale's Finance Director to see how he was handling that city's budget, because Ferndale uses the same accounting practices as Lynden. He also asked the State Auditor's Office to look at the budget, to get an "educated set of eyes on it." He denies that he asked or threatened to ask Deloitte & Touche to review the budget.

³⁵ Mr. Martin provided his supervisor notes for Ms. Camfield. The "8/8" [8/28/13] entry references a meeting that Mr. Martin requested with Ms. Camfield, Ms. Peterson, and Employee F. The entry reads that he saw that the meeting had not been scheduled and he requested that Ms. Peterson schedule it again. She told him that Ms. Camfield had called and said they were too busy. Mr. Martin then sent an email telling Ms. Camfield to reprioritize. The next entry, for "8/8 p.m." [8/28/13], states that Ms. Camfield came to talk about the email. They had a 20-minute meeting, and Mr. Martin wrote in the notes, "the gist of which I told her that 1) I do run the organization, which included her department. I think that surprised her and she said, 'That's good to know' but later seemed to acquiesce ('you have to answer to the Mayor...'")

³⁶ Mr. Martin's supervisor notes contain an entry for 10/17/13, in which he stated that the general fund appears "to be careening toward the red, both in 2013 and in 2014" and that Ms. Camfield appears not to have known about it. The 11/5/13 entry states that Mr. Martin wrote and delivered a letter to Ms. Camfield regarding the "budget debacle," which she refused to sign.

Mr. Martin also provided his task notes on the budget. These notes contain a 10/24/13 entry regarding his assessment of "significant structural deficit" and that "the Council feels blindsided, Scott likewise." The 11/22/13 entry states that he spoke with the State Auditor's Office. The 12/10/13 entry states that the State Auditor's Office assigned Sherrie Ard to review the budget.

He did not intend the October 30, 2013 disciplinary letter as a corrective action, although it may have included language “up to and include termination.”³⁷ His purpose was to put in writing what was wrong with her performance and the steps she needed to take to correct it.

Other Witnesses and Documents.

Mayor Korthuis states that Ms. Camfield performed “the mechanics” of the finance department, but Mr. Verwolf did the forecasting and planning. Councilmember Kuiken also states that Mr. Verwolf “loved” to do budgeting, and Ms. Camfield relied upon him to do it. When Mr. Verwolf retired, she was forced to do budgeting and was “unfamiliar with it.” Mr. Martin states in his February 2016 performance evaluation of Ms. Camfield that she “commented that my style is quite different from that of my predecessor in that she is more involved in various activities, including budgeting, that he held close.”

The Mayor states that in the fall of 2013, he learned about a budget shortfall. He recalls being very surprised that the City is “going to be short” because Mr. Verwolf had told him that there would be a \$200,000 budget surplus. He states he told Ms. Camfield that, as the Finance Director, she was supposed to know this information. The City ended 2013 “just fine,” because of a second-half sales tax, “which they know tracks higher,” but Ms. Camfield did not provide this information.

The Mayor states that Ms. Camfield spoke to him about Mr. Martin’s disciplinary letter. He may have told her she was the Finance Director and the letter was about her not doing her job functions. He states that he spoke with Mr. Martin after this conference with Ms. Camfield, and he decided that the action was still appropriate.

Councilmember Gelder was chair of the Finance Committee in 2009, for five or six years. He states that he was concerned about the City’s financial reports, including the City’s borrowing from the Enterprise Funds. When Mr. Martin became City Administrator, he stepped back from monitoring Ms. Camfield. In October 2013, Mr. Martin announced that the City was “\$450,000 in the hole” and that Ms. Camfield had not correctly informed him of this deficit. Mr. Gelder states that he looked at the 2013 budget and compared it to the 2006 to 2015 budgets. He

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[REDACTED]

states that there was nothing “weird” about 2013, because the City is “in the red” seven months of the year.

Police Chief Foster states that Ms. Camfield told him that Mr. Martin did not understand finance, and asked her to do things that she did not want to do. He states that there were three big expenditures in 2013, and the City overspent revenues at some point in the year. He states that Ms. Camfield told him that the City was down to about several hundred thousand dollars. Chief Foster states that he told Mr. Martin that this had happened before, but that Mr. Martin makes “snap decisions” based on the information available.

Mr. Banham, Public Works Director, states that he took over the Enterprise Funds after Ms. Camfield resigned.

Councilmember Lenssen states that in September or October 2013, he met with Ms. Camfield. She told him that Mr. Martin bullied her, mistreated her, and wrote a letter to her file saying she was incompetent. He wrote a letter to the Mayor and Mr. Martin about this.

The Mayor conducted an exit interview of Ms. Camfield. His interview notes state that [REDACTED]” He recalls that she explained to him that Mr. Martin continually asked her for information because he had come from a big city, and assumed that she had people who could get her the information that he wanted. He does not recall if this was what she meant as “bullying and harassment.”³⁸

Ms. Camfield’s sole performance evaluation by Mr. Martin is part of her personnel file.

[REDACTED]

³⁸ The notes also contain a list of bulleted items in the left margin, including:

- Selected groups/women over 40
- Urgency on odd projects [emphasis in original]
- Investigative reporter
- Very little give or take
- “This is how he did it in Burien”

The Mayor states that these items were Ms. Camfield’s issues with Mr. Martin’s management style. He does not know what Ms. Camfield meant by “women over 40.” He states that he reviewed the exit interview with Human Resources Manager Ms. Roebuck but does not recall discussing this particular entry with her.

Factual Findings and Conclusion.

1. The facts do not substantiate that Mr. Martin treated Ms. Camfield less favorably than men or younger employees.

City policy prohibits discrimination because of gender or age. The facts do not show that Mr. Martin treated Ms. Camfield differently because she was a woman, and/or over 40 years old.

The facts do not substantiate that Mr. Martin disciplined Ms. Camfield because of her gender or age. Mr. Martin's discipline of Ms. Camfield for "substandard performance" was performance-based. The facts show that Mr. Martin and the Mayor believed that the City faced a serious budget deficit, and that Ms. Camfield failed to alert them to it. Ms. Camfield believes that Mr. Martin did not understand finance or the City's accounting practices and therefore confused the issues, but if so, Mr. Martin's discipline is unrelated to her gender or age. It is not necessary for purposes of this investigation to resolve whether he correctly concluded that a deficit existed. The facts show that he did not discipline Ms. Camfield because of her gender or age, but because he believed that a deficit existed and she failed to alert him and the Council.

Ms. Camfield claims that Mr. Martin thereafter submitted her work to males for review. The facts show that he submitted, or asked her to submit, the budget to external reviewers: the State Auditor's Office and the City of Ferndale Finance Director. The facts do not show that he asked for an outside budget review because he wanted male reviewers. (The Ferndale Finance director was male; the auditor assigned by the State Auditor's Office was female.) Rather, the facts show that he was not familiar with the City's accounting practices; did not trust Ms. Camfield; and wanted "another set of eyes" on the budget. For the same reason – lack of trust in Ms. Camfield's performance – he transferred the Enterprise Funds to the Public Works director. The investigation did not reveal facts that showed his lack of trust was because she was female or a certain age, rather than his assessment of substandard performance.

Ms. Camfield's claim that Mr. Martin required only women to go home at 5:00 p.m. is not supported by the facts. Witnesses observed that Mr. Martin required men and women to leave at 5:00 p.m., and that men and women also stayed past 5:00 p.m. There is no evidence that he required employees over 40 years of age to go home at 5:00 p.m. or otherwise discriminated against Ms. Camfield because of her age.

2. The facts do not substantiate that Mr. Martin subjected Ms. Camfield to harassment and hostile treatment because of her gender and age.

City policy states that harassment is (1) conduct directed towards a person because of their gender or age that is unwelcome that (2) could reasonably be expected to alter the conditions of the victim's employment.

Looking at all of Ms. Camfield's allegations in their context, there is no factual basis to conclude that a hostile work environment existed. Mr. Martin did not make ageist or sexist comments, or subject Ms. Camfield to ridicule or offensive acts because she was a woman or a

certain age. She claims he burst out “I am in charge,” but if so, this is a gender and age-neutral comment. She states that she avoided in-person meetings with Mr. Martin because he took “copious notes” and then “twisted” what she said back to her. Mr. Martin was not familiar with the City’s accounting practices, and it may be that that was the reason for his questions. The investigation did not discover facts that showed this complained-of conduct was because she was female and 60 years old. The evidence also shows that she requested more frequent meetings with Mr. Martin.

Conclusion. The facts do not substantiate Ms. Camfield’s gender and age discrimination allegations. The facts show that Mr. Martin’s discipline of Ms. Camfield and his request for external review of the City budget were performance-based. The facts also do not substantiate the claim that Mr. Martin harassed Ms. Camfield because of her gender or age. There is no evidence that Mr. Martin made any ageist or sexist comment or joke to or about Ms. Camfield, or engaged in any other offensive behavior towards her because of her gender or age.

C. AMY HARKSELL

Allegation 1: Mr. Martin discriminated against Ms. Harksell by treating her less favorably than males or younger employees, and subjecting her to harassment and hostile treatment because of her gender and age.

Ms. Harksell’s Allegations.

Ms. Harksell states that at an October 29, 2013 Leadership Team meeting, Mr. Martin told the directors that Noreen was a girl at his school who he “hated” because she was “too smart” and “had all the answers.”³⁹ She states that he thereafter repeatedly called her “Noreen.” She also states that, at one of his first meetings with the City directors, Mr. Martin told everyone that they had two choices: they could either “lick the boot or wear the boot.”

Ms. Harksell states that, in March 2015, she first complained about her work environment to the Mayor, and told him that Mr. Martin stated at a Leadership Team meeting that employees could have received a bigger cost of living raise, if the City did not have to do “Amy’s Plan.”

She also states that Mr. Martin would at times ignore her in passing in the hall, and at Leadership Team meetings. According to Ms. Harksell, Mr. Martin laughed and joked with the Public Works Director, and would enthusiastically greet the Police and Fire Chiefs. However, she states that he barely acknowledged her and Finance Director Salminen.

Ms. Harksell states that she complained to the outside consultant, Ms. Russell, about the way Mr. Martin treated female department heads. Thereafter, Ms. Harksell states that Mr.

³⁹ Ms. Harksell declined an interview with this investigator. Her allegations and statements set out here are based on her interview with Mr. Key and her Notice of Claim. While Ms. Harksell’s attorney directed this investigator to Ms. Russell’s performance evaluation report of Mr. Martin as well, that report contains only anonymous feedback, none of which references gender discrimination.

Martin “shunned” her at Leadership Team meetings, and at bi-weekly meetings, would “shut down” on one topic and she could not get through to him on any other topics.

According to Ms. Harksell, Mr. Martin created an artificial situation by forcing Ms. Harksell to apologize to Councilmember Bode because of something that she did not agree had happened. Ms. Harksell states that, if she had thought Mr. Bode was upset after their meeting in her office, she would have gone to him immediately to apologize.

Ms. Harksell states that Mr. Martin required her to provide a public apology to Mr. Bode, in the Mayor’s presence. She states that she had her notes in her hand. She apologized to both Mr. Bode and the Mayor. She then tore up her notes and said, “This concludes my obligation to Mr. Martin.” She states that Mr. Bode and the Mayor accepted her apology. She states that she was shaking, and close to crying, because her relationship with the Mayor and Mr. Bode had always been open and upfront.

Ms. Harksell states that on at least three occasions (*e.g.*, Community Development Block Grants, the Transportation Plan, and the budget for that plan), Mr. Martin rejected her proposals or explanations. She states she asked Mr. Banham to intercede. Once he did so, “Mr. Martin accepted Ms. Harksell’s ideas.” She states that, in March and April 2015, she asked Mr. Banham to explain to Mr. Martin why the Transportation Plan was necessary. She states that, after he did so, the funding was provided. In September 2015, she needed to carry over funds from the 2015 budget into the 2016 budget to complete the Transportation Plan. Mr. Martin refused this request. She states that, on her request, Mr. Banham again spoke to Mr. Martin, and thereafter, the funds were allowed in the budget.

Ms. Harksell also states that in February 2016, Mr. Martin brought Mr. Banham onto a second interview panel for a Planning Department position, although she had already provided Ms. Roebuck with a clear ranking of the candidates after the first interview panel. She states that Mr. Martin “deliberately overrode” her hiring decision for a new hire for her department and scheduled a second interview without consulting her. She states that Mr. Martin determined that he, Mr. Banham, and the Mayor would sit on the panel with Ms. Harksell. According to Ms. Harksell, Mr. Martin had only previously participated in a second interview with Assistant Fire Chief Spinner, and never brought another department head onto an interview panel.⁴⁰

Mr. Martin’s Response.

Mr. Martin states that he did tell a story at a Leadership Team meeting about Noreen, the smartest girl in his Catholic grade school class. The nun put the smart students in the front of the

⁴⁰ Ms. Harksell provided to Mr. Key an email exchange with Ms. Roebuck, re: interview confirmation, on February 22, 2016. In that exchange, Ms. Harksell asked Ms. Roebuck to confirm that the interview group included Mr. Banham, Mr. Martin and the Mayor. Ms. Roebuck responded that the Mayor will not participate. Ms. Harksell then requested Ms. Roebuck to tell her when in the last year the City Administrator had been involved in a second interview or a director from another department has been asked to participate. Handwritten notations state that there was no response.

class, and Mr. Martin sat in the back, with the “dumb kids.” He recalls calling Amy “Noreen” once at a Leadership Team meeting. He meant the story to be self-deprecating, because he was the “dumb kid.” He states he spoke to Ms. Harksell soon thereafter, and she laughed about it.

Mr. Martin states that he has disciplined three directors – two men and one woman. He gave a male acting director a verbal warning during an investigation into the acting director’s conduct, for asking subordinates about their interviews. He gave another male director a verbal warning for an inappropriate email that contained a vaguely threatening comment. He states that he also disciplined Ms. Harksell because of her interaction with Councilmember Bode.

Mr. Martin states that Mr. Bode came to his office and said, “Amy put me in my place.” Mr. Martin states that the next day, he spoke to Ms. Harksell and she recounted the same events as Mr. Bode. He states that she told him the mayor should have given her a “heads up” before the Council meeting that Mr. Bode was the new Community Development Committee Chair. Mr. Martin states that he told her, “You understand that you were rude and disrespectful towards a Councilmember.” He states that Ms. Harksell’s response was that Mr. Bode was a “micro-manager,” and that she did not seem to understand that “her behavior was a problem.”

On February 2, 2016, Mr. Martin gave Ms. Harksell a verbal warning for her conduct with Mr. Bode. He states that this was the first reprimand/disciplinary action she had received. He states that he instructed her to apologize to Mr. Bode with the Mayor present. The next day, after her scheduled apology, he states that he went to the Mayor’s office, and both the Mayor and Mr. Bode told him that Ms. Harksell had ripped up the apology and “stomped out.”

Mr. Martin states that he met with Ms. Harksell the following Monday. He states that she told him that she had folded the apology, tore it, crumpled it and said she had now complied with Mr. Martin’s instructions.

Regarding the transportation plan, Mr. Martin states that Ms. Harksell sent an email to him on September 11, 2013, asking for \$40,000 for the transportation plan. That amount was included in the 2014 budget. According to Mr. Martin, Ms. Harksell was supposed to spend it, but “it just sat there.”⁴¹ He states that at the end of 2014, she wanted \$75,000 for the 2015 budget. Mr. Martin thought she could add \$35,000 to the \$40,000 because he thought a contract had been signed with the transportation consultant and thus it would roll over into the next budget. He states that Ms. Salminen or Ms. Harksell told him that the money would have to be entirely re-allocated. According to Mr. Martin, the money was then included in the budget. Mr. Martin states that Mr. Banham was not involved in the transportation plan and there is no basis for his intercession.

⁴¹ Mr. Martin’s supervisor notes for Ms. Harksell contain an entry dated 4/15/2015 regarding an agenda item by Ms. Harksell at the Community Development Meeting, requesting \$80,000 to hire [a consulting firm] to complete the traffic element of the Comprehensive plan. The entry states that she had not mentioned this to the Mayor or Mr. Martin; it was a very significant request for money after the budget had been adopted; and “she requested and received \$40K in the 2014 [budget] for this purpose but never did the task, now the cost is \$80K.”

Regarding the interview for a part-time planner, Mr. Martin states that Ms. Roebuck told him that one of the candidates, a woman, was an outstanding candidate. He states that there are second interviews for mid-level positions if there is no clear winner from the first interview. As City Administrator, he does not get involved in mid-level interviews. He states that the Mayor was concerned about a “bad situation” in the Planning department and that Ms. Roebuck was concerned that Ms. Harksell would not hire the woman, the stronger candidate. He states that the Mayor did not want to sit on the second interview panel. At about the same time, the Public Works department was interviewing for a new GIS Technician. He states that Ms. Harksell was asked to sit on the panel for a new GIS Technician with Mr. Banham, but withdrew when she found out that he would be sitting on her panel to select a part-time planner.

Other Witnesses and Documents.

Referring to Ms. Harksell as “Noreen.” Mr. Banham stated that he heard Mr. Martin call Ms. Harksell “Noreen” once or twice, at a Leadership Team meeting early in Mr. Martin’s employment. Ms. Harksell was “particularly on top of” an assignment given to all directors, and had impressed Mr. Martin. Mr. Martin made a comment that she reminded him of “Noreen.” He did not observe that this irritated Ms. Harksell. Mr. Banham understood the comment to be self-deprecating, in that Mr. Martin was not as smart as Noreen.

Police Chief Foster heard Mr. Martin refer to Ms. Harksell as “Noreen” on two, maybe three occasions. He heard this early on in Mr. Martin’s employment, when the Leadership Team was working on creation of the City’s values. Mr. Martin stated that there was a girl in his school named Noreen who always had the right answer and always had her hand up. The Catholic sister would say, “I know, Noreen, but let’s let Michael answer that one.” Chief Foster states that Mr. Martin compared Ms. Harksell to Noreen because she always came up with an opinion. Ms. Harksell told the Chief during this time period that at least Mr. Martin does not call him Noreen. He did not think she appreciated the name.

Treatment at the Leadership Team Meetings. Parks & Recreation Director Vern Meenderinck and Fire Chief Gary Baar stated that they did not observe Mr. Martin treating Ms. Harksell differently from the other directors at Leadership Team meetings. Public Works Director Steve Banham is aware of the struggle between Mr. Martin and Ms. Salminen, and Mr. Martin and Ms. Harksell, but has not seen this manifested in the Leadership Team meetings, other than reduced participation by Ms. Salminen and Ms. Harksell. The Police Chief only observed the “Noreen” comments, described above. Ms. Roebuck states that the women Leadership Team members participate at meetings and the men listen to them.

The February 2016 Discipline for Rudeness. The Mayor states that at the Council meeting on February 1, 2016, he announced new Council committee assignments, and assigned Councilmember Bode as Chair of the Community Development Committee. He states that Ms. Harksell approached him later and was “visibly upset with me” because of this reassignment. Councilman DeValois states that he observed Ms. Harksell approach the Mayor before an

executive session and in a “hostile” way say “how can you do this to me?” Councilman Kuiken observed Ms. Harksell tell the Mayor “really, really?” after learning of the committee reassignments.

Councilmember Bode states that the next day, at about 11:00 a.m., he went to Ms. Harksell’s office to ask her for Community Development Committee minutes. He states that Ms. Harksell told him that she did not have time to do the minutes because she was short-staffed; his assignment was not a good fit; she uses the committee to get the resources needed for the department; he does not support her; and he was a micro-manager. He states that he responded that he did not have time to micro-manage; the committee’s purpose was to serve the community; and he was just there for the meeting minutes. He then left Ms. Harksell’s office.

Two employees observed Mr. Bode and Ms. Harksell’s interaction. Employee G states that she observed Ms. Harksell come out of her office, and tell Mr. Bode something like, “I am not thrilled that you are the chair of my board” and that “it is known that you meddle where you do not belong.” Employee G states that Mr. Bode responded that he was just there for the meeting minutes, and Mr. Bode and Ms. Harksell then went into Ms. Harksell’s office. Employee G states that when Mr. Bode left Ms. Harksell’s office, he turned to her and made a gesture, holding up both of his arms. She states she understood this gesture to mean, “what just happened?” She states that the entire incident, from the time Mr. Bode arrived to the time he left, was about 15 to 20 minutes.

Employee A states that he went to the Planning department, and heard Ms. Harksell speaking in a loud, angry voice, but could not hear what was said. He also heard Mr. Bode’s voice, but does not know if he was angry. Employee A states that Mr. Bode’s face was red when he left Ms. Harksell’s office.

Mr. Bode states that at 1:00 p.m. he told Mr. Martin what had happened. The next day, Mr. Martin asked if he could be available on Thursday, February 4, at 4:00 p.m. at the Mayor’s office, so that Ms. Harksell could apologize.⁴² Mr. Bode states that Mr. Martin told him that he (Mr. Martin) would not be there, because this concerned Mr. Bode and the Mayor, and Mr. Martin’s presence would be embarrassing to Ms. Harksell.

The Mayor and Mr. Bode state that the next day, Ms. Harksell came to the Mayor’s office to apologize. Mr. Bode states that after she read her apology, he thanked her and stated that “we

⁴² The February 4, 2016 “Verbal Warning – Report of Conference,” signed by Mr. Martin and Ms. Harksell, required Ms. Harksell to apologize to Mr. Bode in the Mayor’s presence on February 5. The Attachment to the Verbal Warning describes the interaction between Mr. Bode and Ms. Harksell.

Later on February 4, 2016, Ms. Harksell provided to Human Resources her typewritten statement “regarding Council Committee changes and meetings with City Councilmember Gary Bode.” Her statement recounted the February 1, 2016 City Council meeting and the February 2, 2016 meeting with Mr. Bode. She stated that at the end of that meeting, “Councilor Bode did not indicate, by word or deed, that I had in any way demeaned or insulted him.”

just need to move on.” He states that Ms. Harksell then “gritted her teeth,” took the paper, ripped it, wadded it up, and stated that she had now done what Mr. Martin asked her to do, and she would be in her office. The Mayor states that Ms. Harksell read the apology, said “I have now fulfilled my duties to Mr. Martin,” tore the paper in half, and crumpled it into her pockets. He states that she was crying.

Both the Mayor and Mr. Bode state that Mr. Martin then came in, and they told him what happened. The Mayor states that Mr. Martin said this behavior was entirely unacceptable, and “negates everything” in the verbal warning. He states that the verbal warning was low-level, designed so that Ms. Harksell could apologize and move on.

The Mayor states that on February 8, 2016, Mr. Martin gave a written reprimand to Ms. Harksell. He states that Ms. Harksell responded that the “problem description section” went beyond the facts. He states that Mr. Martin substituted the written reprimand with one dated February 22, 2016, which removed this language.⁴³

Similar Corrective Actions by Mr. Martin. Review of the personnel files of Mr. Martin’s direct reports show that he has issued two corrective action notices for insubordination to directors: the February 22, 2016 written reprimand to Ms. Harksell, regarding her apology, and a June 6, 2016 verbal warning to a male director for a comment in an e-mail. He also issued a corrective action notice to an Acting Director in December 2015, for discussing confidential personnel matters about an investigation (of which he was the subject) with subordinates.

Councilman Burns states that he had not observed any interaction between City staff and the Council that he would consider rude during his 18 years on the Council. Councilman DeValois states that the only interaction he observed between City staff and the Council that caused him concern, during his 13 years on the Council, was Ms. Harksell’s conduct in confronting the Mayor. Councilman Kuiken has been on the Council for 29 years; the only incident he observed was Ms. Harksell’s interaction with the Mayor regarding the committee reassignments. Councilman Laninga has served for 19 years; he has not observed any rude behavior between staff and the Council. Councilmember Lenssen states that, two years ago in the spring, he met with Mr. Martin in Mr. Martin’s office, and Mr. Martin became hostile and told him to “fuck off.” Mr. Martin denies ever cursing at Councilmember Lenssen. The Mayor states that a few years ago, Councilmember Lenssen told him that he had had an inappropriate dialogue with Mr. Martin, and that Mr. Martin cursed at him. He does not remember the purpose for the conversation or what was discussed. He thinks he spoke to Mr. Martin about this.

⁴³ Ms. Harksell wrote a memo to Mr. Martin dated February 12, 2016, re: Written reprimand. Ms. Harksell stated in the memo that the subjective commentary about her behavior is insulting and requests that it be removed from the reprimand. She also stated that, in her discussion with both the Mayor and Councilmember Bode, she accepted responsibility for her actions, and she believes that they understand that it was out of character and would not be repeated. The February 22, 2016 “Written Reprimand” required Ms. Harksell to (1) be placed on a two-day unpaid administrative leave; (2) attend and complete an interpersonal training of the City’s choosing; and (3) maintain a professional demeanor.

Mr. Banham and the Transportation Plan. Mr. Banham states that in June 2015, Ms. Harksell told him that the transportation plan required additional funding. She asked him to weigh in with Mr. Martin on the importance of the transportation plan. She did not tell him why she wanted him to do so, but his sense was that she thought he had a better rapport with Mr. Martin. Mr. Banham states that he spoke to Mr. Martin but felt that the decision to approve the funding had already been made. Mr. Banham recalls Ms. Harksell telling him that “you get along better with [Mr. Martin] than I do.” He believes that this is the result of a difference in personality. Mr. Banham states that he spent 20 years in the Navy.⁴⁴ He is content with expressing his opinion and then letting the decision-makers make their decision. His observation is that Mr. Harksell is not as willing to accept decisions by leadership that she does not like.

Employee H states that about a year ago, she was present when Ms. Harksell asked Mr. Banham to talk to Mr. Martin about the Transportation plan funds. She remembers her telling Mr. Banham that “he will listen to you.” The money ended up in the budget. This witness states that Mr. Banham has a good working relationship with Mr. Martin, “so if he says something, Mr. Martin is more apt to listen.”

The Planner Interview. Ms. Roebuck states that she sat on the first panel interview with Ms. Harksell and Employee G. Ms. Roebuck preferred the female candidate, who had previous planning experience. Ms. Harksell and Employee G preferred the male candidate, who did not have planning experience but who was a former planning commissioner. At a lunch to debrief the interviews, Ms. Roebuck recalls that Ms. Harksell told her that she felt threatened by the female applicant’s abilities. Ms. Roebuck believed that the female candidate was the better choice and brought this to Mr. Martin and the Mayor’s attention. She states that Mr. Martin and the Mayor decided to have a second interview. Ms. Roebuck states that she planned to have Ms. Harksell, Mr. Martin and the Mayor on the panel. She states that the Mayor could not attend so Ms. Roebuck asked Mr. Banham. Ms. Roebuck states that Ms. Harksell had been on an interview panel for a Public Works position, but withdrew when she learned that Mr. Banham was to be on the Planning position panel.⁴⁵

Mr. Banham states that he was asked to be on the second interview panel because there was concern over the recommendation in the first interview. After seeing the resumes, he states that “there was no question that the more qualified person was not selected in the first interview,” and there was no explanation as to why. He thinks that Ms. Roebuck asked him to be on the second interview panel.

⁴⁴ Ms. Harksell states that Mr. Banham told her he “gets along fine” with Mr. Martin because he retired from the Navy and was used to a chain of command.

⁴⁵ An email from Ms. Roebuck to Mr. Banham set out steps for hiring a GIS Technician for the Public Works Department. The panel interview was to include Mr. Banham, Ms. Roebuck, Ms. Harksell and Mr. Sandal. A February 19, 2016 email from Ms. Roebuck to Ms. Harksell and other panel members asked them to attend a working lunch following the interviews. On February 22, 2016, Ms. Harksell responded, stating that she could not participate in the interviews.

Ms. Harksell's Written Complaint. On March 2, 2013, Ms. Harksell filed a written complaint of gender discrimination with Mayor Korthuis. The letter provides examples of Mr. Martin's allegedly discriminatory behavior: (1) Ms. Harksell's request to Mr. Banham to intercede in April 2015 regarding funding of the Transportation Plan; (2) her later request to Mr. Banham to fund the transportation budget; (3) Mr. Martin's decision to have a second interview for the part-time planning position in mid-February 2016, despite Ms. Harksell's decision to select a candidate after the first interview, and Ms. Harksell's discovery on the day of the second interview that Mr. Banham was on the panel; (4) Ms. Harksell's gender discrimination complaint to Ms. Russell, and Mr. Martin's subsequent behavior towards her; and (5) Mr. Martin's discipline for the interaction with Mr. Bode.

Factual Findings and Conclusion.

1. The facts do not substantiate that Mr. Martin treated Ms. Harksell less favorably than males, or younger employees.

City policy prohibits discrimination because of gender or age. The facts do not substantiate that Mr. Martin treated Ms. Harksell differently because she was a woman or because of her age.

The facts show that Mr. Martin disciplined Ms. Harksell for rudeness and insubordination. Witnesses observed the behavior for which she was disciplined, and her own statement is largely consistent with these witnesses' observations.

The facts do not show that Mr. Martin treated the male directors preferentially in terms of discipline. Mr. Martin disciplined one other director, a male, for insubordination for an inappropriate comment in an email. There is no evidence that male directors raised their voices, used foul language or insulted Councilmembers or staff. Councilmembers state that the only incident of such misconduct by a director was Ms. Harksell's behavior in 2016. Councilmember Lenssen's statement that Mr. Martin used foul language in speaking to him two years ago does not inform the question of whether Mr. Martin treated males more favorably than females in terms of discipline.⁴⁶

The facts do not substantiate that Mr. Martin treated Ms. Harksell less favorably than males. Ms. Harksell alleges three incidents. Twice, in 2015, Ms. Harksell asked Mr. Banham to speak to Mr. Martin about transportation plan funding, because he had "better rapport" with Mr. Martin. The facts show that Mr. Banham's personality and attitude towards authority are the reason for that rapport, and not his gender. The facts are also insufficient to show that Mr. Banham's intercession was the reason Mr. Martin approved the funding. The third incident involved the planner interview in February 2016. Mr. Martin requested a second interview, rather than accept Ms. Harksell's choice after the first interview. The facts show that this was

⁴⁶ Mr. Martin is Ms. Harksell's supervisor, not her peer, and it is not necessary for purposes of this investigation to resolve the credibility issue regarding whether Mr. Martin acted in the manner alleged by Mr. Lenssen.

performance-based, and regarded selection of the best candidate. There are no facts that show Mr. Martin's request to schedule a second interview was because of Ms. Harksell's gender or age. Mr. Banham's presence on the second interview panel is also not indicative of disparate treatment, particularly given that Ms. Harksell had been asked to sit on a panel to hire for a position in Mr. Banham's department.

There is no evidence of age discrimination. Ms. Harksell was the youngest of the six directors, and the only director 40 to 50 years old. There are no facts that show that a younger person was treated more favorably than Ms. Harksell.

2. The facts do not substantiate that Mr. Martin subjected Ms. Harksell to harassment and hostile treatment because of her gender and age.

City policy states that harassment is (1) conduct directed towards a person because of their gender or age that is unwelcome that (2) could reasonably be expected to alter the conditions of the victim's employment.

The facts do not substantiate a finding of harassment or creation of a hostile work environment. Mr. Martin's use of the name "Noreen" to refer to Ms. Harksell was based on her gender – it is a female name. It is not, however, on its face an offensive sexist term. Mr. Martin claims it was self-deprecating; Ms. Harksell claims it showed he hated her because she was smart. It is not necessary to resolve this factual issue because this is a stray comment, made three years ago on two or three occasions. Mr. Martin did not use any sexist, ageist, or other offensive terms about or to Ms. Harksell or subject her to humiliation or ridicule because of her gender or age. The "lick the boot" comment is not related to age or gender because Mr. Martin made this statement to two mixed gender groups three years ago. The only other allegations relate to ignoring Ms. Harksell in the hallway, and not responding to her at Leadership Team meetings. The other directors did not observe that Mr. Martin treated Ms. Harksell differently at Leadership Team meetings (other than calling her "Noreen"). Moreover, neither is the type of severe or pervasive offensive act that would alter the terms of her employment.

Conclusion. The facts do not substantiate Ms. Harksell's gender and age discrimination allegations. The facts show that Mr. Martin's discipline of Ms. Harksell for rudeness and insubordination was based on her conduct, and not her gender or age. There is no evidence that a male director or manager engaged in similar conduct as Ms. Harksell. The facts also do not substantiate that Mr. Martin disregarded Ms. Harksell's work requests or recommendations because she was female or over 40 years old. There is also no evidence to substantiate the allegation of harassment and a hostile work environment. Mr. Martin did not use any ageist, sexist or offensive terms, and his use of the name "Noreen" to refer to Ms. Harksell is a stray comment, made over two years ago.

Allegation 2: Mr. Martin and Mayor Korthuis retaliated against Ms. Harksell because of her complaints of Mr. Martin's gender and age discrimination.

- 1. Mr. Martin retaliated against Ms. Harksell because she participated in his performance review and raised complaints of gender discrimination.**

Ms. Harksell's Allegation.

Ms. Harksell states that she participated in Ms. Russell's performance evaluation of Mr. Martin in November 2015. She states that she was candid with Ms. Russell about the way Mr. Martin treated female department heads and complained about the way he treated her. Ms. Harksell states in her Notice of Claim that she believes that Ms. Russell shared this information with Mayor Korthuis. She states further that Mr. Martin's behavior in shunning her, and his subsequent discipline, was in retaliation for her complaint to Ms. Russell.

Witnesses and Documents.

Ms. Russell's Performance Evaluation Report to Mayor Korthuis summarizes 16 interviews with Councilmembers and Mr. Martin's direct reports. The report does not identify any interviewee by name, or attribute any comment or feedback to any interviewee. The Employee feedback section does not contain any comment regarding discriminatory acts by Mr. Martin, or his treatment of female employees. The Councilmember feedback contains one comment, "Some things have gone too far to fix. Concerned about a hostile work environment lawsuit."

The Mayor states that Ms. Russell sent him a cover letter and the Performance Evaluation Report. He states that she did not provide her interview notes or other work papers. He states that he discussed the report with Ms. Russell, and that she did not identify any statement made by any individual to her.

Ms. Russell confirms this, stating that she did not share names or the interview sheets with the Mayor. She states that the performance evaluation report does not identify who said what. She states that she did not find a common theme of gender discrimination, although certain people did feel that way. She states that she met twice with the Mayor to discuss the report, and "at no time" were the individual names of the interviewees discussed, nor any comments attributed to a specific person.

Factual Findings.

City policy prohibits retaliation against an employee for filing a complaint. The facts do not substantiate the allegation that Mr. Martin retaliated against Ms. Harksell because of her complaint to Ms. Russell. First, her complaint was anonymous, and the report does not contain any comment regarding gender discrimination (other than an unidentified Councilmember's statement about a "hostile work environment"). There is no evidence that suggests that Mr. Martin knew of Ms. Harksell's anonymous complaint to Ms. Russell. Second, Mr. Martin

disciplined Ms. Harksell for misconduct, witnessed by several City employees and a Councilmember. This investigation did not discover any factual basis for a link between Ms. Harksell's statements, and Mr. Martin's discipline or alleged behavior.

2. The City retaliated against Ms. Harksell by placing her on administrative leave during the Key investigation, and allowing Mr. Martin to remain at work.

Ms. Harksell's Allegation.

Ms. Harksell alleges that the Mayor retaliated against her for her gender and age discrimination complaints by expanding Mr. Key's investigation into allegations that Ms. Harksell created a hostile work environment, and placing her on paid leave for one day. Ms. Harksell states that the allegations against her are false.⁴⁷

Other Witnesses and Documents.

Employee G states that Mr. Key interviewed her in the City Hall conference room. She states that when she returned to her desk, Ms. Harksell and Ms. Salminen were present. She states that they asked how the interview went, and what type of questions Mr. Key asked. Employee G states that she was very uncomfortable because she did not want to be part of Ms. Salminen and Ms. Harksell's "issue with Mr. Martin." She states that Ms. Harksell continued to ask her about the interview. She states that Ms. Harksell made a comment that Employee G was not supporting her enough, and then Ms. Harksell left early for the day. Employee G states that this upset her, and that Employee A came to her desk and saw how upset she was. Fire Chief Gary Baar then came into her work area, saw that she was upset, and asked her what was wrong.

Employee A states that he came to talk to Employee G, and saw that she was "visibly distraught." He states that he went back to his office, and then went to report this to Mr. Martin.

Fire Chief Baar states that he was in City Hall. He states that he came to the counter, and saw that Employee G was crying. He states that he sat with her for about 20 minutes. He states that he then went to report this to Mr. Martin.⁴⁸

⁴⁷ Ms. Harksell stated in her letter of March 28, 2016 to the Mayor and Ms. Roebuck that the City is engaging in a pattern of retaliatory actions because of her contributions to Mr. Martin's earlier performance evaluation and her written complaint regarding his discrimination and hostile behavior. She also stated that false allegations had been made against her.

⁴⁸ In a March 25, 2016 memo from M. Martin to S. Korthuis re: Notes from staff conversation re: Amy Harksell, Mr. Martin stated that the Fire Chief told him that Employee G appeared upset; that Employee G told the Fire Chief that Ms. Harksell told her that she would like to hear about the interview with Mr. Key; and that Employee G responded that she did not have a problem with Mr. Martin. Mr. Martin reported in this memo that he spoke to Employee G, and she confirmed this information.

Employee H states that Mr. Key interviewed her. She states that Ms. Harksell approached her, and asked what her feeling was about the outcome of her interview. The witness stated that she told no one about this.⁴⁹

The Mayor states that he was in the City Administrator's office, when Employee G came in. He states that she told him and Mr. Martin that she was fearful because she had not "toed the line" when she told Ms. Harksell that she did not think "working for Mr. Martin was harassment." He states that he then told Ms. Harksell to take paid administrative leave on Friday.⁵⁰ He states that he did so because Employee G was "so fearful," and had told him she would not come in to work if Ms. Harksell did. On Monday, March 28, 2016, he gave Ms. Harksell a letter instructing her not to discuss the investigation with any City employee or engage in behavior that could reasonably be perceived as retaliatory.

Factual Findings.

The facts do not substantiate the allegation that the City's action in placing Ms. Harksell on a one-day paid leave was retaliatory. The facts show that Ms. Harksell had approached two employees about Mr. Key's investigation, and that one of these employees was fearful of Ms. Harksell. Ms. Harksell was not disciplined for inquiring about the Key investigation, nor was she suspended without pay. The Mayor had knowledge of employee allegations about Ms. Harksell's conduct, and based on this, expanded the investigation. There is no basis to conclude that his motive was retaliatory.

Conclusion. The facts do not substantiate a claim of retaliation. There is no evidence of a link between Mr. Martin's discipline of Ms. Harksell for rudeness and insubordination, and her prior anonymous complaint to outside consultant Ms. Russell. There is also no fact that shows that the City's decision to investigate employee complaints about Ms. Harksell's conduct was retaliatory. The facts also show that Ms. Harksell was not disciplined for inquiring about the Key investigation, but instead was told to refrain from any further such conduct.

⁴⁹ *March 28, 2016 memo from M. Martin to S. Korthuis, re: Notes from March 25 interview with [Employee H] re: Amy Harksell.* The City provided this document, in which Mr. Martin summarizes a conversation with Employee H. Employee H stated that Ms. Harksell approached her before Employee H's interview with Mr. Key, and stated "I can't tell you what to say" She then approached her afterwards and asked her how the interview went.

⁵⁰ *March 24, 2016 Email exchange between Mayor Korthuis and Amy Harksell.* Ms. Harksell attached this email thread to her letter of March 28, 2014 to Mayor Korthuis. In this email thread, on Thursday, March 24, the Mayor stated that he stopped by to talk about the Community Development committee, but Ms. Harksell had left for the day. He had decided that she should have the day off, in light of all that has been going in the last few days. Ms. Harksell, in response, asked if this was another day of administrative leave, and stated that she left because she was not feeling well.

VI. CONCLUSION

This investigation did not substantiate the allegations of discrimination, harassment, hostile work environment, or retaliation. The facts showed that Mr. Martin's discipline and management of the three Complainants were performance-based, and not because they were women or because of their age. The allegations of preferential male treatment are not sustained, either because men were treated the same or there were insufficient facts of a male being treated preferentially in the same circumstances in terms of discipline, working conditions, or some other employment action.

This investigation also did not substantiate Ms. Harksell's claims of retaliation. There is no evidence that Mr. Martin knew of Ms. Harksell's anonymous complaints to Ms. Russell, or that a retaliatory motive – rather than Ms. Harksell's conduct – was the reason she was disciplined in February 2016. There is also no factual basis to conclude that the City's decision to give Ms. Harksell one day's paid leave, following a fearful emotional report by an employee about Ms. Harksell's conduct, was retaliatory.

Enclosures