

1 CITY OF SPOKANE ETHICS COMMISSION

2  
3 THOMAS BASSLER,

4  
5 Complainant,

6  
7 v.

8  
9 BREEAN BEGGS,

10  
11 Respondent

EC-22-01

RESPONDENT'S MOTION TO  
DISMISS

12  
13 COMES NOW Breean Beggs, and petitions this Commission for an Order of Dismissal  
14 because Complainant has not offered any admissible facts that would ever justify a violation of the  
15 City of Spokane Ethics Code based on an email to City Council Members and Staff only, of shelter  
16 operator proposals that had previously been rejected by a vote of the Continuum of Care Board  
17 ("The CoC") and was no longer confidential.

18  
19 **I. Standard of Review**

20 In *Martin v. Gonzaga University*, 191 Wn.2d 712, 425 P.3d 837, 842 (2018) the Washington  
21 State Supreme Court set out the standard of review for a body to determine when a matter should go  
22 to hearing where conflicting evidence is weighed and determined; and, when it should be dismissed  
23 without hearing from live witnesses because no matter what how credible they may or may not be,  
24 there is an insufficient basis of admissible evidence in their testimony to find a legal violation.

25  
26  
27 The court should grant summary judgment when "the pleadings, affidavits, and  
28 depositions establish that there is no genuine issue as to any material fact and the  
29 moving party is entitled to judgment as a matter of law." *Id.*

¶ 14 "A nonmoving party in a summary judgment may not rely on speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value." *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wash.2d 1, 13, 721 P.2d 1 (1986). If Gonzaga University submits adequate affidavits, Martin must then "set forth specific facts that sufficiently rebut the moving party's contentions and disclose that a genuine issue as to a material fact exists." *Id.*

425 P.3d at 842. Like Mr. Martin, the Complainant in this matter may not rely on speculation or argumentative assertions and has not offered any admissible evidence that:

1. Any confidential information was disclosed to the public via the April 18<sup>th</sup> email to Council and Staff;
2. Any of the information included in the April 18<sup>th</sup> email was confidential since all RFP proposals for the Trent Shelter had been rated by the RFP Committee, the CoC Board had discussed the proposals in a public meeting, the CoC Board had voted and rejected all proposals and the proposals were sent to Council President's email in-box and thus were available as public records;
3. Council President had any knowledge that the information provided in his email to Council was confidential after being assured by the Administration that it could be distributed after the CoC vote and no objections being raised by the Administration to his emails that he would be discussing the proposals at an upcoming Council meeting; or,
4. Council President or anyone else benefitted from him sharing the proposals with Council and Staff in order to prepare for a Council meeting on the topic.

## II. Facts

The Declarations of Breean Beggs and Ben Stuckart confirm that the CoC finished its RFP Committee ratings and Board votes on the Trent Shelter operator RFP proposals prior to Council President even seeing these proposals, let alone sending his email to Council and Staff on the evening of April 18<sup>th</sup>. Just like the release of similar documents to Council by CHHS Director Cerecedes in June, there was no longer any expectation of confidentiality because all the ratings and

1 voting were completed. There is no counter-evidence to this timeline, nor is there any admissible  
2 evidence that the email was delivered by Council President to the general public.

3 There does not appear to be any allegation in the complaint or in the current evidence before the  
4 Commission that scoring sheets for the proposals were included in the April 18<sup>th</sup> email. It is unclear  
5 what the relevance would be if they were since the RFP ratings were completed, the CoC Board had  
6 voted and Council customarily reviews scoring of the RFP process to confirm due diligence by the  
7 raters.  
8

9 In his original complaint, the Complainant only alleges that there may have been a public release  
10 of confidential documents and there may have been a benefit to the Council President. The  
11 Complainant has since admitted in a letter to the Commission requesting a continuance that he did  
12 not have sufficient evidence to prove his allegations when he filed the complaint and instead is  
13 hoping that he will someday obtain sufficient information to establish a violation of the ethics code.  
14

### 15 **III. Argument**

16 The Pre-hearing order sets out the two questions at issue as to whether there was an ethics code  
17 violation: 1) Was there a knowing public disclosure of confidential documents in the April 18<sup>th</sup>  
18 email sent by Council president that was limited to Council Members and its Staff? SMC  
19 1.04A.030(I). And/or did the email benefit Council President or another person or entity? SMC  
20 1.04A.030(L). Respondent respectfully submits that the Complainant has not submitted or identified  
21 admissible evidence sufficient to establish an affirmative answer to either question.  
22

23 As outlined in the undisputed facts, the April 18<sup>th</sup> email was not distributed to the public by  
24 Council President Beggs. Other City employees or members of the CoC Board, or even the RFP  
25 proposers may have distributed their proposals to the general public. Council President did not do  
26 so and the only allegation raised in the complaint is that he distributed the email solely to City  
27 employees who are bound by the same confidentiality rules that he is.

28 Based on the City's established and announced practice of sharing RFP proposals with City  
29 Council after the RFP committee has completed its ratings, the proposals sent after the RFP  
30

1 Committee had completed its work and the CoC Board had voted not approve any of the proposals,  
2 the proposals shared in the April 18<sup>th</sup> email were no longer confidential. Further, the emailing of  
3 documents from outside the City or its attorneys to the email in-box of Council President also  
4 destroyed any confidentiality since they became accessible public records. Council President did  
5 nothing more than mirror the behavior of the CHHS Director on June 28<sup>th</sup> when she sent the  
6 proposals from the most recent RFP process to Council Members.  
7

8 Even if reasonable minds could disagree on whether Council Members were a safe repository  
9 for these documents on April 18<sup>th</sup>, there is no evidence that Council President believed he was  
10 violating City policy. Just a week earlier he had been told by the Division Director that as soon as  
11 the CoC voted, Council could see the proposals and he had an email from the CoC chair reporting  
12 that the CoC had voted. Council President took the additional step of emailing Administration that  
13 Council planned to discuss the proposals at its next meeting in three days and no one from the  
14 Administration emailed back any objection or concern. Council President at a minimum did not  
15 make a knowing public disclosure of confidential documents.  
16

17 Finally, no one has even speculated on how Council President's email limited to other Council  
18 Members and Council Staff could have or in fact did benefit him or others. Even the Complainant  
19 acknowledges that it is only speculation.


#### 20 **IV. Conclusion**

21 The Complainant has fundamentally misunderstood the role of the Ethics Commission  
22 and the Spokane Municipal Code. He apparently believed that it was sufficient for him to simply  
23 forward a concern without having the evidence to establish an ethics violation- hoping that  
24 volunteer commissioners would turn into investigators. Of course, that is not how Spokane's ethics  
25 code was designed. The code requires admissible facts of actual wrongdoing and the Commission  
26 sits as judge as to the veracity of those facts and to levy any consequences required for proven  
27 violations.  
28  
29  
30

1 The dark side of Complainant's misguided view of the code is that levying a complaint without  
2 first identifying admissible facts of wrongdoing casts a long shadow over those who are subject to  
3 the code and requires a tremendous amount of energy defending concerns as opposed to firm  
4 allegations backed by admissible evidence. Unless the Complainant comes forward with admissible  
5 evidence by sworn testimony in response to this motion, Respondent respectfully requests that the  
6 complaint be dismissed with prejudice prior to spending the time and other resource on witness  
7 testimony and further proceedings.  
8

9 Respectfully submitted this 16<sup>th</sup> day of August, 2022.  
10

11 PAUKERT & TROPPMAN, PLLC

12   
13

14 BREEAN L. BEGGS, #20795  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

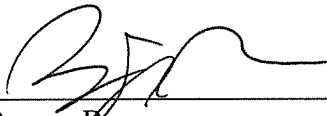
1  
2  
3  
4 **CERTIFICATE OF SERVICE**

5 I hereby certify that on this date, I caused to be served a true and correct copy of the  
6  
7 preceding document to the following person of record by method specified below:

8  
9 Thomas Basseler  
10 tom@gvdcommercial.com

☒ Email: tom@gvdcommercial.com

11 DATED August 16<sup>th</sup>, 2022

12  
13   
14 \_\_\_\_\_  
15 Breean Beggs  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30