

1 CITY OF SPOKANE ETHICS COMMISSION

2
3 THOMAS BASSLER,
4 Complainant,

5 v.

6 BREENAN BEGGS,
7 Respondent,

EC-22-01

BASSLER’S OPPOSITION TO MOTION
TO DISMISS

8
9 **I. INTRODUCTION**

10 Having already once sought the dismissal of this matter on the merits, while ignoring
11 the Ethics Commission Policy and Procedures, and dismissal having already been denied by
12 the Commission once, Council President Beggs has now come back for a second bite at the
13 apple with essentially the same arguments for why the Complaint against him should be
14 dismissed. This motion should likewise be denied, and the Commission should either find
15 that the Council President did, in fact, commit an ethical violation based upon the evidence
16 already submitted, or order the matter to continue on to a hearing on the merits.

17 **II. BACKGROUND FACTS**

18 The key facts and events giving rise to this Ethics Complaint are not disputed. On
19 March 10, 2022, the City of Spokane Community Housing and Human Services Department
20 (the “**CHHS**”) issued a Request For Proposal (“**RFP**”) for the creation of a new homeless
21 shelter. Proposals were received from the Guardian Foundation, the Salvation Army and
22 Jewels Helping Hands (hereafter referred to as the “**RFP Proposals**”). Former City Council
23 President Ben Stuckart stood to earn a \$151,000.00 annual consulting salary if Jewels Helping
24 Hands had been awarded the project. *See Jewels Helping Hands RFP Proposal.*

25 The three proposals were provided to the RFP Committee of the Continuum of Care
26 (“**CoC**”) Board for confidential review and analysis, and to provide the Committee’s

1 recommendation to the full CoC Board, which in turn, would present its confidential
2 recommendation, first to the Mayor to select the winning bid, and ultimately to the City
3 Council for approval. However, before that process could run its full course, on April 18,
4 2022, Council President Beggs preempted the normal procedure by sending copies of the RFP
5 Proposals to the City Counsel and staff before the Mayor had selected a winning bid. Shortly
6 afterwards, the RFP Proposals became public. *See Attachments 3 to the Complaint.*

7 Council President Beggs had received copies of the RFP Proposals from a third-party
8 source, which we now know was former Council President Stuckart, who in addition to the
9 fact that he had a financial interest in the Jewels Helping Hands RFP Proposal, was also Chair
10 of the CoC Board. Mr. Stuckart later resigned from that Board during a pending investigation
11 that resulted in a finding of an ethical violation for his participation in the Board's discussion
12 of the RFP Proposals despite his conflict of interest due to the \$151,000.00 salary he would
13 make if Jewels Helping Hands was the successful bidder. *See Claimant's Exhibit No. 1*

14 Although Council President Beggs now claims, that for a variety reasons, the RFP
15 Proposals were no longer confidential when he disclosed copies to the Councilmembers and
16 their staff, it is undisputed that, as a result of his disclosure of the Proposals, and acting on the
17 advice of concerned City staff, the Mayor directed the CHHS to issue a new RFP for the
18 project, thus starting the entire process over again to the detriment of those who were the
19 intended beneficiary of the shelter project as well as the taxpayers.

20 **1. Procedural Background**

21 The Ethics Complaint at issue here was brought by Dr. Thomas Bassler on May 5,
22 2022. The City of Spokane Ethics Commission Policy And Procedures Manual, Rule 4,
23 entitled "Complaint Process," provides with emphasis added that the Commission shall
24 request an initial written response to the complaint from the respondent which:

25 "Shall pertain to whether the complaint should be dismissed pursuant to SMC
26 1.04A.110 D. 1. a.-g. and *shall not address the merits of the complaint.*"

SMC 1.04A.110 D. 1. a.-g. provides the following list of grounds upon which the Commission can decide to dismiss an ethics complaint:

- a. It has no jurisdiction;
- b. The alleged violation, if true, would not constitute a violation of this article;
- c. The alleged violation is a minor or de minimis violation;
- d. The complaint or inquiry is, on its face, frivolous, groundless or brought for purposes of harassment;
- e. The matter has become moot because the person who is the subject of the complaint or inquiry is no longer a City officer or employee;
- f. The appointing authority has already taken action as a result of finding a violation and the Commission believes the action was appropriate;
- g. The respondent had previously requested and followed the documented advice regarding compliance with the Ethics Code provided by the legal counsel for the Ethics Commission;
- h. The respondent had previously been the subject of a prior ethics complaint based upon the same set of facts and alleging the same violation(s) of the Code of Ethics and regarding which the Ethics Commission issued a decision.

Council President Beggs responded to the Complaint on June 8, 2022, but without any mention of SMC 1.04A.110 D. 1. a.-g. whatsoever and without addressing any of the grounds listed there that would justify dismissing the Complaint. Rather, he ignored the admonishment in Rule 4 of the Policy and Procedure Manual not to address the merits of the Complaint and instead did exactly that.

SMC 0.04A.110D 2 provides that the Commission can determine that the “complaint alleges facts, which, if found to be true, would be sufficient to constitute a violation of the Code of Ethics,” and that “[f]urther information must be presented for the Commission to determine if a violation of the Code of Ethics has occurred.” That is presumably the conclusion the Commission reached based upon Council President Beggs’ response to the merits of the Complaint since, rather than dismiss the Complaint, the Commission ordered the

1 matter to proceed to a hearing. Nevertheless, the Council President has now come back to this
2 Commission a second time with essentially the same arguments he made in his June 8
3 response to the Complaint, hoping this time around that the Commission will summarily
4 dismiss the matter so that he can avoid an actual hearing on the merits of the Complaint.

5 **III. ISSUES PRESENT**

6 There are essentially only two key questions before the Ethics Commission in this
7 motion:

- 8 1. Whether the RFP Proposals were still confidential when Council President
9 Biggs provided copies to the City Council and staff; and
- 10 2. Whether Council President Beggs disclosed the RFP Proposals by providing
11 copies to the City Council members and their staff.

12 If the answer to these two questions is “Yes” these proceedings should conclude here
13 with a finding that Council President Beggs violated SMC 01.04A.030(L) of the Code of
14 Ethics. That is because, as discussed below, it is not necessary to also find that his actions
15 were motivated by a desire to benefit himself, or someone else--although there is evidence to
16 suggest that may have been the case.

17 On the other hand, if there is a dispute about any material fact or circumstance that
18 bears on either of these questions, then this Motion to Dismiss must be denied and the matter
19 must then proceed to a hearing.

20 **IV. ARGUMENT**

- 21 **1. The Standard of Review for a Summary Judgment Motion Does Not
22 Apply to These Proceedings.**

23 Council President Beggs cites to Washington Supreme Court case, *Martin v. Gonzaga*,
24 as setting out the “the standard of review for a body to determine when a matter should go to
25 hearing where conflicted evidence is weighed and determined.” *See Respondent’s Motion to*
26 *Dismiss, page 1.* In fact, however, *Martin v. Gonzaga* had nothing to do with the standard of
review to be followed by a deliberative body like this Ethics Commission when considering a

1 motion to dismiss an ethics complaint. Rather that case concerned an appeal from a **trial**
2 **court's** dismissal of a wrongful termination **lawsuit**. The Supreme Court was merely
3 reiterating the long-standing rule that is to be applied by a **trial court** when deciding whether
4 to dismiss a **lawsuit** without a trial. That is referred as a “summary judgment” proceeding.

5 The matter before this Commission is obviously not a summary judgment proceeding
6 before a trial court, and therefore, the standard of review for summary judgments does not
7 apply here. And even if it did apply, Council President Beggs has failed to mention a very
8 important and fundamental precept of the standard of review for a summary judgment motion,
9 which is that the trial court must “view all facts and reasonable inferences therefrom most
10 favorably toward the nonmoving party.” *Martin v. Gonzaga*, 191 Wn. 2d 712, 722 (2018).

11 Put another way, that means the party opposing the summary dismissal of their case
12 must be given every benefit of the doubt regarding the facts and circumstances supporting
13 their claims. That much, at least, is also true for these proceeds. Thus, Dr. Bassler’s
14 Complaint should not be dismissed without an evidentiary hearing if, after considering all the
15 facts and circumstances in a light most favorable to him, the Commission concludes that a
16 hearing is necessary to get the bottom of what actually happened here.

17 **2. To Find that Council President Beggs Committed an Ethical Violation, the**
18 **Commission Need Not Conclude that He Disclosed the RFP Proposals for**
19 **His Own Benefit or for the Benefit of Another.**

20 SMC 01.04A.030(L)(1) provides in relevant part and with emphasis added as follows:

21 **1. Disclosure of Confidential Information**

22 No City officer or employee shall, except as required or reasonably believed to
23 be required for the performance of his/her duties, disclose confidential
24 information gained by reason of his/her official position **or** use such
25 information for his/her own personal interest.

26 The two grounds for finding a violation of this code provision are stated in the
disjunctive. Thus, the Commission need not find that Council President Beggs

disclosed confidential information **and** that he used that information for his personal interest. Rather, the disclosure of confidential information is by itself an ethical violation.¹

3. The CoC Board Did Not Consider the RFP Proposals in a Public Meeting.

Council President Biggs contends the RFP Proposals had already been discussed and considered at a public meeting of the CoC Board, and therefore, were no longer confidential. He offers no proof for that claim, however. And indeed, CoC Board meetings are not subject to the Open Public Meetings Act, they are not noticed to the public and recordings of those meetings are only available through a Public Records Act Request. The same is true of RFP Committee meetings. Furthermore, there is no evidence the CoC Board was provided with actual copies of the RFP Proposals at the Boards April 27, 2022, meeting.²

4. Council President Beggs was Not “Assured by the Administration” that He Could Distribute the RFP Proposals to the City Counsel and Staff.

Council President Beggs contends that, in distributing copies of the RFP Proposals to the City Councilmembers and their staff, he was relying on assurances from the “Administration” that he was free to do so. As evidence of this, he has provided a link to his conversation with Eric Finch, the Chief Innovation and Technology Officer and Interim Director of Neighborhood Housing and Human Services for the City of Spokane. <https://www.facebook.com/spokanecitycouncil/videos/670251177573073> (minute 1:13 - 1:15). The following is a transcription of that conversation:

¹ Given the long-standing and close political and professional relationship between Council President Beggs and Ben Stuckart it would be reasonable to assume that Beggs’ actions may have been intended to steer the City Council toward favoring the selection of Jewels Helping Hands. For example, Mr. Stuckart led the charge in getting Beggs appointed to the City Council, both served together for years on the Council, and Beggs endorsed, financially supported and campaigned for Stuckart in his failed mayoral campaign in 2019.

² Additionally, in his April 18, 2022, email to the CoC Board members, Ben Stuckart admonished them not to send the results of the Board’s vote on the RFP Proposals to the media, which is further proof that the meeting had not been public. *See Exhibit A to Respondents Disclosure of Exhibits.*

1 **Beggs:** “I have a related question because we took off the RFP for today and
I’m just wondering, can Councilmembers gets copies of the RFP responses?”

2 **Eric Finch:** “Yes, I’ll check. I mean there’s a process we’re supposed to
3 follow in terms of trying to keep that in, you know, you know, uh, I think, with
4 the right people on it and then it will become public so or certainly available
5 for you so along as I’m not violating that, sure absolutely happy to supply. I
think as soon as the vote is done, right, we can confidently bring that forward
but we can’t really until the CoC vote on it. “

6 **Beggs:** “Yeah I think we just want to see it before we’re asked to vote on it.
7 (Finch: Oh yes) As you might imagine, we’re getting lots of comments about
it. (Finch: yes, absolutely) So as soon as the CoC votes, if you can get that to
8 us, that would be great.”

9 **Eric Finch:** “Absolutely.”

10 With no disrespect intended toward Mr. Finch, given his role at the City, it is big
11 stretch to claim that he was speaking for the “Administration.” Regardless, Mr. Finch made it
12 clear that, before he could provide copies of the RFP Proposals, he would first need to check
13 to ensure the correct process was being followed and would not be violated by him doing so.

14 But rather than wait for Mr. Finch to check, and without taking any other steps to
15 ensure that providing the RFP Proposals to the Council at that stage in the process would be
16 appropriate, Council President Beggs took it upon himself to source copies of the RFP
17 Proposals by email from former Council President Ben Stuckart. And without naming his
18 source he created a new email to which he attached the RFP Proposals--strongly suggesting
19 he knew what he was doing was not appropriate—and sent them the other Councilmembers
20 and their staff. *See Exhibit D to Respondent’s Disclosure of Exhibits.*

21 **5. Providing Copies of the RFP Proposals to the City Council and Staff**
22 **Constituted a Disclosure of Confidential Information.**

23 SCM 01.04A.020 defines confidential information in relevant part as follows:

24 1 Specific information, rather than generalized knowledge, that is not
available to the general public on request; or

25 . . .

26 3 Information that is initially disclosed or discussed in executive session,
and which is not available to the general public on request; however

4 Confidential information does not include information authorized by
the mayor or a majority vote of the council to be disclosed.

SMC 01.04A.030(L)(1) defines confidential information as:

all information, whether transmitted orally, or in writing, that the employee has
been informed, is aware, or has reason to believe is intended to be used only
for city purposes, is not intended for public disclosure, or is otherwise of such a
nature that it is not, at the time, a matter of public record or public knowledge.

There can be no serious question here that the RFP Proposals constituted specific,
versus general, information that was not public, not available to the public or intended for
public disclosure, and which the Mayor had not authorized to be disclosed.³

Council President Beggs' claim that, because the RFP Proposals were emailed to him,
it destroyed their confidentiality is frankly absurd, particularly considering his source was the
then-acting Chair of the CoC Board, Ben Stuckart, not a member of the general public.
Furthermore, if merely receiving confidential information by email was sufficient to destroy
its confidentiality, that would easily allow for collusion between a City official desiring, for
whatever reason, to make otherwise confidential information public, to do so by finding
someone willing to oblige them by simply emailing it to them.

Council President Beggs also contends that, because the City Council and staff, like
him, are ethically bound to prevent the disclosure of confidential information, providing
copies of the RFP Proposals to them did not constitute a disclosure with the meaning of SMC
01.04A.030, which prohibits the disclosure of confidential information.

The fatal flaw in this argument is obvious. Council President Beggs simply forwarded
copies of the RFP Proposals to the Council and staff without any warning, disclaimer,
advisement, instruction or admonishment of any kind, that the Proposals were still
confidential, at that point in the review process, and needed to be treated as such.

³ It is true, as Council President Beggs contends, that the City has an established practice of sharing RFP
proposals with the Council after the CoC RFP committee has completed its ratings. But, what the Council
President neglects to mention is that the RFP proposals are only provided to the Council after the Mayor has
first selected the winning bid.

1 Consequently, the Council members and their staff were left to assume the Proposals were no
2 longer confidential. And indeed, within days the RFP Proposals were made public.

3 **6. Unlike Council President Beggs, Jennifer Cerecedes was Following the**
4 **Proper Process and Procedure When She Provide the RFP Proposals to**
5 **the City Council on June 28, After the Project had Been Rebid.**

6 Council President Beggs is wrong when he says that what he did was no different than
7 what Jennifer Cerecedes did on June 28, after the project had been rebid, when she provided
8 the new proposals to the City Council. That is because, the RFP process had already run its
9 proper course and was closed before Ms. Cerecedes emailed the proposals to the Council.
10 City Administrator Johnnie Perkins and Chief Innovation and Technology Officer, Eric Finch,
11 had already briefed the City Council on the rebid and on the Mayor's selection at the June 6,
12 2022 Public Safety Committee Meeting: *See, <https://vimeo.com/717681083> (marker*
13 *1:04:20).* Council President Beggs, on the other hand, had preempted the proper process for
14 the review of the first RFP Proposals when he sent them to the Council and staff **before** the
15 Major had selected a winning bid.

16 **7. It was Because of Council President Beggs' Disclosure of the RFP**
17 **Proposals that the Bidding Process Had to be Restarted.**

18 Along with his June 8 response to Dr. Bassler's Complaint, Council President Beggs
19 provided his written statement, which included the following:

20 The submission of a meritless ethics complaint sadly distracts and delays City
21 government from promptly opening acutely needed shelter beds while the
22 homeless camp near Second and Ray continues to grow.

23 This is akin to the perpetrator blaming the victim. In addition to former CoC Board Chari Ben
24 Stuckart's ethical violation for failing to recuse himself from the CoC Boards' discussion of
25 the RFP Proposals despite his obvious conflict of interest, the Mayor cited as the other reason
26 for restarting the bidding process that the Proposal were shared (by Council President Beggs)
outside of the CoC Board's evaluations before the Board "completed its process, which
creates the potential for outside influence." *See, City of Spokane's April 20th Press Release.*

1 In short, it was Council President Beggs' unethical conduct, not this Complaint, that derailed
2 the RFP process, resulting in the very delay the Council Present referred to in his written
3 statement.

4 **V. CONCLUSION**

5 For all of the foregoing reasons, Dr. Bassler asks that this Committee either: (1) find
6 that, based upon the evidence already presented, that Council President Beggs has committed
7 a Code of Ethics violation; or (2) deny Council President's Motion to Dismiss, and order this
8 matter to proceed to a full hearing on the merits.

9 DATED this 12th day of October, 2022.

10 CARNEY BADLEY SPELLMAN, P.S.

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12 By: 

13 Kenneth W. Hart, WSBA #15511

14 Attorneys for Thomas Bassler
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1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies under penalty of perjury under the laws of the State of
3 Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years,
4 not a party to nor interested in the above-entitled action, and competent to be a witness herein.
5 On the date stated below, I caused to be served a true and correct copy of the foregoing
6 document on the below-listed attorney(s) of record by the method(s) noted:

7 ☒ Email, to the following:

8 **Breean Beggs, WSBA #20795**
9 **Paukert & Troppmann PLLC**
10 **522 W. Riverside, Ste. 560**
11 **Spokane, WA 99201**
12 bbeggs@pt-law.com

13 DATED this 12th day of October, 2022.

14 S/ Rozalynne Weinberg

15 Rozalynne V. Weinberg, Legal Assistant