

IN THE CITY OF EVANSTON BOARD OF ETHICS

MISTY WITENBERG and CLERK DEVON REID)
Complainants,)
v.) File No. 2019 BOE _____
)
MAYOR STEPHEN HAGERTY)
Respondent.)

Misty Witenberg, joined by City of Evanston (“City”) Clerk Devon Reid, complains of Respondents Mayor Stephen Hagerty and Corporation Counsel Michelle Masoncup for suspected violations of Evanston Code of Ordinances 1-10-4 and its subsections § (C)(1) Impartiality and § (C)(3)(b) Abuse of Power in Office, and in support therein, provides as follows:

I. Introduction.

The Ethics Code requires complainants provide information known to establish the ethical misconduct. Where this may suggest violations or potential violations of regulations outside the Board’s jurisdiction, we request this opinion only for violations under Ch. 10 of City Code. Specifically this alleges the Mayor and Masoncup **(1)** failed to perform their duties with impartiality and without prejudice or bias for the benefit of all citizens of the City; **(2)** deprived Reid, as a citizen, consideration available to every other citizen; and **(3)** used the power and influence of their office to engage in transactions which were and/or would reasonably appear to be in conflict or incompatible with the discharge of their official duties. Broadly put, that the Mayor and Masoncup’s violating conduct interfered with serving the public interest and maintaining the public trust necessary for good government as it pertains to his conduct and duties in the events and circumstances of his Resolutions 78-R-19 (“Censure Resolution”) and 57-R-19 (“FOIA Resolution”).

II. Factual Background.

A. Investigation & Proceedings.

The Mayor stated the City had retained an outside legal firm to conduct an investigation of complaints filed by multiple City employees with Human Resources against the Clerk, also indicating that the firm and its investigators served in a capacity sufficiently independent to render those investigative findings.

1. **Parties.** The complainants in the investigation were City’s corporation counsel Michelle Masoncup, assistant attorney Alex Ruggie and deputy clerk Eduardo Gomez (“complainants”). Robbins Schwartz (“Robbins”) was the firm hired to investigate.

Complainants Masoncup and Ruggie were also involved in coordinating portions of the investigation, its interviews, and the complaints filed therein, including that of the third complainant, Gomez. Masoncup also coordinated the investigators themselves, and received their reports.

2. Dates Pertinent. The City reported all three complaints were filed verbally on **April 26, 2019**. The City also provided its invoice totals and records for its retention of Robbins to investigate those complaints, indicated in the itemized invoices as Matters 019102 and 019103 (“Matters”).

Billing for Matter 019102 began **March 25, 2019**, a month prior to the complaints’ filings.

Billing for Matter 019103 began **April 29, 2019**, the same day Corp. Counsel received notice of Clerk’s intent to seek declaratory judgement for the FOIA matters at issue in the findings. Also the same day the deputy clerk complainant accessed the audio at issue in the City’s findings, making a copy and deleting the original file.

3. Scope of Investigation. The City reported it had no record of letter of engagement or other contract with Robbins related to the investigation, but provided those Matters were purposed for provision of legal advice and strategy rather than provision of independent investigative findings. The City also reported communications between Robbins and Masoncup were between an attorney and client in which that advice was sought and provided. Also that communications between Masoncup and the HR Division Manager were similarly privileged.

4. Provided Counsel. The legal counsel the Mayor provided Reid as respondent was complainant Masoncup. At that point, Masoncup was also named in an administrative complaint filed by Reid, and a declaratory judgement suit. The Mayor also permitted the complainant to serve as legal counsel to Council, who acted as the tribunal.

5. Opportunity for Defense. The Mayor provided Reid a partial list of the findings, but neither he nor the City presented Reid with evidence supporting those charges (except summaries of allegations). The Mayor, as counseled by Masoncup, also denied Reid opportunity to act fully in his own defense, or even to substantially address the allegations or charges, citing as basis restrictions under the Ill. Personnel Records Review Act.

6. Allegations and Findings. The City has no record of physical complaints or documentation filed against Reid. The three complainants, according to the HR Division Manager, provided verbal complaints on April 26, 2019. Summaries of allegations are provided on page 1 of the letter. The 10 findings provided are simply restatements of the allegations made.

III. Discrepancies in Policy, Procedure, and Precedent.

A. Censure by Council.

Council has at no other known time sought on its own accord to censure any official for any reason, nor does it or any City body have apparent authority to do so other than with its own members (the Mayor and nine alderpersons).¹

Masoncup provided the applicable Council rule as 10.3, authorizing Council to censure alderpersons by majority vote for disorderly conduct at Council meetings,² adding “so yes, hypothetically the mayor and city clerk cannot be censured, but that doesn’t really make any sense,” and that “[Council] rules apply to the corporate authorities that sit up here.” However, the

¹ Also at City Code § 1-5-6 and 65 ILCS 5/3.1-40-15: “The city council shall determine its own rules of proceeding and punish its members for disorderly conduct.”

² <https://youtu.be/tOiyhgvWgtw?t=4665>; <https://youtu.be/tOiyhgvWgtw?t=4733>

Clerk is also not a corporate authority.³ Like the Corporation Counsel and City Manager, his official duties include attending Council meetings and performing duties therein. Council's recourse for disorderly conduct by non-members is provided under Council Rule 2.5, authorizing the Mayor to remove offenders from the Council Chambers. Further, the Clerk is not subordinate to Council or any City body, except its citizens, and cannot be punished except by this Board.

B. Penalty for violations of Council Rules.

The Mayor's Resolution recommended Council censure Reid for violating Council Rules. The Council has at no other known time recommend censure or otherwise sought to punish officials for violating Council Rules. In fact, the Mayor himself violated Council Rule 18.11 in bringing the Resolution, and his prior FOIA Resolution, as special orders of business without absent the requisite majority vote of Council.

Authority. Further, Council Rule 13.1 sets forth Council's powers as purely legislative. As does Ill. Municipal Code, which permits exception where otherwise empowered by the State, excluding administrative powers which may be exercised only by delegated appointive officers.⁴

Or Rule 2.3, "the Mayor shall preserve order and decorum," the rules governing debate and decorum where alderpersons act out of order.

C. Penalty for violations of the Open Meetings Act.

The Mayor's Resolution recommended Council censure Reid for violating the Open Meetings Act. The City has at no other known time recommend censure or otherwise sought to punish officials for violating the Open Meetings Act. In all cases the City acts instead to defend those officials. And when those officials are Council members, the City appears to instead punish those who report those violations. For example:

Mayor's OMA violation. In 2017 Attorney General found OMA was violated in the Mayor's calling an last-minute "emergency" Council meeting on June 30. In that case, the Clerk contacted the Attorney General and issued an internal City memo prior to the meeting alerting the potential violation, and a public statement on his position. Within six business days of the meeting, on July 10, the City acted to immediately reassign all permanent staff of the Clerk's Office to other departments, without notifying the Clerk or providing him replacement staff.

Ald. Fiske's OMA violation. Ald. Fiske introduced imposition of more burdensome restrictions for citizen participation at Council's Jan. 22, 2019 meeting of its Rules Committee after a resident had reported she'd improperly restricted public comment at the Dec. 3, 2018 meeting of Council's Rules Committee, citing specifically that "criticism" received and "conversation with the Attorney General."⁵ Council then acted to introduce and approve an unprecedented number of citizen participation restrictions at subsequent meetings.⁶

Attorney General as decision-maker. In both of the above cases, as is City practice, the determination of OMA violation was made by the Attorney General's Office and based upon substantive and/or case law.

D. Penalty for violations of City Policies which don't exist.

³ Council Rules 14.4, 16.2, 21.1, 25.5; also **65 ILCS 5/1-1-2(2)** "Corporate authorities" means (2) the mayor and aldermen."

⁴ Ill. Municipal Code **65 ILCS 5/5-3-6**.

⁵ January 22, 2019 Rules Meeting <https://youtu.be/CWGIBQQ1M5M?t=1608>

⁶ Resolutions [12-R-19](#); [40-R-19](#); [43-R-19](#); [72-R-19](#); [73-R-19](#).

The investigation found that Reid violated the City's "Hostile Work Environment Policy," and the Mayor's resolution recommended Council censure Reid for violating the City's "Healthy Work Environment Policy." The City reported it doesn't have record of either of policies.

E. Penalty for violations of City Strategy (Mission, Vision, Purpose Statements).

The City did however provide its "Healthy Workplace Strategy" of mission, vision and purpose statements, and its personnel policies set forth in Ch. 6 of its Personnel Manual which refers to its complaint process therein its section 1 and 3.5 et seq. as its "Healthy Work Environment ("HWE") Complaint Process."

With exception to the Robinson case, the City has at no known time sought to punish persons for engaging in "inappropriate workplace conversations"⁷ which did not also expressly violate the City's Workplace Harassment policy, nor for violating any other City strategy or mission/purpose statements. The City's other strategy, mission and vision statements, it serves as a guide for City actions and doesn't include actionable prohibitions or penalties. (For example, the City's mission statement for its strategic plan includes that the City is committed to "providing fiscally sound, responsive municipal services and delivering those services equitably," but doesn't itself contain prohibitions or consequences for officials who fail to do so).

F. Administration of Workplace Harassment Complaints.

The Mayor (and City Council⁸) charged with Reid with violations of the City's Workplace Harassment Policy, including sexual harassment.

1. State Mandates for City's Harassment & Retaliation Policies. The City is required by the State⁹ to have its sexual harassment policy in writing and adopted by ordinance, including: (a) the City's complaint process and penalties; (b) details for how individuals can report (with options for confidential reporting to a supervisor, ethics officer, etc); (c) provision of a mechanism for reporting and independent review of allegations of sexual harassment made against an elected official by another local elected official; (d) prohibition on retaliation, (including availability of whistleblower protections under the State Ethics Act, Whistleblower Act, and Ill. Human Rights Act); and (d) penalties for false reporting.

City's Policy/Procedures Adopted. The City's policies enacted are found in Ch. 6 Sec. 3 "Workplace Harassment Policy," with subsection 3.4 amended and superceded by Resolution 1-R-18 "Policy Prohibiting Sexual Harassment," (collectively "HWE Policy")

2. Outside Investigation. The City has at no other known time prior hired outside investigation or sought criminal investigation of City officials or senior staff for any reason, including investigations of workplace harassment complaints. In the HWE case cited at the July 15 meeting against the former City manager, the City permitted his assistant City Manager conduct the investigation. The City then retained outside counsel to defend federal charges in court. See Table A. The City's HWE Policy is silent on investigations outside of the HR Division. It's Sec. 3.6-7 states: "Human Resources will conduct a prompt, *impartial* investigation of any complaints of harassment [...] pursuant to the City's complaint process." *Emphasis added.*

⁷ Evanston Patch: "[Alderman Called 'Sketchy' In Profanity-Laced Outburst.](#)" and "[Bobkiewicz responded by describing Reid as 'the biggest asshole I've ever worked with' in a room full of department heads.](#)"

⁸ Council approved at its July 8, 2019 closed session meeting a second letter (not provided to Reid) requesting criminal investigation of Reid.

⁹ [Public Act 100-0554](#) (State Ethics Act [5 ILCS 430/70-5](#)) and Human Rights Act [775 ILCS 5/2-105](#).

Applicability to Officials. The Mayor specified Reid’s status as an elected official as cause for the City’s retention of an outside investigation. The policy’s Sec. 3.2 “Coverage,” and its Part I extends applicability to elected officials and provides reports may be made, in addition to HR, to the City’s Ethics Board and State agencies. Further, the City is required under the Ill. Human Rights Act to have its harassment policy in writing and provide mechanism *independent* review of allegations by and against elected officials. **Due Process.** And where public employment as official or staff constitutes “property interest” subject to due process protections, it must afford such independence and impartiality.¹⁰

TABLE A

ROBINSON V. CITY OF EVANSTON

In May 2016, former City public works director Robinson filed a federal suit against the City, former City Manager Bobkiewicz, former Corp. Counsel Farrar, and HR Manager Lin. The City settled the suit in November 2017 for \$500,000.

The complaint alleged Bobkiewicz reassigned some of Robinson’s duties to other staff in response to her reporting retaliatory action against him to Human Resources. *Id.*, No. 16 C 5677, at *2-3 (N.D. Ill. Jun. 5, 2017). Farrar then directed Lin to conduct staff interviews to uncover unfavorable information about Robinson after she notified him of her intent to file an administrative complaint to a state agency. A memo Lin issued to Farrar supported the claims that the interviews sought only negative information about Robinson, then concluded she created an unhealthy workplace. *Id.* at *4.

Finally, the City never made the complaints public. While Lin included some of the information she gathered during the investigation in a memo she drafted for Lyons and the City attached this memo to their response to Robinson’s IDHR complaint, Robinson does not allege that it was publicly available or that it had an impact on her professional reputation.

The Court initially found that the City never made the complaints public and while Lin included some of the information gathered during the investigation in her memo, Robinson had not alleged it was publicly available or had an impact on her professional reputation, providing Robinson could remedy the issue upon repleading sufficient facts that the HWE complaints caused some tangible adverse employment consequence. *Id.*, at *6-8 (N.D. Ill. Jan. 18, 2017).

The Court found the facts in Robinson’s amended complaint (wherein she stated professional reputational damage, undermining of her authority over her direct and indirect reports; reassignment of her direct reports; and the stripping of her decision-making authority at Bobkiewicz’s direction) sufficient to show the investigation and fabrication of HWE complaints resulted in materially adverse action, concluding, reasonable actors would have known the retaliatory actions taken to be unlawful. *Id.*, at *10-12, 15 (N.D. Ill. Jun. 5, 2017).

3. Confidentiality and Disclosures. The City appears to offer anonymous reporting of harassment to satisfy the State Ethics Act’s Sec. 70-5 (ii) policy requirement inclusive of “options for making a confidential report.” The complainants did not report their complaints

¹⁰ *Misek v. City of Chicago*, 783 F.2d 98; *Hudson v. City of Chicago*, 374 F.3d 554; *Tatom v. Ameritech Corp.*, 305 F.3d 737; *Bishop v. Wood*, 426 U.S. 341; *Board of Regents v. Roth*, 408 U.S. 564; *Dauel v. Board of Trustees*, 768 F.2d 128, 129.

anonymously, however, HWE Sec 3.6 adds “all complaints shall be treated in a confidential manner to the extent possible taking into consideration the requirements of the investigation.”

The Mayor publicly disclosed portions of his letter of reprimand to Reid in his memo and resolution seeking Council discipline Reid by censure at its July 15 proceedings, including that multiple City employees had filed complaints against Reid, and that based on the investigation, the complaints were sustained and Reid was found to have harassed, threatened and retaliated against the employees, but that due to the privacy rights afforded to City employees under the Ill. Personnel Records Review Act (“PRRA”), he could not disclose the specific complaints contained in the investigative report. Reid received notice of the public disclosure on July 15, three days after it was publicly released, by way of an unmailed letter on his desk.

At the July 15 meeting, the Mayor, alderpersons and Masoncup verbally repeated the above disclosures, but advised Reid the privacy rights set forth in PRRA precluded his addressing specific matters¹¹ upon which his disciplinary action was determined. PRRA, however, does not set forth such preclusion. See Table B. Conversely, its primary purpose is “to remedy the imbalance of power between employer and employee.”¹² Where it acts to limit employer disclosures, including for quasi-administrative proceedings, those limits do not apply to employees.¹³ Further, where the Mayor made public information contained in the complaints and resulting reprimand and discipline, and set forth directives bearing on Reid’s public duties Reid’s requests for disclosure could not be considered invasion of personal privacy.¹⁴

TABLE B ILLINOIS PERSONNEL RECORDS REVIEW ACT (820 ILCS 40)

Disclosures Required to Employee. The Act authorizes any person currently employed with the City¹⁵ to examine and receive copies of any documents or information that the employer may use “in determining that employee’s [...] disciplinary action.”

Disclosures Required to Public. Personnel records of “employees, appointees and elected officials” are also subject to public disclosure, with limited exceptions, since 2010 when Illinois eliminated such records as exempt under FOIA. The amendment maintained exception for disclosure of personal records which would cause a “clearly unwarranted invasion of privacy,” meaning “highly personal or objectionable [information] in which the subject’s right to privacy outweighs the legitimate public interest in obtaining the information.” Also clarifying that the “The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.”¹⁶

City Disclosures Prohibited. PRRA does however prohibit employers from divulging the “disciplinary report, letter of reprimand, or other disciplinary action to a third party, [or] to a party who is not part of the employer’s organization,” without providing the employee written notice “by first-class mail to [his or her] last known address [] on or before the day the information is divulged.”¹⁷

¹¹ <https://youtu.be/tOiyhgVWgtw?t=4889>.

¹² Landwer v. Scitex America Corp., 238 Ill. App. 3d 403, 407 (Ill. App. Ct. 1992).

¹³ 820 ILCS 40/4; IASP p. 4.

¹⁴ 820 ILCS 40 Sec. 7, 10; Stern v. Wheaton Warrenville School District 200, 375 Ill.App.3d at 507.

¹⁵ “Employee” statutorily defined under 820 ILCS 40/1; “Public Employee” person on the government’s payroll. Garcetti v. Ceballos, 547 U.S. at 415

¹⁶ Stern v. Wheaton Warrenville School District 200, 375 Ill.App.3d at 507.

¹⁷ 820 ILCS 40/7.

IV. Discrepancies in charges.

The First Amendment protects the rights of elected officials as citizens to address matters of public concern;¹⁸ and those protections are “reinforced by the powerful network of legislative enactments – such as whistleblower protection laws and labor codes – available to those who seek to expose wrongdoing.”¹⁹ **III. Whistleblower Act.** Correspondingly, the purpose of the State Act “is to protect statutorily defined employees [“anyone employed on a full-time, part-time, or contractual basis”]²⁰ who report violations of state or federal laws, rules, or regulations.”²¹ Broadly, the Act protects employees from their employer taking or threatening to take any materially adverse act or omission, including that not specifically set forth by the Act, because of the employee disclosing or attempting to disclose public corruption or wrongdoing. 740 ILCS 174 (20.1 and 20.2).

The Mayor and Masoncup abused their authority and acted impartially in taking and threatening adverse action against Reid because of his engaging in protected activities in the public interest.

A. Background on Charges, City practice, State FOIA Law.

Request for Criminal Investigation. The Mayor and Masoncup sought criminal charges against Reid, bringing for City approval on July 8, 2019 a request to the County State’s Attorney Chief Investigator for its conducting a criminal investigation of Reid, alleging in part:

“Reid [was] obligated to keep the City’s records and respond to FOIA requests pursuant to the City’s direction,” and that “Reid’s failure to perform his mandatory duties as required by law per the City’s direction constitute[d] Official Misconduct under the Criminal Code [*a felony charge requiring forfeit of government position*].”

1. State FOIA Law: City’s obligation in the open disclosure of City records.

The request notes “Reid has openly taken a position advocating for the open disclosure of City records in response to FOIA requests, which is contrary to the direction of the City.”

The Act’s Sec. 1 expressly declares it the State’s policy that “all persons are entitled to full and complete information regarding the affairs of government [...] consistent with the terms of the Act [...] to enable the people to fulfill their duties [...] of monitoring government to ensure that it’s being conducted in the public interest.” 5 ILCS 140/1. And that:

“It is a “fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.” *Id.*

“Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.” Sec. 1.2.

¹⁸ *Connick v. Myers*, 461 U.S. 138, 156 (1983). (Also elected official’s speech not constitutionally protected where not substantially involved in matters of public concern.)

¹⁹ *Garcetti v. Ceballos*, 547 U.S. 410 (2006) at 419, 425. (Also elected official not speaking as citizen in issuing obligatory memo where “job duties require him to speak” at 433.)

²⁰ 740 ILCS 174/5, “Employee” means anyone employed on a full-time, part-time, or contractual basis.

²¹ *Larsen v. Provena Hosps.*, 27 N.E.3d 1033, 1043 (Ill. App. Ct. 2015).” *Sweeney v. City of Decatur*, 79 N.E.3d 184, 189-90 (Ill. App. Ct. 2017).

2. State FOIA Law: City's obligations in administration of FOIA requests. The Act's Section 3 mandates that "all requests for inspection and copying received by a public body shall immediately be forwarded to its Freedom of Information officer or designee."

Its Section 3.5 provides that the body's designated FOIA officer or his designee shall (i) "issue responses under this Act," (ii) and create retention file of FOIA requests, responses and communications. The City's FOIA Policy at that time also provided that: "the FOIA Officer is the person with the authority on behalf of the City to grant or deny requests," and evaluate record disclosure exemptions with the "aid of the [City's] Law Department."

3. City's practice and direction violative of State FOIA law. FOIA's exemptions are to be read narrowly, and to meet its burden to prove an exemption applies, a public body must provide a detailed explanation justifying its exemption claim, specifically addressing the requested documents in a manner allowing for adequate adversarial testing. *Ill. Ed. Ass'n v. Ill. State Bd. of Ed.*, 204 Ill. 2d 456, 463-464 (2003).²²

"[T]he public body can meet its burden only by providing some objective indicia that the exemption is applicable under the circumstances." *Id.* at 471.

The Law Department's practice at that time to assert records or portions therein as exempt, particularly exempt under attorney-client privilege, was simply to state records as privileged communications between attorney and client and thus withheld as so privileged. This included records the department was required by law to provide requestors, and records between parties who were neither attorney nor client. See Exhs TK. Explanations "merely conclusory" are inadequate to sustain the requisite burden of proof under FOIA. *Id.* at 470.

It was further the practice of the Law Department to withhold FOIA requests from Reid as FOIA Officer; issue responses to grant and deny records; and to withhold from Reid those records it released for his evaluation of exemption pursuant to State and City FOIA policy. In October 2018, the City reported law staff had denied nearly 40 percent of FOIA requests without either forwarding them to the FOIA Officer or designee or identifying law staff as persons responsible for the denial as required under the Act's sections 3 and 9.

B. Retaliatory actions taken for Reid's engaging in protected activities.

Retaliation for certain refusals prohibited. Ill. Whistleblower Act Sec. 20: "An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law [...] including, but not limited to, violations of the Freedom of Information Act."

Refusals at Issue. As FOIA officer Reid refused to comply with Law Dept directives to close FOIA requests in which the department issued responses; refused to provide him responsive records for evaluation and retention; or which would otherwise result in violation of FOIA Law.²³

²² Evidential burden prescribed by FOIA in denying records or portions therein is outlined in its Sec. 9, and inclusive of providing written notification to the requestor of the: (i) Exemption claimed; (ii) Specific reasons for denial, (iii) Detailed factual basis, (iv) Legal citation to supporting authority, and (v) names of each person responsible for the denial.

²³ <https://youtu.be/j9aXCDU7ifU?t=7460>

Retaliation for certain disclosures prohibited. Ill. Whistleblower Act Sec. 15(a) and (b) provides that “An employer may not retaliate against an employee who discloses information in a court [or to government agency] where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.”

Agency Disclosure at Issue. On April 12, 2019, Reid filed a complaint against Masoncup to the ARDC, an agency of the Ill. Supreme Court, charged with assisting with regulatory objectives.²⁴
Court Disclosure at Issue. On April 29, 2019 Reid notices his intent to file for declaratory judgment regarding FOIA disagreements, which he files May 7, 2019.

1. Subjecting Reid to unwarranted investigation, charges. The only support cited for the findings against Reid known, and cited as known prior to the March 25, 2019 engagement of investigatory Matter 019102 is Reid’s refusal to act at the City [Law Department’s] direction. Matter 019103 is initiated on April 29, the same day Masoncup receives Reid’s attorney his notice of intent to seek declaratory judgement regarding the above FOIA disagreements.

Undermining of Reid’s authority. Law staff instructed Reid’s direct report, deputy clerk Gomez, who Reid had appointed his FOIA designee, to disregard Reid’s instructions in FOIA administration. This led to, on April 10, 2019, Reid’s issuing Gomez reprimand for such action, also relieving Gomez of his authority to close FOIA requests.

FOIA disagreement leading to Reid’s disclosures. On April 12, 2019, Reid requested FOIA records from the law department. Ruggie and Masoncup verbally denied the records asserting they were attorney-client privileged. Reid then requested Masoncup’s response in writing. When Masoncup equivocated, Reid then indicated his intent to file an administrative complaint the ARDC, which Masoncup, in memorializing the exchange immediately afterwards, states was Reid threatening her. *See Exh. TK.* Reid files the complaint the same day.

Retaliation for Reid’s agency disclosure. Masoncup then coordinates the filing of the three HWE complaints filed against Reid, all on April 26, recharacterizing the encounter as Reid having “engaged in hostile debates with her and Ruggie” and “filed a ‘frivolous’ complaint.”

In all cases, the “investigative findings” merely restated the accusations made. For example:

Allegations , Reid violated Policy where he:	Findings , Reid violated harassment policy in:
a) “Engaged in hostile debates with Masoncup [and Ruggie] related to FOIA matters.”	“Engaging in hostile debates with Masoncup related to FOIA matters.” [<i>Ruggie’s dismissed</i>]
b) “Filed a frivolous ARDC complaint against Masoncup.”	“Filing a frivolous complaint against Masoncup with the ARDC.”
c) “Chastised and issued Gomez ²⁵ a written reprimand for performing his FOIA duties per the Law Department’s directives.”	“Chastising and issuing Gomez a written reprimand for performing his FOIA duties per the Law Department’s directives.”

And in all cases, all refuting law, facts and evidence were suppressed from consideration.

²⁴ The ARDC is an administrative agency of the Ill. Supreme Court charged with assisting the Court in its regulatory objectives to protect the public, advance of the rule of law, and provide access to justice and the ethical delivery of legal services.

²⁵ Gomez’s actual allegations are not known as there’s no verbatim record.

For example:

- a) Masoncup's initial description of Reid's "hostile debates related to FOIA matters" were that he argued with her and her staff rather than respecting their opinions. Opinions which were inconsistent with both FOIA law, and Attorney General interpretations of that law.
- b) The ARDC did not find Reid's complaint "frivolous," it found it warranting investigation, currently pending.
- c) Law staff was not authorized to issue such directives to Reid's staff, Gomez reported to Reid—not to law staff, and City Personnel Policy authorized Reid to issue reprimand.

2. Initial reassignment of Reid's FOIA duties. Masoncup also cited²⁶ Reid's above refusals as cause for reassignment of much of his FOIA duties to its department, including authority to evaluate exemptions to disclosure, action the Mayor brought before Council on May 28, 2019.

Though the Mayor argued his resolution was to ensure the City's FOIA compliance, it then used the resolution to motion to dismiss the pending determination which would have settled those compliance disagreements." See *City Motion to Dismiss, TKTK*. Further, the Mayor at no known time prior had acted to compel FOIA compliance, including where he knew the Law Department was improperly withholding records as attorney-client privileged. See *TK*.

3. Reassignment of Reid's remaining staff and FOIA duties. The Mayor's directives in his July 9 Letter of Findings ordered Reid to reinstate Gomez's authority as his FOIA designee [in administering and closing FOIA requests remaining under Reid's jurisdiction], and that Gomez then be reassigned to report to the City Manager's Office.

4. Threatening and actuating Reid's removal from his government office. In addition to pursuing Reid's removal from office through charges of Official Misconduct made to the State's Attorney, the resulting directives covering the Clerk's Office (after reassigning his staff), also prohibits Reid from entering that Office during weekday hours from 8:30am to 1pm, at which time the Clerk's Office is under the authority of the City Manager's Office.

5. Pursuance of criminal charges, removal from Office. These were in addition to the above allegations of Criminal Misconduct made against Reid to the County Chief Investigator for charges threatening his official position in government.

Threatening retaliation. Ill. Whistleblower Act Sec. 20.2: "An employer may not threaten any employee with any act or omission if that act or omission would constitute retaliation [...] under this Act." See *Sec. 20.1*.

C. Mayor's directives preventing future protected disclosures.

Certain policies prohibited. Ill. Whistleblower Act Sec. 10 "An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation."

²⁶ <https://youtu.be/j9aXCDU7ifU?t=7297>; <https://youtu.be/j9aXCDU7ifU?t=7449>

1. **Directives prohibiting Reid's protected disclosures.** The Mayor verbal and written orders Reid's filing of complaint against Masoncup as in violation of the City's Workplace Harassment policy, and that he must cease and desist such violative actions, and specifically describes Reid's administrative complaint as retaliation against Masoncup and that he must refrain from such retaliation.