

CITY OF ABERDEEN

ETHICS COMMISSION

******* DECISION OF ETHICS COMMISSION**

Re: Complaint of David Yensen v. Ruth Elliott

I. COMPLAINT AND RESPONSE

David A. Yensen, the Complainant who at the time of the incident in question was a Council member, filed a complaint with the City Ethics Commission against Council member Ruth Elliott, the Respondent. The Complainant alleges that the Respondent disclosed confidential information contained in an e-mail from an attorney representing the City and thereby violated Section 9-3 A (10) of the Aberdeen Code. At the request of the Commission the Respondent provided to the Commission a written response to allegations in the Complaint. The Commission, after deliberation and discussion, determined that a hearing was not necessary in order for it to make a final determination.

II. ABERDEEN CODE PROVISIONS

Section 9-3 A. provides in part that,

"The following provisions shall apply to city elected officials, employees, members of the Planning Commission and Board of Appeals, and those persons shall not:

* * * *

(10) Use or disclose confidential information acquired in their official city position for their own benefit or that of others."

III. FINDINGS OF FACT

Lawrence F. Kreis, Jr., an attorney for the City, sent an e-mail to the City Manager regarding existing litigation between the City and a number of City taxpayers. The e-mail contained confidential information regarding the litigation in which the City was a defendant. ("E-mail 1"). The message in E-Mail 1 was followed by a specific written statement at the end of the e-mail text stating as follows:

"The information in this electronic transmission is confidential and intended only for the addressee. Any use or disclosure by any other person is unlawful. This information is protected under attorney-client and attorney work product privileges. If

you receive this electronic transmission in error, please notify us immediately by telephone (410.879.2222) and delete this message without making a copy. "

The City Manager, by e-mail ("E-mail 2"), forwarded the message in E-mail 1 to the Council members who were named defendants in the above referenced litigation and for whom the information contained in E-mail 1 was relevant. In doing so the City Manager created an e-mail message "thread" in which both E-mail 1 and E-mail 2 were shown to the recipients of E-mail 2.

After the receipt of E-mail 2, the Complainant prepared a new e-mail and sent it as a reply to E-mail 2. It was transmitted to all persons who received E-mail 2 ("E-mail 3") thereby continuing the thread. E-mail 3 contained the following message:

"The press release will cite Fred, Mike and me as bad guys and point out that Ron and Ruth tried to do the "right thing". I strongly suggest that we get an an (sic) release together ASAP that points ut (sic) the actual facts, not the ravings of a demented old woman "

The thread of E-mails 1, 2 and 3 are sometimes collectively hereinafter referred to as the "E-mails".

The Respondent, after receiving E-mail 3, provided the e-mail thread to a person not authorized to receive the information contained in E-mail 1. The Commission, after review of the Council minutes and the tape recording of the meeting, determined that it was provided to a private citizen who had been a plaintiff in the litigation referenced in E-mail 1. The contents of E-mail 3 were discussed at a Council meeting, at which the Complainant apologized for the content of E-mail 3.

Whether intentional or not, the Respondent provided the thread of E-mails to an outside party who was not an intended recipient of the E-mail 1 and E-mail 1 contained confidential information relating to ongoing litigation.

The Complainant contends that the release of the E-mail thread to a person not intended to receive E-mail 1 was done for political reasons. Whether the transmission of the E-mail was for political reasons or other reasons, it appears that the release of E-mail 3, along with the other two e-mail messages, was not a benign act and was done for a reason which was for the benefit of others.

IV. CONCLUSIONS OF THE HEARING PANEL

The Respondent violated the provisions of the Aberdeen Code, Section 9-3 A (10) by disclosing confidential information contained in the message in E-mail 1 when she divulged the contents of all three E-mails to a person not entitled to receive the

information contained in E-mail 1. The Respondent chose to provide an unintended recipient with the E-mails, the first of which contained confidential information. The Commission determined that the disclosure of the thread of E-mails containing E-mail 1 by the Respondent was an improper disclosure of confidential information. The Commission also determined that nature of the disclosure was such that it was made for the benefit others.

The Commission, as a disciplinary action, directs the Director of Human Resources of the City to place this decision in the Respondent's personnel file as a warning and as a reprimand.

January-^ . 2008

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