

MICHAEL C. WALTER
ANDREW G. COOLEY
STEWART A. ESTES*
JAYNE L. FREEMAN**
RICHARD B. JOLLEY***
SHANNON M. RAGONESI
KIMBERLY J. WALDBAUM

* also licensed in AZ/OR
** also licensed in OR
*** also licensed in WY/MT



JEREMY W. CULUMBER
AMANDA G. BUTLER
BRIAN C. AUGENTHALER
RUTH NIELSEN
DEREK C. CHEN

OF COUNSEL:
MARK R. BUCKLIN

ROBERT C. KEATING (1915-2001)

KEATING, BUCKLIN & McCORMACK, INC., P.S.

ATTORNEYS AT LAW
801 SECOND AVENUE, SUITE 1210
SEATTLE, WA 98104
PHONE: (206) 623-8861
FAX: (206) 223-9423
www.kbmlawyers.com

jfreeman@kbmlawyers.com

July 7, 2020

Mayor Angela Birney
City of Redmond
5670 N.E. 85th Street
Redmond, WA 98052

RE: *Workplace Investigation -- Executive Summary Report*

Dear Mayor Birney:

On April 14, 2020, this investigator was contacted about conducting an outside investigation regarding various issues related to the City of Redmond's response to the COVID-19 crisis. More than thirty witnesses were interviewed, and a number of documents provided by the City and various witnesses, as well as information from public agencies, were reviewed.

I. BACKGROUND

On March 30, 2020, an emergency volunteer worker emailed the Redmond City Council regarding concerns she had about the City's response to the COVID-19 crisis. The email alleged that: 1) "city leadership is not being forthcoming" about the number of COVID-19 cases among city staff, asserting that at least five people in the Fire Department had tested positive as opposed to the Mayor's statement of two "known" cases as stated in an earlier communication, 2) the Chief Operating Officer ("COO") "instructed" two employees with positive results "not to tell anyone of their test results," and (3) the transition of leadership and staffing in the City's Emergency Coordination Center (ECC) in mid-March may fall out of compliance with National Incident Management System ("NIMS") requirements and could impact eligibility for FEMA reimbursement.

The Mayor responded to each of the concerns, explaining that City Hall had been closed the afternoon of March 12, 2020, upon learning that one City employee tested positive for Coronavirus, that the City eventually became aware of a second and third positive tests (for staff who were at home), but that the City could not share identities and medical conditions of specific employees without their consent.

On April 8, 2020, KUOW posted an article on its website titled “Redmond Fire Chief, Other Leaders Told to Stay Quiet About Having Coronavirus, Sources Say,” publishing the names of five Redmond Fire Department employees who had purportedly tested positive for Coronavirus. The article also reported that few people knew of the positive tests “because two of those command staff members were told by the Chief Operating Officer not to share publicly that they had coronavirus, multiple sources told KUOW. Those two passed along the demand to the three others who were infected.”

KIRO7 news also posted an article online titled “Redmond City Leadership Accused of Telling Employees to Stay Quiet about Having COVID,” referring to the KUOW story and quoting a Redmond City Councilmember (“Councilmember 1”) claiming information from City leadership was dishonest. The article also quoted a message from the Mayor outlining the City’s responses to concerns and inaccuracies in some of the reports.¹

A. Emergency Coordination Center (ECC) Activation and Leadership.

On February 28, 2020, the Redmond Fire Department (RFD) learned that medics who had previously responded to the Life Care Rehabilitation Center in Kirkland may have been exposed to the Coronavirus from patients. Following recommendations of King County Public Health, the City immediately took steps to isolate seven EMS personnel for fourteen days since times of potential exposures. The next morning, the City’s Emergency Coordination Center (ECC) was “stood-up” to begin monitoring and coordinating the City’s response to growing concern about the spread of the COVID-19 virus in the region.²

While they were isolated, the City’s Medical Services Administrator (MSA) and/or his staff contacted these medics twice daily to monitor symptoms and report data to the Public Health Department as requested. None of the Redmond Fire Department medics who were quarantined after responding to the Life Care Center ever tested positive for Coronavirus, and all returned to work after a 14-day period of isolation consistent with recommendations of the Public Health Department. By all accounts, the medics and other first responders from Redmond utilized appropriate PPE and safety procedures when responding to calls in the field. The MSA staff

¹ The Investigative Report and this Executive Summary are organized to provide information related to the concerns raised and the Mayor’s responses to those concerns, but also to minimize re-disclosure of private health information about City employees, some of which gave rise to concerns leading to this investigation in the first place.

² Five remained isolated at home, one out of town, and one at Redmond’s Fire Station 13, which was set up as an isolation/quarantine site to the extent it may be needed.

communicated with the medics about when it was safe for them to return to work.

In mid-March, City administration requested a transition of leadership in the ECC. At the COO's request, the Police Chief was assigned to Direct Incident Command and a Police Captain was assigned to fulfill the role of ECC Manager. The ECC was then moved from a "monitoring" mode to "activation" and took a more active role in coordinating logistics for City operations.

CONCLUSION: A preponderance of the evidence supports a conclusion that City Administration requested a transition of leadership in the ECC in March of 2020 due to concern about availability and effectiveness of then-current leadership. Failure to provide clear communication, leadership, and planning left a void that City Administration felt needed to be filled during a serious and quickly evolving crisis. Additionally, observations of and communications from ECC leadership (or lack thereof) seemed to reflect a lack of urgency or appreciation for the seriousness of the emergency and the needs of the City.

Some key personnel in the ECC's leadership roles had become ill, but were sharing little information about their health status, availability, or limitations. A number of witnesses noticed these personnel appeared to be less available, that there was a void of effective communication or articulated plan of action for the ECC, and that department directors (who also serve on the Emergency Preparedness Council) were spending valuable time independently seeking out resources (*i.e.*, locating scarce PPE and emergency supplies) in addition to managing their own departmental staffing and operations under increasingly difficult circumstances.

Initial "monitoring" activities in the ECC appear to have focused on external community partners and agencies; this is consistent with the Administration's recognition of the early-ECC's outward-focusing activities.³ However, there appears to have been a disconnect about the significance of internal logistical, communication, and leadership needs of the City itself as an organization, which is also a function of the ECC. While a number of "seats" in the ECC are staffed by and for various functional purposes that include coordination of support for City services (including staff who provide the services), the ECC leadership at the time did not appear to be setting in motion or communicating a plan to provide emergency support for internal operations like they were for the general public.⁴

The evidence supports a conclusion that the Police personnel assigned to manage the ECC do have ICS and NIMS training and experience with incident management. Additional personnel staffing the ECC also have ICS training. ICS-trained finance staff is currently working with FEMA regarding reimbursement protocols and other emergency support. It does not appear that transition

³ While in a slightly different organizational format, it appears volunteers and liaison staff continue providing community support through a task force and other activities.

⁴ For example, City-wide employees assigned to the ECC spent the first two weeks updating a Pandemic Plan that should have been updated prior to the current pandemic, a citizen complained about the EPM/ECC Manager's public comment to the media that the virus was "just a flu-like" bug, and witnesses reported that it did not seem those managing the ECC were properly adhering to or modeling CDC recommended hygienic safety practices.

of leadership in the ECC should impact the City's eligibility for FEMA reimbursement for qualifying costs. Several witnesses reported changes and communications from the new leadership team seemed much more effective, and the ECC took over coordination of logistical and supply needs for City departments.

B. City Administration's Knowledge of Employee Health and Testing Results.

On Friday, February 28, 2020, Redmond's Emergency Preparedness Manager (EPM), who was also assigned to manage the ECC, briefed the City's Director's Team regarding the novel coronavirus, forwarding current data from King County Public Health. She informed Directors that the State Department of Health, CDC, and State Emergency Management was sharing 3 consistent messages: 1) isolate: stay home if you're sick; 2) hygiene is critical: wash hands, clean surfaces; and 3) this is a low risk disease (and will stay that way if following the first two steps). The City's Department Directors shared this information with staff.

The next day, the Mayor sent a "Coronavirus Information Update" to all City staff providing links to King County Public Health, advising the ECC had been activated, and reminding employees to social distance, frequently disinfect surfaces, and stay home if you are sick. The King County Public Health data sheet provided at the time stated, "Currently the risk to the general public is low," "has not been spreading widely in the United States," and there are "no additional precautions recommended for the general public." A little over a month later, the volunteer reported to Councilmembers that five Fire Department employees had tested positive for COVID-19, suggesting the Mayor was not providing accurate information in past communications.

CONCLUSION: The evidence regarding if and when the Mayor or COO learned that each City employee actually *tested positive* for COVID-19 is consistent with the information in the Mayor's public statements. While the MSA and his staff was in regular contact with employees who were quarantined (*i.e.*, the medics who responded to Life Care) and employees who were home sick with flu-like symptoms (*i.e.*, the other five Fire Department employees), this information was primarily reported to King County Public Health, not City Administration. While Public Health requested such data for their own tracking and data-collection purposes, the MSA also used the information internally to advise affected employees when it would be safe to return to work, based on CDC and Public Health guidelines after their symptoms had completely dissipated.

While it appears the *Fire Chief* may have been aware that *five* employees in the Fire Department received positive COVID-19 test results sometime during the week of March 23rd, he did not share this information with the Mayor or COO until March 31st—*after* the volunteers emailed the City Council.⁵ Despite their suggestions that the Mayor *knew* that *five* different Fire Department employees had *tested positive* to COVID-19 in March 30th emails, which were then quoted by the media a week later, the witnesses themselves admitted they did not actually know if

⁵ A sixth employee in another department who got sick before any of the Fire employees was never tested for the virus. This employee stayed home after getting sick.

or when the results of any such tests were actually *received* by the subject employees and if or when results from each of the employees had actually been *disclosed* to the Mayor. At least two of the employees confirmed they did not receive positive results until the week of March 23rd, that they did not share the results with the Mayor, and they did not know if anyone else had.

C. Alleged Directive To Employees Not to Disclose Their Own COVID-19 Diagnosis Test Results.

The April 8, 2020 KUOW article quoted Volunteer 1's March 30th email stating: "I've learned that at least two of those with positive results were instructed by the Redmond chief operating officer... not to tell anyone of their test results... I personally had been working with these individuals shortly before their diagnoses but was unaware due to this instruction..." Another volunteer said he was "forced to independently decide whether to self-quarantine." Councilmember 1 was quoted as saying that affected employees directly told her that Fire Department leadership was "told not to tell anyone after they tested positive," and that this was given as a "directive" by the City's Chief Operating Officer. The KUOW article did not identify which employees reportedly said this to the Councilmember.⁶

CONCLUSION: A preponderance of the evidence supports a conclusion that the City's Chief Operating Officer (COO) did not give a directive to employees never to disclose information about their own medical information after they tested positive for COVID-19. Nor did the COO tell Employee 1 to give a directive to other employees in Employee 1's chain of command that the City prohibited them from sharing information about their own health or test results. The evidence does support a conclusion that Employees 2, 3, 4, and 5 were told by Employee 1 or their own departmental supervisors in their chain of command that they should not disclose their test results, and they were told that the COO had issued this directive to them (via chain of command).⁷ However, the COO had no idea that Employee 1 had given this directive to employees in Employee 1's chain of command or that these employees were under the impression that she had issued such a directive to Employee 1 or indirectly to them.

To the extent any statement from the COO was construed to be a "directive," this appears solely based on a comment along the lines of "let's hang on to that for now" made during a telephone call when Employee 1 initially called to report the first positive test result on March 12th, and immediately prior to City Administration consulting with King County Public Health and other resources that day to develop a plan regarding closure of City Hall and communications to City staff and the public. The evidence reflects that Employee 1 was involved in this consultation with Public Health officials and with development of plans for public communications and closure of City Hall. Employee 1's comments to Employee 3 the next day corroborate that the context of the comment "hold on to that for now" took place in the midst of learning of the City's first positive

⁶ Unfortunately, Councilmember 1 did not respond to repeated requests for an interview during the course during this investigation, nor did one of the employees who it appears the Councilmember did speak with.

⁷ It appears this message was communicated to these employees by their departmental supervisors before they ever received positive COVID-19 test results.

test result, seeking guidance from Public Health officials, and developing a plan for City-wide and public communications that would be going out later that day.

If there was any other statement Employee 1 construed as an ongoing “directive” to Employee 1 to direct employees in Employee 1’s chain of command not to disclose information about their own testing, it does not appear Employee 1 disclosed it to these other employees or other witnesses.⁸ It is unclear why either Employee 1 or Employee 2 interpreted the above-described comment to constitute an ongoing “directive” to Employee 1, or to apply to Employees 2, 3, 4, or 5. There is no evidence suggesting that the COO considered or referenced any other City employees during this initial conversation with Employee 1, or during follow-up conversations, or had that she had any intention of issuing such a directive to them. The evidence also does not support a conclusion that the COO should have known that either Employee 1 or Employee 2 would have interpreted her initial conversation with Employee 1 to constitute an ongoing directive to them or others not to disclose information.

Based on interviews with witnesses, it also appears that Employee 1 did not tell the employees in Employee 1’s chain of command that Employee 1 had actually had ongoing communications with the COO and Human Resources during the next week confirming only that *the City* would not release Employee 1’s personal health information (including testing positive to COVID-19) about Employee 1 without a signed authorization from Employee 1. Employee 1 did not share with the other employees in E1’s chain of command that E1 declined to sign a release authorizing the City to disclose his positive test results. No other employee had direct communication with the COO regarding disclosure of their own health or testing information when they later began to experience symptoms, got tested, and eventually received positive results—some at much later dates than others. Nor is there evidence the COO told these supervisors to tell the employees in their chain of command not to disclose any of their own testing information when they did get tested or received results later in the month of March. The affected employees had opportunities to seek clarification or ask questions of either their supervisors, Human Resources, or City administration if they had any concern or questions about their own medical information, though when asked about this, each simply said they would never question “chain of command” directives.⁹

The evidence also supports a conclusion that one non-Fire employee was asked not to continue telling people that the employee *had* Coronavirus. However, this was because the employee was never tested for COVID-19 and therefore did not know if the employee ever had it. The employee stayed home after becoming ill, as recommended by the CDC.

⁸ Neither Employee 1 nor the Councilmember 1 who appears to have spoken with Employee 1 about receiving such a directive agreed to be interviewed during this investigation and no other detail about the nature, scope, or timing of the alleged directive appear in documents or public statements reviewed to date.

⁹ Some of these employees did have communications regarding other matters with Human Resources and other City personnel during the same period where they could have asked about it, and some did not appear to have a problem pushing back regarding other issues when they disagreed or had questions.

D. Whether Steps Were Taken to Conduct “Contact Tracing” Upon Learning of Positive COVID-19 Test Results.

Some individuals raised questions about whether the City did or should have conducted “contract tracing” to locate and notify any individuals who had been in contact with a City employee who eventually tested positive with Coronavirus. On this issue, witnesses expressed a range of opinions about what notifications they felt the City should have given and when (*i.e.*, when an employee was out sick, when they got tested, when they received results, when they shared results with anyone at the City, or with City administration).

CONCLUSION: A preponderance of the evidence supports a conclusion that City Administration consulted with and followed the recommendations of the Public Health Department as to which employee(s) to recommend COVID-19 testing based on the information reported by Employee 1 on March 12th. City Administration also advised all City staff and the public (which included Councilmembers) that they had learned of one presumed positive case of COVID-19 in an individual who had been at City Hall, also pursuant to the recommendation received from the Public Health Department. During the consultation, Public Health officials advised that transmission of the virus was unlikely until an individual was exhibiting symptoms of illness. The City relied on these recommendations.

The City did not take further steps to specifically advise additional individuals of potential exposure based on proximity to Employee 1 or additional employees who later tested positive to the virus (beyond immediate notification of Employee 2 per recommendation of Public Health officials). Employee 1 had not been present at City Hall since March 5th, at least three days before the employee reported first experiencing symptoms, and nearly a week before the employee tested positive and reported this result to the City. The other four employees who eventually tested positive reported that they were not symptomatic while still working onsite at the City; most reported that the illness came on very suddenly when they were at home and that they did not return to work until they were advised it was safe to do so.

Several employees and volunteers were nonetheless “informally” advised by co-workers early on that they may have been working in close proximity to someone who had either tested positive or were going to get tested because they had been in close contact with someone presumed or suspected to be ill. At this point, and in light of the focus and conclusions regarding City communications, this report is focused on reporting what information was available at the time, not on re-creating and reporting on each individual who may or may not have been in proximity to any other individual who may have tested positive a number of months ago.

E. Disclosure to Media of Identities of Employees Who Tested Positive.

The employees whose names appeared in the KUOW article, identifying them as having tested positive for Coronavirus, all expressed surprise, disappointment, and varying levels of distress at seeing their identities and medical information published in a news article. They each

expressed a desire to find out who disclosed this information to the media and described the impact when family members and others learned this information so publicly. Their frustration was compounded by their understanding that they had been subject to a directive from the City not to disclose this information to anyone, only then to see their health information published in the media by someone else.

CONCLUSION: A preponderance of the evidence does not support a conclusion that any member of City administration, four of the five employees who were identified in the KUOW article, or the two volunteers disclosed either their own or their co-workers' identities, health, or testing information to the media. Nor does the evidence suggest that most of the employees who tested positive likely told co-workers about their positive test results before the volunteers emailed the City Council, which appeared to trigger more conversations among staff.

While this investigator was unable to interview the fifth employee named in the article (Employee 1), the KUOW article does not reflect having interviewed or contacted this employee. Two Councilmembers quoted in the media articles denied disclosing any employee identities to the media. However, Councilmember 1, who was quoted saying she spoke to "affected employees" did not respond to multiple requests for an interview for this investigation, so this investigator is unable to conclude what information this Councilmember may or may not have shared with the reporter or why she would not make herself available for an interview. Unfortunately, based on the evidence reviewed thus far, a determination of who did disclose the identities and test results of the City employees to the media could not be made.¹⁰

F. Communications between City Administration and City Council.

Some Councilmembers have expressed concern about whether the Mayor had kept them sufficiently informed about the health status of employees, transition of leadership in the ECC, and concerns raised by volunteers. In addition to telephone calls, email, and in-person communications with City Councilmembers, the Mayor's office also sought advice from the City Attorney about authority and process for transitioning personnel in the ECC, employee privacy issues, and the powers, roles, and responsibilities of the Mayor and City Council.

CONCLUSION: A preponderance of the evidence supports a conclusion that the Mayor maintained communications with the City Council while also attempting to manage City-wide operations and public communications regarding a novel, challenging, and rapidly evolving emergency response. In the midst of this crisis, City Hall closed, City administration and most staff transitioned to working remotely while still providing essential services to the public, and agencies received evolving guidance from Federal, State, and Health District agencies about a wide range of issues in light of the pandemic.

¹⁰ All four employees interviewed express concern about their identities and private health information being disclosed publicly.

The Mayor is responsible for managing City operations, including administration of all personnel within the constraints of budgetary authority reserved to the City Council. This includes authority to hire, discipline/terminate, and assign job duties to City employees, including Department directors. The Mayor (or her designees) do not typically share medical information about individual employees with the City Council. Except for specific, narrow exceptions, most communications between these elected officials are open to the public. The Mayor's office also sought advice from the City Attorney about authority and process for transitioning personnel in the ECC, employee privacy issues, and the powers, roles, and responsibilities of the Mayor and City Council. The Mayor reports to the Council about "the affairs of the city and its financial and other needs and shall make recommendations for Council consideration and action."

The transition of ECC leadership was an operational management decision, as opposed to a policy decision, and was based on internal, administrative evaluation of the availability (or unavailability or ineffectiveness) of key personnel and operational needs of the City. The unpredictable and medical status of individual employees, which also posed complicated privacy issues, is not information City administration would typically affirmatively share with City Councilmembers—they do not have a need to know and do not have a role in managing employees. The Mayor's decision to re-assign available and qualified City staff to temporary roles in the ECC did not require Council action or expenditure of funds requiring Council approval.

Nor did temporary assignments to roles in the ECC eliminate the employer's obligation to protect employees' private health information. It would not be typical for the Mayor's office to disclose to the City Council if an employee was ill or had been diagnosed with a particular medical condition. Some of the employees who did test positive to Coronavirus confirmed that they considered their health and test information to be sensitive, private information and none gave the Mayor or City administration authority to disclose it publicly.¹¹ Some concerns also appear to arise from miscommunications or assumptions about the timing of availability and transmission of information based on rumor; for example, a citizen-volunteer told the City Council that the Mayor's office knew information about five different employees when the Mayor had not actually been advised of that information at the time. Witnesses conceded they did not actually know what the Mayor knew but were repeating what they heard from others.

II. CONCLUSION

Though the Investigative Report was organized to describe available (and unavailability of) evidence most relevant to each topic, the scope and quickly evolving nature of available information, communications, and events during this time frame cannot be understated. Each of the "issues" discussed above required an immediate, coordinated response during the development of an undisputedly novel emergency situation, one that created unique challenges for which it appears a playbook was (and still is) developing, including changing recommendations from typical guidance sources, such as the Public Health Department and the CDC, as well as State and

¹¹ And some reported they did not even want their health information shared with City administration.

Federal governments.

Witness interviews and documents reflected a similar divergence of opinion, recommendations, and desired actions and outcomes based on each witness's own perception of circumstances and guidance. The Report is not intended to make conclusions as to which is the "right" action, but to report factual information. Through the course of the investigation, it became apparent that many of the witnesses outside a core group with direct knowledge of communications and information applicable to them only had second and third-hand information about material disputed facts, with many learning information after-the-fact and, at times, filling in blanks with information they conceded they did not have.

It is not in dispute that several individuals and groups associated with the City expressed concern about whether they may have been exposed to an individual who may have had the virus at some time in the past. None of the additional witnesses interviewed reported having tested positive to the virus but felt they may not have had enough information to decide whether to isolate themselves from family or other individuals during the time period at issue. The evidence reflected that City administration based decisions on information and guidance available at the time.

Please let me know if you have any questions regarding this report.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jayne L. Freeman", with a long horizontal flourish extending to the right.

Jayne L. Freeman