

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



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

ROBERT C. KEATING (1915-2001)

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

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 – City of Redmond*

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 documents provided by the City and various witnesses, as well as information from public agencies, were reviewed.

This investigation posed some unique challenges. This investigation began in mid-April, with many witness interviews taking place during the last two weeks of April and into May, with the focus of the investigation on events from the end of February to shortly before the time the investigation was requested in mid-April.¹ In the meantime, events and information regarding the ongoing COVID-19 pandemic, as well as ongoing operations at the City, have continued to unfold and evolve. In developing an investigation plan, it was anticipated that interviews would include what appeared to be two key witnesses, with additional follow-up interviews with witnesses as necessary depending on the information obtained.

However, on May 7th, the Fire Chief advised he was unavailable for an interview until June 1st.² After June 1, he then declined renewed requests to schedule an interview. Councilmember 1

¹ Due to COVID-19 related restrictions, interviews were conducted via remote connection or telephone.

² Other witnesses indicated he was unavailable from April 22-June 1.

never responded to repeated requests to schedule an interview throughout April and May.³ Additionally, a number of witnesses seemed to express an unusually high level of distrust regarding the nature and scope of the investigation itself and/or of other witnesses—some seemingly related to the issues involved in this report, but also seemingly related opinions regarding past events or experiences or various witnesses’ roles in the organization. This comment should not be construed to suggest any unified theme or subject of such expressed concerns, as they were as varied in subject-matter, source, and direction as the number of witnesses, but these varied sentiments seemed to impact some witnesses’ expectations regarding the nature and purpose of the investigation and views regarding opinion versus fact. This investigator has also made effort to minimize specific attribution of identifiable employees to the extent possible.

I. BACKGROUND

On Monday, March 30, 2020 at 8:14 p.m., an emergency volunteer worker (Volunteer 1 or “V1”) sent an email to the Redmond City Council, Mayor, and another volunteer titled “*Concerns About Current City of Redmond COVID-19 Response Management.*” In the email, she outlined concerns she had around the City’s management of its response to the COVID-19 crisis “specifically beginning in the March 20-23 time frame.” She alleged “city leadership is not being forthcoming” regarding 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 email/communication. She also alleged the Chief Operating Officer (“COO”) “instructed” two employees with positive results “not to tell anyone of their test results.” The email also suggested that the City may not be in compliance with the National Incident Management System (“NIMS”) requirements and thus may lose FEMA reimbursement eligibility as a result of staffing in the ECC, and that the Director of Emergency Preparedness (DEP) and Emergency Preparedness Manager (EPM) were “not being included” in Emergency Preparedness Council (“EPC”) meetings.

Mayor Angela Birney responded to the volunteer’s email the next day, on March 31st at 3:31 p.m., briefly outlining the reasons for the change of leadership in the ECC, transparency, NIMS compliance, the nature and number of positive COVID cases known to City Administration, and confirmed that the Fire Chief still served on the EPC and had been invited to all EPC meetings. The Mayor explained that City Hall had been closed the afternoon of March 12, 2020, upon learning that one City employee tested positive to COVID, that the City eventually became aware of a second and third positive tests, but that the City could not share identities and medical conditions of specific employees without consent.⁴ The Mayor and Human Resources Director

³ Additional timing of production of the report has been affected by factors including this uncertainty about the scope of interviews, and coordination of other workload and scheduling.

⁴ A second CERT volunteer (Volunteer 2 or “V2”) had spoken with Councilmember 1 regarding his own similar concerns about the transition of command leadership in the ECC, suspected unreported COVID-19 cases, and background and training among staff and volunteers working in the ECC. He expressed concern that some ECC staff had been directed home on March 12th while other staff and volunteers were not notified of potential exposure, also asserting “my understanding is the lack of notification was on direction from supervisors.”

have also addressed questions raised by Councilmembers, employees, and union representatives. **See, Ex. 1.**

The following week, on April 8, 2020, an article was posted on the KUOW website titled “*Redmond Fire Chief, Other Leaders Told to Stay Quiet About Having Coronavirus, Sources Say.*” The article published the names of five members of the Redmond Fire Department and their positions with the City, identifying them as having tested positive for Coronavirus in March 2020. It 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.*” **See, Ex. 2.**

KIRO7 news also posted an article online titled “*Redmond City Leadership Accused of Telling Employees to Stay Quiet about Having COVID,*” (last updated April 9, 2020-9:01 p.m.) referring to the story filed first by KUOW. This article quoted a Redmond City Councilmember (“Councilmember 1”) as stating, among other things, “*I do believe that the information you are getting is dishonest and that’s from our City leadership.*” The KIRO7 article also quoted at length a message that the Mayor issued after the story initially aired, suggesting that the media had reported inaccuracies related to the City’s response to employees that tested positive for COVID-19, and outlining the City Administration’s response to the concerns. **See, Ex. 3.**

This report has been organized in a manner to try to clarify information related to the concerns raised by various internal and external sources and the Mayor’s responses to those concerns. The report has also been formatted to avoid re-disclosure of private health information regarding City employees, some of which gave rise to concerns leading to this investigation in the first place.

II. ACTIVATION OF THE CITY OF REDMOND’S EMERGENCY COORDINATION CENTER (ECC) AND RESPONSE TO COVID-19 PANDEMIC.

While this investigator does not purport to be an expert in emergency management, a brief overview of some of the source documents and terms utilized by witnesses may provide some context.

Chapter 2.20 of the Redmond Municipal Code provides for preparation and carrying out of plans for emergency preparedness and protection of persons and property within the City in the event of a disaster and coordination of emergency preparedness and disaster functions of the city with other public agencies and affected private persons, corporations, and organizations. *See*, RMC 2.20.010. The Code provides for establishment of the Emergency Preparedness Council (EPC) and a Director of Emergency Preparedness (DEP) (the Fire Chief serves in this position *ex officio*) and empowers the Director to appoint an Emergency Preparedness Program Manager.

See, RMC 2.20.060.⁵ **See, Ex. 4.** The EPC consists of the Directors' Team, Mayor, and the Director and Manager of Emergency Preparedness.

The City of Redmond's Comprehensive Emergency Management Plan (CEMP) (2015) provides a policy framework and guidance in preparing for, responding to, and recovering from an incident. The City's emergency plans can be found here: <https://www.redmond.gov/589/Emergency-Plans>. A copy is also attached hereto as **Ex. 5**.

The National Incident Management System (NIMS), is part of the National Response Framework (NRF) that provides a common, nationwide approach to enable the whole community to work together to manage all threats and hazards. The City adopted the NIMS in 2005. According to the CEMP, the City also uses the Incident Command System (ICS) to respond to incidents in compliance with NIMS and first responders and a number of other City personnel are required to take and have taken ICS classes so they are capable of using the system in an incident.

The FEMA website describes these Systems as follows:

NIMS: *NIMS guides all levels of government, nongovernmental organizations (NGO), and the private sector to work together to prevent, protect against, mitigate, respond to, and recover from incidents. NIMS provides stakeholders across the whole community with the shared vocabulary, systems, and processes to successfully deliver the capabilities described in the National Preparedness System. NIMS defines operational systems, including the Incident Command System (ICS), Emergency Operations Center (EOC) structures, and Multiagency Coordination Groups (MAC Groups) that guide how personnel work together during incidents. NIMS applies to all incidents, from traffic accidents to major disasters.*⁶

Incident Command System (ICS): *The Incident Command System (ICS) is a management system designed to enable effective and efficient domestic incident management by integrating a combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure. ICS is normally structured to facilitate activities in five major functional areas: command, operations, planning, logistics, Intelligence & Investigations, finance and administration. It is a fundamental form of management, with the purpose of enabling incident managers to identify the key concerns associated with the incident—often under urgent conditions—without sacrificing attention to any component of the command system.*⁷

⁵ The 2015 CEMP provides "As of late 2011, the Emergency Manager is the Police Commander responsible for the Office of Emergency Management (OEM); the role was previously a civilian function in the Fire Department." Witnesses reported that, historically at Redmond, the Office of Emergency Management has been organizationally housed in both the Fire Department and the Police Department at various periods of time in the past. *CEMP*, p. 25.

⁶ <https://www.fema.gov/national-incident-management-system>

⁷ <https://www.fema.gov/incident-command-system-resources>

The City of Redmond's CEMP outlines plans for coordinating incident management activities, including activation of an Emergency Coordination Center (ECC).⁸ The CEMP defines the ECC as the "hub for incident coordination and communication activities. *CEMP*, p. 15. Coordination activities take place between the ECC and Incident Command field locations, Department Operations Centers (DOCs), King County Emergency Coordination Center (ECC), the State Emergency Operations Center (EOC), Non-Governmental Organizations (NGOs), and private industries. *Id.*

A. Emergency Coordination Center (ECC) Activation Re: Coronavirus

On January 30, 2020, the World Health Organization (WHO) declared the outbreak of the COVID-19 virus a public health emergency of international concern. On January 31st, the U.S. Secretary of Health and Human Services declared a public health emergency for the United States. On February 19, 2020, Governor Jay Inslee declared a State of Emergency for all counties in Washington as a result of the COVID-19 outbreak (*Procl. 20-05*).

1. Quarantine of Redmond EMS Personnel Responding to Life Care Center.

On February 28, 2020, the Redmond Fire Department (RFD) was advised that medics who had responded to the Life Care Rehabilitation Center in Kirkland earlier that month may have been exposed to the Coronavirus via patients who had recently tested positive for the virus. The Fire Chief advised that King County Public Health suggested that these medics be quarantined for 14 days since times of potential exposures. The next morning, Saturday, February 29, 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.⁹

The City immediately took steps to isolate seven (7) EMS personnel from the Redmond Fire Department who had recently responded to the Life Care Center. 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. During the time they were isolated, the City's Medical Services Administrator (MSA) and/or his staff contacted these medics twice daily to monitor symptoms and report this information to the Public Health Department as requested. The status of this personnel was listed on the March 1, 2020 recap of a COVID-19 Conference Call with neighboring agencies, County Public Health doctors, and recommendations from the CDC and PIO groups.

⁸ Several witnesses noted that the City of Redmond has established an Emergency *Coordination* Center (ECC), not an Emergency *Operations* Center (EOC), which may provide a broader range of services.

⁹ Emails reflect that, the week before the ECC was stood up, the Police Department had already asked the Fire Department about launching a unified approach to stocking up on supplies for the City's public safety departments "in light of the looming COVID-19... crisis that the CDC is predicting," reporting that their usual vendor had already run out of masks and reduced their order for sanitizer by half.

NOTE: 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.

2. Early Activity in the Emergency Coordination Center (ECC).

On March 1st, the Fire Chief updated the Mayor, COO, and Communications Director about the need for the ECC to coordinate with other cities and King County. On March 2nd, the Mayor initiated the first meeting of the Emergency Preparedness Council (EPC). Policy decisions discussed included an emergency proclamation and coordination with other agencies.

On March 2, 2020, Mayor Birney declared a State of Emergency in the City of Redmond. This allowed for more flexibility in some City operations, such as purchasing requirements, so City staff could move quickly in its efforts to secure needed supplies like Personal Protection Equipment (PPE) and equipment to better facilitate City staff telecommuting. **See, Ex. 6.**

The same day, Mayor's Office scheduled another EPC meeting, requesting an update from the ECC, as neither the Emergency Preparedness Director nor Manager had yet to schedule any such meetings. At this meeting, the EPM was directed to update the Pandemic Plan that apparently had not been updated in years. Email communications reflect the Deputy Fire Chief reporting to the Fire Chief that, as of Friday morning, February 28, 2020, he had met with staff regarding Coronavirus and the need to update the current City Pandemic plan, which "we found is indeed badly needed."¹⁰ He reported that the Fire Chief had requested that the EPM update the Pandemic Plan, that the Deputy Fire Chief had directed the MSA to start documenting and addressing the Fire Department's preparations for potential impacts, and that the MSA would take the lead in the Fire Department's preparations regarding the overall Pandemic Plan, and that the department had doubled their orders for N-95 masks.

Updating the Pandemic Plan required each of the City's departments to plan for the essential nature and prioritization of personnel and staffing levels in the event certain percentages of employees became unavailable (*i.e.*, due to illness or quarantine). Staff from each of the departments spent time over the next two weeks preparing input, with a deadline of March 13th. A number of witnesses reported frustration that City staff from various departments spent most if not all of their time assigned to the ECC updating this "continuity of operations" information for the Pandemic Plan as opposed to tasks they felt might more directly help the City prepare and logistically facilitate operational response to the pandemic. The Mayor's office was frustrated that leadership in the ECC did not seem to be making affirmative efforts to schedule EPC meetings or provide useful information to coordinate logistics City-wide. Witnesses reported that reports

¹⁰ It appears the CEMP overall is intended to be updated every five years, and was last updated in 2015; however, the Pandemic portion of it may not have been updated for a longer period of time. Another department Director reported having spoken to the EPM or Fire Chief weeks earlier about the need to update the City's Pandemic Plan, prior to the local arrival of COVID-19 or a State of Emergency in Redmond.

coming from the EPM consisted primarily of updating the Directors on the status of the Pandemic Plan update project, as opposed to logistical activities to coordinate and support operational needs of the City.

3. Challenges and Concerns Regarding Ongoing ECC Operations.

On March 6th, just days after the ECC had first been stood up in a “monitoring” phase, the Fire Chief (also serving as Emergency Preparedness Director/Incident Command for the ECC) advised his supervisor, the COO, that he was leaving the state for a few days to attend to personal matters. The Deputy Fire Chief was delegated to oversee Fire Operations. At an ECC briefing with the EPC/DT on Friday, March 6th—again initiated by the Mayor’s office—the EPM (and ECC Manager at the time) reported again on how far staff had gotten on updating the Pandemic Plan but not on any progress with coordinating City-wide responses to staff requests to order and provide Personal Protective Equipment (PPE) for employees, a growing concern City-wide. Witnesses and documents reflect the EPM’s focus in meetings on March 3, 6, 10, and 11 being on reporting how far each department had progressed on updating their portion of the “plan.”

During the EPC/DT briefing with the EPM on March 10th, they asked about availability and procurement of additional thermometers for health screening of City employees when reporting to work. The EPM reported she had personally spent time traveling to local stores and could not locate any; during the meeting, the Police Chief went online and advised that there were thermometers available to order via the internet. The Mayor had also personally ordered and brought in two thermometers to the City for use by City employees. They expressed frustration that the EPM and/or the ECC did not seem to be providing more helpful or useful logistical support to locate and provide essential tools for City staff. Other Directors and staff also reported frustration with the amount of time they spent personally locating PPE and supplies and wondered when and how the ECC was planning to provide effective assistance.

That same day, Q13 news videotaped interviews with various City staff for a new broadcast that night. The Communications and Marketing Manager facilitated interviews and prepared talking points for the Mayor, ECC Manager, and the MSA. During her interview, the EPM was heard to comment about the Coronavirus being akin to “just the flu,” which was inconsistent with the talking points. On March 11th, a citizen emailed the ECC Manager a message titled “*URGENT interview correction COVID-19 IS NOT a flu as you stated.*” He forwarded a copy of the email to the Fire Chief and Deputy Chief the next day. The EPM forwarded the complaint to the Communications Manager on March 12th at 11:09 a.m. and one of the City’s Public Information Officers (PIO) had to contact Q13 asking them to pull the story and video of the interview as it contained a statement wherein the EPM “misspoke.” By the afternoon of March 12th, the City’s communications staff had also responded to the citizen apologizing for the “misinformation” and confirming that Q13 had pulled the story at the City’s request. Copies of the response were shared with Fire administration and the EPM. **Ex. 7.**

Witnesses reported that the EPM had been provided talking points prior to the interview and those that heard her comments to the reporter immediately recognized them as concerning and inconsistent with the talking points provided. Some witnesses reported having previously heard the EPM make similar comments seeming to minimize concern about Coronavirus and had cautioned her that it made it sound like she or the City was not seeming to take the risk seriously. Others reported concerns that the ECC itself was not being operated in a manner consistent with recommended social-distancing and sanitizing practices before City Hall was shut down on March 12th.¹¹ The COO reported that some of these lapses in judgment, along with the failure to timely update the Pandemic Plan or take the lead in setting meetings and affirmatively providing effective information and coordination of services for the City, seemed to reflect a lack of seriousness and slow reaction to the emergency situation displayed by the EPM.¹²

On the afternoon of Thursday, March 12th, City Hall was shut down for deep cleaning, and all City staff were directed to leave and begin working from home. (More specifics provided below). This included staff in the ECC. Thereafter, multiple witnesses reported it was not always clear who was “on duty” or “out” because everyone was working from home; meetings were typically conducted via videoconference and sometimes it was difficult to tell or recall who was in attendance or why.

On Monday, March 16th, the Fire Chief suddenly appointed the Fire Marshall as the Fire Department Point of Contact (“POC”). In this role, the Fire Marshall served as the administrative contact for the Department and attended briefings at the ECC, much like he would if the Fire Chief was out of town. Neither the Fire Marshall nor the COO (the Fire Chief’s supervisor) knew at the time why the appointment was being made or why other members of the command staff were not filling that role as usual. The COO asked why the Fire Chief needed to designate an alternate POC and whether he needed help.

At this point, members of the Directors Team/EPC shared increasing concern regarding the role and effectiveness of ECC activities. Directors reported spending an inordinate amount of time personally planning and executing logistical activities, such as the continual search for PPE resources and transitioning staff to working from home (which also required locating, distributing, and installing additional equipment).

Several witnesses reported hearing and/or learning that some members of the Fire command staff were “out sick”; though noticing they seemed somewhat “absent,” it was not immediately clear why they were not around and who was involved in various communications. For example, there was confusion about which meetings the Fire Marshall/POC was supposed to

¹¹ Additional concerns were expressed regarding the seeming disregard of recommended precautionary measures to minimize public transmission outside of work by the Emergency Preparedness Director and the apparent lack of a plan to ensure continuity of leadership with designated roles at least “3 deep” to provide for leadership in the event of unplanned absences.

¹² The COO also cited prior experience during a snow event, when City Administration felt the ECC was slow to react or timely update the impending weather and the Mayor’s office had to request activation of the ECC.

attend in place of the Chief, but he did attend some Director's Team and EPC meetings in this role.¹³ The Fire Marshall did *not* take over the role of Emergency Preparedness Director or Incident Command for the ECC, just as administrative contact for Fire Department operations (the on-duty Battalion Chiefs provided operational leadership for Fire Department staff on their own shifts as usual). Most witnesses reported not really being clear about the status of various Fire Department staff during this time period—some heard that people might be “sick,” some thought various staff may still be out of town traveling, and some assumed that some might be working from home at the time, but few reported really knowing the status of specific individuals at the time.

Some individuals involved with ECC leadership reported they continued to work remotely, though perhaps taking more breaks than previously. One individual reported being out sick and unable to work for time. Some witnesses reported knowing this employee was very ill and not working, while other witnesses reported they were not sure if this employee was just working remotely. Fire Department personnel reported that it was highly unusual for there to be such a seeming void or absence of Departmental command staff, particularly without explanation or clear communication about the circumstances.

Amidst these growing concerns, the Mayor asked the COO to develop a plan for leadership of the ECC and Emergency Preparedness to be put in place and to follow up with the Fire Chief. The COO also consulted with the City Attorney regarding procedures for transition of leadership if necessary.¹⁴

In a telephone call on Tuesday, March 17th, the Fire Chief explained to the COO that the ECC was still in “monitoring” mode, not full activation, and that an Administrative Coordinator from the Fire Department and two volunteers were monitoring it (remotely, working from home). When asked what his plan was for operating the ECC moving forward, the COO reported that the Fire Chief told her he did not have one. She told Fire Chief that the ECC could not continue to operate this way and that action needed to be taken to put leadership in place to direct the ECC and COVID-19 response. Though seeming to agree that some action needed to be taken, the Fire Chief apparently did not propose a plan himself.

On Wednesday, March 18th, the Fire Marshall/acting Fire POC advised the COO that the Fire Department was not receiving information about City Hall and requesting an update regarding how long City Hall would remain closed. The COO responded that it was her understanding that the Fire Chief was keeping the Fire Department informed of ongoing events and information and asked him to confirm whether that was happening. The COO had to ask who was monitoring the ECC and who would be available to lead a full activation of the ECC if it became necessary, as it appeared staff who had been responsible for managing the ECC seemed to be under the weather.

¹³ This is corroborated by emails on March 25th, wherein the Fire Marshall requested clarification from the Fire Chief as to which meetings he wanted him to attend and/or may want the Fire Chief's Administrative Coordinator to attend on his behalf.

¹⁴ Later, upon request, the City Attorney provided a written advisory legal memo to the Mayor and the City Council dated March 31, 2020. *See, Ex. 8.*

The COO reported daily contact with the MSA but not receiving daily operational updates on the Fire Battalion Chiefs on duty as she had previously requested from Fire Department leadership.

Having heard nothing from the Fire Chief and having not been provided with an articulated plan for moving forward with the ECC, the COO told the Fire Chief on March 18th that the City needed to move forward with realignment of leadership in the ECC due to apparent lack of availability of current leadership from the Fire Department. She suggested appointing the Police Chief to direct the ECC and the Police Captain to manage the ECC. The Fire Chief said he was okay with that and said that the administrative staff from the Fire Department could continue to support that leadership team. (During this call there was additional discussion that is detailed below).

Witnesses reported that the ECC was not really “activated” at the time but was still generating daily SitReps. The Fire Marshall reported providing information to administrative staff in the ECC by 3:00 p.m. each day, including which Fire Department medics were quarantined. He does not recall being asked to report the status of others who might be “sick” from the Fire Department and was never provided that information to forward for the SitReps. On March 18th, the COO, MSA, and some Department Directors also spent time planning how to facilitate access to City Hall for staff to collect equipment for telecommuting and mitigation that may need to be put in place. They also discussed the desire to move the ECC into an “active” mode instead of simply “monitoring.” Upon recommendation of the MSA, the COO contacted the City of Kirkland’s Emergency Manager to see how they were successfully operating their emergency center.

B. Transition of Incident Command and Management of the ECC.

On Thursday, March 19, 2020, the COO and Human Resources Director convened a conference call with Fire operations staff and some Directors to discuss transition of ECC management due to current lack of available and effective leadership. They also spoke with the ECC Manager (EPM) regarding operational and leadership challenges they were facing and explained the plan to transition to a different leadership team into the ECC.

Shortly after noon, the COO then emailed the Police Captain a summary of a discussion she had with the Emergency Preparedness Manager for the City of Kirkland, noting that the City of Redmond would also need to coordinate with King County Health and other agencies if there was a change in leadership of the ECC. In the summary, she noted that Kirkland had “fully activated” their EOC,¹⁵ was shifting to a semi-remote model with some EOC staff on site and some working remotely, and that their COVID -19 response was being operated through their EOC while ongoing City operations were directed by each Department Director (with policy decisions made by the EPC as needed). The COO then outlined an overview of planned key functions, including

¹⁵ Some witnesses pointed out that Kirkland actually was operating an “Emergency Operations Center (EOC)” as opposed to an “Emergency Coordination Center (ECC)” that Redmond operates. They suggested that Kirkland’s emergency center provides a more expansive range of services and facilities.

full activation of Redmond's ECC for the next 8-10 weeks, with a "Unified Command established between Fire and Police for coordination of response and exposure, medical monitoring and tracking of staff in conjunction with King County Public Health, coordination and securing supplies (logistics), and a lead PIO to coordinate all communications."

That same day, at 1:58 p.m., the COO sent an email to the Fire Department and Police Chief and Captain advising that the City would be making some adjustments to the leadership and operation of the ECC based on staffing availability and continuity of the ECC over the long term. Effective immediately,

- ECC – Incident Command – Police Chief with Fire Chief resuming in the near term to join Incident Command with the Police Chief
- ECC Manager/Operations – Police Captain to lead all functions and authority of the ECC and coordinate with the EPC on policy decisions
- Directors Team – Directors will resume leadership of their departments and will serve on the EPC for policy questions
- Fire Department administrative staff will continue to support the ECC and Police Captain managing the ECC
- RFD Operational Leadership – COO, Fire Chief, Police Chief, Finance Director will coordinate with the MSA, Fire Marshall and the BC on duty (rotational) on RFD operational needs

Ex. 9.

On March 20th, the Fire Chief confirmed designation of the Police Chief to act as Incident Command or Director of Emergency Preparedness in his absence. **Ex. 10.**

On Monday, March 23rd, a transitional briefing meeting was held, wherein prior ECC Section Chiefs were asked to brief new Sections Chiefs on operational rhythm, unresolved items, and next intended actions. That afternoon, the COO emailed the Director's Team regarding protocols for the ECC and City Operations, outlining "two very distinct areas of work": 1) ECC Operations in regard to COVID-19, and 2) City Operations. The email noted that all items related to COVID-19 need to be coordinated through the ECC, with the Police Chief now designated as the Director of Emergency Preparedness, the Police Captain authorized to manage the ECC (with Ernie Fix as his backup), and the Director's Team addressing policy issues as needed as the Emergency Preparedness Council (EPC). She noted that communication needs are to flow through the ECC as they had a PIO on duty each day to coordinate communications and media needs. **Ex. 11.**

After transition of ECC leadership, the Police Chief prepared a summary of the Improvements and Enhancements the new team implemented to fully active the ECC and move forward. **See, Ex. 12.** Emails March 19-23 also reflect communications from ECC staff providing transitional information, such as where SitReps and other documents could be found.

In her response to Volunteer 1's March 30th email, Mayor Birney wrote that the ECC Manager was changed to meet the needs of the City's Directors Team (DT), noting that while the ECC Manager had been reporting on her communications with external partners and Public Health, she felt the new ECC leadership had been able to provide more specific guidance to internal City staff to make key actions happen. She also communicated that, after consulting with legal counsel and discussion with the Fire Chief, the Chief confirmed that the designation of the Police Chief to act as the Director of Emergency Preparedness in his absence. The email indicated that the Fire Chief would still serve on the EPC and had been invited to all EPC meeting and was attending when available. **See, Ex. 1.**

Interviews with some members of the Director's Team and others corroborated frustration and confusion regarding what the ECC was doing to assist the departments internally to develop a coordinated response to the COVID-19 pandemic. In addition to supervising daily operations of their respective departments and planning for potential impacts of the virus on staffing and operations, many of the directors were devoting additional time trying to inventory and obtain necessary supplies such as sanitizers, masks, and thermometers. As the pandemic loomed, they found many of the normal channels for obtaining such supplies were not available.

In terms of personal knowledge of the volunteers who expressed concerns about transition of ECC leadership, Volunteer 2 worked intermittently in the ECC beginning February 29th then daily from March 9- 23, 2020 when leadership transitioned to the Redmond Police command staff. When City Hall closed, the ECC functions continued remotely via Microsoft Teams conferences, email, telephone, and shared documents. He indicated that the administrative coordinator ECC Manager and her back-up continued participating in and directing his activities supporting the Planning and Logistics roles in the ECC. After transition of Incident Command in the ECC, he participated in in community outreach activities as opposed to working in the ECC.

V2 personally prepared the ICS-209 compliant SitReps March 3-5, 9, and 12, 2020 onsite from the ECC and March 16-20, 2020 working remotely. The SitReps were approved ECC Manager and/or her backup. During the COVID-19 response, he also created a Web EOC training in the ECC for City staff to refamiliarize themselves with Logistics and Planning activities. The volunteers and some ECC staff emphasized the importance of their activities and communications related to interacting with agencies and community partners outside the City (as an employer and organization providing operational services to the public). For example, the EPM or other staff typically were participating in daily conference calls with regional partners, reporting out on Redmond's activities and updating the SitReps with information obtained from other agencies. The documents appear to have been filed in the OneNote system on file. They also maintained communications with local partners such as the local school district and private businesses, and

coordinated services, supplies, and information for community groups.

However, the volunteer workers were not part of the EPC and would did not attend those meetings. Neither Volunteer 1 nor 2 had spoken directly with the Fire Chief, department directors, or City Administrators about any of the concerns raised in their emails regarding their perception of management or leadership in the ECC. V1 last worked in the ECC (remotely) on March 23rd. As consistently explained by the COO and Human Resources Director to both the Fire Chief and the Emergency Manager when communicating about the transition of leadership, there appeared to be a void of leadership and responsiveness to the needs of internal City “partners” to coordinate emergency response and logistics for the City of Redmond’s own organization.

On April 1st, the Police Chief responded to questions from Councilmember 1, who told him she had concerns about how the City was responding to the COVID-19 events and issues with the ECC leadership (after contacts by the volunteers). The Police Chief explained to her that he had been asked by the Mayor to take Incident Command of the ECC when the Chief was out, and that he was acting in this role as the EPD’s designee, but that this did not make him the “Director of Emergency Preparedness,” which is a much broader role than just providing Incident Command for the ECC in response to the current emergency. He explained to her the role of the ECC, EPC, and operational efficiencies that his team had implemented in the ECC for the ongoing COVID-19 response, including use of a high level “snapshot” to provide daily updates of information to the City. The Police Chief explained that he and the Police Captain both have appropriate FEMA ICS training and certifications and were qualified to run the event.¹⁶

Questions about the Police Command’s qualifications to run the ECC were also raised by the volunteers and some of the prior ECC staff who were re-assigned.¹⁷ However, each of the witnesses making such an assertion conceded they did not actually have any idea what training, certifications, or specific experience that the Police Chief, Police Captain, or other personnel in the ECC actually had, other than some acknowledged awareness that the Police Chief has a Master’s Degree in Emergency Services Administration. Nor does it appear any of these witnesses asked about training or qualifications before making these assertions.

Upon review, it appears these personnel have received the FEMA training witnesses suggested was important (ICS and NIMS training).

The Police Chief’s Training and Experience: Training records reflect FEMA courses in 2005 and 2006, including Incident Command System and NIMS training.

¹⁶ Director’s Team records corroborate witness reports that each of the department directors is also assigned a “buddy” to cover for them in event of an absence and that the Police Chief is the Fire Chief’s assigned Director-buddy.

¹⁷ The Fire Chief reportedly suggested to the COO what the Police Captain may not have emergency operations qualifications.

- FEMA IS 00001.a: Emergency Manager: An Orientation to the Position (2016)
- IS-00235: Emergency Planning (2008)
- IS-00240: Leadership Influence (2008)
- FEMA Center for Domestic Preparedness: Law Enforcement Response Actions (2009)
- FEMA ICS 300 and 400 (Incident Command System for Law Enforcement) (2007)
- FEMA IS 100 and 700 (ICS and NIMS Introductions) (2006)

The Police Chief also has an extensive training and certification record related to law enforcement and organizational leadership, as well as training on N-95 respirator masks, rapid deployment of first responders, first-aid/CPR, and bloodborne pathogens. The Chief was appointed to the Redmond Police Department in August of 2019, and thus most of his prior law enforcement experience is in the state of California.

Training records reflect that the Police Captain has received the following FEMA training:

- **Entry Level ICS Training:** ICS 100 (ICS Introduction-2008), and ICS 700 (NIMS Introduction-2008)
- **Mid-level ICS Training:** ICS 200 (Basic ICS-2008) and ICS 800 (National Response Framework-2008),
- **Senior Level ICS Training:** ICS 300 (Intermediate Incident Command System for Expanding Incidents-2013) and ICS 400 (Advanced Incident-2013 Command System for Command and General Staff), NIMS Incident Management (2006), N95 Mask fitting (2016, 2017, 2018) NIMS Incident Management System (2008), Incident Command for Law Enforcement

The Police Captain also has a host of additional training and/or certifications regarding First Aid/CPR, Bloodborne Pathogens, Hazardous Materials Response, and police leadership and administration. Most recently, he attended a new IAEMC COVID Cost Recovery training (April 3, 2020). The Captain has served in the Redmond Police Department for more than 20 years.

Police Department training and experience with NIMS/ICS is also consistent with additional evidence. For example, on March 9th, the Police Captain forwarded the Redmond Police Department's COVID-19 Law Enforcement Branch Operations Plan (#20-0265) to the Emergency Management Coordinator. The plan reflected it was prepared in accordance with the common Incident Command System (ICS) forms, including ICS 201,202, 204, and 205. The plan indicated

an operating period beginning February 26, 2020 and that “due to the public health nature of the emergency, Redmond Fire is designated as the lead agency in the response. Redmond PD is supporting the Law Enforcement Operations and Communications Branches to support incident objectives,” but that a Law Enforcement command representative would be staffed in the ECC as liaison for daily operations. This presentation appears consistent with Fire/Emergency services’ descriptions of the requisite roles and events at the time.

The Finance Director confirmed that both she and Finance staff filling roles in the ECC also have received the requisite NIMS/ICS training to undertake the emergency response work at hand. The Finance Department has had staff assigned to the ECC since the beginning, but some were frustrated at spending so much time initially updating the Pandemic Plan rather than working on what they felt might be more important, such as setting up a system to capture costs of the ECC for FEMA reimbursement.

Since the transition of ECC leadership, in addition to tracking costs, a Finance Analyst has been in regular contact with a FEMA liaison, as recommended by FEMA, to stay updated on FEMA’s current and evolving plans for recovery, reimbursement, and evaluation of potential and appropriate grant funding. Typically, applications for FEMA reimbursements are submitted after an event is over; however, due to the unusual and ongoing nature of this particular emergency event, FEMA has not yet determined when it might begin processing applications. Finance staff has also been actively engaged in seeking out and evaluating potential grant funding opportunities.¹⁸

A specific concern raised by at least one witness was whether the Emergency Operations Division of the Fire Department would be able to “certify” that all NIMS/ICS “requirements” were strictly adhered to throughout the event in order to apply for FEMA reimbursement funds. Examples of potential non-compliance included transition to using a “Daily Snapshot” for daily updates instead of the 7-8 page “Situation Report” (“SitRep”) previously utilized by the ECC to share information in a systematic format with both internal and external partners. Another example cited by some witnesses was lack of clarity as to some of the new roles or tasks that were currently assigned, as they did not appear to strictly track established roles.

While FEMA reimbursement application forms do include a required certification by an agency representative that they have read FEMA rules regarding what costs properly qualify for reimbursement, they do not appear to require that only Emergency Operations staff sign the certifications. Again, while this investigator does not purport to be an expert in FEMA transactions, the evidence did not suggest that FEMA is likely to reject applications for costs that qualify for reimbursement and are properly accounted for. The current ECC leadership and Finance staff appeared cognizant of the need to properly track information for this purpose and

¹⁸ One issue that arose during the transition in the ECC was delay in communication regarding the status of a particular grant opportunity. While a number of electronic communications that still went to the EPM as the listed contact for the City were forwarded to the new ECC manager, there was some frustration that this information was not shared earlier to avoid potential duplication of effort.

indicated that FEMA has been helpful to agencies as they both navigate this new and unusual disaster situation.

Director's Team meeting notes from Tuesday, March 24th reflect both the Police Chief and Fire Chief in attendance remotely via videoconference. Notes of an example of an ECC Snapshot were reviewed and described as the best way to provide information to the City Council and others. Witnesses described the ECC "Snapshots" as an abbreviated form of the previous SitReps, intended to provide a more easily digestible summary of current updates of information most useful for City operations. Several witnesses reported appreciating the Snapshots, which were apparently sent out to the recipients each afternoon as providing more useful information that could be viewed quickly and did not have to be looked up on OneNote.

The meetings notes describe the ECC as being staffed by "skill set, not by department." Operational Objectives for the pandemic event were identified as: 1) Minimizing and controlling the spread of COVID-19, 2) Providing public health guidelines and messaging to staff and the public throughout the incident consistent with King County Public Health and CDC guidelines, 3) Planning for continuity of operations of essential city functions through April 30, and 4) planning for recovery. There is mention of the need to supplement the Pandemic Plan to identify triggers to *bringing work back on-line at the fullest capacity*,¹⁹ and that HR Analysts would work with employees' managers/supervisors regarding potential exposures.²⁰ Witnesses on the EPC reported feeling the ECC was much more organized, proactive, and effective in support of internal operations after the transition as well as providing more clarity as to what policy decisions needed to be made by the EPC each day.²¹

It appears the Fire Chief was at work on March 26th, and subsequently the COO continued communications with him about coordinating with the Police Chief to work on the Recovery effort (which she observed had not been started under prior management) and also focusing on providing leadership in the Fire Department. The Police Chief and Captain expressed a willingness to continue working cooperatively with Fire personnel and command, as well as coordinating Incident Command as necessary with the Fire Chief, and the Police Chief indicated he'd had some communications with the Fire Chief since his return. Some Fire command staff suggested there had been little to no actual communication between the Fire and Police Chief regarding a "joint command," but no one specified a particular operational issue in the ECC that for which specific

¹⁹ Previously, when City staff spent the first two weeks in the ECC updating the Pandemic Plan, the focus was on each department providing a "continuity of operations" plan in response to the pandemic, proportional to how much of each department's staff may be unavailable due to illness or quarantine, for example.

²⁰ A function of the MSA in contacting employees and tracking symptoms was to determine and provide guidance regarding when employees who were quarantined or sick were safe to return to work. Operationally, managers had to supervise staffing, scheduling, workload, *etc.*, and Human Resources continued to handle many of the leave-related issues (which also evolved during this time) and other HR functions while the City also transitioned to telecommuting.

²¹ Some witnesses reported feeling that communications with external partners was not as strong after the transition, including a temporary gap in communications with some community partners, and an expressed preference for the prior format of the SitRep for sharing information with them.

action as “joint command” posed an obstacle.

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. Availability and effectiveness of some individuals in leadership positions was likely impacted by illness (whether or not each employee was completely unavailable or attempting to work off and on from home); however, 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 situation. The fact that health information about affected employees also implicated potential privacy issues, and that the actual medical status of various employees was, in and of itself, not clear, complicated the situation.

ECC initial activities related to external community partners and agencies appears consistent with the Administration’s recognition of strengths in the early-ECC’s outward-focusing activities, and volunteers, liaison staff and support appear to continue providing community support through a task force and other activities. However, there appears to have been a disconnect about the significance of internal 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), it does not appear ECC leadership at the time was setting in motion needed focus on internal as well as external objectives at the time.

Some key personnel in the ECC’s leadership roles had become ill, but little information was shared about their health status, availability, or limitations. A number of witnesses noticed these personnel appeared to be less available, there seemed to be a void of communication or articulated plan of action for the ECC, and department directors (who were also on the Emergency Preparedness Council) grew increasingly concerned about independently performing logistical functions (*i.e.*, locating scarce PPE and emergency supplies) in addition to managing their own departmental staffing and operations under increasingly difficult circumstances.

The evidence supports a conclusion that the Police personnel assigned to manage the ECC have do have ICS and NIMS training and experience with incident management. Additional staff staffing the ECC also have ICS training.

III. COMMUNICATIONS REGARDING SPECIFIC EMPLOYEES’ HEALTH & TESTING STATUS

A. City Administration’s Knowledge of Employee Health and Testing Results.

On Friday, February 28, 2020, Redmond’s Emergency Preparedness Manager (EPM) 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 three (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 socially distance, frequently disinfect surfaces, and stay home if 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."

The following is a summary of information that was provided to City Administration regarding five (5) employees who did eventually test positive for Coronavirus and how and when it was provided. To minimize potential re-dissemination of health-related information, while still providing sufficient evaluative information, the employees have been identified in a manner consistent with the Mayor's prior public communications.

EMPLOYEE 1 (E1): This employee was last at Redmond City Hall on Thursday, March 5th. E1 then traveled out of state, leaving town by vehicle on March 6th and returned via commercial air Monday, March 9th. E1 did not feel well and did not return to work that week. On Tuesday, March 10th, E1 told the City's Medical Services Administrator ("MSA") that symptoms started Sunday and were worse after flying home Monday. The MSA advised E1 to get tested for COVID-19 and arranged for a test that day. E1 got tested for COVID-19 and received positive results on Thursday, March 12th. E1 called the City's COO and reported the positive test results that day. [This is consistent with the Mayor's statement.]

EMPLOYEE 2 (E2): E2 was working at the City when E1 called to report positive test results on Thursday, March 12th. When E2 heard E1 report a positive result, E2 reported to the City's COO that E2 had picked E1 up from the airport three days earlier. After consultation with Public Health officials, E2 was advised to go home, get tested for COVID-19, and follow CDC recommendations. E2 then went downstairs and told E3 that they had both been exposed to someone who tested positive, and that E3 should get tested as well. While E2 had ridden in a vehicle with E1 on Monday, there is no evidence E3 or any other city employee had any contact with E1 since seven days earlier, before symptoms developed. E2 did report to work at the City that week, including spending time at Station 11, City Hall (and the ECC at City Hall) through March 12th, but E2 reported not experiencing symptoms while still at work.²²

E2 reported getting tested on Tuesday, March 17th, and the results came sometime later that week. The only people E2 reported the positive result to was the MSA, the MSA's assistant, and E1. E2 has no idea if or when the Mayor or COO knew of the positive test—when asked if E2 had any communication with the Mayor or COO regarding E2's own medical status or testing results, E2 responded “absolutely none” and “at no point did I tell the COO or Mayor that I tested positive.”²³ This employee was contacted by Dr. Rea of King County Public Health and was contacted by the City's MSA staff daily to monitor symptoms. E2 was not contacted by City Administration regarding the illness. E2 does not know who had access to information regarding their health status or testing results. E2 did not physically return to work until the week of March 23rd. [This is consistent with the Mayor's statement].

EMPLOYEE 3 (E3): On March 12th, E2 called E3 out of the ECC and advised E3 that E1 had tested positive and that E3 should go get tested now. E3 left City Hall and tried to get tested that day but was unable to test for Coronavirus until the next day, March 13th. E3 did not receive a positive test result until the week of March 23rd, nearly two weeks after City Hall closed. The MSA and staff contacted E3 twice daily to monitor symptoms, and E3 thought they had a list of everyone who was “sick.” It was E3's understanding that the MSA was reporting this information to the Public Health Department but did not know if information was being shared with City Administration.

E3 did not report being sick to the Mayor or COO and did not want personal health information shared with them. E3 learned of the positive test via a call from Public Health, but this was more than two weeks after being tested. By the time E3 learned of the positive test results, the symptoms had resided. The Public Health representative told E3 when it was safe to return to work. E3 did not report the positive test result to City Administration. [This is consistent with the Mayor's statement]. Apparently, E3 did share the positive results with a supervisor in the Fire Department via chain of command. E3 did not know whether or who the supervisor may have reported information to within City Administration, or when.

EMPLOYEE 4 (E4): E4's last day working at City Hall was Wednesday, March 11th, having scheduled planned time off March 12-13. On Thursday, March 12th, E3 called E4 at home and advised that they had both been working around someone who was positive and that E4 should watch for symptoms and go get tested.²⁴ E4 also reporting telling Volunteer 2 (V2) that day to monitor their own symptoms and telling V2 to pass that message along to V1 because they may have been exposed to someone with the virus; E4 reported learning that evening that it was E1 who had first tested positive. E4 began feeling ill Friday, March 13th and was very sick until

²³ This employee expressed frustration that there had been no contact from Human Resources or City Administration despite E2's apparent illness until the advisement in mid-April that this investigator may be contacting E2 for an investigative interview. E2 indicated an expectation, as a dedicated City employee, that City Administration or HR would at least reach out to E2 to see how E2 was doing. E2 acknowledged that Human Resources said they understood the MSA staff was contacting the employee, which was acknowledged, but E2 felt this was not enough.

²⁴ As of this date, only E1 had been tested and received a positive test result.

March 24th. E4 never reported to work at City facilities during this time.

During the time E4 was sick, MSA staff was making daily contact to monitor symptoms, but E4 did not get tested until March 16th and did not learn of positive test results until March 24th, more than ten (10) days after first experiencing symptoms and twelve (12) days after last working at City Hall. The test results were reported to E4 by a private doctor. E4 reported only specifically sharing the positive test result at the time with the MSA staff and did not know for sure who else they reported it to. E4 had contact with E1, E2, and E3, and some other Fire staff in that they contacted E4 during the illness to check in on how E4 was doing. E4 “returned to work” on March 30th but was working remotely from home. E4 never directly reported E4’s own test results to City Administration. [This is consistent with the Mayor’s statement].

EMPLOYEE 5 (E5): E5 became ill at home on Saturday, March 7th—before any of the other employees described above. E5 described the symptoms as coming on very suddenly Saturday evening, and not having experienced any symptoms when last at work on Friday, March 6th. E5 called in sick beginning Monday, March 9th. Later that week, E5—after E1 found out positive results—E1 called E5 and recommending getting tested for COVID-19. E5 was not tested until March 16th and received positive results sometime later. E5 shared the results with E1 and E2 via chain of command, and the MSA. E5 did not share the positive test results directly with City Administration and personally felt the MSA should *not* have shared E5’s own health information or testing status with “City Hall” (*i.e.*, the Mayor or COO). E5 was not contacted by Public Health. E5 was contacted daily by the City’s MSA staff tracking symptoms with the understanding the information was reported to King County Public Health to learn more about how the virus spread, *etc.* E5 was also contacted by a hospital and the CDC asking if E5 would participate in antibody studies. E5 returned to work onsite on Monday, March 23rd. [This is consistent with the Mayor’s statement].

On March 31st (after the volunteer emails asserting that five Fire employees had tested positive), during a telephone conference with the Mayor and COO, the Fire Chief disclosed to them that, while he was not really “tracking” COVID testing, he was aware that five employees in the Fire Department had tested positive. The Mayor said she was *not* aware that five Fire Department employees had tested positive and asked why he had not advised her or the COO if he knew that additional City staff had tested positive (E3 and E4 apparently received positive test results the week of March 23rd).²⁵ The Mayor and two witnesses to this conversation reported that this question was met with silence by the Fire Chief and that he never provided an answer. The Mayor expressed frustration that volunteers appeared to have more information than City Administration based on what the volunteers appeared to have reported to City Councilmembers in emails they sent earlier that week. [This is consistent with the Mayor’s statement that she was not aware that five Fire employees had tested positive before this date and she still did not have

²⁵ During telephone calls with the COO and Human Resources Director on March 23rd and 24th, the Fire Chief had specifically reported to them that Employee 3 did *not* have any test results back and that he had not heard from Employee 4 regarding any results.

such information directly from the employees].

A sixth City employee, not in the Fire Department, who began feeling sick on or around March 3rd, stayed home through March 19th, when released by a doctor to return to work. This employee was never tested for Coronavirus, so it is unknown if they had the virus or not. Due to the nature of the employee's job duties, the employee reported having been in many different areas of City Hall and in contact with equipment used by many different City employees throughout City facilities prior to March 3rd. Apparently, this employee was concerned that their illness might be caused by the virus, and the employee discussed his illness and concerns with a number of other City employees and at least one Councilmember. Some employees and the Councilmember reported some concern about whether they could have been exposed to Coronavirus if they had previously been in contact with this employee. It is still unknown if the employee ever had Coronavirus.

On March 19th, the Washington Department of Health website posted the following guidance, in part, for business administrators handling sick or possibly sick employees with COVID-19:

Employees who show signs of COVID-19 (fever, cough, or trouble breathing): place them in a private room away from others. Ask them to wear a face mask. Notify your local health department right away. They will tell you what to do.

What to do if an employee has COVID-19: Keep it confidential. This is required by the Americans with Disabilities Act (ADA). Inform close contacts of the sick employee that they may have been close to someone with COVID-19. Direct employees to the Department of Health website or the Coronavirus assessment tool developed by Microsoft and Providence.

On March 21st, the EEOC updated its guidance regarding *Pandemic Preparedness in the Workplace and the Americans with Disabilities Act* to address application to COVID-19. Noting that COVID-19 was declared a pandemic on March 11, 2020, the EEOC indicated that "Employers and employee should follow guidance from the Centers for Disease Control (CDC) as well as state/local health authorities on how best to slow the spread of this disease and protect workers, customers, clients, and the general public." The guidance "recognizes that guidance from public health authorities will change as the COVID-19 situation evolves. The original long-standing guidance that "all information about employees regarding a medical condition or history of an employee must be collected and maintained separately as a confidential record" was still maintained. *See, EEOC-NVTA-2009-3*, pt. II, A (2). The guidance was an update indicating that an employee "with COVID-19, or symptoms of it present at the workplace at the current time" could constitute a direct threat, and thus employers *can send such employees home from work. Id.*, pt. II, B, pt. III, B. The employer may follow the advice of the CDC/local health authorities

regarding information needed to permit an employee to return to work. *Id.*, pt. III, B (8).

As of March 21st, the CDC issued updated Interim Guidance for Business and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19). It stated, “To prevent stigma and discrimination in the workplace, use on the guidance described below to determine the risk of COVID-19 infection... there is much to learn about the transmissibility, severity, and other features of COVID-19 and investigations are ongoing.” The Guidance states “*If an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the... ADA. The employer should instruct fellow employees about how to proceed based on the Public Health Recommendations for Community-Related Exposure.*”

CONCLUSION: The evidence regarding if and when the Mayor or COO learned that various City employees actually *tested positive* for COVID-19 is consistent with the information in the Mayor’s public statements.²⁶ 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 reported to King County Public Health, not to City Administration. While Public Health requested such information for their own tracking and data-collection purposes, the MSA also used the data 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 sent emails alleging this information to the City Council.²⁷ Despite their suggestions that the Mayor knew that *five* different Fire Department employees had *tested positive* to COVID-19 when they emailed Councilmembers on March 30th, which were then quoted by the media a week later, the volunteer witnesses themselves admitted they did not actually know if or when any 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. The evidence supports a conclusion that at least two of the employees did not receive positive results until the week of March 23rd and that they did not share the results with the Mayor.²⁸

²⁶ The April 8th KUOW article also reported the decision to shut down City Hall was made “after the first two positive results were made public to staff in mid-March.” (emphasis added). In fact, the evidence reflects that the decision to shut down City Hall on March 12th was made that day, upon learning that one employee (E1) had tested positive; none of the other employees had been tested. No other employees received positive test results until much later in the month

²⁷ 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.

²⁸ The Fire Chief did not make himself available for an interview.

B. Alleged Directive To Employees Not to Disclose Their Own COVID-19 Diagnosis or Testing 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 I felt this was extremely negligent behavior on the part of a high-level city representative."* The article also quoted an email from Volunteer 2 stating *"I was forced to independently decide whether to self-quarantine."*

The April 8, 2020 KUOW article quoted comments from three Redmond City Councilmembers regarding the allegation that the COO allegedly directed employees who had tested positive not to tell anyone about their test results.

Councilmember 1:

- *"I was told directly, that was absolutely the case. That our leadership (at the fire department) was told not to tell anyone after they tested positive. They were told this by our COO and that's who they report to."* (regarding whether the COO talked with some of the people who got sick and was told the COO asked several employees not to share their positive test results).
- *"The people that were directly affected are saying otherwise. The people who did test positive are saying otherwise. They were directed to do otherwise."*

The KUOW article did not identify which employees the Councilmember spoke to or had reportedly said this to her. Unfortunately, this Councilmember did not respond to repeated requests for an interview during this investigation, thus the investigator was left with a process of elimination while interviewing several other witnesses and relying on their reports. From the comments (and process of elimination in reliance on interviews with other witnesses), it appears the Councilmember may have spoken with Employee 1; however, this employee also did not appear for an interview.²⁹

Two other Councilmembers were quoted as expressing concern if employees had been told not to disclose information and if the Council was not being provided accurate information from City Administration. Neither Councilmember was quoted as saying they had received alleged

²⁹ Councilmember 1 did not respond to requests to schedule an interview sent on April 22 (twice), May 7, 12, and 29, in addition to a voicemail and at least two requests by the Human Resources Director to contact this investigator for an interview. The requests offered to facilitate any scheduling needs, including availability during the day, evening, or weekends for a remotely conducted interview. No explanation has been provided for this lack of response.

factual information directly from an employee-witness on this issue. Nor did they indicate during investigative interviews that any employees had directly made such statements to them.

The article reported that the COO denied telling employees they were not allowed to disclose or share their own test results with anyone, and the Mayor's statement denied it as well.

Employee 2: This employee reported being present in a conference room at City Hall on when the City's Chief Administrative Officer ("COO") was talking to Employee 1 on the telephone. Though unclear on details, E2 thought it was the initial conversation on Thursday, March 12th when E1 first called to report to the COO that they received the first positive test.³⁰ E2 reported hearing E1 ask something along the lines of "what should I do now?" or "should I tell people?" and that the COO responding with something along the lines of "just hold on for now." E2 did not know exactly what the COO meant by the statement, how long "for now" meant, or why the statement may have been made at that time. E2 never asked the COO, never had any follow-up conversations with the COO about the scope or intent of the statement, and does not know if E1 ever had additional conversations regarding the comment or the scope of any directives from City administration regarding disclosing or not disclosing either E1's testing status or any other employee's testing status. At the time E2 overheard this conversation on the telephone, E2 had not yet been tested, was not experiencing symptoms of illness, and had not received positive test results. Nor had any other City employees.

Subsequently, when E2 did later get sick, get tested, and received positive results, E2 reported assuming that E2 was not supposed to tell anyone about it. It was E2's understanding, via chain of command from E1, that the COO had directed *them* not to tell anyone about whether either of them may have tested positive. E2 never asked the COO, anyone in City Administration, and does not know if the COO ever specifically directed that E2 was not allowed to share information regarding E2's own health status or testing results at the time E2 eventually got tested and learned of the positive test results. Citing "chain of command" as the basis for following what E2 understood to be a "directive," E2 never heard of any other directive given to E1 aside from the initial comments about "holding on to that for now." E1 did later ask E2 if E2 had heard the COO's comment on the telephone on March 12th and cited to that comment as the only source for the "directive" to either E1 or E2 that none of the Fire employees were supposed to share information about their own medical or testing results.

If the COO commented to "hold onto it for now" during the first conversation when E1 called to report the first known positive Coronavirus test, it would have been before the COO had an opportunity to consult with the Mayor, the MSA, and King County Public Health to obtain recommendations and guidance about how to proceed with City operations, staff, and communications. Immediately after receiving news of the positive test, such consultations, decision-making, and communications took place. E1 was included on a conference call with City

³⁰ This is also corroborated by the fact that this was the last day that E2 or any other of the subject employees were working onsite at City Hall, or when E2 would have been present in such a meeting with the COO.

Administrators, the MSA, and King County Public Health Officials that afternoon. Though not required, in an abundance of caution, a decision was made to close City Hall, send all employees home for at least a week, and deep clean City Hall. During the call, a recommendation was made to advise E2 to get tested, due to E2's recent direct contact with E1 (spending time inside a vehicle off-duty with E1 when E1 was already feeling sick). E1 was also involved in communications with City Administration regarding messaging going out to employees.³¹

Other witnesses report a number of communications over the next two weeks with Employee 1 (E1), during which E1 did not disclose or discuss a directive not to disclose E1's test results or directing E1 to require other employees in E1's chain of command not to disclose their own personal health information or testing results. The COO and Human Resources Director reported specifically telling E1 that *the City* would not disclose E1's health information or positive test results *unless E1 signed a release expressly allowing disclosure of such information*, but that they did not tell E1 that E1 was prohibited from discussing E1's *own* information. They reported that E1 asked for more time to think about whether E1 wanted to sign a release, and after further conversations about the issue the week of March 16th, ultimately declined to sign a release.³²

Councilmember 2 reported that the E1 later told him, during the week of April 20th, that E1 had been told by the COO not to tell anyone about his positive COVID test. This was more than a month after E1 had recovered and after the media articles had been published. E1 did not describe when E1 received the directive or what specifically the COO had said that E1 considered to constitute a directive that applied to E1 and/or the other four Fire Department employees.

Employee 3: E3 was advised by both E2 and E1 that E3's own health and testing information should not be shared with others, both citing a "directive" from the COO. E3 reported that E1's description of the "directive" to E3 on March 13th, the day after City Hall closed and after a City-wide announcement had been made that an employee who had been at City Hall had tested positive, was that the COO had told E1 to "hold onto that for now" in a conversation the day before. E3 never talked directly to the COO or anyone in City administration about whether E3's own information could be shared, citing understanding this to be a "directive" given via chain of command by the COO to E3's supervisors and down to E3. E3 does not know if E1 or E2 ever sought any clarification or if the directive as described was actually meant to apply to E3—who had not even been tested at the time the comment was reportedly made, did not receive a positive test until weeks later, and never reported the results to City administration. E3 did have communications with the COO and Human Resources Director regarding other issues during the month of March (*i.e.*, transition of ECC) but did not ever ask about whether there was ever a directive not to discuss E3's own health information or if any such directive was ongoing. At the

³¹ For example, at 5:52 p.m. the evening of Thursday, March 12th, E1 responded to a question about whether to send out a "Code Red" message advising that "critical employees should report to their normal facility as usual or telecommute as directed. E1's recommendation was "I think we need to put out something just state the day city will closed and if they have questions contact their department director or supervisor [sic]."

³² At this point, it appears E1 had already told at least two other employees that the COO had given a directive that none of them were allowed to discuss their test results.

time of most of these communications, E3 had not yet even received any test results.

Employee 4: E4 reported the understanding that E1 had been told not to tell anyone about testing status and that E3 told E4 that E3 should follow this chain of command directive as well. E3 described this communication occurring on Thursday night, March 12th, when E3 told E4 that E3 was getting tested because they may have been exposed to someone with the virus; E3 also told E4 that E1 had told E3 “not to tell” and “not to say anything at this point” *because the City was coming up with a plan* regarding closure of City Hall and were planning to announce it the next day through City communications.³³ It was E4’s understanding that E1 had been told by the COO not to tell anyone about E1’s own test results (this was told to E4 by E3). Thus, E4 then assumed E4 was not supposed to tell anyone, as this seemed to be a directive passed down via Fire Department and/or ICS chain of command. E4 was asked daily about symptoms and test results by the MSA staff who called E4 to check in. E4 never asked E1 or anyone else specifically about what E4 understood to be a directive, stating “it’s not my protocol to question a directive coming from my superiors.”

Employee 5: Sometime after receiving positive test results on March 12th, E1 told E5 of the result and told E5 to get tested (E5 had already been staying home sick for the past six days at this point). E1 told E5 “do not share” E5’s test results because the COO had told E1 that the City did not want that information shared; E1 did not explain why, nor did E5 ask.³⁴ E5 would have shared that E5 was sick and that had tested positive with members of the Fire Department because E5 feels it would be important for co-workers to know. Later, after E5 recovered, E5 wanted others to know the positive and optimistic information that, though miserable, the virus is survivable. E2 told E5 that E2 was given the same directive not to share test results with others.³⁵ E5 reportedly “pushed back” some with E1 the week of March 16-20 about wanting to share the information with co-workers in the Fire Department, but given the paramilitary organization of the Fire Department, E5 described having been given a directive from a superior in the chain of command that E5 felt had to be followed. It was not until E5 read in the media report that the Mayor’s office denied giving such a directive that E5 felt there was no longer a need to follow it and E5 started telling co-workers about E5’s experience with the Coronavirus. At this point, E5 had recovered and was back at work.

³³ Though E3 described being told this by E1 the next day, on March 13th, the witnesses admitted not always recalling the specific times of each conversation, and the reports among these witnesses are consistent in a description of receiving this information either March 12 or 13, at a time when only E1 had tested positive and communications were first going out regarding closure of City Hall.

³⁴ If the COO made the comment about “holding on for now” on March 12th to E1, at that time, E5 had not yet been tested and would not receive any test results until at least the following week. The evidence did not reflect the COO specifically telling that E5 not share any information about E5’s own medical or testing information after E5 had these results.

³⁵ At the time E2 reported hearing the COO tell E1 to “hold on to that for now,” E2 had not yet been tested and would not receive results for at least another week. The evidence did not reflect the COO specifically directing that E5 not share any information about E5’s own medical or testing information after E5 had these results.

No other witness reported hearing the COO direct any employee not to tell anyone about their own medical condition, symptoms, whether they had been tested for COVID-19, or their test results. Most witnesses reported either noticing or hearing that a certain handful of fire employees seemed to be “missing” or possibly “sick,” but many described that it was difficult to tell the actual status of other City staff after March 12th because most employees shifted to remotely work from home after City Hall closed. The exception were first responders in the Police and Fire Departments, who were still reporting in-person due to the nature of their work. Most administrative personnel, including those who had been working in the ECC, had begun to work from home.

The MSA reported that he never heard anyone in City Administration direct any City employees not to tell anyone about their own test results. Nor did he hear any such suggestion from the Mayor’s office or Public Health. At some point—after the E1 and E2 had returned to work—the MSA heard them say that the COO previously told them not to tell anyone about their test results, and he told them that no one can make them not tell anyone. He indicated that it also did not make sense that they would give such a directive; he only recalls City administrators saying that *the City* would not disclose the employees’ own medical information, including testing results, without their consent due to the employees’ rights to privacy.

Nonetheless, it appears several City employees did pass along some information about known positive COVID-19 tests or potential exposure to those they worked closest with—just not via communications from “City Administration.” This includes some of the employees who report a belief they were subject to a directive not to share medical information.

For example, in addition to advising E2 and E3 March 12-13th of E1’s own positive test results, E1 told at least one other Fire employee working in the ECC of E1’s own positive tests; this employee had last been in close proximity to E1 on March 5th and did not observe any symptoms of illness then. The employee asked E1 if self-quarantine was advisable and E1 said and it would not be a bad idea. This employee also knew E4 and E5 were later out sick for several days but did not know the cause, and the employee had worked near them before City Hall closed. It was not until the KUOW article was published April 8th that this employee learned the others had potentially received positive test results, but the employee did not know when such results were available or who they were known to.

E3 reported telling Volunteers 1 and 2 that E3 was self-quarantining and that if they had been around E3 in the ECC, they should quarantine, too. The volunteers eventually also realized E4 was sick for a period of time and learned sometime after the KUOW article that both E3 and E4 had tested positive.³⁶ The two volunteers were not “officially” notified by anyone else in City Administration of possible or actual exposure to City staff who may have tested positive to the virus. E4 reported also advising Volunteer 2 early-on that E4 may have been exposed to someone

³⁶ Though at least Volunteer 1 had already told the City Council in her March 30th email that it was her understanding *five* Fire employees had tested positive; she reported she did not know for sure which five.

who might be positive, so V2 might want to consider that they may have been exposed to a “presumptive positive” as well; E4 reported asking V2 to pass that information along to V1 as well. E4 reported sharing with CERT volunteers via a Zoom meeting that E4 had previously tested positive, but this was not until April 1st (this was before the KUOW article was published and after E4 was fully recovered), indicating at this point E4 felt it was E4’s own private health information and that E4 should be able to choose who E4 shares it with.³⁷

Other members of the Fire Department reported realizing that some key staff were “no longer at work.” It became clear that some were off because they were not feeling well, and some vaguely seemed to suggest to witnesses they had been told not to say more than, leaving the impression this message had come from City Hall. The Fire Department had been very meticulous about how they managed the medics who had responded to Life Care, but some witnesses reported it did not seem like these other employees or their co-workers were being treated with the same level of care and caution. Some witnesses reported feeling that other employees who had been in contact with employees who were out sick should have been notified as soon as the employees were *symptomatic*; other witnesses suggested feeling that co-workers should have been notified when employees received a *positive test result*.

Aside from those specifically described herein, all other witnesses denied knowing exactly when any City staff/co-workers actually got tested, received results, who the results were shared with or when, or if any “contract tracing” or “notifications” had been made at any particular time. The MSA had consistently emphasized to everyone *not to come to work* if any symptoms of illness—before and since City Hall shut down. Some employees reported having an understanding that the MSA and staff were contacting and monitoring employees who were sick or quarantined, but they did not know what information was discussed or with whom it was shared. It appears that none of the witnesses interviewed were contacted individually by the MSA, City Administration, or Health Department with an advisement or recommendation to get tested or to quarantine.

Other witnesses reported learning generally from a public statement only that “someone” was sick and that it made sense why identities would not be released due to privacy concerns. Some expressed the opinion that anyone who may previously had been in contact with those who eventually tested positive should all have been notified directly by City Administration of “potential” or “possible” exposure—especially those who had been working in the ECC where several of those who tested positive had been present before City Hall closed down on March 12th.

Later, after the April 8th KUOW article and various public statements about specific employee testing and positive test results had been made, witnesses reported that some of the five employees named in the article did *then* directly share that they had tested positive to the virus

³⁷ Volunteer 2 reported that E3 and E4 told him much later that they had been sick but is not sure if they specifically told him they tested positive. V2 also admitted not knowing when each of the employees actually got tested, received test results, who they shared test results with, or when. V2 reported still not knowing who the “1st person was.” V2 was concerned but when asking questions about the necessity of quarantining, no direct answers were given. V2 did not ask E1 or E2 about exposures or what directives may have been given from City Administration.

back in March, and that they had not told anyone because they understood they were under a directive from City Administration not to. Many witnesses reported then having also heard this second or third-hand, but no other witnesses reported knowledge of *what the COO supposedly actually said* in such a “directive,” who it may have been said to or when, or why such a directive might have been given (other than the five fire employees as described more specifically above).

Another employee who had last worked at City Hall in the ECC March 11th (but is not on the log sheet) received a call at home from a co-worker on March 12th and was told they had been exposed to someone in the ECC who was sick and “getting tested”,³⁸ so the employee should not come in, and should probably self-quarantine. The employee was told to keep the information confidential but responded that the employee would need to tell the employee’s supervisors about not coming in to work. This employee self-quarantined from March 12th-23rd, but in the meantime City Hall was closed anyway and most staff transitioned to working from home.

This employee shared with supervisors in the employee’s own department that they had been told not to tell others that “[the employee] had been exposed” working in the ECC, but thought it was strange the same supervisors who had also been present in the ECC but were never specifically notified that they may have been exposed. The employee who was “sick and getting tested” never told this employee directly of the testing, nor did the employee receive notification from City Administration about potentially being exposed to the virus.³⁹ One volunteer shared with this employee that they had also decided to self-quarantine because they learned that two employees who had worked in the ECC were out sick. This employee’s supervisors confirmed that their employee reported on March 12th that they had received a call from a co-worker in another department advising that an ECC employee was getting tested, and that the employee should stay home but not tell anyone. The same day, another employee reported to the same supervisor that they ran into the ECC employee at a nearby hospital (when getting tested) and that the employee had said something along the lines of “don’t come near me—I’m sick; please don’t tell anyone.”

This supervisor, other Department members, and CERT volunteers had been working physically in the ECC through March 11-12th. Employees had been told by the City to stay home if you had been exposed, and some reported observing and/or hearing this type of evidence that they *may* have been exposed, but expressed concern that many had not been “notified” whether or not they had been exposed to someone with the virus—so it was difficult to know how to make these decisions. Some employees were making personal decisions to decontaminate and/or remain separate from family at home, but they did not receive further official notice from the City/MSA/Public Health about which other employees who had been present in the ECC who were sick and may have tested positive.

Members of the Police Department, Teamsters Union that representing Police staff, Fire Department personnel, and other employees expressed concerns and asked questions in late March

³⁸ The reference appears to have been to Employee 3.

³⁹ Though the evidence reflects that that employee did not receive positive test results until late March.

and early April to Human Resources and the Mayor about the lack of clarity regarding potential exposure to City employees sick with Coronavirus. Witnesses reported hearing rumors of absences, illnesses, and testing, but not knowing who actually might have tested positive and thus which individuals may have been in close proximity at times of potential transmission. Some Councilmembers also reported personal concerns about regarding when and if they may have been exposed to the virus as they did not know at the time who had tested positive and when they may have last been in close proximity with certain staff who work at City Hall or who they may have attended meetings with.

The ECC Notebook morning briefing notes from March 16th indicate that the COO gave approval for Directors to include injury/illness reports in the ECC SitReps. While some Sitreps generally report the number of employees remaining in quarantine (*i.e.*, medics who responded to Life Care Center) and occasional absence or illness in some other departments (without identifying by name), it does not appear the five employees ultimately testing positive for the virus were included in the SitReps. None of the witnesses interviewed could explain why the status of those five employees was not included in the ECC SitReps, even though it appears some of the staff who were ill were involved in reviewing and/or collecting information for the SitReps at the time. Witnesses involved in preparing SitReps for the ECC reported they did not know why the information was not reported or tracked in the SitReps. While one employee raised the suggestion that the employees may have thought they were not supposed to share information about their health, but no one reported or recalled any specific decision, discussion, or directive not to include the status of these five Fire employees in the SitReps. There is no evidence the COO specifically directed that this information not be included in the SitReps, nor does it appear this level of administrative detail the COO would be expected to manage.

Aside from the Fire personnel described above, a sixth employee, described above as having gone home sick on March 3rd, employee was advised by a supervisor on March 9th that the employee's continued communications to people around the City about "having Coronavirus"—when the employee was never tested for the virus and thus did not know if the employee had it or not—were raising concerns and that "there is no reason to share your personal health information with anyone else. No one needs to know what's going on other than you're home sick." The employee was also advised equipment had been wiped down and cleaned after the employee was last at work. The HR Director reported that she discussed with this employee concerns about telling multiple people that this employee "had Coronavirus" when he was not tested for it.

On March 18th, after talking with the COO and HR Director, this employee reported getting "clearance to communicate my situation over here again." During these conversations, and communications with other City staff, this employee frequently shared a number of other pre-existing frustrations with the City and the employee's job situation. This employee also spoke with

the Mayor later, on April 11th, regarding his frustrations about City employment.⁴⁰

CONCLUSION: A preponderance of the evidence does not support a conclusion that the City's Chief Operating Officer gave 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 E1 to give a directive to employees in E1's chain of command that they were not allowed disclose information about their own health or test results. The evidence does support a conclusion that Employees 2, 3, 4, and 5 were told by supervisors in their departmental chain of command that they should not disclose that they were getting tested or their test results because the COO had issued such a directive.⁴¹ However, the COO had no idea that E1 had given this directive to employees in E1's chain of command or that these employees were under the impression that she had issued such a directive to E1 or indirectly applicable to them.⁴²

To the extent any statement from the COO was construed to be a "directive," this appears solely attributed to a comment along the lines of "let's hang on to that for now" during a telephone call when E1 initially called to report the first positive test result on March 12th, and 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 E1 was involved with development of plans for public communications regarding the situation, and E1's comments to E3 the next day corroborate that the context of any initial conversation with the COO took place in the midst of learning of the City's first positive test result, seeking guidance from Public Health officials, and developing a plan for managing City operations, facilities, and staff, and consistent communications City-wide and to the broader community.

If there was any other statement E1 construed as an ongoing "directive" to E1 to direct employees in E1's chain of command not to disclose information about their own testing, it does not appear E1 disclosed it to these other employees or other witnesses. Neither E1 nor the Councilmember who appears to have spoken with E1 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. It is unclear why either E1 or E2 interpreted the above-described comment to constitute an ongoing "directive" to E1, or to apply to E2, E3, E4, or E5. There is no evidence suggesting that the COO considered or referenced any other City employees during this initial conversation, or during follow-up

⁴⁰ Interview with this employee and review of correspondence reflected a tendency to spend a great deal of time discussing a wide range of matters, opinions, and details, both specific to the employee, employment and details of a wide range of medical issues, and as broad as personal observations and opinions about broader, societal approaches to pandemic response and details about other employees or individuals.

⁴¹ It appears this message was communicated to these employees before they even received positive COVID-19 test results.

⁴² In fact, the COO did not know when or if all five employees had even received test results until after the volunteer emails to the City Council on March 30th. In a telephone call on March 31st, the Fire Chief told the COO and the Mayor that he was aware of five positive test results, but he had not shared this with them yet.

conversations, or 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 E1 or E2 would have interpreted her initial conversation with E1 to constitute an ongoing directive not to disclose information.

Based on interviews with witnesses, it does not appear that E1 shared with the employees in E1's chain of command that E1 had ongoing communications with the COO and Human Resources over the following week confirming that *the City* would not release E1's personal health information (including testing positive to COVID-19) about E1 without a signed authorization from E1, or the fact that E1 declined to sign one.⁴³ 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 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.

The evidence also supports a conclusion that one employee was asked not to continue telling people that the employee *had* Coronavirus.⁴⁴ 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.

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

In her March 31st email to Volunteer 1, the Mayor advised the City immediately close City facilities and sent employees home from City Hall on March 12, 2020, upon learning that one employee had tested positive to COVID-19. The email explained the City then learned of a second case, and eventually of a third case, but had not received direct confirmation about the other two cases. She explained the City balanced providing employee privacy with ensuring safety of employees, noting that the Americans with Disabilities Act (ADA) prohibits disclosure of positive test results to an identifiable employee without their consent. This is consistent with prior communications distributed by the Mayor and Human Resources Department and guidance from the EEOC regarding the ADA.

Upon learning that Employee 1 had tested positive to COVID-19, and consulting with Public Health and the MSA the same day, one co-worker (E2) was immediately advised to get tested because it was revealed that this employee had been in close personal contact with Employee 1 (off-duty, away from the workplace) a few days earlier when Employee 1 *was already*

⁴³ It appears these communications took place during a time when E1 may have not been feeling well and also during conversations about other issues, including management and transition of the ECC.

⁴⁴ There was evidence that some other City employees who experienced symptoms of illness during this timeframe subsequently learned they did not actually have the virus when they got tested; instead, they simply had an unrelated illness.

experiencing symptoms of illness. While this employee did eventually test positive to the virus, the employee denies experiencing any symptoms of illness still working at City facilities.⁴⁵

During the initial consultation City administrators had with Public Health officers on March 12th, it was King County Emergency Medical Director Dr. Rae who asked Employee 1 questions about who the employee had been in close contact with while not feeling well. When Employee 1 described riding in the car with Employee 2, Dr. Rae recommended Employee 2 get tested. King County's Public Health Officer Dr. Duchin, asked Employee 1 questions about when the symptoms occurred, which were reported as Sunday-Monday, March 8-9th. Dr. Duchin advised the group at the time⁴⁶ that the risk of transmission is when the person is symptomatic, and that since Employee 1 had not been at work since the week before, the infection risk was extremely low.⁴⁷

At the end of the conference call, the King County Public Health Doctors and the City's Medical Services Administrator recommended the following action to City administration:

- Notify City employees and the community of the presumptive positive case
- Recommend Employee 2 get tested and quarantine for 14 days
- Close the City for a deep clean
- MSA to monitor Employee 1

While City Administration generally advised *all* City staff that they had learned of one presumed positive case of COVID-19 in an individual who had been in City Hall, the City did not take further steps to specifically, formally advise additional individual employees (beyond Employee 2) of potential exposure based on proximity to Employee 1 or additional employees who later tested positive to the virus. 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.⁴⁸

⁴⁵ At least one employee, after-the-fact and looking back, recalls observing this employee seeming "sweaty" and using a cough drop during a meeting that week, but the observing employee also reported using cough drops at the time due to allergies.

⁴⁶ The Mayor, Chief Operations Officer, Fire Chief, and Medical Services Officer were all on this call with the Public Health officials.

⁴⁷ Dr. Duchin did point out during the conference call that there may be other risks to consider, unrelated to the City's workplace, such as having traveled on a commercial airplane while symptomatic. It is unclear if the Public Health Department took additional steps to notify the airline or follow up with Employee 1 about additional, non-work-related contacts.

⁴⁸ The MSA also described a form of community "contract tracing" functions conducted early on in the crisis, as efforts were undertaken to track where residents from known exposure locations (such as the Life Care Center) were released to in the community to provide notice of potential "hot spots" that first-responders may encounter in the field. However, as the number of COVID-19 cases spread rapidly, this became more difficult for emergency and public health departments to stay on top of.

The evidence reflects that several employees were nonetheless “informally” advised by various co-workers that they may have been working in close proximity to someone who had either tested positive or who was going to get tested because they had been in close contact with someone presumed or suspected to be ill. Notice of the first known positive test coincided with City Hall closure that resulted in most City employees transitioning to telecommuting. Though initially intended to close briefly for cleaning, as the COVID-19 pandemic spread and Statewide health and safety orders were implemented, City Hall has remained closed. Several employees (and some Councilmembers) still expressed frustration at feeling they had to make an “independent” decision regarding whether to isolate themselves from family members due to a lack of information about the level of risk of exposure they actually faced. However, considering the guidance from Public Health officials on March 12th that only suggested notifying Employee 2 to get tested, it is unclear what additional guidance the City would have provided at the time.

Further, following the first consultation with King County Public Health doctors, the COO, Mayor, and Human Resources Director reported it was their understanding that it was the role of the Public Health Department to conduct any “contact tracing” if it were to occur.⁴⁹ This appears corroborated by the type of questions and recommendations the Public Health officials made during this initial consult when they were present.⁵⁰ City Administrators also knew that the MSA was in regular contact with City employees who were quarantined and who reported symptoms, and that the information they obtained was being reported to the Public Health Department. Information posted on Public Health websites also suggests that it is typically a function of the Public Health Department to conduct “contact tracing” and notification regarding potential virus transmission.

Employee 5 reported being contacted by the CDC, but only to ask if E5 would participate in antibody testing. Employee 4 was contacted by the CDC on March 26th, two days after learning of E4’s positive test results, and asked questions about E4’s symptoms. At that point, E4 had already self-elected to stay at home and had been away from the workplace for fifteen (15) days. None of the employees interviewed reported being asked questions by the Public Health Department, MSA staff, or City administration regarding who they’d had contact with at work or off-duty, or any other inquiries that appeared to be related to “contact tracing.”

The ECC logs do appear to reflect who was working in the ECC on particular days (though based on witness interviews, there may be some other employees who went into the ECC who are not always reflected on the logs). Individuals who logged into the ECC during the week before City Hall closed included employees who were informally notified by co-workers that they were

⁴⁹ Some employees, such as Employee 2, reported that they were contacted by Dr. Rea when they tested positive. It does not sound like the calls included additional inquiry for the purpose of contact tracing. This witness commented that any contact tracing at the point of receiving the positive test was unlikely to have shown anything useful because E2 had not been at work for a week.

⁵⁰The scope of the Public Health officials’ questions regarding both on-duty and off-duty contacts and specific development of symptoms also suggested that such tracing efforts likely entailed they type of personal inquiries and follow-up that would be conducted in privacy by the Health Department instead of the employer.

feeling sick and other employees who were not notified by co-workers or otherwise (including some of the employees who expressed concerns to the City about notifications).

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 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 was not focused on re-creating and reporting on each individual who may or may not have been in proximity to any individual who tested positive a number of months ago, but rather what information was available at the time.

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

Shortly after the KUOW article was posted online the evening of April 8th, the City’s Communications and Marketing Manager emailed KUOW management, requesting that the news organization remove the article from its website due to several inaccuracies in the article and privacy violations associated with the article directly naming five City of Redmond employees as “COVID-19 positive” without their authorization. The Mayor also sent a City-wide email confirming that the retraction request had been made and that the City had not authorized disclosure of the employee names.

Some Fire Department staff also expressed frustration at the initial implication in the news article that Redmond Fire Department medics who responded to the Life Care Center in Kirkland (then were quarantined) were among those who became ill or tested positive to COVID-19, or that any Redmond Fire employee may have become infected *as a result of responding to calls in the field without adequate Personal Protective Equipment (PPE)*. Redmond Police and Fire first-responders reported being provided with and trained in appropriate use of PPE and scrupulously using it correctly. Significantly, none of the Fire personnel who later tested positive were directly involved in administering patient care or responding to calls in the field. None of the medics who were quarantined as a result of responding to calls at the Life Care Center ever tested positive for Coronavirus.

The IAFF union separately asked KUOW remove the names of two of its represented Fire employees from the article, citing the KUOW's own Ethics Rules, and asked the organization to correct the foregoing inaccuracies in the article. KUOW subsequently removed the name of two of the five employees at the union's request, but not the other three employees at the City's request. As none of the witnesses interviewed gave anyone permission to disclose their names and testing results to the media, it is unclear where the reporter obtained the information or why they did not remove the other names.

Of the five City employees whose names were originally reported by the KUOW article as having tested positive with COVID-19, all four denied having disclosed the identity of City employees and their testing status to the media. The fifth did not provide an interview to this investigator but previously denied having shared such information when asked by a Human Resources employee in April (and the KUOW article stated this employee was not interviewed for the article). Two volunteers and two Councilmembers interviewed also denied disclosing the identities of employees who may have tested positive to the media or knowing who may have disclosed such information. Additional witnesses corroborated that employees identified in the article and volunteers contemporaneously denied having disclosed health or testing information to the media.

Each of the "named" employees interviewed expressed that they wanted to know who did disclose their identity and medical information (*i.e.*, that they tested positive) to the media; some expressed frustration and concern that members of their families learned this information through this media article when they had intentionally not disclosed this information to them.⁵¹ Additional witnesses also corroborated that some of these employees previously and contemporaneously expressed frustration and distress to them about being named publicly in the media.

⁵¹ The employees cited various reasons for choosing not to disclose this information to some friends or family, ranging from not wanting to cause unnecessary worry or stress, to feeling they were under a directive not to share such information, to feeling it was private information. All reported having subsequently received comments and questions from others about their purported illness after the article was published, including one who reported this being the focus of many comments from outside partners to the extent it was difficult to keep the focus on the work at hand instead of the employee's personal information.

Of all other witnesses interviewed, no one admitted disclosing the employee identities/testing status to the media or knowing who may have done so. A Police Department PIO was contacted by the KUOW reporter to request interview with the Police Chief and was referred to the City's Communications Director/Mayor's office. The PIO did not disclose identities of any employees to the reporter. The Mayor, COO, and Communications Manager all denied disclosing the identities of the employees to the media. This is consistent with the repeated and consistent statements from City administration and Human Resources of the intent to protect private employee health information.

Shortly after the KUOW article was published on April 8th, the Human Resources Director asked at least two of the employees if they knew who disclosed the employee identities and health information to the media; they reported they did not know. The Fire Chief also interviewed two of the identified employees in his chain of command and they denied disclosing the identities of themselves or other employees as having tested positive to the virus. The same employees denied any such disclosure to this investigator.

Two of the three Councilmembers quoted in the article denied having disclosed identities of City employees to the reporter or knowing who did. The third Councilmember did not respond to repeated requests for an interview by this investigator, so it is not known what specific information she had about individual employees' identities or test results or what information was shared with the media. At least one remaining employee who this Councilmember appears to have communicated with also declined to provide an interview, so it is not known what information this employee may have shared with the Councilmember about other employees.

The few employees and volunteer who reported having spoken with that Councilmember denied disclosing the identities or testing results of themselves or their co-workers. The two volunteers had sent emails to either this Councilmember or the entire City Council. Neither of the volunteers had personal knowledge of actual testing results or directives to employees about sharing information but had heard second-hand or "pieced together" that five Fire personnel had tested positive and been told not to share information.

CONCLUSION: A preponderance of the evidence does not support a conclusion that any member of City administration disclosed the identity or health information regarding COVID-19 testing or results to the media. Nor does a preponderance of the evidence support a conclusion that four of the five employees who were identified in the KUOW article, or the two volunteers who referenced concern about positive tests, 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, the KUOW article does not reflect having interviewed or contacted this employee. The Councilmember 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.

IV. COMMUNICATIONS BETWEEN CITY ADMINISTRATION AND CITY COUNCIL

On March 31, 2020, the City Attorney provided a memo summarizing the powers, roles, and responsibilities of the Mayor and City Council. Regarding communications between the Mayor and the City Council in a Strong Mayor/Council form of government under which the City of Redmond operates, the memo described that “[T]he Mayor is required to “report to the council concerning the affairs of the city and its financial and other needs, and shall make recommendations for council consideration and action.” *See, Ex. 8.*

A. Communications Regarding the City’s COVID response.

During the week of February 29th-March 6th, 2020, when the ECC was first stood up in a monitoring phase and several RFD Medics were quarantined as a preventative measure after responding to the Life Care Center in Kirkland, the Mayor personally called each of the City Councilmembers to advise them on the situation. Not all Councilmembers answered or returned her calls. Councilmembers who were interviewed confirmed the Mayor made these calls.⁵²

Tuesday, March 3rd, was the last regularly scheduled public City Council meeting before City Hall closed on March 12th. At the Director’s Team (“DT”) meeting that day, the Fire Chief provided a Coronavirus update and the DT discussed telecommuting plans, capacity to quarantine or isolate at a City facility (*i.e.*, Fire Station 13), and that potential exposures were being reported to Dr. Rea at King County Public Health. Given that the Emergency Preparedness Council (“EPC”) consisted primarily of the Director’s Team, it appears the DT meetings began serving both purposes in terms of discussion of various policy decisions.

A week later, on Tuesday, March 10th, the DT/EPC discussed ECC updates and what information needed to be shared organization wide. Policy decisions included canceling some City events following the governor’s suggestion to consider cancelling large events statewide. The COVID-19 update included that the IS department was working with the Deputy Fire Chief, MSA, and Finance Director on mapping community outbreaks (primarily to assist appropriate safety measures for first responders), preparing messaging based on reports from KC Public Health, and planning for personnel issues. Notes reflect the level of monitoring for staff who may test positive to COVID-19 as: 1) notifying HR because of need to track potential exposure to other staff, and

⁵² The Mayor reported that the Councilmember who declined to be interviewed for this investigation also apparently declined to take or return her calls when she tried to reach her to provide updates.

2) returning to work only after symptom-free for 72-hours and a doctor's note.⁵³ A City Council Committee of the Whole/Public Works was held that night at City Hall.

Two days later, on Thursday, March 12th, City Administration learned that one City employee had tested positive for Coronavirus. The employee had last been present at City Hall a week earlier, on Thursday, March 5th, at least three days before reportedly experiencing any symptoms. Throughout this week, the City Council would have received several City-wide and public emails/announcements sent out by the Mayor and Human Resources.

On Tuesday, March 17th (2:47 p.m.), Mayor Birney sent a Coronavirus update to the City Council requesting feedback on whether the format in which her office had been providing Coronavirus updates was working for the City Council and if they were getting information that was useful to them—only some Councilmembers responded. The update listed MSA Jim Whitney as the City COVID-19 spokesperson and advised that the City Hall closure would be extended to April 30th. It reported that the Redmond Fire and Police Departments were fully operational and that City of Redmond ECC was in a “monitoring” phase at that time. The City Council meeting was cancelled when City Hall was shut down due to concerns regarding compliance with the Open Public Meetings Act (OPMA) if City Hall was not open to the public.

This was the week that some members of ECC leadership appeared become increasingly absent and may have been ill.⁵⁴ It was during this week that the COO reported hearing from the Fire Chief that he did not really seem to “have a plan” for moving forward with the ECC and there appeared to be increasing concern and frustration about what the ECC was doing to assist City operations in its emergency response. However, the specific status of each employee (current and future) was unclear and City administration reported difficulty getting clear information regarding the status and management of the ECC other than it was being monitored by administrative staff and volunteers, and there was confusion among staff as to the role and activities of the ECC designed to support internal City operations.

B. Communications Regarding Transition of ECC Leadership.

The Mayor, COO, and Human Resources Director reported not having the luxury of time to wait and see what would happen with the ECC challenges while also trying to maintain an appropriate level of privacy regarding the medical conditions of leadership staff in the ECC. The Mayor and COO did not consult with or immediately advise the City Council of re-assignment of

⁵³ That first week, a Human Resources staff member served as a contact for non-first responders who were out sick; during that time, one employee reported testing positive for the flu, but not COVID-19. However, this staff member did not continue this function after City Hall closed and most employees were working from home.

⁵⁴ Witnesses reported that it was never quite clear who may have actually been “out sick” or working periodically during this time. Some of the personnel who became ill reported maintaining email contact and performing some job duties, depending on how they were feeling. Other witnesses reported difficulty getting information from some of this personnel and concern that the ECC was not being adequately activated or managed to provide effective support for City operations.

different City personnel to manage the ECC for purposes of the COVID-19 response. They considered it an operational, administrative function, which they did not consider required consent or immediate reporting to the City Council. In addition to involving personnel management, the specific needs that were not being met by the current functioning of the ECC were also related to management and support of internal, operational functions of City operations.

On Monday, March 23, 2020 at 4:46 p.m., the same day that the COO announced the transition of leadership in the ECC, Mayor Birney send an email to the City Councilmembers entitled “*Important Information for Council-PLEASE READ EMIAL TO THE END.*” The email addressed a number of issues, including: 1) Keeping Council Business Moving, 2) Council Updates (3 of 7 Councilmembers had provided requested feedback as to sufficiency of the update format), 3) Ombudsman process, 4) scheduling via Microsoft Teams, and 5) Needing Councilmembers to help checking online/social media postings as available and please reach out to the Mayor with questions.

C. Communications Regarding Concerns Raised by Volunteers.

The following Sunday-Monday, March 29-30th, appear to be when the two Volunteers had contact with City Councilmembers to express their personal concerns.⁵⁵ This was approximately one week after transition of leadership in the ECC, after which the Mayor, COO, and Directors reported the ECC running in much more organized, proactive, and transparent fashion, providing effective coordination and support for internal emergency-related needs, allowing department directors to focus on managing operations under already challenging circumstances. This was also apparently the week that the last two Fire employees (E3 and E4) received positive COVID-19 test results but this was not shared with the Mayor or COO at the time.

As reflected elsewhere in this report, the Mayor responded on May 31st to the concerns raised and followed up over the next few days regarding information alleged that had not previously been provided to the Mayor.

On Friday, April 3rd, Mayor Birney provided a comprehensive response to Councilmember 1’s questions to the City Council. Regarding the decision to transition ECC leadership to Police command staff, the Mayor confirmed that she authorized these operational changes under the purview of the Mayor’s role for managing administration and personnel, that the COO and Human Resources Director had been in contact with the Fire Chief, and that the ECC went from a “remote monitoring” status to “full activation” when the Transfer of Command took place. This is consistent with the evidence obtained in the course of this investigation.

⁵⁵ They each reported they were raising the concerns in their role as citizens, not as CERT volunteers, and the City employee in what the Volunteers’ considered to be in their “chain of command” regarding emergency response work confirmed they were advised communications directly with a Councilmember would have to be outside their role as a Volunteer.

The Mayor's April 3rd response to the mayor confirmed that the City Attorney had advised the COO that the Fire Chief could designate another individual to serve as Emergency Preparedness Director in his absence, as RMC 2.20.060(1) provides that the "director of his designee" may exercise the Director's powers. The City Attorney also indicated that the Redmond Municipal Code did not require Council confirmation, advice, or consent for delegation of emergency duties to the Police Chief or appointment of an Emergency Preparedness Program Manager. This is consistent with the evidence obtained in the course of this investigation.

On April 10, 2020, another Councilmember (Councilmember 2) asked the City's Human Resources Director to provide an update on how the Americans with Disabilities Act ("ADA") provisions may correspond with pandemic emergency preparedness in the workplace. The HR Director responded that, as an employer, the City still has an obligation to protect private health information, such as illness and test results, about employees. The City Attorney also confirmed that individuals who test positive for COVID-19 have a right to privacy of their medical information and diagnosis and the understanding that that was the reason the City has not given out names of individuals who may have tested positive.

On April 21, 2020, Committee of the Whole-Public Safety. Councilmembers asked questions of the Police Chief, Deputy Fire Chief Administrative Battalion Chief. The BC reported on the decontamination, screening, and PPE practices by the Fire Department and confirmed that no Redmond first responders had become ill *because of patient contact*, which the Fire Department attributes to their proper use of PPE and other precautions. He also described the transition to an "EMT Scout Model" when responding to aid calls, where fewer personnel enter a residence first to see what is needed before additional personnel determine if they need to enter. The Deputy Fire Chief confirmed to Councilmember 1 during this meeting that the Fire Department had had five employees test positive, but that they were all over that now, and to direct questions about notification issues to the Mayor's office; the Police Chief also indicated he would refer questions about notification procedures to Human Resources.

D. Communications Regarding Health Status of Specific Employees.

Some City Councilmembers expressed concern about not receiving information about potential personal exposure to the Coronavirus if they had been near any of the employees who ultimately tested positive to the virus.

Councilmember 1 asked via email: *"Have all individuals involved with City operations (staff, volunteers, elected officials) who have been in contact with City employees who tested positive for COVID-19 while they were contagious been sufficiently informed?"* The Mayor responded on April 3rd: *"Yes, they were sufficiently informed. From the outset we have relied on Public Health for notification, and their protocols changed as the situation evolved, and we are no longer notified."*

To this extent, any such Councilmember was essentially in the same position as individual employees who also may have been present at City Hall before it closed and were unsure if they had been exposed to the individual whose positive test prompted closure of City Hall on Thursday, March 12th. The evidence confirms that this individual had not been present at City facilities since March 5th and did not begin experiencing symptoms until at least Sunday, March 8th, more than 72-hours later. The City Council, along with all City employees who may have been present in City Hall, were uniformly advised on March 12th that an individual who had been at City Hall had tested positive.

While it does appear that additional staff later began experiencing symptoms closer to the time they were last at City Hall, some did not obtain testing or positive results confirming they had the virus until so much later that they had already nearly or fully recovered by then. Following closure of City Hall, there did not appear to be an expectation that most City employees or Councilmembers would be physically present at City facilities, consistent with Public Health and CDC recommendations to stay home even in the event of a potential exposure.

Based on widely varying opinions expressed by witnesses interviewed and publicly available guidance information, a definitive determination of what each person may consider “sufficient” at any given time over the past few months may be hard to come by. However, under the guidance provided to City administrators by Public Health and the MSA, it appears the only employee who *tested positive* and had known contact with City officials, volunteers, and elected officials *while contagious* (*i.e.*, considered experiencing symptoms of illness) was Employee 1, and the only known contact while experiencing symptoms was the off-duty contact with Employee 2, who was notified and advised to get tested.

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 guidance from Federal, State, and Health District agencies about a wide range of issues in light of the pandemic.

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) did not typically share medical information about individual employees with the City Council. Except specific, narrow exceptions, most communications between these elected officials is 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 disclose to the City Council. 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 a particular employee was ill or had been diagnosed with a particular medical condition. Some of the employees who did test positive to Coronavirus reported that they did consider their testing and results to be sensitive private information and none gave the Mayor or City administration authority to disclose it publicly. Some concern also appear to arise from miscommunications about the timing of availability and communication of information; 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.

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 Federal governments.⁵⁶

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

⁵⁶ For example, conflicting guidance regarding whether it is effective and/or recommended to wear masks or not to wear masks.

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.⁵⁷

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". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jayne L. Freeman

⁵⁷ For this reason, after interviewing more than thirty witnesses, it did not appear necessary to interview additional witnesses who reportedly had similar information—i.e. that they heard/observed people may be sick and had concerns about potential exposure and notifications.