

## **PORT OF SEATTLE COMMISSION**

### **Report on Investigation of Inappropriate Police Department Emails**

#### **I. Introduction**

##### **A. Commission Review Process**

On January 23, 2007, we adopted three motions relating to the circulation of highly inappropriate emails on Port computers by some members of the Port of Seattle Police Department ("Police Department") staff and the internal investigation that ensued. Our Motion No. 1 called for us to retain an outside advisor to perform a full review of the internal investigation conducted by the Police Department and Port staff in 2006 with respect to these emails. We wanted a determination of whether the internal investigation was validly conducted, whether the findings made by the Police Department and Port of Seattle staff in that investigation were thorough and well founded, and whether the disciplinary actions taken were appropriately strict. Further, to the extent that the internal investigation was not validly conducted, the findings were not thorough and well founded or the disciplinary actions were not appropriately strict, we wanted to know what impaired the validity of the investigation and/or the disciplinary actions taken.

Seabold Group was retained to perform the full review set out in the motion. The Commission also retained Davis Wright Tremaine as outside counsel to advise us on legal issues that arose and were expected to arise as a result of the investigation and to ensure that the Port would deal appropriately and lawfully with employees whose rights potentially were implicated by the investigation.

Over the course of the past few months, Seabold Group has conducted a thorough review of the prior internal investigation. They interviewed over 40 individuals, many of whom were interviewed multiple times. They also received and reviewed approximately 25,000 pages of documents, which included Port policies, personnel records and internal communications as well as thousands of email communications circulated within the Police Department. The specific issues presented in our motion related to the email investigation were addressed.

Earlier this month, Seabold Group presented to the Commission and our counsel a comprehensive oral report of its investigation. As a result of that presentation and our own review and analysis, we are confident that the matters we identified have been adequately considered. We have since been working with the Port's Chief Executive Officer ("CEO") to develop and implement a plan and process addressing issues that were identified in the investigation and to ensure that such improper conduct does not occur in the future.

## **B. General Comments**

Before commenting on the specific results of the current investigation, we want to be very clear. We found the sexually explicit, sexist and racist emails that were sent, received and saved on Port computers to be vile, revolting and disgusting. Without question, all of these inappropriate emails violated Port policy. Additionally, the behavior in disseminating this type of clearly inappropriate material was not in accordance with the high standards to which we believe all Port of Seattle employees should be held, in particular our Police Department. As a uniformed law enforcement agency, the Police Department has a special duty to maintain the public's trust and must at all times act in the most ethical, respectful and appropriate manner possible – which some members of the Police Department clearly failed to do in this instance. We will not tolerate any such unacceptable behavior in the future.

We are committed to promoting the Port's core values which include treating people with trust, decency and respect and embracing diversity in our workforce. The conduct that was subject to this investigation is inconsistent with these values and is and will not be condoned. To the extent that Port employees at the Police Department or otherwise are not living up to our core values, that must change immediately and we hold Port leadership accountable for ensuring that it does.

We also are extremely disappointed that an investigation of this magnitude was not handled more thoughtfully and responsibly by the Police Department and by members of our executive team. The findings presented to us indicate that bad decisions were made and poor judgment was exercised at the Police Department and executive levels both in terms of how the investigation was conducted and the level of discipline decisions that resulted. There was a failure of leadership and accountability, starting at the Police Department and its handling of the issues. However, we do not believe Port executives acted with bad intent, nor did we find any attempt to cover up the fact that the distribution of these emails had been discovered.

## **II. Overall Conclusions**

Based on the information presented to us, we conclude that the internal investigation conducted in 2006 by our Police Department, with oversight at the executive level, and the discipline that resulted from that investigation were inadequate and deficient. Our general conclusions are as follows:

The email investigation was not validly conducted:

- o The decision to have the Police Department conduct its own internal investigation was flawed;
- o There was inadequate procedural or substantive expertise within the Police Department to conduct this type of personnel-related investigation effectively;
- o There were insufficient Police Department resources devoted to the investigation or direction given throughout the investigation;

- o The Police Department appeared determined to keep the process internal and to minimize the scope and impact of the investigation and was given too much leeway to operate in this manner.

The Police Department did not adequately rely on the expertise of the Human Resources, Labor Relations or Information Communication Technology ("ICT") Departments during the process of the investigation.

The investigation focused on IT policies and did not consider other relevant Port policies and principles that also were applicable to the behavior at issue.

The process for determining discipline was unacceptable and the discipline administered was not appropriately strict.

- o The decision of discipline was made by the Police Chief and approved by the Deputy CEO, General Counsel, and ultimately the CEO, without input from Labor Relations or Human Resources, in violation of Port policies and practice.
- o The determination to issue letters of reprimand to everyone without differentiating discipline according to rank, content or frequency of emails sent or past disciplinary infractions was ill-advised and not adequately scrutinized.
- o The Police Chief seemed unduly influenced by a desire to avoid any union challenge to his discipline decision, and apparently believed any discipline imposed greater than written warnings would provoke such challenge.

There was a general failure of adequate documentation kept or retained at all levels of this investigation.

There was a failure of adequate oversight and intervention at the Port executive level, which we believe could have addressed many of these issues at the time.

- o Members of the executive team were overly deferential to the Police Department.
- o Members of the executive team presumed a level of coordination between the Police Department and the Human Resources and Labor Relations Departments that did not occur.
- o Members of the executive team failed to act on red flags that were present throughout the process that could have alerted them to issues that potentially were undermining the effectiveness of the investigation and discipline decisions.

### **III. Summary of Material Facts**

Below are the material facts as we understand them:

In February 2006, the Police Department discovered inappropriate emails in the account of a sergeant during an unrelated investigation. A preliminary review of

those emails revealed that 29 Police Department members had sent or received inappropriate emails.

The decision was made by the Deputy CEO to assign the email investigation to the Police Department's internal affairs investigator ("IA Investigator"). Human Resources and Labor Relations raised concerns at the time and subsequently regarding their perception that they were excluded from the investigatory process. They were assured they would continue to play a role in the investigation, particularly in the evaluation of facts and determinations on what to do with the findings.

The IA Investigator, a lieutenant in the Criminal Investigation Unit of the Police Department, had minimal experience conducting internal affairs investigations and no experience or substantive expertise in personnel or electronic-related investigations. The email investigations assigned to him were in addition to his regular duties as a criminal investigator.

- The day-to-day oversight of the email investigation was implicitly delegated by the Police Chief to the Deputy Chief who had been with the Police Department for only a few months. The Chief retained general decision-making authority throughout the investigation.

Early in the investigation process, the Police Department apparently made a decision to limit the scope of people investigated to those identified in the original email trail as actually sending inappropriate emails as opposed to those who had just received them. They did not review email accounts of recipients to see if they in fact were also senders of inappropriate emails as well.

The Police Department further determined that one inappropriate email was as bad as 10, that there would be no differentiation among content deemed inappropriate, and that content that was determined by the IA Investigator to be "juvenile" or "commercially available" would not be considered inappropriate. It was then left primarily to the IA Investigator to determine whether specific emails were inappropriate and should be included in the investigation.

From March to May 10, 2006, a total of nine email accounts were requested by the Police Department from the ICT Department for review. During that same time period, members of Teamsters Local 117 (the "Union") made it known to police command and others that if anyone received discipline greater than a written warning, the Union would request email accounts for all Port and Police Department leadership and the discipline likely grieved.

On May 10, 2006, the Police Department met with members of the Human Resources and Labor Relations Departments to discuss the status of the investigation. Although it appears that Labor Relations initially disagreed with decisions that the Police Department had made regarding scope, there are varying recollections of the resolution of this meeting and no documentation of what was discussed or decided. It does appear that all left the meeting with an agreed understanding that the Police

Department would continue with the investigation as had been described and the presumption that this group or another group of representatives from the different departments would reconvene later in the investigation. May 10 was the last meeting that included members of the Human Resources or Labor Relations Departments.

- Following the May 10 meeting, the Police Department requested five additional email accounts from the ICT Department, which were the last accounts requested during this investigation for a total of 14. Although it appears that the investigation focused on known "senders," some of the accounts requested did not fit that description; nor were email accounts requested or reviewed for other individuals identified as senders on the known emails.
- Of the 14 individuals whose email accounts were requested, the IA Investigator determined that nine had sent inappropriate emails. The IA Investigator interviewed those nine individuals. The interviews were brief, described as informal and did not go beyond the few emails that were included in the final reports. All nine officers admitted to wrongdoing and many apologized.
- One lieutenant, included among the 14 email accounts requested, also was interviewed in this investigation. He was interviewed by the Police Department Administrative Manager and shown copies of several emails he had received that had been found in other subjects' email accounts. There is no record that any further investigative action was taken regarding the lieutenant, and his email account was never reviewed.
- The IA Investigator finalized his reports and provided them to the Deputy Chief as of June 8, 2006, who in turn gave them to the Chief on June 15, 2006. Per his regular practice, the IA Investigator did not retain any working notes once the reports were finalized.
- On June 8, 2006, prior to receiving the final reports of investigation, the Police Chief sent an email to the Port Deputy CEO and General Counsel recommending written reprimands along with relevant training. Issuance of letters of reprimand was consistent with past disciplinary practices of the Chief, in a Department where suspensions had been rare.
- Prior to making his discipline recommendation, the Police Chief did not consult with Labor Relations or Human Resources. This was inconsistent with Port policy or past practice.
- The Chiefs discipline recommendation was approved by the Deputy CEO and the General Counsel without either of those two executives asking a number of important questions that should have been asked at the time. The CEO accepted the decision and conducted no significant review of his own.
- The Chief drafted all 10 letters of discipline himself, including to the lieutenant, which were dated July 10, 2006. The discipline letters referenced only violations of Port and Police Department ICT policy even though numerous other Port and Police

Department policies arguably were violated, including, for example, conduct unbecoming, harassment, neglect of duty, and ethical standards of conduct.

Neither the Deputy Chief nor the Administrative Manager challenged the Chief's final decision to issue letters notwithstanding the fact that both had expressed prior opinions that stronger discipline was needed.

During the investigation and after its conclusion, the Deputy Chief and Administrative Manager attended multiple roll calls and communicated specific expectations regarding the use of email at the Police Department. Certain personnel also were required to undergo on-line harassment training.

- The letters of reprimand do not appear to have been considered by the Police Department in subsequent assignments of disciplined officers.

#### **IV. Specific Commission Findings**

##### **A. The Email Investigation Was Not Validly Conducted.**

A combination of poor decisions and other factors led to failures in the original email investigation process and undermined the soundness of the results. Some of the more notable issues include:

##### **1 The Decision to Have the Police Department Conduct this Investigation Internally was Misguided.**

At its core, this was a personnel-related investigation that should have been directed by, or at least wholly included, those at the Port most expert in conducting this type of an investigation – Human Resources and Labor Relations. That did not happen here. Instead, the decision to have the Police Department conduct its own internal investigation did not reflect adequate consideration of Port of Seattle policies, practice, equal employment opportunity law concepts, technological challenges or the breadth of the investigation. The Police Department did not have the procedural, technological or subject matter expertise to take on this investigation on its own. Moreover, in this matter, where the threshold facts revealed that the conduct at issue was potentially so pervasive and may have implicated supervisors, the Commission believes that there was a significant potential conflict of interest in having the Police Department investigate itself and this should have been fully considered.

##### **2. Resources, Expertise and Direction Were Lacking.**

Once the Police Department took on the responsibility for conducting this investigation, it failed to devote sufficient attention or resources to the internal investigation given its scope. Inadequate leadership and direction was provided to the IA Investigator within the Police Department. Especially troubling was the improper exclusion of the Port's experienced Labor Relations and Human Resources professionals from both the investigation process and subsequent administration of discipline. Multiple relevant Port policies were ignored, including some that the emails violated and the one requiring Human Resources and Labor Relations Director input, that we believe would likely have been considered had Human Resources and

Labor Relations been more involved. Although there was one meeting in May where Human Resources and Labor Relations participated in conversations regarding scope and discipline, by that time, the Police Department had made many judgment calls on its own as to how to proceed without input from the other Departments. Inexplicably, the Police Department then prematurely concluded the investigation and imposed discipline without any further input from, or consultation with, Human Resources or Labor Relations.

In addition, the job was far too big for one individual investigator, even with help he apparently received from the Police Department Administrative Manager. While we do not have any concern about the IA Investigator's motives or general competencies, it is clear to us that he lacked the substantive and procedural expertise required to conduct such a complex personnel-related investigation with the minimal direction and supervision that he was provided. Additionally, there was no systematic or standardized investigation process for the IA Investigator to follow. Personnel investigations, especially electronic personnel-related investigations, are not the same as criminal investigations, which appears to have been more of the process utilized in this instance. Different legal standards and procedural requirements apply to personnel and electronically-based investigations that should have been followed in this investigation.

### **3. Poor Decisions Were Made Regarding the Scope of Investigation.**

Decisions were made by the Police Department regarding the scope of the email investigation that reflect a desire to minimize and contain the investigation. This decision appears to have been made by the Chief of Police and apparently reflected his desire to identify enough people who had engaged in the inappropriate behavior to send a message Department-wide that the behavior was not acceptable and would not be tolerated in the future, rather than to determine all who had behaved inappropriately and hold them accountable for their specific behavior. These limitations played out both in terms of who actually was investigated and the decisions on what level of content should be considered inappropriate. With regard to who was investigated, the Police Department limited the scope from what originally was understood by the Deputy CEO, the Human Resources Director and the Labor Relations Director, and then did not consistently follow or apply even that limited scope.

With regard to content, the wrong standards were applied. Even though highly offensive and vulgar and in violation of Port policy, content that the Police Department deemed to be "juvenile" or that was "commercially available" was not considered inappropriate. Applicable legal standards for judging whether communications were sexist, racist or potentially created a hostile work environment were not considered.

#### **B. The Process for Imposing Discipline Was Circumvented and the Discipline Administered Was Not Appropriately Strict.**

Only ten individuals were ultimately disciplined. One was terminated for additional and unrelated reasons. The other nine received letters of reprimands regardless of rank, severity of the misconduct or the number of improper emails sent. We conclude that the discipline administered did not match the severity of the misconduct and the process for imposing discipline was inadequate.

We conclude that the Chief of Police was the sole Police Department decision maker of what discipline would be imposed in this instance. In making his decision, he did not review personnel files or past violations of people disciplined, and deviated from past practice and policy requiring Human Resources and Labor Relations input in advance of imposing discipline. The investigation further revealed that the Chief was motivated, at least in substantial part, by a desire to avoid any challenge from the Union, which clearly influenced his decisions throughout the investigation.

We are also disappointed that the Chief of Police's recommendation of discipline was not more fully scrutinized by the Deputy CEO or General Counsel. Any number of questions could have been asked by them that would have revealed many of the problems and issues that have arisen with the underlying investigation, and we consider it to have been their responsibility to do so.

Although it appears that there was a genuine concern and attempt to identify the problem generally and to correct the behavior moving forward, we do not believe that the discipline imposed sufficiently held people accountable for their conduct that led to the investigation in the first place, nor do we know whether the discipline imposed or corrective steps taken served to deter the behavior from continuing.

### **C. There Was a Failure of Adequate Oversight at the Executive Level.**

There was a lack of adequate oversight by senior members of the Port's executive staff, including the former Chief Executive Officer, the Deputy CEO, the Chief Administrative Officer and the General Counsel. That lack of oversight contributed to the flaws in the investigation and discipline decisions. Basic questions that should have been asked of the Police Department, Labor Relations or Human Resources at various points in time were not asked and undue deference was given to the Police Department's internal processes and capabilities. For example, at one point, the former CEO and Deputy CEO understood that the original scope of the investigation would focus on approximately 30 individuals. When the number was reduced to 9 or 10 people disciplined, they failed to ask why or to realize that many of the original individuals identified had never been investigated.

The Deputy CEO also erroneously relied on presumptions that the Police Department was equipped to handle the investigation and was undertaking a thorough review, and that the Police Department had adequately involved Human Resources and Labor Relations in the investigation and discipline decision-making processes, when in fact none of this was the case. In addition certain senior executives who were aware of potential issues and concerns with how the investigation was proceeding did not feel either that they were empowered or obligated to raise or resolve these concerns at the executive level.

We are concerned that our senior executive team did not perform as we would expect both in their individual roles and as an executive team. We expect the CEO to provide us assurances that he will set clear expectations as to what it means to be a senior executive at the Port of Seattle and to hold himself and his team accountable accordingly.

#### **IV. Moving Forward**

Based on the information provided to us, we believe that at a minimum half of the Police Department could be implicated in the sending or receiving of inappropriate emails as of the point in time that the original investigation was conducted. We also estimate that to continue investigating the individual email accounts of the police personnel currently identified or potentially identified in the future would likely cost the Port hundreds of thousands of dollars. We further understand that there may be limitations imposed by labor laws on the Port's ability to administer additional discipline for behavior that occurred in the past.

What we have asked ourselves, in that context, is what would be gained by expending public funds on further investigation that likely will result in no greater discipline than what has been done to date. It is our conclusion that proceeding down that path would not be the best use of public funds and would obscure a greater issue. It seems that what this investigation revealed in its essence was a failure of the leadership of the Police Department to set standards and expectations of conduct, and to hold its employees accountable to those standards as well as a failure at the executive level to hold the Police Department accountable for doing so. In addition, we believe that it is necessary to change the culture of our Police Department to reflect the Port's core values. We expect and will hold accountable the CEO and his executive team to achieve this cultural change at the Port of Seattle.

In light of these fundamental findings, we have directed our Chief Executive Officer to take the following steps:

- Determine what follow-up action with regard to existing Police Officers and Port executive leadership is appropriate and necessary in light of these findings, including the potential imposition of discipline;
- Ensure that clear expectations of conduct and behavior at all levels of the Port of Seattle – including but not limited to a "zero tolerance" policy with respect to violations of the Port's ICT and anti-harassment policies - are properly communicated and enforced and hold people in positions of leadership responsible for meeting these expectations;
- Prepare an action plan and process for ensuring that such behavior is not repeated within our Police Department or elsewhere in the Port;
- Determine how future Police Department and Port-wide personnel-related investigations should be conducted and develop a new policy and procedure for conducting them, as well as addressing other procedural deficiencies that were identified in the course of the investigation;
- Prepare an action plan and process for insuring Port-wide compliance with all Port of Seattle policies regarding use of Port computers; and
- Provide a report on these and other steps he deems appropriate and action plans to the Commission at its public meeting on June 12, 2007.

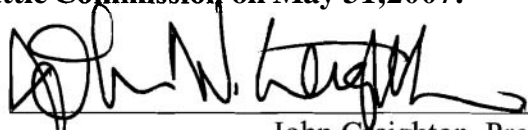
We also have directed our CEO to report back to the Commission no later than six months following the hiring of a new Police Chief with his assessment of the effectiveness of the above steps in changing the culture of the Police Department and the behavior of Police Department personnel to be reflective of the core values of the Port of Seattle and the King County community, including treating people with trust, decency and respect and embracing diversity in our workforce. To the extent that insufficient progress has been made in implementing the above steps and changing the culture of the Police Department, then the Commission may consider directing the CEO to pursue other corrective action at that time.

We believe that these steps are consistent with the second Motion we adopted on January 23, 2007.

With respect to our Motion No. 3, we are proceeding with the establishment of an Expert Advisory Panel composed of community members. We are pleased to announce that the following individuals have agreed to serve as members of this Advisory Panel and we are continuing to discuss it with other potential members: Karen Bates (former superintendent, Lake Washington School District); Liz Ford (labor law attorney); James Kelly (President and Chief Executive Officer of the Urban League); Gil Kerlikowski (Chief of Police, Seattle); Dorry Elias-Garcia (Executive Director, Minority Executive Directors Coalition); Karen Yoshitomi (Japanese Americans Citizens League-PNW District).

In conclusion, and on behalf of all of the Port of Seattle employees who behave in a proper manner reflective of our core values, we want to apologize to the public for the inappropriate and offensive conduct of certain members of our Police Department. We are committed to ensuring that such behavior is not repeated.

**Unanimously adopted by the Port of Seattle Commission on May 31, 2007.**



John Creighton, President



Lloyd Hara, Vice President



Alec Fisk, Secretary



Bob Edwards, Assistant Secretary



Patricia Davis, Commissioner