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Sent via e-mail to:
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September 20, 2019

Fox Blackhorn
Compliance Officer
Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504-0908

RE: PDC Case No. 57140
Our File No. 6597-001

Dear Mx. Blackhorn,

We write to you on behalf of our client, Mayor Debbie Bertlin, in response to Glen Morgan's September 6, 2019 complaint. Glen Morgan alleges Mayor Bertlin's June 30, 2019 email violated RCW 47.17A.555. While Mayor Bertlin respects the judgment of the Public Disclosure Commission (PDC), she continues to believe she did not violate RCW 47.17A.555. Morgan also alleges that Mayor Bertlin lied to the PDC. This allegation is simply untrue.

I. Mayor Bertlin's June 30, 2019 email did not violate RCW 42.17A.555.

When Mayor Bertlin came back from vacation, in her capacity as Mayor, she was informed about a candidate training that Mercer Island (the City) had provided to candidates. At this meeting, the City had informed the candidates of its policy regarding Nextdoor, a social networking tool for neighborhoods (attached). As the Mayor of Mercer Island, Mayor Bertlin has an obligation to accurately portray the City's policies at all times, which she noted in her email when she stated, I "want to be sure anything I might write represents the City's position." Thus, her email asking for the City's policies was not sent for the purpose of furthering her campaign for election, despite her reference to her candidacy, but instead, was in service of her role as Mayor of Mercer Island.

On August 20, 2019, the Mercer Island City Council voted on a resolution regarding the City's investigation of Mayor Mercer under MICC 2.60.040 based on this email. The City Council decided to take no further action. Mayor Bertlin approved this outcome, which allowed the City to move on from this matter. Moreover, while the internal investigation report stated that its legal analysis is based "on a reasonable reading of the email," its finding is specifically limited to the City's code of ethics. While

Mayor Bertlin acknowledges that it may have been more prudent to use her private email account to request this information, she continues to believe that she did not violate RCW 42.17A.555 when she sent her June 30, 2019 email.

II. Glen Morgan's allegations regarding RCW 42.17A.750(2)(c) are specious.

Glen Morgan's allegations that Mayor Bertlin lied to the PDC and violated RCW 42.17A.750(2)(c) are unwarranted. RCW 42.17A.750(2)(c) states, "[a] person who, with actual malice, procures or offers any false or forged document to be filed, registered, or recorded with the commission under this chapter is guilty of a class C felony under chapter 9.94A RCW." In his 55282 PDC complaint, Glen Morgan stated:

according to Bertlin's own statement to the PDC (See PDC Case #53323, response attached) Bertlin claims she was "unable to comply" with the campaign finance laws due to security settings and changes made by Mercer Island staff to her public email and/or city-provided computer. Presumably, based on her own admission, she was using these public resources to manage her campaign and file documents on behalf of her campaign with the PDC, which is a clear and unambiguous violation of RCW 42.17A.555.

Complaint 55382 (attached). Mayor Bertlin both on her own and through her counsel truthfully replied that she did not engage in the conduct alleged by Morgan. Even taking the broadest possible reading of her statement in which she "confirm[ed] I did not use any phone, computers, servers, and other public facilities... to support my election campaign," this statement is not a misrepresentation because Mayor Bertlin did not believe at the time the statement was made and continues to believe that she did not use public resources to support her election campaign. Because Mayor Bertlin did not lie or offer a false document to the PDC, RCW 42.17A.750(2)(c) is not applicable here.

Please contact me with any questions or concerns at (206) 257-6019.

Sincerely,

A handwritten signature in black ink that reads "Melissa Greenberg". The signature is written in a cursive, flowing style.

Melissa Greenberg
Counsel for Debbie Bertlin

Enclosure

cc: Mayor Debbie Bertlin

Social Media: How Does the City Use NextDoor.com?

NextDoor is a nationwide platform designed to encourage civil neighbor-to-neighbor interaction and discourse online, focused on highly local topics. It is exceptionally popular on Mercer Island and has grown to over 11,000 accounts (about 60% penetration). The 14 neighborhoods into which NextDoor has divided the Island are of vastly different sizes: two very large segments at the north end of 5,200 and 2,900 users, vs. many southern segments tallying just 50-150 users.

The City joined NextDoor in October 2014 and uses its account to make general announcements, advertise meetings, solicit public engagement, provide crime and storm updates, highlight achievements, and more. The platform does not function in the same manner as the City's other social media outlets (i.e. Facebook, Twitter, Instagram). NextDoor is not a City-controlled page, but rather a private membership network that functions more like an online community bulletin board. The City merely has an official presence on the platform via its "Agency Account," but by design, NextDoor tightly limits Agency Accounts in important ways.

- 1) Most notably, the City can only see its own posts and replies to them, while ALL other neighbor-to-neighbor content is hidden. This is intended to prevent eavesdropping by the City on local discussions.
- 2) The last name of anyone replying to a City post is just replaced with an initial and is not spelled out.

In addition, the City is required to maintain public records of social media to comply with the Public Records Act. The City uses ArchiveSocial to backup Facebook, Instagram, Twitter, YouTube, and other accounts to retrieve information if requested. Unfortunately, NextDoor does NOT allow access by automated archiving services. Instead, the City must execute a clunky manual export process that can be refined only by date range (not topic, or subject line, etc.). This lack of archiving access to NextDoor also prevents current Councilmembers and staff from making their own posts or replying to other people's posts, as they are unable to capture the post and all responses in a manner that is suitable for responding to public records requests.

*1 July 2019
Ross Freeman
Communications Manager*