

GREGORY A. MESCHER
ANDREW S. RINEHART
JOHN M. REDLINGSHAFFER

October 12, 2018

CONFIDENTIAL

City Manager Tim Gleason
City of Bloomington
109 E. Olive Street
Bloomington, Illinois 61701

Re: Ethics Complaint Filed Against City Employee Nikita Richards

Dear Mr. Gleason:

At your request, this office conducted an independent, ethics investigation into a citizen complaint stating City Employee Nikita Richards (“Ms. Richards”) engaged in campaign activities and excessive personal shopping during working hours at City Hall.

As part of the investigation, numerous interviews were conducted of members of the City’s Information Services Department, the Human Resources Department, the Legal Department, as well as Ms. Richards. The investigation also required the review of voluminous records previously produced by the City pursuant to various requests made under Illinois’ Freedom of Information Act (5 ILCS 140/1, *et seq.*).

Due to the high level significance of this investigation, our office was tasked with a prompt response as to whether Ms. Richards engaged in the above activities, which, if true, would be contrary to guidelines set forth in the City’s Employee Handbook and Illinois law.

For the reasons set forth below, there is no evidence Ms. Richards engaged in campaign activities or personal shopping during working hours at City Hall.

Interview of Information Services Department Representatives

After reviewing the documentation provided by the City, it was apparent the first, if not most important, interviews would be with representatives of the Information Services Department (the “Department”). Specifically, this would allow the Department to fully describe and interpret the 1800+ pages of browser history obtained from Ms. Richards’ City-issued desktop computer.

City Manager Tim Gleason - CONFIDENTIAL

October 12, 2018

Page 2

Scott Sprouls, the Director of Information Services, and Ed Frels, the System Administrator, provided me with a detailed explanation of the City's server, system contracts, and how browser data is collected.

For example, the City has an annual maintenance agreement with an entity known as Forcepoint (formerly known as Websense). One service provided under this agreement is to protect the City and its systems from "malware" and other security issues. The Forcepoint system actively watches computer usage, including browser history, from all City computers. This includes a nightly scan/review of websites visited by any City computer, flagging and setting forth lists of new and previously unknown websites that could subject City equipment to data breaches or other malware.

The websites "flagged" are no longer accessible, and if a particular City employee or Department requires access, Mr. Frels will work with them to reinstate access. For example, the Police Department may need access to pages to research various weapons, while other City employees will remain blocked.

In addition to flagging, the Information Systems Department will occasionally get an email reporting "suspicious activity" from an employee. This is particularly common if a website generates adware on the user's computer. When this occurs, the Department contacts the employee to work through the issue. This does not happen often, and neither Mr. Sprouls nor Mr. Frels recall such an instance involving Ms. Richards' activity.

The Department is increasingly active in assisting other City staff in responding to Freedom of Information Act ("FOIA") requests for browser history and/or other technological activities of City officials and employees.

Typically, the Clerk's office receives such a FOIA request, and in turn, it may be reviewed by the Legal Department, and then comes into the Department for processing. These FOIA requests seek browser data from a particular login, IP address, and for a particular range of dates. The Department is able to run a report reflecting this usage through Forcepoint. The City currently stores years' worth of browser history, on the current system as well as that which predates Forcepoint.

The Department can run these browser reports, but Mr. Sprouls and Mr. Frels noted that any information appearing in any report is not going to necessarily provide clear evidence of specific visits to specific websites. Further, no matter the format chosen, the reports do not show the particular content of the page listed on the report. It only shows uniform resource locators ("URLs" or websites) that were active on a computer at a given time.

With today's internet, every website a user visits can generate data for the site visited but also any other websites with a "presence" on it. For example, if one visits www.pantagraph.com to read a

City Manager Tim Gleason - CONFIDENTIAL

October 12, 2018

Page 3

story, Mr. Sprouls noted advertisements may pop up and rotate for the duration you are on the page, while other “hot links” exist and generate their own data (i.e., a link to share an article on facebook, twitter, or Google messenger). These webpages with such “dynamic” (versus “static”) content can easily generate countless lines of data that show up on a browser report.

In sum, Messrs. Sprouls and Frels were clear - when a browser report is prepared, one cannot look to any single hit to summarily conclude that a user was actively engaged on that particular website. In fact, it is not always multiple lines in a row that indicate usage. For example, Mr. Sprouls noted he does not have a facebook account. Yet, a past search of his browser indicated a three hour presence on a facebook-related website. This seemingly indicates the browser was used to search dynamic websites, but is clearly not conclusive use of facebook.

Further, even if there are pages upon pages of a particular website/URL noted on a report, that is not necessarily indicative of extensive traffic or use of that page, as it is possible an employee can leave a computer on overnight, allowing websites to constantly refresh. Therefore, 1, 2, 10, or 20 lines on a report indicating a particular website within a day is not always an indication of actual viewing of a particular website. Mr. Frels also noted that there are times when Forcepoint is not always using accurate descriptions or “categories” of websites, when the City runs a particular browser report. For example, “comet.yahoo.com” is actually Yahoo’s advertising engine, so it is not clear why Forcepoint calls it “instant messaging” on a browser history report.

All of the above information from the Department indicates that it is almost (if not actually) impossible to definitely say someone went to a particular website. In litigation and in other instances, engineers can be hired to do forensic analyses on computers, but even then, Messrs. Sprouls and Frels indicated that different engineers can come to different, inconsistent conclusions.

While there are a limited number of websites appearing in the browser history of Ms. Richards that may involve political content and/or shopping activities (i.e., www.wellstone.org and www.amazon.com), the browser reports in and of themselves are not conclusive evidence to demonstrate Ms. Richards engaged in such activity as alleged in the citizen complaint.

Interview with Human Resources Department

In addition to speaking with the Information Services Department, it was also important to speak with representatives of the Human Resources Department (“HR”), to not only understand the City’s training and expectation of City employees with technology, but also because Ms. Richards works in HR.

Accordingly, both Nicole Albertson (Human Resources Director) and Michael Hurt (Talent Acquisition & Development Manager) made themselves available for this investigation.

City Manager Tim Gleason - CONFIDENTIAL

October 12, 2018

Page 4

Ms. Albertson explained that generally, new City employees are given a job offer conditioned upon a background check. Assuming the background check is cleared, a formal job offer is extended and they are given a copy of the Employee Handbook.

In addition to the Handbook, a new employee now attends "New Employee Orientation." These are held almost every Monday, and representatives of HR and other teams walk new employees through the Handbook (including specific focus on the City harassment and other policies), have various City officials come introduce themselves, and answer any questions. HR also offers "HR College" to department supervisors, which allows for the dissemination of new policies and other employee-related issues to be discussed and taken back to the various other City departments by those supervisors.

The City has a technology policy, and both Ms. Albertson and Mr. Hurt acknowledge that the City's policy is that as long as an employee is "reasonable," he or she can engage in personal use of City equipment (i.e., using the internet, etc.). The sentiment is that as long as those activities do not take away from your department's productivity, "reasonable use" is acceptable. Ms. Albertson and Mr. Hurt have never issued any penalties or warnings for unreasonable personal computer usage in HR.

Ms. Richards serves as one of two Employment Coordinators in HR. Mr. Hurt is their direct supervisor. Ms. Richards' primary job focus relates to recruitment, but she is cross-trained with the other Coordinator so they both can handle job applications, requirements, interviews and other hiring-related activities.

Mr. Hurt explained that with Ms. Richards' job obligations, she is required to be very active in attending job fairs, and he will ask her to purchase various items for that and other recruitment activities. These items can be purchased off of the internet (including Amazon) with the City's "P card" or through other, authorized means. Mr. Hurt particularly remembered asking Ms. Richards to make certain purchases around the time her browser history was obtained under a FOIA request.

When asked directly, both Ms. Albertson and Mr. Hurt stated they have not seen Ms. Richards engage in any personal shopping or any political activities while on the job. They are aware of Ms. Richards' company called NDR Communications, but they noted she does not engage in any activities related to that entity at the office, either.

Both also volunteered that when Ms. Richards decided to have her personal car wrapped with an advertisement for her political campaign, she requested to park off-site.

In preparation of the interview, Ms. Albertson reviewed a browser report for Ms. Richards produced under a prior FOIA request. She seemed concerned with its accuracy, as she noted instances of browser activities during times in which Ms. Richards would not have access to the building.

City Manager Tim Gleason - CONFIDENTIAL

October 12, 2018

Page 5

Neither Ms. Albertson nor Mr. Hurt question Ms. Richards' integrity, and believe her to be a genuine, honest professional. Mr. Hurt noted his office is less than twenty (20) feet from Ms. Richards' cubicle. He can hear everything going on in their area, and he has not heard or seen anything remotely related to campaign activities or personal shopping.

Interview with Nikita "Niki" Richards

Ms. Richards began her employment with the City in its Legal Department. After a couple of years, she transferred into HR to be an Employment Coordinator.

These Coordinators are responsible for all recruitment and training for new City employees. During her early time with HR, HR realized the City was missing a stronger community involvement aspect of recruiting City employees.

Ms. Richards reaffirmed her main job focuses are recruitment, the City's service and rewards program, community outreach, training, and compliance. She also assists the Bloomington Fire and Police Commission with their minutes and communications.

Ms. Richards confirmed that a major component of her recruiting role is price pointing for purchasing materials, media outreach, and job fairs. Further, she stated that she is often-times meeting with various City partners, including not-for-profit organizations, to see how the City can recruit future employees.

When asked about her specific computer activities, Ms. Richards confirms she has a desktop computer, and when she is at her desk, she is actively engaged in research for various recruiting opportunities and City programs. She acknowledged she uses www.amazon.com, but because of the many purchases she makes for HR/recruitment, after being authorized to do so by a supervisor. She has purchased promotional items, a small roller/trailer to haul materials to and from job fairs, banners, mugs, fidget spinners, chap sticks, cell phone pocket sleeves, and numerous other items from various vendors and websites. As part of the recruitment process, Ms. Richards also notes she is on numerous job boards to post City information, purchase City memberships, and/or working on outreach and research to connect with various potential employment pools.

There are other instances, when focusing on the hiring side (and not just recruitment) that Ms. Richards will purchase background checks of various candidates, but that is also with permission from her supervisor.

When asked if she engages in campaign activities while at the City, she says she does "absolutely none." She noted her experience in the Legal Department, among other things, makes it a "no brainer" for her to know what you can and cannot do as a public employee at the job site. She even

City Manager Tim Gleason - CONFIDENTIAL

October 12, 2018

Page 6

recalled approaching the Legal Department to notify them of her intent to run for office. Ms. Richards advised that she is using her personal and vacation time for political activities outside of the office. When asked about the www.wellstone.org appearing on her report (among other websites), she claimed she had no knowledge of it. She has been known to post pictures of herself on her personal social media accounts while at these job fairs, but in her mind, she is doing that to promote the City.

When asked about her shopping activities, she reiterated the above functions of her job that required her to be on various websites.

Conclusions

The Information Systems Department explained that any browser history report run on any City computer will not provide a clear, conclusive picture as to what particular website(s) were viewed and used by an employee. This is particularly true with countless websites that may be used for legitimate purposes by City employees, but offer misleading information on a browser report because of advertisements or “hot links” on the page. Further, this does not dismiss the fact that the Human Resources Department acknowledges an employee may still engage in personal use of City resources, as long as the employee is “reasonable.”

Additional information from the Human Resources Department further corroborates and substantiates Ms. Richards’ statements. Namely, Ms. Richards’ is required to utilize the internet, upon direct request from her superiors to purchase items for recruitment/job fairs and research the various opportunities and options for the City in trying to promote and entice future employees to apply. Further, it appears Ms. Richards is trying to keep her public responsibilities separate from her political campaign (absent asking her to discuss it as part of this investigation).

Accordingly, I must conclude there is no evidence Ms. Richards is engaging in political campaigning or personal shopping during work hours at the City. Based on the information learned during the investigation, even with proof Ms. Richards was shopping for personal items on a City computer (which there is not), it is arguable that would constitute “reasonable use” of City equipment for personal reasons.

Certainly, our office was tasked with conducting an independent investigation, but this report does not preclude the City from further internal review of the situation and/or consultation with law enforcement officials of McLean County.

I would like to personally thank the City, its staff (particularly all who were asked to, and cooperated fully with the investigation), and with you, your office, and City Attorney Jurgens for the openness

City Manager Tim Gleason - CONFIDENTIAL

October 12, 2018

Page 7

and transparency granted to allow this review. Please do not hesitate to contact me with any further questions.

Very truly yours,

MESCHER LAW OFFICES, P.C.

BY: 
JOHN M. REDLINGSHAFFER

JMR