



CITY OF
BAINBRIDGE ISLAND

Office of the City Attorney
City Attorney Statement

Date: April 17, 2019
To: General Public
From: Joe Levan, City Attorney
Re: Ethics Board Case No. 2019-05 (Issued 4/15/19)

I am issuing this City Attorney Statement to avoid any misunderstanding that could occur due to a combined Advisory Opinion and Complaint Determination issued by the City of Bainbridge Island Ethics Board. The Determination at issue, [Determination 2019-05](#), is dated 4/15/19 and was provided by the Ethics Board to the City Clerk on 4/16/19.

Determination 2019-05 relates to a [complaint](#) filed by the wife of former Bainbridge City Manager Doug Schulze related to communications and activities of Bainbridge Councilmember Ron Peltier concerning Mr. Schulze's resignation from his position as Bainbridge City Manager to become City Manager in Banning, California. The specific allegations are set forth in the complaint filed with the Ethics Board.

This City Attorney Statement is necessitated to clarify conclusions reached in the Advisory Opinion portion of the Determination, as well as to address an incorrect legal conclusion reached related to confidentiality.

Regarding the clarification related to the Advisory Opinion portion of the Determination, the Opinion refers in several instances to "harassment" and to a "hostile work environment." Although these terms are legal terms that have specific definitions under law, Determination 2019-05 uses the terms without referring to their legal definitions. Rather, the terms are used more generally as part of the Opinion. For the sake of clarity, the Ethics Board did not consult with the City Attorney related to the use of these terms, and the City Attorney interprets these terms as part of this Determination as statements of general opinion by the Ethics Board, and not as legal conclusions supported by specific legal authority.

Regarding the Complaint Determination portion of Determination 2019-05, the Determination reaches an incorrect legal conclusion related to what constitutes a breach of confidentiality under Washington state law. In doing so, in part, the Determination incorrectly cites to “Open Public Records Act RCW 42.30.110(g).” Presumably, the intended reference is to RCW 42.30.110(1)(g), but that reference is to the Open Public Meetings Act, not to the Public Records Act, which is set forth in Chapter 42.56 RCW.

Additionally, neither the Open Public Meetings Act (Chapter 42.30 RCW) nor the Public Records Act provide that the type of personal performance evaluation at issue related to a City Manager is confidential. To the contrary, Washington courts interpreting the Public Records Act have concluded that City Manager performance evaluations are not exempt from disclosure and are, therefore, not confidential. See, e.g., *Spokane Research & Defense Fund v. City of Spokane*, 99 Wn. App. 452 (2000).

Determination 2019-05 also refers to the performance evaluation at issue, in part, as being confidential because it was discussed in executive session. For a record to be exempt under the Public Records Act, it must meet a specific exemption and, as above described, a performance evaluation of a City Manager is not exempt from disclosure.