

MEMORANDUM

TO: Mayor and Council
FROM: City Attorney, Alex Andrade
DATE: October 24, 2022
RE: CLAIMS OF EMPLOYEE MISCONDUCT

BACKGROUND

On October 17, 2022, I received a Memorandum from Mayor Lindsay entitled “Conduct of City Manager Randy Jorgenson” (the “Memo”). The Memo referred to complaints levied against Mr. Jorgenson by unnamed individuals, and concluded that those complaints, if true, violated “six of the nineteen subparagraphs” of Section 2-62 of the Milton Code of Ordinances. On the same day, I requested Mayor Lindsay provide me with a citation to the six subparagraphs to which she referred.

On October 20, I requested the factual details from Mayor Lindsay, to conduct an investigation of the allegations. To date, I have not received the information requested.

On October 21, Mayor Lindsay notified me of her desire to call a special called meeting of the Council to “clear the air” and to elaborate on the allegations at a public meeting. While the names of the complainants and the factual allegations they are making was not included in the email, Mayor Lindsay did list the six subparagraphs alleged to have been violated:

Sec. 2-62

(3) Violation of any lawful and reasonable regulation, order or direction made or given by a superior.

(6) Incompetency or inefficiency in the performance of assigned duties.

(7) Wantonly offensive conduct or language toward the public, a superior, or fellow employee.

(8) Threatening or actual physical harm, abuse, or conduct which is intimidating or insulting directed against an individual.

(11) Conducting or engaging in political activity during working hours or at the city's expense.

(15) Conduct unbecoming to a city employee, either while on or off duty.

The names of those levying accusations and the specific acts alleged have yet to be shared with me in order to conduct an investigation.

IDENTIFIED CONCERN

Allegations of misconduct of this nature should be investigated to protect the City from potential liability.

Regardless of the veracity of the allegations, complaints filed against employees are confidential until the employee who is the subject of the complaint is provided written notice that the City has concluded its investigation.

If the allegations are false and are disseminated by the City at a public meeting, they expose the City to liability for defamation.

Disseminating the factual basis for complaints against an employee at a public meeting, prior to legal counsel investigating the details of the complaints, exposes the City to unnecessary risk of liability for two main reasons:

1. They may violate the rights of those submitting complaints, some of whom may be entitled to protections by the City; and they expose the City in the event that an investigation should have been conducted sooner to address ongoing misconduct.
2. If the allegations are false, publishing the allegations prior to verifying the facts alleged could cause harm to a City employee as a result of possible defamation.

FLORIDA LAW

Florida Statute 119.071(2)(k) states:

*A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution **until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint**, either personally or by mail, that the agency has either:*

1. *Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or*
2. *Concluded the investigation with a finding to proceed with disciplinary action or file charges.*

As stated previously, legal counsel has not been provided with the names of those making complaints against Mr. Jorgenson and has not received the factual basis for the claim that six subparagraphs of Section 2-62 were violated.

Legal counsel does not have sufficient information to investigate the merits of the complaints, or to determine whether they are the proper subject of public disclosure.

DEFAMATION

Because of the nature of the six subparagraphs cited, a reasonable possibility of defamation exists if the City were to publish the complaints prior to conducting an investigation.

While the City enjoys broad protections against liability for defamation claims, in this circumstance, releasing this information publicly, prior to allowing an investigation to occur, may result in a false allegation being published by the City.

The risk of this circumstance is inherent. The City Council has the ability to investigate each complaint in a confidential manner prior to publicizing such complaints. To forgo the investigation of the facts alleged would open up the City to a claim of recklessness in this context.

SERIOUSNESS OF ALLEGATIONS

The allegations made, if verified, could reasonably implicate criminal conduct. Legal counsel should be provided with the information and names of those levying complaints against Mr. Jorgenson, in order to fully investigate and advise the City Council of its findings.

As conducted under similar circumstances, legal counsel for the City has pursued investigations in the past and provided the Council with its findings. This method protects the confidentiality of the information shared and allows the Council to be fully apprised of the seriousness of the acts alleged prior to taking official public action.

CONCLUSION

Until such time as legal counsel has been provided with the names of those levying complaints and the facts supporting the allegations themselves, it is the opinion of the City's legal counsel to refrain from public disclosure of such complaints at a public meeting.