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November 18, 2005

Via Email and Regular U.S. Mail
Dennis P. Hession, City Council President
City of Spokane
808 W. Spokane Falls Blvd.
Spokane, Washington 99201

Re: Investigation of Mayor James West

Dear President Hession:

The City Council for the City of Spokane authorized me to conduct a workplace investigation of Mayor James West. The purpose of the investigation was to determine whether Mayor West's alleged conduct involving improper computer use and hiring practices violated existing City policies, procedures or ordinances. This is my investigation report.

None of the information or materials relied upon in this report are subject to the protective order entered into by the parties in the Public Records Disclosure Act litigation.

Background

On May 5, 2005, *The Spokesman-Review* reported, among other allegations, that Mayor West offered a City Hall internship to a man he believed to be an 18-year-old. The man was reportedly instead a forensic computer expert working for the newspaper. The newspaper further reported that Mayor West visited a gay chat room on the Internet, using a City computer.

The City of Spokane announced on May 6, 2005, that it intended to conduct an independent investigation into Mayor James West's internship program and his use of City email and the Internet. The FBI also opened an investigation to determine if Mayor West's alleged conduct violated federal law.

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On May 16, 2005, City Attorney Mike Connelly named a five-member group of Spokane citizens to investigate whether Mayor West violated any existing City policies, procedures or ordinances. All of the task force members eventually resigned. So, the Spokane City Council voted on August 1, 2005, to pursue its own investigation of the Mayor's alleged conduct. The Council engaged me to perform the investigation.

Brief Summary of Conclusions

Mayor West violated the City of Spokane Personnel Policy HR-56 Internet Access by accessing profane and pornographic information, pictures and representations on his City computer.

Mayor West also violated RCW 42.23.070 (prohibited acts of municipal officers) by using his office to secure a position on the SHRC for Mr. Oelrich for the purpose of furthering his personal interest in an intimate relationship with him.

The Investigation Process

1. Individuals Interviewed. I interviewed the following persons as a part of the investigation: Mayor West; Deputy Mayor Jack Lynch; Councilperson Cherie Rogers; Cody George, former Senior Advisor to Mayor West; Ryan Oelrich, former member of the Spokane Human Rights Commission; and, Mr. Oelrich's "friend," identified as "Witness #2" in an Affidavit prepared by FBI Special Agent Frank Harrill. I also spoke briefly with Councilperson Brad Stark.

I requested from Mr. Oelrich the names and telephone numbers of other persons who he claimed had also been inappropriately offered internships by Mayor West. He refused to provide me that information because I could not assure him that it would remain confidential. Instead, Mr. Oelrich said he would tell the individuals that I wanted to speak with them and leave it to them to decide whether to contact me.

I also requested an interview with FBI Special Agent Frank Harrill, who is currently assigned to the FBI's Spokane office. Special Agent Harrill filed an Affidavit with the United States District Court for the Eastern District of Washington in support of the FBI's application for a warrant to search Mayor West's residence. The Affidavit identified Mr. Oelrich, Witness #2 and two other unnamed witnesses, who had engaged in conversations on the Internet with a person with online names used by Mayor West. Each of them told Special Agent Harrill that the person had offered to help them find a job in City Hall; three of the four said that the person also tried to engage them in a sexual relationship. I contacted Special Agent Harrill specifically to learn the identity of the

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three unnamed witnesses. He referred me to Mark N. Bartlett, Special Attorney to the United States Attorney General, who denied my request for information. He stated that the FBI's investigation was confidential, but noted that the sworn Affidavit filed by Special Agent Harrill was a public record.

At the conclusion of Mayor West's interview, the Mayor recommended that I contact Mr. Oelrich's "friend" (Witness #2) and his attorney provided me the name of the witness' attorney. I contacted Witness #2's attorney, who facilitated my contact and interview of Witness #2. I have not used the witness' name at his request to protect his identity and privacy.

Lastly, I contacted Bill Morlin, *The Spokesman-Review* reporter who had written the article about Mayor West on May 5, 2005, and who was responsible for much of the newspaper's ongoing reporting on the story. I requested that he identify the forensic computer expert, aka "Moto-Brock," who had worked for the newspaper and allegedly had received the internship offer from Mayor West. I told Mr. Morlin that I hoped to interview the individual to confirm his electronic conversations with Mayor West. Mr. Morlin refused to identify the newspaper's expert, likening him to a confidential source. In the alternative, I asked Mr. Morlin to sign a declaration to authenticate the Internet conversations between the expert and Mayor West that *The Spokesman-Review* had posted on its web page. Mr. Morlin executed the declaration.

2. Documents Reviewed. In addition to the documents noted above, the City provided for my review thousands of Mayor West's emails produced by the City in response to Public Disclosure Act requests from the media. To streamline the process, I reviewed only those documents that the media requested the City to copy for them after they had combed through the entire document production.

The City also provided me the following documents: "State of the City 2004," authored by Mayor West; Mayor West's Oath of Office; City of Spokane Personnel Policies, including HR-12 State Work Study Program, HR-46 Internship Program, HR-52 Electronic Communications, HR-55 Email, and HR-56 Internet Access; a City organizational chart; and documents produced by the City pursuant to the Public Records Act pertaining to Mr. Oelrich's Spokane Human Rights Commission complaint.

3. Computer Files. On September 30, 2005, I requested that the City produce to me the user data taken from Mayor West's City-supplied computer. Mayor West's attorneys responded that they intended to oppose my request in the Public Records Disclosure Act litigation involving the Mayor and *The Spokesman-Review*. I sought counsel and intervened in the litigation to clarify my right to access Mayor West's user data. Ultimately, my counsel entered into a stipulated protective order with Mayor West's lawyers, which the Court approved, that allowed me to receive the user data

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subject to certain restrictions on its disclosure. The most pertinent restriction provides that if and to the extent I refer to and/or describe protected materials in an investigative report, the report will be provided only to the City Council of the City of Spokane and its legal counsel, with a copy to counsel for Mayor West.

The Court did not rule on the Mayor's motion to prevent disclosure of the protected material until yesterday. It granted the Mayor's request that the images themselves be kept private. Consequently, I will reveal information about the protected material only to the extent that information is already in the public domain.

I have reviewed Mayor West's user data with the assistance of the staff of the City's Management Information Services (MIS) Department, including its Director, Garvin F. Brakel. I decided to use the Department as my technical resource for the following reasons: (1) at City Attorney Connelly's request, the MIS Department copied the user data from the Mayor's computer immediately and was the custodian of that data; (2) it served as the technical resource to the task force initially convened by City Attorney Connelly; (3) Mr. Brakel was asked by Judge Miller to provide him technical assistance in the Public Records Disclosure Act litigation; and (4) the Department was the most cost-effective resource available to me.

I have also considered the following statements pertaining to the user data and the Mayor's use of his City computer: Supplemental Affidavit of Bill Morlin, dated October 18, 2005 ("Supplemental Affidavit"); Affidavit of Josiah P. Roloff, dated November 4, 2005; and, Declaration of Garv Brakel, dated November 14, 2005.

Summary of the Evidence and Findings of Fact

As previously explained, I was asked to determine whether Mayor West's alleged conduct involving improper computer use and hiring practices violated existing City policies, procedures or ordinances. My findings pertaining to each of these questions are set forth separately below.

1. Alleged Improper Computer Use

(a) **Summary of the Evidence.** On May 5, 2005, *The Spokesman-Review* printed its initial stories about Mayor West's alleged misconduct. Among other things, it reported an interview with Mayor West conducted the day before in which he admitted visiting a gay chat room on the Web. In the interview, Mayor West denied having the chats from City Hall:

Q: First of all, I'd like to ask you, did you have any of these chats from City Hall?

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A: No.

According to Councilperson Cherie Rodgers, Mayor West called her the next morning around 6:00 a.m. Ms. Rodgers said she asked Mayor West, "Did you use City Hall computers?" Mayor West reportedly replied, "Yes. I was online in the gay chat rooms." Ms. Rodgers said she told the Mayor, "I have a hard time with you using City Hall computers," to which he purportedly responded, "I know; I know."

Ms. Rodgers said that Mayor West also told her that he had engaged in "mutual masturbation." He made the statement in the context of using City Hall computers, so Ms. Rodgers understood that the Mayor masturbated while online in his office using his City computer.

Mayor West later denied, both publicly and to Ms. Rogers, that he engaged in online sex in his City Hall office, or engaged in online chats using his City computer.¹ In email exchanges with constituents, the Mayor stated that he "did visit and chat in internet chat rooms at home in the evening and on weekends," but said "I didn't conduct online chats in my office."

In an email from "Jim" to "Brock Stewart" ("Moto-Brock"), dated April 16, 2005, Mayor West stated, "When i (sic) take my work computer I can't get AIM and don't like to go to the web much."² Both the FBI and the City's MIS Department confirmed that AIM, which enables instant messenger chat, was not installed on Mayor West's City-issued computer.

In my interview with Mayor West, he also confirmed that AIM is not installed on his City computer. Consequently, he said he could not have chatted with Moto-Brock using his City computer. The Mayor also denied discussing "mutual masturbation" with Ms. Rodgers, or telling her that he had online sex while on his City computer and at City Hall.

Reporter Bill Morlin, in a sworn Supplemental Affidavit submitted to the Court in the Public Records Disclosure Act litigation, identified three categories of computer records from the Mayor's user data produced by the City to the public that are pertinent here. First, Mr. Morlin said that the records included a "shortcut file" to what appeared to be a Gay.com profile for a person using the screen name onekuldude82. A shortcut creates a link to an Internet site, document or other data, which allows the computer user quick access to it by simply clicking on the shortcut. According to Mr. Morlin, the

¹ The Mayor's City-issued computer is a tablet PC.

² AIM is the name for America Online's (AOL) instant messenger software.

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shortcut file was last modified by Mayor West on a day (April 15, 2005) when the Mayor was in Fresno, California on City business.

The City's MIS Department confirmed the existence of the "shortcut" file, which was a link to a Gay.com profile posted on the Mayor's desktop, and not to an Internet site, as stated in the Supplemental Affidavit. However, the profile was not on the computer's desktop, which indicates that the Mayor deleted it.

Mayor West told me that he used his City computer to visit Gay.com, but only when he was traveling outside the Spokane area. He said that he has never used the computer to access Gay.com while in the City. The Mayor also denied using the City's Internet service to access the website.

With respect to the onekuldude82 profile, Mayor West said that he was in Fresno on April 15, 2005 and went on Gay.com late in the evening. He said he used his City computer to access the website, but again denied using the City's Internet service in the process. However, the Mayor could not specifically recall the onekuldude82 profile.

Second, Mr. Morlin identified an Internet history file from Mayor West's user data. The file contained 57 different addresses for Internet links related to Gay.com visited by the Mayor on April 25, 2005. According to Mr. Morlin, some of the links are to the "adult" areas of Gay.com, which contain graphic sexual images.

The City's MIS Department helped me review the Internet file referred to by Mr. Morlin. It included many addresses for Internet links to Gay.com, including the specific profiles identified in the Supplemental Affidavit. A member of the MIS Department and I visited Gay.com to view the profiles identified, using a dummy membership purchased for the sole purpose of supporting the investigation. Those profiles indeed revealed graphic sexual images, including pictures of nude men in various suggestive poses, genitalia and oral sex.

Mayor West said that his practice was to delete his computer's Internet file every time he visited the Internet, whether for personal reasons or for business. He reportedly deleted the files so that his computer was not slowed by the excess data on the hard drive. The Mayor acknowledged that he likely overlooked deleting the Internet file identified in the Supplemental Affidavit.

Third, Mr. Morlin identified a JavaScript file, which he said demonstrated that the Mayor viewed 82 profiles on Gay.com and initiated communications through the site's chat rooms or email services. As noted, during his interview, Mayor West confirmed that he visited Gay.com frequently when he was traveling and viewed profiles of men posted

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there. He also said that on those occasions he would also use the website's chat room and instant messenger features.

Mayor West further stated that he visited Gay.com at times during "normal business hours." According to the Mayor, "City time" was when he was engaged in official City business, such as meetings or conferences. In other words, his work time was defined by activities and not hours in the day. So, according to his view, so long as he did not have an appointment on behalf of the City while he was traveling, he was free to visit Gay.com (or engage in other personal business, like taking a nap) during the workday.

Finally, Mr. Brakel has examined the images from the Mayor's user data that the Court ruled yesterday were not subject to public disclosure. He confirmed that the more than 3,000 files contained in the material clearly indicate that Mayor West visited Gay.com on many occasions using his City tablet PC. And, as Judge Miller stated in open court, the images downloaded to his City computer contained graphic sexual content, including 100 pictures of male genitalia and 10 pictures of sex acts between men.³

(b) Findings of Fact

- The Mayor did not engage in chat using AIM with Moto-Brock and others on his City computer because it did not have AIM software loaded on it. However, he did use his City computer when he entered chat rooms on Gay.com.
- The Mayor did engage in online sex with Moto-Brock, but not while in City Hall using his City computer, again because his computer was not loaded with AIM software.
- The review of the user data indicates that Mayor West frequently visited Gay.com using his City computer. When on the website, he viewed member profiles frequently. His use was not "limited" or de minimus. Some of those profiles contained, among other images, graphic pictures of male nudity, genitalia and sexual activity that would be highly offensive to the average person.
- The Mayor also admitted using his City computer to access the chat room and instant messenger features of the Gay.com website. He visited the website at times during the normal workday.

³ As Mr. Brakel stated in his Declaration, these images were probably downloaded to the Mayor's computer by operation of the Gay.com software, when the Mayor entered the website and clicked on members' profiles. It is not possible to determine whether any of these pictures were downloaded by the Mayor intentionally. In any event, the Mayor denied downloading them in his interview.

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- Mayor West stated that he used his City computer to get on the Gay.com website only while outside of Spokane and only by means of an Internet service other than the City's. I have not been able either to confirm or deny his claim from the user data. However, I find the Mayor's claim credible. First, according to the MIS Department, the City's Internet service is only available in City buildings, such as City Hall. Second, as a closeted gay man, it is unlikely that Mayor West would knowingly risk either his political standing or his public sexual identity by accessing Gay.com from his office or other public space. Finally, the links to Gay.com that are apparent from the Internet history and JavaScript files are dated at times when the Mayor was out of his office and traveling on City business.⁴

2. Alleged Improper Hiring Practices

(a) Summary of the Evidence.

(i) **Moto-Brock.** As noted above, a May 5, 2005, article in *The Spokesman-Review* reported that Mayor West offered a City Hall internship to a man he believed to be an 18-year-old, but in fact was a computer consultant hired by the newspaper. The transcripts of their chats, which are posted on *The Spokesman-Review's* website, document conversations between the consultant and a person using the online name of "jmselton" on AIM. In his interview, Mayor West confirmed that he used the name "jmselton" when chatting with Moto-Brock (and others) on AIM. He also verified that he used the following names when chatting online in Gay.com: "theright-biguy,"⁵ "wrightbiguy" and "Cobra82nd."

The Spokesman-Review also posted on its website numerous email messages between "Jim" and the consultant, Mayor West and the consultant, and the Mayor's staff and the consultant. The Mayor also confirmed that the posted emails were sent between Moto-Brock, his assistant and himself.

A summary of pertinent portions of the online chats and emails is provided below.⁶

⁴ Judge Miller ordered the City to reveal an "index of usage," which shows the dates and times the Mayor visited Gay.com. Further analysis of this data may shed further light on the Mayor's claim regarding the timing of his visits to Gay.com.

⁵ Mayor West said that he could be mistaken and the name could have been "therightbi-guy," as it appears in various documents and transcripts.

⁶ The Mayor said that some of the transcripts of the online chats were inaccurate, and some were out of order, e.g., February 19, 2005. He verified, however, that the portions of the chats quoted in this report are accurate to the best of his recollection.

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- Email from the consultant to "Jim," dated March 8, 2005: "I really liked chatting with you again tonight. If you decide to help me apply for the internship that would just be awesome."

- Email from Mayor West to the consultant, dated March 21, 2005: "A friend of mine has asked if I would consider you for an internship in the Mayor's office. He informs me that you are a high school senior at Ferris high school....If you are interested please contact Melissa Murphy in my office....We look forward to hearing from you."

- Online chat between the consultant (motobrock34) and jmselton, dated March 29, 2005:

motobrock34: oh yeah, was just doing homework.....I got the app from city hall!

jmselton: oh that's great. I saw your email. Your mom picked up the app?

motobrock34: ...I'd like to buy u lunch for turning me onto the internship

motobrock34: but I wanna meet u too

jmselton: in time you will get both wishes. I'm happy to help you. I don't really know why but you have impressed me.

jmselton: when are you starting?

motobrock34: I'd start as soon as they want me

jmselton: I'll ask the Mayor if you are good looking? ;-)

motobrock34: u better not!....he'll think somethings up with u

jmselton: I'm guessing a nice guy like you will be invited to start as soon as you get your interview. like maybe yesterday.

jmselton: well i guess we don't have enough time to beat off then?

motobrock34: i can

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jmselton: wish i was there with you

jmselton: touching you and kissing you

(The dialogue continues in an overtly sexual manner between them and includes a graphic suggestion that the two of them masturbated together.)

• Online chat between the consultant (motobrock34) and jmselton, dated April 9, 2005:

(jmselton sends the consultant a hyperlink that connects to Mayor West's biography on the City website.)

motobrock34: that is u?

motobrock34: ur screwing with me aren't u?

jmselton: shhhhh

jmselton: no I'm not

motobrock34: you are who I'm applying with????????????????

jmselton: see this is what i was afraid of. now you won't apply.

motobrock34: the heck I won't!

jmselton: well please be careful

jmselton: ok?

motobrock34: of course i will

motobrock34: i wasn't sure i should because i didn't think I'd get it and i didn't wanna dispaoint u

jmselton: oh you were going to get it.

jmselton: don't worry about that

• Email from Mayor West to Brock Stewart, dated April 28, 2005, RE: Internship:

"You still interested?"

Finally, on June 28, 2005, *The Spokesman-Review* reported that Mayor West issued a statement that included the following remarks: "Chatting online about sex with a

person I believed to be 18 years old was wrong. Although it was a private conversation conducted on my personal computer in my home, I'm ashamed of it and embarrassed by it."

In my interview with Mayor West, he said that he chatted with Moto-Brock from his home computer. He initially met the consultant at Gay.com but soon moved the conversations to AIM. The Mayor said that Moto-Brock "pestered" him for an internship, citing the emails between them as evidence of the consultant's insistence. He said the consultant finally "wore him down," so he suggested that Moto-Brock submit an application for an internship to the Mayor's office.⁷

Mayor West admitted having online sex with Moto-Brock but said that he had no intention of developing an intimate relationship with him. He characterized the chatting between them as "fantasy" and said, for example, he never intended to go out to lunch with Moto-Brock. When asked why he emailed the consultant on April 28, 2005, "You still interested [in the internship]," after a period of silence between them, Mayor West said that he simply ran across the email about the internship and wanted to make sure that Moto-Brock was going to maintain his confidences.

(ii) **Ryan Oelrich.** Mr. Oelrich filed a Human Rights Complaint with the Spokane Human Rights Office on May 25, 2005. He alleged that Mayor West had engaged in "reverse discrimination" by appointing him as a Commissioner of the Spokane Human Rights Commission (SHRC) because of his "gender & sexuality" and not because of his qualifications. He also claimed that the Mayor's treatment of him was disrespectful.

Mr. Oelrich submitted a "timeline" to the Office, which described his interactions with the Mayor that formed the basis of his Complaint. The timeline was consistent in all respects with the information Mr. Oelrich provided to me in his interview. The facts contained in the timeline were also corroborated by Witness #2. I summarize below the pertinent events described by Mr. Oelrich and Witness #2.

- Starting around August or September 2003, "therightbi-guy" and "wrightbiguy" messaged Mr. Oelrich on Gay.com. The individual later started messaging him using "Cobra82nd." He identified himself as "Jim" and said his business was similar to marketing.

⁷ The Mayor did not reveal his identity to Moto-Brock at first. He said he kept his identity private because he was a closeted bisexual and was concerned about his privacy. Instead, he posed as a friend of the Mayor and offered to suggest Moto-Brock for an internship to Mayor West.

- During these conversations, Mr. Oelrich mentioned he was looking for a job. The individual suggested that Mr. Oelrich come by to discuss work. He also said that he knew who Mr. Oelrich was and suggested they go out on a date.
- In March 2004, according to Mr. Oelrich, Witness #2 told him that he had discussed Mr. Oelrich's name with the Mayor as a possible candidate for SHRC Commissioner. Witness #2 said the Mayor knew Mr. Oelrich and suggested that he apply to an opening on the SHRC. Witness #2 confirmed that he had spoken with the Mayor on March 24; Mayor West said he knew of Mr. Oelrich's work with balloons and had seen him on TV.
- Witness #2 said that the Mayor told him online on March 30, four business days after they first spoke about Mr. Oelrich, that his staff had sent Mr. Oelrich an application for the Commissioner position. Mr. Oelrich applied for the open Commission position and interviewed with Mayor West. During the interview, the Mayor was very friendly and did not review Mr. Oelrich's resume at all, pushing it to the side of his desk. Nevertheless, Mayor West suggested that he appoint Mr. Oelrich as Chair of the Commission.
- "Cobra82nd" messaged Mr. Oelrich online later that evening, after the interview. The Mayor told Mr. Oelrich that he was attractive and should meet him for dinner. Mayor West spoke online with Witness #2 the same night. The Mayor commented that Mr. Oelrich was kind of small, but cute.
- Several times over the next couple of months Mr. Oelrich terminated online conversations with "Cobra82nd" when they became sexually inappropriate.
- Later, Mr. Oelrich said Witness #2 told him that the individual he was speaking with online was the Mayor who was interested in Mr. Oelrich romantically and thought he was cute. He also shared with Mr. Oelrich his opinion that the Mayor appointed Mr. Oelrich to the SHRC because of his romantic (sexual) interest in Mr. Oelrich.
- Mr. Oelrich confronted the Mayor, who confirmed his identity and asked Mr. Oelrich to keep it a secret. Shortly after Mayor West revealed himself, he offered Mr. Oelrich an internship in City Hall and offered to discuss with him whether other positions were available.
- Mr. Oelrich began his term as Commissioner in June 2004. In August 2004, Mayor West told Mr. Oelrich online that he had been interested in him for a long time and had to figure out a way to get to know him because he didn't think Mr. Oelrich would ever meet a guy like him. Mr. Oelrich understood Mayor West to be telling him that his way of "figuring out how to meet him" was to appoint him to the SHRC. Witness #2

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confirmed that the Mayor West had revealed to him that those were the Mayor's intentions.

- Over the next few months, Mayor West: suggested that he come over to Mr. Oelrich's house and together use the pool and hot tub; offered to pay Mr. Oelrich if he would skinny dip with him in the pool; drove by Mr. Oelrich's house and told him that he was going show up at his door; continued to make sexually inappropriate remarks to Mr. Oelrich online. Mr. Oelrich became uncomfortable with Mayor West's conduct and resigned his position on the SHRC in January 2005.

- After *The Spokesman-Review* story on May 5, 2005, Mr. Oelrich and Witness #2 considered the similarities between their inappropriate experiences with the Mayor and those of the young men described in the article: online sexual chatting, innuendo and suggestion; offers of memorabilia and trips; and, offers of positions with the City. Because the City's initial investigation had proved unsuccessful by this time, they decided to contact the media to expose the Mayor's conduct.

The SHRC found that Mr. Oelrich's claim of improper behavior by Mayor West was supported by the evidence available to it. It stated:

We agree that the transcribed conversations demonstrate on the part of Mayor West a disregard for your personal requests to him, and a further disregard for the dignity of his office, disregard for the public view of human relations in the City of Spokane, and disregard for the mores of the community.

The Commission further found that Mr. Oelrich's documents did not support a claim of discrimination.⁸

Mayor West unequivocally denied offering Mr. Oelrich a "quid pro quo" exchange of the SHRC Commissioner position for an intimate personal relationship.⁹ The Mayor explained that he met Witness #2 at a conference and told him he was interested in appointing young people to the SHRC. A few days later, Witness #2 suggested Mr. Oelrich for a position on the Commission.

Mayor West denied knowing that Mr. Oelrich was the person he chatted with online until April 2004, when Mr. Oelrich came to his office to interview for the Commissioner position. The Mayor said he recognized Mr. Oelrich from his

⁸ The SHRC's findings state that Mayor West was invited to respond to Mr. Oelrich's claim but refused to do so on the advice of counsel.

⁹ The Mayor made the point in his interview that the City Council appointed all SHRC Commissioners, but acknowledged that the Council's approval of his recommendations was generally a rubber stamp.

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profile on the Gay.com website. However, at the same time, Mayor West said that he knew that the person he was chatting with online used the screen name "balloonman" (or something similar), and also knew from posters he had seen that Mr. Oelrich had a balloon business.

Mayor West further stated that he did not interview Mr. Oelrich in any great length because he had been suggested by a trusted friend, Witness #2, and had been interviewed and approved by his office staff. The Mayor initially said that he could not recall suggesting to Mr. Oelrich that he take the SHRC Chair position, then later said "it didn't happen."

From the time of the interview until November, when the Mayor acknowledged his identity to Mr. Oelrich online, Mayor West said he discussed several possible internships with him, both at local advertising agencies and at City Hall. He also acknowledged that he suggested that they swim and hot tub together (and offered Mr. Oelrich \$300 to do it) and "might have" suggested that he show up at Mr. Oelrich's house. But, he insisted that he was simply "flipping shit back and forth" (as he used to say in the Army) and "it wasn't going to happen."

(iii) **Witness #2.** Special Agent Harrill of the FBI stated in his Affidavit that "Witness #2" reported that he recommended Mr. Oelrich for the SHRC position to Mayor West and later told Mr. Oelrich of his endorsement. Witness #2 also said that Mayor West encouraged him during an online conversation to apply for positions with the City, including the position as Director of the Human Resources Department, in the course of attempting to engage him in a sexual relationship.

In my discussion with him, Witness #2 confirmed that he was interviewed by Special Agent Harrill and provided him the information summarized above. More specifically, Witness #2 said he first spoke with the Mayor online on March 29, 2004. He said the Mayor plainly knew Witness #2 and admitted his own identity later during the conversation when asked. Mayor West inquired about Witness #2's sexual experience and spoke about his; Witness #2 said he deflected this and other sexual banter from the Mayor.

The two of them spoke again online on April 1, 2004. The Mayor continued to banter sexually and discussed Witness #2's future, including his work options. Mayor West sent Witness #2 a description of the Human Resources Director position with the City and asked Witness #2, "wanna apply" for the \$80,000 per year position? Witness #2 said he was not qualified and asked about the minimum qualifications for the position. The Mayor replied: human

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resources experience; education (Witness #2 has a degree in HR); and, "the Mayor has to like you. It's totally my choice." Later in the conversation, Mayor West suggested that Witness #2 should consider taking civil service examinations for other City positions, including the aquatics director position.

After that conversation and throughout the summer, Mayor West continued to chat with Witness #2 online and to suggest sexual relations with him.

Mayor West said he and Witness #2 figured out each other's identity, flirted online and teased each other about sex. He said he suggested that Witness #2 apply for the HR Director position because it was vacant and he knew that Witness #2 had management and hiring experience.¹⁰ In response to my questions, Mayor West said he did not know if Witness #2 had any actual human resources experience, but claimed that he merely suggested he apply for the position and go through the interview process.

(b) Findings of Fact. I find that Mayor West has engaged in a pattern and practice of linking discussions of sex with young men online with offers of City positions, both paid and unpaid.

(i) Moto-Brock.

- In the course of online chats with a consultant, who Mayor West believed was an 18-year-old high school student, he posed as a friend of the Mayor's and offered to help the student get an internship with the Mayor.
- Mayor West flirted online with Moto-Brock and made sexual suggestions to him. Eventually, the Mayor masturbated twice while online with the consultant, and while expressing his desire to be physically intimate with him.
- When Moto-Brock expressed doubt that he would receive the internship, Mayor West assured him that he was going to get it and shouldn't worry about it.
- After an extended period of silence between them, Mayor West emailed the consultant and asked him whether he was still interested in the internship.
- I find that the Mayor's desire for a relationship with Moto-Brock was an important factor in his decision to offer an internship to him: (a) prior to the Mayor suggesting the internship, the two of them had been chatting in a flirtatious manner and the Mayor had offered the consultant gifts (sports memorabilia, etc.); (b) during

¹⁰ Witness #2 was 24 years old.

conversations when the two of them discussed the internship, they discussed sex overtly and Mayor West masturbated while online; (c) Mayor West made clear to Moto-Brock that the decision to give him the internship was his alone; and, (d) after not hearing from the consultant for an extended period, Mayor West again solicited the consultant's interest in the internship, which I find was for the purpose of rekindling their online relationship.

(ii) Ryan Oelrich

- While it is unclear whether Mayor West knew that Mr. Oelrich was "balloonman," who he was chatting with in a sexually suggestive way online, the Mayor's knowledge of Mr. Oelrich and his business certainly suggests that the Mayor knew they were the same person.

- Clearly, however, the Mayor knew that Mr. Oelrich was his Gay.com chat partner when he interviewed him for the SHRC Commissioner position. I find that the Mayor's interest in a relationship with Mr. Oelrich was the determining factor in Mayor West's offer to Mr. Oelrich the position of Chair of the Commission, a position for which he had no experience and for which he was not qualified.

- The "quid pro quo" nature of the offer is further demonstrated by Mayor West's statements to Mr. Oelrich the evening of his interview, *i.e.*, he was attractive and should have dinner with the Mayor. Mayor West's statement to Witness #2 that same evening that Mr. Oelrich was "cute" is also evidence of the linkage between the Mayor's offer of the SHRC position and his sexual interest.

(iii) Witness #2

- Mayor West engaged in sexually suggestive online chat with Witness #2 from their very first conversation.

- Mayor West offered to Witness #2 the \$80,000 per year position as the City's Human Resources Director, whether or not he could make good on his offer, saying "It's totally my choice." The offer was for the intended purpose of furthering his relationship with Witness #2. That the Mayor hoped for a sexual relationship with Witness #2 is evidenced by his continued sexual online chat with Witness #2 during the following summer.

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Conclusions

1. **Alleged Improper Computer Use.** City of Spokane Personnel Policy HR-56, Internet Access, ¶ 3.2, provides: "Employees are allowed *limited use of equipment and facilities* to access the Internet for purposes other than that directly or indirectly related to the activities of the City." (emphasis added) However, this private-use privilege is a restricted one, *i.e.*, City equipment and facilities cannot be used to access the Internet for prohibited purposes. One prohibited purpose is contained in ¶ 3.7, which states: "The Internet shall not be used *to access or transmit obscene, profane, pornographic, abusive, harassing, discriminatory, or threatening information, pictures, or representations.*" (emphasis added)

The Mayor's use of his City-issued computer to view graphic pictures of male nudity, genitalia and sexual activity on the Internet clearly was access to "obscene, profane, pornographic...pictures, or representations." Further, his use of his City computer for this purpose was not limited; rather it was frequent and extensive. The only question presented by the City's Internet Access policy and the facts of Mayor West's computer use is whether he violated the policy when he accessed Gay.com from outside of Spokane via Internet providers other than the City's Internet service.

I conclude that Mayor West violated HR-56 for the following reasons:

- HR-56 does not expressly provide that it applies only to Internet access through the City's Internet service;
- Paragraph 3.2 expressly limits use of the City's equipment, *i.e.*, the Mayor's City-issued computer, for personal use; and
- Interpreting the policy to permit *off-site* access to graphic sexual images during normal business hours, but prohibiting the same access while *on-site* is inconsistent with the intent of the HR-56.

2. **Alleged Improper Hiring Practices.** RCW 42.23.070 sets forth prohibited acts of municipal officers. It provides in relevant part: "(1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others." I conclude that Mayor West's conduct violated this statute. He used his office to secure a position on the SHRC for Mr. Oelrich for the purpose of furthering his personal interest in an intimate relationship with him. *See In the Matter of the Recall of City of Concrete Mayor Robin Feetham*, 149 Wn.2d 860 (2003)(Mayor's alleged acts

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of directing city employee not to enforce building code against business owned by another and taking town file for his own use would violate statute; recall petition was legally sufficient). Further, by failing to adhere to the laws of the State of Washington, Mayor West also violated his Oath of Office.¹¹

Finally, I concur with the conclusion of the SHRC regarding Mr. Oelrich's Complaint of disrespectful treatment:

We agree that the transcribed conversations demonstrate on the part of Mayor West a disregard for your personal requests to him, and a further disregard for the dignity of his office, disregard for the public view of human relations in the City of Spokane, and disregard for the mores of the community.

The Commission's observations would apply equally to the Mayor's treatment of Witness #2.

Thank you for the opportunity to assist the City Council and the City of Spokane in this matter.

Sincerely,

SEBRIS BUSTO JAMES



Mark R. Busto

MRB/ajj

¹¹ The Oath of Office states "I, James E. West, do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the laws of the State of Washington and that I will fully and impartially perform and discharge the duties of the office of Mayor, City of Spokane, *according to law*, to the best of my ability." (emphasis added)