

**EXECUTIVE SUMMARY REPORT OF INVESTIGATION**  
**Prepared for City of Sammamish**

**Date:** November 16, 2021

**To:** City Council

**Investigator:** Katherine F. Weber

On or about June 4, 2021, Inslee, Best, Doezie & Ryder and Katherine F. Weber were retained by the City of Sammamish (the “City”), to conduct a fact-finding investigation into reported concerns involving the City Manager.

Specifically, in April 2021, a private citizen (the “Citizen”) expressed concerns about communications by a family member of the City Manager, another private citizen (the “Family Member”), which seemingly indicated that the Family Member, by virtue of her relationship with the City Manager, was privy to the City’s attorney-client privileged information and other confidential communications, and exercised certain influence over City operations (the “Complaint”).<sup>1</sup>

Based on its review of the provided communications, a majority of the Councilmembers initiated an investigation regarding the City Manager’s conduct during the May 18, 2021 council meeting.<sup>2</sup> The scope of this investigation focused on whether the City Manager had engaged in unlawful, unethical or otherwise improper conduct or communications in his official role as City Manager.

I conducted the investigation during the period of June 29 through October 21, 2021. The investigation included interviewing the complainant, the Citizen, the subject of the complaint, the City Manager, and other witnesses who were identified as possessing potentially-relevant information, as well as reviewing relevant documentation, including electronic communications between the Family Member and the Citizen.

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<sup>1</sup> The Citizen also subsequently alleged that the City Manager and Family Member engaged in “tactics of intimidation” with him during the course of this investigation. The investigation did not sustain any act of intentional “intimidation” by the City Manager or the Family Member.

<sup>2</sup> The Council subsequently revisited and a majority ratified this decision during the June 8, 2021 council meeting.

This report is an executive summary report only and is not intended to be a comprehensive or detailed recitation of all the information that was collected, reviewed and considered as part of the investigation.<sup>3</sup> The findings and conclusions set forth in this report are based on the entirety of the record considered by the investigator and are not limited to the factual information contained in this report. The findings are based on a preponderance of the evidence, which means that based on the credible evidence gathered during the investigation, it is “more likely than not” that a particular event occurred or did not occur as alleged.

Finally, although this report includes the investigator’s interpretation of certain standards and policies, as applied to the facts, this report is not intended to provide any legal conclusion or offer any legal advice and should not be construed as such.

### **SUMMARY OF FINDINGS**

A review of the electronic communications between the Citizen and the Family Member flagged certain communications that raised questions/concerns involving (i) breach of the City’s attorney-client communications; (ii) the Family Member’s access, through the City Manager, to confidential and/or otherwise non-public City information; and (iii) the Family Member’s “inside involvement” with, and influence over, City operations by virtue of her relationship with the City Manager.

#### **I. Attorney-Client Communications**

The record revealed that the Citizen and the Family Member had multiple conversations regarding the City’s legal disputes. Some of these conversations suggested that the Family Member was privy to the City’s attorney-client privileged information and communications with respect to these disputes.

While the above-referenced topics have been widely discussed in the public forum, the weight of the evidence supports a finding that, by virtue of her familial relationship and living arrangement with the City Manager, the Family Member was privy to certain attorney-client communications between the City Manager, the City’s attorney and, in some cases, other City staff, with respect to these issues.

The Family Member acknowledged that she would sometimes “listen in” on the City Manager’s business conversations when these occurred at her residence; the evidence indicates that this “eavesdropping” included communications with the City’s attorney, which the Family Member knew (or reasonably should have known) to be protected by the attorney-client and work product privileges.

It is clear that the Family Member not only listened to the conversations between the City Manager and the City’s attorney (and, in some cases, other staff members), but that she passed the information she

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<sup>3</sup> In light of the underlying allegations of potential disclosure and/or failure to protect privileged attorney-client communications, work product and/or otherwise confidential information without proper authorization by the City, this Executive Summary Report has been prepared in a manner to reflect the City’s request that confidentiality of such information be preserved.

gleaned from these conversations on to the Citizen,<sup>4</sup> who, in addition to being politically active and wanting to advance certain interests in the community, is also a prolific blogger for the Sammamish Comment.

While it appears clear that the Family Member gained information—including some privileged attorney-client communications and work product—by listening to the City Manager’s work conversations, it is unclear as to whether the City Manager affirmatively shared this sensitive information with the Family Member. The Family Member says not. However, the City Manager conceded that it was possible that he may have shared some information while “venting to” or having “dinner table conversation with” a trusted family member.

In this respect, there is no direct evidence that the City Manager breached the City’s attorney-client and work product privileges by actively disclosing privileged information to the Family Member; however, the evidence indicates that the City Manager and the Family Member are close, that the Family Member is highly active and interested in City politics and operations, and that the City Manager thinks highly of and trusts his Family Member’s knowledge and expertise. Based on these circumstances, and the record itself, the investigator cannot definitively rule out the possibility that the City Manager’s and the Family Member’s conversations regarding City business (which appear to have been extensive) included the disclosure of privileged information. The evidence is inconclusive in this regard.

However, based on the entirety of the evidence, one may reasonably conclude that on certain occasions the City Manager failed to adequately safeguard the City’s protected and privileged information. The record revealed at least three conversations between the City Manager and the City’s attorney that were admittedly overheard by the Family Member. I credit the City Manager’s report that he was not aware that his Family Member was actively listening to his conversations and did not know that she was passing these on to the Citizen. However, the majority of the confirmed overheard conversations appear to have occurred under “close quarters” circumstances in which the City Manager should have appreciated the probability of these being overheard. Additionally, knowing the Family Member as he does, the City Manager could have anticipated that her interest would likely be piqued by his legal conversations.

It appears that the City Manager could have been more circumspect and cautious in discussing and working on legal matters around the Family Member.

## II. Other Confidential and/or Non-Public Information

the Citizen’s and the Family Member’s conversations further raised concerns regarding the Family Member’s access, via the City Manager, to other confidential and/or non-public City information.

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<sup>4</sup> The Family Member indicated that she felt coerced to do so because she was fearful of the Citizen. However, the record tends to contradict this assertion and suggests that the Family Member and the Citizen were on friendly terms.

*A. Conversations with Councilmembers*

The record indicated that, in addition to conversations between the City Manager and the City's Attorney, the Family Member also listened to conversations between the City Manager and individual Councilmembers regarding City business.

The Family Member admitted that she would sometimes listen to the City Manager's work conversations. The record, in which the Family Member expressly stated that she was listening to certain conversations, confirmed this.

These conversations included the City Manager's communications with various Councilmembers. Each of the Councilmembers interviewed indicated that they were unaware that the Family Member was listening to their conversations with the City Manager.

It is undisputed that the Family Member listened to various conversations between the City Manager and Councilmembers while the City Manager lived with the Family Member and/or was otherwise in her presence. The Family Member indicated that she saw nothing wrong with this based on her assessment that Councilmembers have voluntarily provided her information over the years.

The telephone conversations between the City Manager and Councilmembers were nonpublic, and in some cases, confidential communications. Notably, members of the public in general are not in a position to access the City Manager and listen to his nonpublic communications with others. In this respect, one may reasonably conclude that the Family Member had access to information, by virtue of her relationship with the City Manager, that was not readily available to the public as a whole and in some cases was confidential.

The evidence further suggests that the Family Member was imminently interested in the City Manager's work conversations, and that she not only listened to these but also used and/or shared this information.

However, the weight of the evidence suggests that the City Manager was not aware that the Family Member was actively listening to his conversations and/or repeating these conversations. In this respect, although the City Manager arguably could have been more diligent in protecting these conversations from the Family Member's ears, there is a lack of evidence that the City Manager affirmatively disclosed these non-public and/or confidential communications to the Family Member. However, given comments by the Family Member, including one in which the City Manager was reportedly "laughing" with her about his conversation with one councilmember, the possibility that the City Manager shared with the Family Member his conversations with Councilmembers could not be definitively ruled out.

*B. Communications with, or about, City Staff/Consultants*

The record indicated that the City Manager would sometimes share his conversations with City staff with the Family Member, "vent" to the Family Member about City personnel and consultants, and share his candid (and often negative) assessments of staff performance. In this respect, it appears that the City Manager shared with someone outside the organization what may objectively be characterized as "personnel information" which also would be considered non-public personnel information, and potentially embarrassing information if made public.

Again, I credit the City Manager's assertion that he didn't know that the Family Member was passing on his comments. However, given the Family Member's political interests, objectives and activities, it is unclear whether the City Manager was indifferent to the possibility that information he provided to the Family Member would be shared/used by her, or if he erroneously assumed she would keep it confidential. In either case, the Family Member's publication of the City Manager's comments to her had the potential to compromise the City's interests and negatively impact affected staff.

### III. "Inside" Information and Influence

Some communications between the Citizen and the Family Member raised concerns that the Family Member may be privy to "inside" information and/or exert "inside" influence with respect to City operations.

#### A. *Knowledge Regarding Public Records Requests*

The record included statements by the Family Member in which she suggested that the City Manager was encouraging preferential treatment with respect to public records requests ("PRR's").

The evidence is inconclusive as to what, if anything, the City Manager told the Family Member with respect to PRR's. The City Manager and (now) the Family Member deny that they had any such conversation. Furthermore, I credit the City Manager's assertion that he did not direct that a citizen receive preferential treatment with respect to PRR's (and that the citizen accused him of the opposite). It is possible that the Family Member was "embellishing" with respect to these statements. However, the Family Member's communications speak for themselves and could not be definitively discounted.

#### B. *Influence and Involvement in City Work Product*

The record objectively gives the impression that, on at least one occasion, the Family Member provided the City Manager information under circumstances that she deemed most favorable to elicit the emotion/reaction/response she wanted, in an effort to influence (or manipulate) the City Manager's opinions, impressions and/or decisions on that topic. Given the entirety of the Family Member's comments, it cannot be ruled out that the Family Member may have done this on more than one occasion.

The record excerpts to this effect further evidence that the City Manager and the Family Member had long conversations, and likely in-depth conversations about City matters. It is clear that the City Manager values the Family Member's knowledge and expertise, and it appears likely that he has been receptive to her perspectives, opinions and/or suggestions. The Family Member's comments further suggest that the City Manager shared and/or developed with the Family Member an "angle" (strategy) with respect to a City matter that he otherwise did not want disclosed or made public, and that this "angle" was based, in part, on "insight" the Family Member had from her husband.

The evidence further suggests that the City Manager has requested and/or received from the Family Member work product relating to City matters and/or the performance of his duties. According to the Family Member's statements, the City Manager asked her for details relating to City matters, and requested that she compile applicable ordinances, certificates and videos and go through these with him.

The Family Member also indicated that she prepared a statement that she needed to go over with the City Manager—suggesting that this was for his benefit (or otherwise pertained to City business).

While it is again possible that the Family Member overstated her involvement in the City matters, the investigation confirmed that, at a minimum, the Family Member has prepared “email statements” for the City Manager, which were then sent to all City employees, with only minor edits, by the City Manager.

While it is clear that the Family Member has furnished the City information with “background,” “context” and information pertaining to various City matters, and appears to have discussed these prolifically, the Family Member’s actual “influence” over the City Manager, if any, could not be definitively qualified or quantified. However, it also could not be conclusively discounted.

### *C. “Inside” Information*

Certain record excerpts were notable as suggesting that the Family Member had “inside information” relating to City business.

First, the Family Member’s comments highlighted what appeared to be the Family Member’s efforts to influence and facilitate internal personnel complaints from City staff against a Councilmember. The Family Member purported to know that a City employee was “collecting” complaints about the Councilmember from specified employees, and what these complaints would assert. The Family Member referred to this as her “side project.”

However, the evidence suggests that this is likely an example of “embellishment” from the Family Member. The employee referenced by the Family Member denied any knowledge of this or efforts regarding the same, and was reportedly shocked to hear of this. The record indicates that one employee did complain about a Councilmember around the time of this communication but this was the only staff complaint that materialized. Further, although the Family Member suggested that the City Manager was “generally aware” of the effort, there is no evidence that the City Manager was directly involved in the Family Member’s “side project to ruin [a Councilmember].”

Second, the Family Member’s comments suggested that the Family Member is privy to City communications and plans with respect to communications before these were published to the public. The Family Member referenced the City Manager’s directions to City staff and seemed to know of communications with the City Attorney and the City’s intended response to a PRR in advance.

In each of these cases, it is possible that the Family Member received this information from a source other than the City Manager. It is also possible that the Family Member “embellished” some of the information she provided to the Citizen. However, the City Manager acknowledged having “dinner table” conversations with the Family Member that may have included these topics. Additionally, some of the Family Member’s communications reference the City Manager as the source of her information and appear to be contemporaneous.

At a minimum, the relevant excerpts may be reasonably interpreted as evidence that the Family Member has had a level of involvement/knowledge with respect to City operations that is unusual for a non-employee, public citizen. This level of involvement/knowledge appears to at least in part stem from the

Family Member's relationships with City staff, including (significantly, but perhaps not exclusively) the City Manager.

#### IV. Analysis and Conclusions

The overall record supports a finding that the City Manager on certain occasions failed to effectively safeguard City attorney-client privileged communications, and that these communications were overheard and further disseminated by the City Manager's family member. It is the investigator's impression that the City Manager more likely than not did not affirmatively disclose privileged communications and/or work product to the Family Member (by specifically sharing this information with her); however, I cannot definitively rule out the possibility that this occurred (whether intentionally or in passing).

There is also evidence to support a finding that the City Manager on occasion "vented" to the Family Member about City information that may be reasonably characterized as confidential or otherwise non-public.

The evidence further indicates that by virtue of their relationship, prior living arrangement and ongoing close proximity, the Family Member had/has "access" to the City Manager, and to City information and operations, that other members of the public do not have. It appears that the Family Member was actively engaged in helping the City Manager understand City issues and historical context (from her point of view) and in formulating City strategy, positions/responses and work product; however, the extent of this engagement, and the "influence" The Family Member may have had in this regard, could not be conclusively quantified or qualified beyond that captured in the record.

The investigation confirmed that the Family Member was also involved in crafting general workplace communications on behalf of the City Manager. These communications do not appear to have included any sensitive information and may be reasonably described as relating more to "esprit de corps" within the City. However, these communications again suggest a level of "behind the scenes" conversations between the City Manager and the Family Member, relating to general City operations, and the Family Member's involvement in crafting messages for the City Manager.

The City Manager equated several of his conversations with the Family Member as being akin to conversations with his wife (and, thereby implicitly covered by a "spousal privilege"). However, even if such privilege existed, the Family Member arguably waived such privilege by repeating these conversations to a third party.<sup>5</sup>

The City Manager correctly pointed to the fact that it was the Family Member, and not him, who made information "public" or otherwise provided the subject representations and statements. However, given the Family Member's high level of interest in City politics and operations, the City Manager arguably may have reasonably anticipated that she would be interested in such information for her own use, in furthering her political objectives and agendas.

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<sup>5</sup> As a private citizen, the Family Member would not be authorized to waive privilege on behalf of the City.

There is insufficient evidence to support a finding that the Family Member has had “influence” over the City Manager with respect to certain City matters of significance, such as specific decisions and/or actions with respect to the hiring/firing of individuals and/or the orchestration/administration of personnel complaints. However, the Family Member’s close involvement in City politics and operations and her ties with certain City staff, including but not limited to the City Manager, coupled with the Family Member’s statements and representations such as the ones made to the Citizen, seemingly have the potential to at a minimum invite “appearance of fairness” and “nepotism” questions and concerns with respect to the City Manager’s performance of his duties.

Against these general findings, the following potentially-applicable standards of conduct are considered:

**A. CODE OF ETHICS FOR MUNICIPAL OFFICERS (excerpts)**

**RCW 42.23.070(4): Prohibited acts [of municipal officers]** No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

With respect to this code of ethics provision, there is no evidence that the City Manager used the City’s confidential information for his personal gain or benefit. Rather, the only potentially-applicable standard is that subsection’s prohibition against the disclosure of confidential information gained by reason of the officer’s position. For purposes of this investigation, “disclose” is the operative term in considering this standard.<sup>6</sup>

As set forth above, while it appears that the Family Member was privy to certain attorney-client or work product privileged information and other information that may be reasonably construed as “confidential” by virtue of her close proximity to the City Manager, the evidence is not clear whether any of this information was affirmatively shared with the Family Member by the City Manager. In most cases, it appears that such “disclosure” occurred because the City Manager was in a position for his conversations with legal counsel, Councilmembers and/or City Staff to be overheard by an “interested party.” However, in some cases, the City Manager may have affirmatively provided confidential and/or non-public information “while venting to” or “having dinner table conversations with” a trusted family member about his workday.

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<sup>6</sup> Chapter 42.23 RCW does not include a definition of “disclose” or “disclosure.” The *Merriam-Webster* Dictionary defines “disclose” as “to make known or public” (<https://www.merriam-webster.com/dictionary/disclose>) and “to expose to view.”<sup>6</sup> “Disclosure” is defined as “the act or an instance of disclosing” (<https://www.merriam-webster.com/dictionary/disclosure>). Applying these definitions to the present case, there are two potential interpretations/conclusions. One is that the references “to make known,” “to expose” and “the act” all suggest an affirmative action on the part of the “discloser.” The second is that “to” and “an instance” may be more broadly construed to include occurrences of “passive” disclosure. In considering the “active” versus “passive” interpretations of “disclosure,” it is noted that In creating the Code of Ethics, the Legislature declared its intended purpose to be to “make uniform the laws of this state concerning the transaction of businesses by municipal officers. . . in conflict with the proper performance of their duties in the public interest; and to promote the efficiency of local government by prohibiting certain instances and areas of conflict. . . .” RCW 42.23.010. In this sense, the Code of Ethics seems to focus on the “private interests and transactions” of the municipal officer, with the intent to avoid conflicts of interests.

Given the apparent spirit of the Code of Ethics to prohibit municipal officers to use their public office for personal gain or interests, it is this investigator's assessment that the facts surrounding the City Manager's sustained "disclosures" do not rise to the level of a violation of RCW 42.23.070(4); however, this is made with the reservation that a different reading of that statute could support a finding that that statute broadly prohibits any disclosure of confidential information gained by reason of the officer's position.

## **B. THE CITY'S EMPLOYEE HANDBOOK**

In addition to the statutory code of ethics, the City of Sammamish Employee handbook includes certain policies regarding the protection of City information:

**Policy 7.7 Confidential Work Product:** Work product related to the operation of the City<sup>7</sup> shall not be removed from the premises *or disclosed to third parties* without proper authorization. . . . (Emphasis added).

The same analysis applied to the Code of Ethics above may be similarly applied to Policy 7.7. The term "disclosed," as used in that policy, may also be read to suggest either an active or passive disclosure. However, Policy 7.7 does not have the same stated purpose of the Code of Ethics. In this respect, the focus of Policy 7.7 appears not to be on preventing "conflicts of interest" but rather the protection of "confidential information."

Adopting the "active disclosure" interpretation again suggests that the City Manager did not "disclose" privileged information; however, it appears likely that, in "venting" or having "dinner table conversations" with the Family Member, the City Manager likely "disclosed" City information that may be reasonably construed as being "confidential."

**Policy 12.1 Expressly Prohibited General Conduct:** Employees are expected to conduct themselves in an appropriate, professional manner. Examples of behavior that is inappropriate and require immediate corrective action include, but are not limited to: . . . *Failing to maintain confidentiality of City information* (emphasis added).

The standard set forth in Policy 12.1 may be broadly construed to require employees to "maintain confidentiality of City information." As outlined above, the evidence supports a finding that the City Manager at a minimum failed in certain cases to appropriately safeguard City privileged and confidential information. Accordingly, one may reasonably conclude that the City Manager engaged in "inappropriate behavior that "require[s] immediate corrective action" under Policy 12.1.

This investigator does not offer any opinion or assessment as to the "severity" or "egregiousness" of the City Manager's "disclosures" or "failure to maintain the confidentiality" of the City's confidential

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<sup>7</sup> Policy 7.7's reference to "work product related to the operation of the City" has a broad connotation that does not appear to be limited to privileged work product created or obtained in anticipation of or preparation of litigation.

information, or what, if any, “corrective action” is warranted or justified. This is a question that is properly reserved to the City Council.<sup>8</sup>

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<sup>8</sup> Apart from the specific policies outlined above, this investigation also revealed certain “intangible” considerations. A review of the City standards set forth in its Employee Handbook demonstrate the City’s overall interest in avoiding the “appearance of impropriety,” “[detraction] from the efficiency of the employee while performing City duties,” and circumstances that “might lead to potential conflict” or “conflict with . . . official duties.” *See, e.g.*, Policies 16.2 (Accepting Gifts); 16.3 (Outside Employment); 16.4 (Employment of Family) and 16.6 (Investments in Conflict with Official Duties).

As evidenced by this investigation, the Family Member’s demonstrated desire and efforts to influence City politics and her relationship with and access to the City Manager have the potential to undermine or call into question the propriety of the City Manager’s decisions and actions, and/or to detract from his efficiency/effectiveness in performing his duties. Given the highly political nature of this investigation, it may be reasonably anticipated that the Family Member’s documented comments and representations to the Citizen will further subject the City Manager’s performance to ongoing scrutiny, criticism and/or claims of “conflict,” “partiality” and/or “unfairness.”