



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE)	PDC CASE NO: 14-006
WITH RCW 42.17A)	
)	
Tom Albro, Stephanie Bowman, John)	
Creighton, and Courtney Gregoire)	
(Port of Seattle Officials))	REPORT OF INVESTIGATION
)	
Respondent.)	
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I.

BACKGROUND

- 1.1 The Port of Seattle is a municipal corporation and special purpose district authorized under Title 53 RCW to provide freight and passenger transfer and terminal facilities. The port owns and operates Seattle-Tacoma International Airport ("Sea-Tac Airport"). In 2013, Sea-Tac Airport handled more than 34.7 million passengers.
- 1.2 The port is governed by five commissioners elected at large by King County voters to four-year terms. In the spring and summer of 2013, the president of the port commission was Tom Albro. Also serving at that time were Stephanie Bowman, Bill Bryant, John Creighton, and Courtney Gregoire. All except Mr. Bryant were candidates for election or re-election in the November 5, 2013 general election, and all were successful in their campaigns. (Ms. Gregoire and Ms. Bowman were appointed to the Port of Seattle Commission on March 5, 2013 and May 3, 2013, respectively, and were elected to the commission for the first time in that year's general election.)
- 1.3 On October 14, 2013, Andrew Pilloud filed complaints against Tom Albro, Stephanie Bowman, John Creighton, and Courtney Gregoire. **(Exhibit 1.)**

II.

ALLEGATIONS IN COMPLAINT

2.1 Mr. Pilloud's complaint alleged that Tom Albro, Stephanie Bowman, John Creighton, and Courtney Gregoire violated RCW 42.17A.555 by using the facilities of the Port of Seattle to assist their 2013 campaigns for Port Commissioner. The facilities at issue were four audio recordings played over the public address system at SeaTac Airport beginning in the spring or summer of 2013. As described in the complaints, the recordings featured the voices of the four commissioners, and identified them by name. Mr. Pilloud further alleged that the four commissioners violated RCW 42.17A.240 by not reporting the assistance from the Port of Seattle as a campaign contribution, and violated RCW 42.17A.405 by exceeding contribution limits.

III.

SUMMARY OF FINDINGS

- 3.1 Port of Seattle Commissioners Tom Albro, Stephanie Bowman, John Creighton, and Courtney Gregoire participated in recording welcome messages that were played in the port's Sea-Tac Airport facility between April and October of 2013. During those times, the four identified commissioners were candidates for election or re-election in the November 5, 2013 general election. A fifth commissioner who participated in the welcome messages, Bill Bryant, was not a candidate.
- 3.2 The Port of Seattle has aired recorded commissioner messages in Sea-Tac Airport since at least 2004. The messages aired in 2013 were similar in substance to messages aired in prior years, in that they focused on the port's business, environment and trade initiatives and other port accomplishments. However, the messages aired in 2013 departed from the port's normal and regular conduct in airing recorded commissioner messages because the messages in 2013 were longer, aired more frequently, and featured all five members of the port commission rather than only the commission president. These changes were brought about at the request of Port of Seattle Commission President Tom Albro, for what he stated was a legitimate agency purpose connected with promoting the Century Agenda, the port's strategic initiative launched in 2012.
- 3.3 During the investigation, Commissioners Albro, Bowman, and Creighton argued that the 2013 recorded commissioner messages failed to meet several required criteria for a "public service announcement" in PDC rules and applicable Commission guidance, and so were not prohibited under RCW 42.17A.575. Commissioner Gregoire stated that she was not aware of the

prohibition against appearing in a public service announcement during the election year until it was brought to her attention in connection with the complaint, and stated that she has no knowledge of or experience with whether the recordings would meet the legal definition of a public service announcement. Rather, Commissioners Albro, Creighton and Bowman stated that in keeping with the Port of Seattle's long-established practice, the 2013 commissioners messages were used to welcome visitors to the Sea-Tac Airport facility and inform them about port operations. Commissioner Gregoire stated that she considered the recording of the airport announcements part of her official and regular duties as a Port Commissioner, and said it did not even enter her mind that the recordings were something that would benefit her campaign for re-election.

FINDINGS

3.4 Content of Recorded Commissioner Messages: On April 19, 2013, two recorded messages featuring the voices of Port of Seattle Commission President Tom Albro, Commissioner Bill Bryant, and Commissioner Courtney Gregoire began playing along the six sky bridges from the Sea-Tac Airport garage into the airport terminal. **(Exhibit 2.)** The message scripts promoted the port's impact on employment, the economy, and the environment, as follows:

Albro / Bryant ("with emphasis on environment")

Tom: Hello, I'm Port of Seattle Commissioner Tom Albro

Bill: And I'm Commissioner Bill Bryant. Welcome to Sea-Tac, one of the greenest airports in the country.

Tom: Our dedication to making the Port of Seattle the greenest and most energy efficient port in North America is an essential part of our Century Agenda.

Bill: We are committed to balancing economic growth with environmental responsibility.

Tom: Because nothing matters if we don't preserve our environment for future generations.

Albro / Gregoire ("with emphasis on small business opportunities")

Tom: Hello, I'm Port of Seattle Commissioner Tom Albro

Courtney: And I'm Commissioner Courtney Gregoire. The Port of Seattle supports over 200,000 jobs, directly and indirectly, in our region.

Tom: The Port promotes small business growth and the development of a strong workforce as part of our Century Agenda.

Courtney: This is important to accomplishing our vision of adding 100,000 new jobs here over the next 25 years.

Tom: More jobs, economic growth, led by the Port of Seattle.

3.5 On May 16, 2013, two additional recorded messages featuring the voices of Port of Seattle Commission President Tom Albro, Commissioner Stephanie Bowman, and Commissioner John Creighton began playing along the Sea-Tac Airport sky bridges. **(Exhibit 2.)** The message scripts promoted the port's impact on employment and the economy, as follows:

Albro / Bowman (“with emphasis on small business opportunities”)

Tom: Hello, I'm Port of Seattle Commissioner Tom Albro

Stephanie: And I'm Commissioner Stephanie Bowman. The Port of Seattle supports over 200,000 jobs, directly and indirectly, in our region.

Tom: The Port also promotes small business growth and the development of a strong workforce as part of our Century Agenda.

Stephanie: This is important to accomplishing our vision of adding 100,000 new jobs here over the next 25 years.

Tom: More jobs, economic growth, led by the Port of Seattle.

Albro / Creighton (“with emphasis on jobs and airline flights/destinations”)

Tom: Hello, I'm Port of Seattle Commissioner Tom Albro

John: And I'm Commissioner John Creighton. Welcome to Sea-Tac Airport, the Northwest's busiest and a leading international gateway.

Tom: We want to tell you about our efforts to create another 100,000 jobs here in the Northwest. It's our Century Agenda.

John: One way we can do this is by growing our number of flights and destinations. That's important for local businesses and tourism.

Tom: And...doing so means more jobs...that's what the Port of Seattle is all about.

3.6 On October 18, 2013, PDC staff contacted Craig Watson, General Counsel to the Port of Seattle, and informed him that the recorded messages identified in Mr. Pilloud's complaint could be public service announcements prohibited under RCW 42.17A.575, given that they included the voices of four municipal officers who were also candidates in the 2013 general election. Staff recommended that the Port of Seattle cease airing the recordings in the airport, and refrain from distributing them in any other manner. On October 21, 2013, Mr. Watson replied **(Exhibit 3)** that the recorded messages had been discontinued per PDC staff's instructions. (He explained that he was late in responding to PDC staff's message because he had been out of the office.)

3.7 **Normal and Regular Conduct of Port Commission:** On October 25, 2013, PDC staff requested information from the port concerning the timing and frequency of airing of the commissioners' recorded messages, as well as the port's history of airing such messages in the airport.

- 3.8 On October 30, 2013, Isabel Safora, the port's Deputy General Counsel, responded (**Exhibit 4**) that the messages at issue in Mr. Pilloud's complaint ran 24 hours, seven days a week along the airport's six sky bridges, and were heard in no other location. She stated that the commissioner messages (20-35 seconds in duration) were aired in rotation with directional messages recorded by port staff or by Northwest musicians as part of the Port's music initiative (she stated that the music messages were approximately 40 seconds long).
- 3.9 Ms. Safora stated that recorded commissioner messages had been aired in Sea-Tac Airport since at least 2004. She stated that the messages at issue in Mr. Pilloud's complaint began airing on April 19, 2013 and played at the rate of five messages per hour. She stated that beginning on May 16, 2013, when recordings with Commission President Albro and Commissioners Stephanie Bowman and John Creighton were added to the playlist, the messages ran at 12 messages per hour, with each commissioner pair running four times each hour. Ms. Safora stated that on July 19, 2013, the playback of commissioner messages increased to 32 messages per hour, with each commissioner pair running eight times each hour.
- 3.10 Ms. Safora stated that prior to April of 2013, Sea-Tac airport's recorded commissioner messages featured only the president of the port commission, and did not include other commissioners. Ms. Safora provided scripts of 17 commissioner greetings used in 2004, 2008, 2009, and 2012. (**Exhibit 5.**) The messages were similar in substance to the recordings at issue in Mr. Pilloud's complaint, in that they focused on the port's business, environment and trade initiatives and other port accomplishments. However, with the exception of one commissioner message used in 2004, the recorded messages were on average half as long as the commissioner messages used in 2013.
- 3.11 PDC staff asked Ms. Safora to explain why the recorded commissioner messages used beginning in April of 2013 departed from the messages used in prior years. In particular, staff asked why the port began including all commissioners rather than only the commission president in the recorded messages, and why the frequency of playback increased from five to twelve to thirty-two messages per hour during the spring and summer of 2013. On October 31, 2013, Ms. Safora responded that these changes were requested by Port Commission President Tom Albro. (**Exhibit 6.**)
- 3.12 **Response of Tom Albro to Complaint:** On December 31, 2013, Tom Albro provided a response to Mr. Pilloud's complaint. (**Exhibit 7.**) Staff asked Mr. Albro to explain why he authorized uses of commissioner greetings that deviated from the port's normal and regular conduct. In response, Mr. Albro stated that he asked his fellow commissioners to take part in the recorded messages because he believed it was important for the commission to convey

a common commitment to the strategic goals presented in the port's Century Agenda, adopted in December 2012. **(Exhibit 8.)** He stated that the Century Agenda has four major thrusts (cargo, tourism, workforce development and small business growth, and environmental stewardship), and that the recorded messages identified by Mr. Pilloud spoke to these four themes.

3.13 Mr. Albro stated that after the commissioner messages had been running for several months, he noticed that he rarely heard them while walking from the garage to the airport. Instead, he noticed prolonged periods of silence and some periods of other announcements. He said that as a result, he asked port staff to review the frequency of the commissioner messages to make best use of the opportunity to convey the Commissioners' commitment to the Port's strategic goals.

3.14 **Responses of John Creighton, Stephanie Bowman, and Courtney Gregoire to Complaint; Response of Tom Albro regarding RCW 42.17A.555:** On December 27, 2013, January 3, 2014, and January 6, 2014, separate responses to Mr. Pilloud's complaint were received from John Creighton, Stephanie Bowman, and Courtney Gregoire.

3.15 In his response **(Exhibit 9)**, Mr. Creighton disputed that the 2013 recorded commissioner messages constituted public service announcements, a use of public facilities to assist a candidate's campaign, or a campaign expenditure in support of any candidate for office. He stated that as the elected leaders of the Port of Seattle, port commissioners have acted properly over the years in recording the airport welcome announcements. He compared the messages to a local mayor having a plaque in city hall welcoming visitors, or a county executive or other elected official having a welcome message on the Web site of the official's agency. He stated that the messages could not be described as a campaign expenditure in support of a candidate, because the public address system in the Sea-Tac Airport is never used for any commercial purpose by outside parties, or for any purpose unrelated to welcoming travelers to the airport.

3.16 In her response **(Exhibit 10)**, Stephanie Bowman echoed Mr. Creighton's comparison to the welcome message from an elected official that appears on an agency's Web site, or a physical sign displayed in the agency. Further, she stated that at the time she agreed to take part in the recorded commissioner greetings, she was a new appointee to the port commission, and participated only with the understanding that the greetings were the part of the agency's normal and regular conduct. Finally, she stated that the recorded messages did not constitute public service announcements as defined in the PDC's laws and rules.

- 3.17 In her response (**Exhibit 11**), Courtney Gregoire stated that she considered the recording of the airport announcements part of her duties as a port commissioner. She stated that she did not take part in the recordings for the purpose of assisting her election campaign. Further, she stated that she was unaware of the prohibition in RCW 42.17A.575 against public service announcements by municipal officers during an election year until the prohibition was brought to her attention in connection with Mr. Pilloud's complaint. She stated that she has no knowledge of or experience with whether the 2013 commissioner recordings met the legal definition of a public service announcement.
- 3.18 Following his initial response to the complaint, PDC staff asked Tom Albro to respond to the allegation that the 2013 recorded commissioner messages met the definition of "Public Service Announcement" in WAC 390-05-525, as further clarified by the Public Disclosure Commission in PDC Interpretation 10-01, *Public Service Announcements By State-Elected Officials and Municipal Officers*. On March 4, 2014, Mr. Albro responded (**Exhibit 12**) that that the messages did not meet the definition of a PSA in the rule or Interpretation.
- 3.19 Referring to the requirement in WAC 390-05-525 that a PSA meet *all* of the criteria listed in the rule, Mr. Albro stated that the 2013 recorded commissioner messages failed to meet several of the listed criteria. He stated that the messages were not designed to benefit or promote the community's health safety or welfare or nonprofit community events (WAC 390-05-525[1][a]), but instead were designed to 1) inform the facility user that they were using a Port of Seattle facility and welcome them, 2) to inform the user that the mission of the Port of Seattle is economic development and job growth, and 3) to convey to the user the four major strategic thrusts of how the Port of Seattle planned to address that mission. He stated that the recorded messages were not of primary interest to the general public (WAC 390-05-525[1][d]), but in the interest of the specific users of the Sea-Tac airport and targeted to reach only them. Finally, he stated that the messages were not subject to Port of Seattle "policies regarding public services announcements" (WAC 390-05-525[1][f]) and were not "sponsored" by the Port of Seattle, in that the Port of Seattle does not routinely use its public address system to provide "outreach public service messages" (WAC 390-05-525[1][c]). Instead, he stated it was the Port of Seattle's long established practice to use its public address system to communicate information about the port to facility users.

IV.

SCOPE

4.1 Staff reviewed the following documents:

1. Complaints filed by Andrew Pilloud on October 14, 2013 against Tom Albro, Stephanie Bowman, John Creighton, and Courtney Gregoire;
2. Scripts of the 2013 Port of Seattle Port Commissioner recorded greetings;
3. An email received from Port of Seattle General Counsel Craig Watson on October 21, 2013;
4. An email received from Port of Seattle Deputy General Counsel Isabel Safora on October 30, 2013;
5. Scripts of 17 Port of Seattle Port Commissioner greetings used in 2004, 2008, 2009, and 2012;
6. An email received from Isabel Safora on October 31, 2013;
7. A response to Mr. Pilloud's complaint, received from Tom Albro on December 31, 2013;
8. Information concerning the strategic objectives of the Port of Seattle's Century Agenda, obtained from the port's Web site, www.portseattle.org.
9. A response to Mr. Pilloud's complaint, received from John Creighton on December 27, 2013;
10. A response to Mr. Pilloud's complaint, received from Stephanie Bowman on January 3, 2014;
11. A response to Mr. Pilloud's complaint, received from Courtney Gregoire on January 6, 2014; and
12. A supplemental response to Mr. Pilloud's complaint, received from Tom Albro on March 4, 2014.

V.

LAW

RCW 42.17A.555 states, in part:

"No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office[.]

...[T]he foregoing provisions of this section shall not apply to the following activities:

...(3) Activities which are part of the normal and regular conduct of the office or agency.”

WAC 390-05-273 defines the “normal and regular conduct” of a public office or agency as *“conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner.”*

RCW 42.17A.575 prohibits state-elected officials and municipal officers from speaking or appearing in a public service announcement from January 1 to the date of the general election in a year in which the official is a candidate.

WAC 390-05-525 states the following:

(1) "Public service announcement" means a communication meets all the following criteria. The communication is:

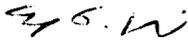
- (a) Designed to benefit or promote the community's health, safety or welfare or nonprofit community events;
- (b) Not selling a product or service;
- (c) Sponsored by an organization with a history of routinely providing the community such outreach public service messages in the service area of the organization;
- (d) Of primary interest to the general public and is not targeted to reach only voters or voters in a specific jurisdiction;
- (e) Not coordinated with or controlled or paid for by a candidate's authorized committee or political committee;
- (f) Subject to the policies for public service announcements of the entity broadcasting, transmitting, mailing, erecting, distributing or otherwise publishing the communication including policies regarding length, timing and manner of distribution; and
- (g) One for which the arrangements to include a reference or depiction of the candidate or candidates in the communication were made at least six months before the candidate became a candidate.

(2) Examples of public service announcements include but are not limited to communications regarding nonprofit community events, outreach or awareness activities such as: Breast cancer screening, heart disease, domestic violence, organ donation, emergency or other disaster relief for organizations such as the Red Cross, programs designed to encourage reading by school children, childhood safety, fund drives for charitable programs such as United Way, and similar matters.

PDC Interpretation 10-01, *Public Service Announcements By State-Elected Officials and Municipal Officers* interprets the term “municipal officer” in RCW 42.17A.575 to include “all elected and appointed officers of a municipality” as

discussed in RCW 42.23.020. (The term "municipality" is defined in RCW 42.23.020 as "all counties, towns, districts, and other municipal corporations and quasi municipal corporations organized under the laws of the State of Washington.") Interpretation 10-01 further interprets and provides guidance on current laws and rules, including the pre-existing definition of "public service announcement" in WAC 390-05-525, in light of RCW 42.17A.575.

Respectfully submitted this 9th day of September, 2014.



Tony Perkins
PDC Assistant Director

EXHIBIT LIST

- Exhibit 1** Complaints filed by Andrew Pilloud on October 14, 2013 against Tom Albro, Stephanie Bowman, John Creighton, and Courtney Gregoire.
- Exhibit 2** Scripts of the 2013 Port of Seattle Port Commissioner recorded greetings.
- Exhibit 3** An email received from Port of Seattle General Counsel Craig Watson on October 21, 2013.
- Exhibit 4** An email received from Port of Seattle Deputy General Counsel Isabel Safora on October 30, 2013.
- Exhibit 5** Scripts of Port of Seattle Port Commissioner greetings used in 2004, 2008, 2009, and 2012.
- Exhibit 6** An email received from Isabel Safora on October 31, 2013.
- Exhibit 7** A response to Mr. Pilloud's complaint, received from Tom Albro on December 31, 2013.
- Exhibit 8** "What Does it Take to Make Big Things Happen?", content taken from the Web site of the Port of Seattle, www.portseattle.org.

- Exhibit 9** A response to Mr. Pilloud's complaint, received from John Creighton on December 27, 2013.
- Exhibit 10** A response to Mr. Pilloud's complaint, received from Stephanie Bowman on January 3, 2014.
- Exhibit 11** A response to Mr. Pilloud's complaint, received from Courtney Gregoire on January 6, 2014.
- Exhibit 12** A supplemental response to Mr. Pilloud's complaint, received from Tom Albro on March 4, 2014.