

**ETHICS OPINION**  
Jeff Cline, County Commissioner

The Board of County Commissioners filed a complaint with the Ethics Commission against County Commissioner Jeff Cline for violation(s) of the Ethics Ordinance related to a disclosure of certain information to the media.

**Background**

On Tuesday, October 3, 2017, the Washington County Board of Commissioners determined, based on the result of an internal investigation by independent counsel, that Commissioner Jeff Cline had provided to the media a copy of a May 30, 2017, "Notice of Claim and Demand for Preservation of Evidence" sent by attorneys for Sarah Lankford Sprecher to County officials, including Commissioner Cline, detailing Ms. Sprecher's legal claims arising out of alleged acts by Commissioner LeRoy E. Myers, Jr., and referred the matter to the Ethics Commission for a determination of whether a violation of the Ethics Ordinance occurred.

The May 30, 2017, Notice of Claim and Demand for Preservation of Evidence (hereinafter, the "Notice of Claim" or the "Notice") was sent by Ms. Sprecher's attorneys, as required by the Maryland Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. § 5-304, "to the corporate authorities of the defendant local government." The Notice of Claim was addressed to The Board of County Commissioners; to each Commissioner in his official capacity; to Gregory B. Murray, as "Former County Administrator and Chief Administrative Officer;" to Robert J. Slocum, as "County Administrator and Chief Administrative Officer;" to John M. Martirano, County Attorney; to Vicki C. Lumm, County Clerk; and to Stephanie Stone, Director of the County Division of Health and Human Services. The Notice consisted of eleven single-spaced typed pages detailing Ms. Sprecher's allegations of factual background and contemplated legal causes of action. The Notice also made demand for a so-called "litigation hold" on the routine destruction or discarding of potential evidence and called for the preservation of information potentially relevant to the issues involved. The Notice was filed expressly in contemplation of the commencement of litigation, but was not itself a lawsuit.

The *Herald-Mail* reported Ms. Sprecher's claims on June 1, 2017, stating that the Notice of Claim accused Commissioner Myers of "taking 'predatory and offensive

sexual and related actions' against her."<sup>1</sup> The *Cumberland Times-News* reported the story on May 31, 2017.<sup>2</sup>

In his appearance before the Ethics Commission, Commissioner Cline acknowledged having provided the Notice of Claim to the media within a day of his receipt of same.

### **Question Presented**

Did Commissioner Cline's release of the Notice of Claim to the media violate the Washington County Ethics Ordinance?

### **Discussion**

The Washington County Ethics Ordinance was enacted in compliance with the Maryland Public Ethics Law, Md. Code Ann., Gen. Prov. § 5-807. The provisions of the Ethics Ordinance apply to Washington County elected officials, employees, and appointees to County boards and commissions. Ethics Ordinance, § 3.

"Public confidence in the performance of government officials is of paramount importance." *State Ethics Comm'n v. Antonetti*, 365 Md. 428, 447, 780 A.2d 1154, 1166 (2001) (citing *Carrol County Ethics Comm'n v. Lennon*, 119 Md.App. 49, 61, 703 A.2d 1338, 1344 (1998)). The recognition of this principle by the Maryland legislature is made express: "[t]he General Assembly of Maryland, recognizing that our system of representative government is dependent on maintaining the highest trust by the people in their government officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of those officials and employees will be maintained. It is evident that the people's confidence and trust are eroded when the conduct of the State's business is subject to improper influence or even the appearance of improper influence." *Maryland Public Ethics Law*, "Legislative Findings," Md. Code Ann., Gen. Prov. § 5-807.

We conclude that the legislative intent underlying the Maryland Public Ethics Law and the Washington County Ethics Ordinance are the same.

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<sup>1</sup> [https://www.heraldmillmedia.com/news/local/sexual-harassment-allegation-made-against-county-commissioner-leroy-myers/article\\_bf9baf2c-4612-11e7-b507-cb1ef62cf8d3.html](https://www.heraldmillmedia.com/news/local/sexual-harassment-allegation-made-against-county-commissioner-leroy-myers/article_bf9baf2c-4612-11e7-b507-cb1ef62cf8d3.html)

<sup>2</sup> [http://www.times-news.com/news/former-delegate-leroy-myers-accused-of-sexual-harassment/article\\_e99a89a6-463f-11e7-a961-bb6538d0d5ce.html](http://www.times-news.com/news/former-delegate-leroy-myers-accused-of-sexual-harassment/article_e99a89a6-463f-11e7-a961-bb6538d0d5ce.html)

## Disclosure of Confidential Information

Section 4(i) of the Ethics Ordinance, entitled “[d]isclosure of confidential information,” states that “[o]ther than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.”

A threshold issue is whether or not the Notice of Claim is “confidential information” afforded the protections of the Ordinance. Commissioner Cline argues that, as a statutorily required notice of contemplated litigation, it is not and cannot be confidential in nature. The Ordinance does not define the term “confidential information.” To ascertain the legislative intent and the scope and applicability of the Ethics Ordinance, we must look to the plain meaning of the language of the Ordinance.

Merriam-Webster defines “confidential” to mean “marked by intimacy or willingness to confide; private, secret; containing information whose unauthorized disclosure could be prejudicial to the national interest.” Further, Black’s Law Dictionary defines the term to mean “intended to be held in confidence or kept secret.” “Information” is, according to Merriam-Webster, “the communication or reception of knowledge or intelligence.” While these common meanings suggest an “I know it when I see it” definition, this Commission concludes that “confidential information” as used in the Ethics Ordinance means any communication of knowledge or intelligence which can be characterized by an intimacy or privacy interest, particularly so where the unauthorized disclosure of such information could potentially be prejudicial to the public or a private interest. Therefore, we conclude that the Notice of Claim should have been afforded, at least initially, treatment as “confidential information” and so was such for purposes of this inquiry.

This Commission acknowledges that openness and transparency are of great importance in building accountability and trust in government, and to promoting the empowerment of citizens and citizen participation in public affairs. However, there is also a recognized need of government to be able to receive, analyze and act on certain types of information in confidence, especially where that information relates to important commercial issues or the privacy of individuals. The laws that address these competing interests attempt to balance the public interest in expanding the understanding of important issues with the governmental interest in preventing harm and protecting the administrative function of government while informing the public regarding important issues. It is a legislative function to draft and pass the laws that

balance these interests and address the legal and ethical obligations invoked by the facts now before this Commission, and to govern the conduct of elected and other government officials by imposing obligations to protect certain information. It is in this light that the Commission considers these matters.

Commissioner Cline argues, in part, that he did not in fact recognize the Notice of Claim as confidential information because it was not marked as such. However, this argument has little merit where Commissioner Cline released the Notice of Claim before County administrators had a reasonable time to process and analyze the matter, to submit the same to counsel for legal review, and to determine whether the Notice should have been treated as confidential or, in the alternative, deemed to be not confidential (as to its existence or as to its detail, or both) and a legitimate determination of what, if any, aspect would be publicly disclosed prior to the conclusion of any internal investigation or prior to the actual commencement of threatened litigation.

Commissioner Cline argues further that, as a layperson, he neither knew nor should have known that the Notice of Claim should have been afforded treatment as confidential information. This argument is not convincing, in light of the facts that Commissioner Cline served from 2005 to 2009 as a Councilperson on the Williamsport Town Council, and has served as a member of the Board of County Commissioners since December 2, 2014<sup>3</sup>, as two Maryland laws loom large in governing the conducting of the affairs of state and local government: the Open Meetings Act and the Public Information Act. The Open Meetings Act “requires many State and local public bodies to hold their meetings in public, to give the public adequate notice of those meetings, and to allow the public to inspect meetings minutes” but “permits public bodies to discuss some topics confidentially.”<sup>4</sup> The Public Information Act similarly grants the public a “broad right of access to public records while protecting legitimate governmental interests and the privacy rights of individual citizens.”<sup>5</sup> In both contexts, “threatened or pending litigation,” “personnel matters” and “personnel records”<sup>6</sup> are types of information expressly afforded privacy protections. Whether or not the Notice of Claim would have ultimately been determined to be appropriate for discussion in open or closed meeting, or for treatment, or not, as a confidential personnel record not

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<sup>3</sup> Maryland Manual Online,

<http://msa.maryland.gov/msa/mdmanual/36loc/wa/leg/html/msa15426.html>.

<sup>4</sup> Brian E. Frosh, Maryland Attorney General: Maryland Open Meetings Act,

<http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx>.

<sup>5</sup> Brian E. Frosh, Maryland Attorney General: Maryland Public Information Act,

<http://www.marylandattorneygeneral.gov/Pages/OpenGov/pia.aspx>.

<sup>6</sup> Open Meetings Act, Md. § 3-305(b)(1); Public Information Act § 4-311

subject to public inspection, Commissioner Cline's release of same occurred before the County's administrators, the County Attorney, or the Board of County Commissioners were given the opportunity to make those determinations under applicable law. However, determining that the Notice of Claim likely should have been afforded treatment as confidential information until determined by official processes to be otherwise does not end the inquiry.

In order to violate the Ethics Ordinance, one must (1) disclose or use (2) confidential information, (3) that the official or employee acquired by reason of the official's or employee's public position (4) that is not available to the public (5) for the economic benefit of the official or employee or that of another person.

Here, Commissioner Cline acknowledges the disclosure. This Commission concludes that the information was, or should have been treated as, confidential in nature pending official determination otherwise. We also find that Commissioner Cline acquired the Notice of Claim solely as a result of his position as County Commissioner, and that he did so in that capacity as an addressee pursuant to the statute requiring the Notice be given. We also conclude that the Notice, at the time of its release by Commissioner Cline, was not available to the public, as all evidence adduced before this Commission indicates that it had been received only by the addressees in their official capacities. However, the presence of the first four elements necessary for a violation are not conclusive of a violation; there must also be evidence of the fifth element.

On this point, the Commission cannot conclude from the evidence adduced that Commissioner Cline acted for his own economic benefit or for that of another person. We have no information that permits us to conclude that Commissioner Cline benefitted economically in any respect from the disclosure of the Notice of Claim. He denies that he was paid by any media outlet for the information. He argues, rather, that the disclosure was made in the public interest and to foster transparency in government, though the rapidity with which the disclosure was made appears to have effectively denied County officials the opportunity to consider whether the existence of the claim should be publicly acknowledged and, if so, to what extent details should be released, or whether any release prior to investigation would or could impair the function of government in investigating the claim and taking appropriate administrative and legal action. Nevertheless, without evidence of any proximate economic benefit, this Commission cannot conclude that Commissioner Cline's conduct was a violation of Section 4(i) of the Ethics Ordinance.

## Use of Prestige of Office

The facts adduced before the Commission also warrant analysis under the “use of prestige of office” provision of the Ordinance.

Section 4(g) of the Ordinance states that, “(1) [a]n official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another. (2) [t]his subsection does not prohibit the performance of usual and customary constituent services by an elected local official without additional compensation.”

Commissioner Cline argued before the Commission that his disclosure of what he presumed was not confidential information was made in the public interest to foster transparency in government. Indeed, the Herald-Mail reported on October 3, 2017, that “[w]hen asked if he was the source of leaks, [Commissioner] Cline said: ‘I don’t feel I have to comment on that.... I would go to any lengths to protect the rights of employees and give them due diligence, especially when it comes to an alleged sexual predator amongst us,’ he said.”

It is unclear whether Commissioner Cline’s disclosure of the Notice of Claim constitutes a use of the prestige of his office or public position within the scope of the Ordinance, but we need not answer that question because there is no evidence indicating that Commissioner Cline did what he did for his own “private gain” or that of another person within the scope of the Ordinance.

Neither the Ethics Ordinance nor the Maryland Public Ethics Law defines the term “private gain.” However, Section 4(g) of the Ethics Ordinance closely parallels § 5-506 of the Maryland Public Ethics Law, which reads in pertinent part “[a]n official or employee may not intentionally use the prestige of office or public position: (i) for that official’s or employee’s private gain or that of another....” The provisions of that Section, which are more expansive than those of the Ethics Ordinance, clearly refer to use of office for financial gain, to wit: influencing the awarding of government contracts, or influencing the retention of compensated lobbyists.<sup>7</sup> The single reported case cited in the annotations to § 5-506 of the Maryland statute involved an agency head hiring family members for paid positions as temporary employees without gaining the approval of the county personnel office, and without actively advertising for other applicants –

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<sup>7</sup> See also Joint Committee on Legislative Ethics, Maryland General Assembly, 2017 Ethics Guide, pp. 19, 35.

clearly for the economic benefit and financial gain of the family members.<sup>8</sup>

Thus, we equate the term “private gain” with the phrase “economic benefit” as used in Section 4(i), both signifying financial gain. As stated, no evidence was adduced before this Commission that Commissioner Cline or any other person gained financially from the disclosure.<sup>9</sup>

Thus, Commissioner Cline did not engage in conduct prohibited by Section 4(g) of the Ethics Ordinance.

### **Conclusion**

This Commission concludes that Commissioner Cline disclosed information that he acquired by reason of his public position, that was or should have been treated as confidential pending official determination otherwise, but there is no evidence that he acted for the economic benefit of himself or another within the scope of the Ordinance.

It is unclear whether Commissioner Cline’s disclosure of the Notice of Claim constitutes a use of the prestige of his office or public position within the scope of the Ordinance, but there is no evidence indicating that Commissioner Cline did what he did for his own “private gain” or that of another person within the scope of the Ordinance.

For the foregoing reasons, we conclude that Commissioner Cline is not in violation of the Ethics Ordinance.

WASHINGTON COUNTY  
ETHICS COMMISSION

By: J. Emmet Burke, Chair

Issued this 30<sup>th</sup> day of November, 2017.

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<sup>8</sup> See State Ethics Comm’n v. Antonetti, supra.

<sup>9</sup> We dismiss the notion that political gain inevitably leads to direct economic benefit as speculative at best and therefore beyond the scope of the Ordinance.