



July 2, 2021

BY EMAIL ONLY

Wayne Barnett
Executive Director
City of Seattle Ethics and Elections Commission

RE: SEEC Case NO. 21-WBI-0304-1

Dear Mr. Barnett,

Thank you for your diligence in investigating this matter. Pursuant to SMC 4.20.830.E, this is in response to your letter and the attached investigative report authored by Ramsey Ramerman, dated May 6, 2021. Pursuant to SMC 4.20.830.D.3, you and Mr. Ramerman concluded there was “reasonable cause to believe” that there had been Public Records Act (“PRA”) violations by Michelle Chen. At all relevant times, Ms. Chen was an Assistant City Attorney assigned by agreement with the City Attorney as Counsel to the Mayor’s Office.

I strongly believe that in our Democracy, government works for and must be accountable to the people. Transparency is fundamental to that accountability and the health of our democracy. Indeed, the Public Records Act, an important part of that transparency, was originally passed by voters exercising another fundamental right in 1972 -- a citizen’s initiative and vote. Your report was important because it not only reached issues in this specific case but revealed systemic shortcomings in the City’s need to maintain, archive and produce public records.

Upon receiving your report, the Mayor’s Office response to the SEEC report was threefold: 1) An independent review of the investigation and report conclusions; 2) working with the City Attorney’s office, taking remedial steps to review pending and closed PRA requests to ensure responsive documents are produced as required by the PRA, consistent with the report; and 3) to identify and begin implementation of systems to improve the City’s work under the PRA, including to ensure the storage, archival, review and production of electronic communications, including text messages.

Independent Review. Given that the underlying issue involved interpretation and implementation of the PRA as it applied to PRA requests for my records and to my office, I felt it important that there be an independent review. My office, working with the City Attorney’s office, retained Retired Judge Bruce Hilyer to conduct an independent assessment of the investigation and make recommendations to me. His report dated July 1, 2021, is attached here for your reference as Exhibit A. As you will see, Judge Hilyer (Ret.) agrees with Mr. Ramerman’s conclusions. I also agree that the underlying actions fell short of the obligations under the PRA. Indeed, no government should be looking to narrowly apply the law. Absent a specific and needed exemption, the presumption should be in favor of production.



Remedial Steps. While the report issued in **SEEC Case No. 21-WBI-0304-I** highlighted systemic deficiencies with the public disclosure technology and practices which are being addressed in a larger citywide directive, the City has re-evaluated the specific requests referenced in the report and all closed and currently open request from this time period to ensure appropriate searches are conducted for responsive records. As part of the process, the City Attorney’s Office was consulted for compliance on the Public Records Act. A summary is attached as Exhibit B.

Systemic Improvements. The City, like many governments, has struggled to keep up with its obligations under the PRA, given the increase in requests, new communication tools and platforms, and the explosion of electronic records. Over the years there have been a variety of efforts to improve the City’s work, including in the last four years when we added personnel, and consolidated some functions in the Seattle IT Department because of the increasing role of technology in the creation, maintenance, and retrieval of records. Nevertheless, as your report shows, there is work that still needs to be done.

With the sheer volume of records related to the Mayor’s Office, the City is working diligently to address the open records requests by hiring two reviewers, an e-discovery expert, and a public disclosure officer at Seattle IT Department – this position reports to Citywide Public Records Act Program and will continue to consult with the City Attorney’s Office for compliance with the Public Records Act. Public Disclosure Officers have been provided more direct access to locations where records are stored, in order to make it easier for them to fulfill requests.

With the addition of SMARSH, a third-party cloud vendor for text messages, all text messages sent or received since the program was installed for of the Mayor, Deputy Mayors, and Chief of Staff are preserved and can be digitally searched, with the results being provided directly to the Public Disclosure Officers responding to relevant requests.

In addition, I have issued a city-wide directive, attached as Exhibit C, that requires both immediate and long-term solutions to both specific and systemic city-wide deficiencies in our PRA systems and practices. This includes immediate resources for PRA responses, new technology to ensure retention and improve archiving and retrieval of text messages, and a review to make recommendations on some critical questions regarding the City’s PRA functions, including whether functions should be more centralized and whether the city should create an independent cabinet level officer to oversee all city PRA functions. Importantly, the Directive also seeks to improve transparency, accountability, and public trust through the creation of an ongoing PRA Advisory Group comprised of PRA experts, media, technology experts and other stakeholders.

Personnel Implications. Finally, I am cognizant that your report may have personnel implications for Ms. Chen. As noted in (Ret.) Judge Hilyer’s report, while Ms. Chen was assigned to the Mayor’s office by MOU, she at all times was, and remains, an employee of the City Attorney. Under the City Charter and Municipal Code, the City Attorney maintains authority over the employment and disciplinary actions for Assistant City Attorneys. This assessment is supported by advice from outside counsel, and our Human Resources Department (HR). The City Attorney has notified our office the MOU that assigned Ms. Chen



to the Mayor's Office will terminate as of August 10, 2021 and confirmed the City Attorney's authority over her employment status. In the event it was determined that the Mayor's Office would be responsible for imposing disciplinary action, we did request a recommendation from Human Resources on the range of appropriate actions for these circumstances. The response from HR, which recommends a written reprimand, additional training, and removal from PRA work, is attached as Exhibit D for your reference. While such employment actions remain under the control of the City Attorney, the Mayor's office can control the scope of duties in the Mayor's office. Consistent with (Ret.) Judge Hilyer's recommendation, for her remaining tenure at the Mayor's Office Ms. Chen will no longer perform functions related to PRA work.

I do want to note that while I agree Ms. Chen's actions here did not comport with the PRA, I believe it would be deeply unfair to define Ms. Chen by these actions. During her tenure, Ms. Chen has provided invaluable work and dedicated service to the City. This is particularly true over the last 16 months of historical challenges for our City. Ms. Chen worked long hours, handling numerous complicated issues related to the pandemic, economic crisis and civil rights reckoning. During the same timeframe you reviewed, she was on call 24/7 as we scrambled to address the burgeoning crisis -- from emergency orders to eviction moratoriums, to lawsuits, to protest responses, to testing and vaccination issues. She did so even though her husband was a frontline doctor at Harborview and even as she faced the same challenges many parents had with young children suddenly "learning from home". More recently, she has had to face and explain to her children how to navigate the very real uptick in anti-Asian hate. Through it all, she kept showing up and working to help the City. Her family can be proud that she demonstrated public service through some of the worst crisis our city has faced.

Again, thank you for your diligence in investigating this matter. Please direct questions or concerns to Senior Deputy Mayor Mike Fong.

Sincerely,

A handwritten signature in black ink that reads "Jenny A. Durkan".

Jenny Durkan
Mayor

Attachments: Ex. A: Report of Judge Hilyer (Ret.)
Ex. B: Summary of Remedial Steps
Ex. C: Mayoral Directive on PRA Changes
Ex. D: Human Resources Recommendation

CC: City Attorney Pete Holmes
Michelle Chen