

February 16, 2022

Howard S. Trickey

Admitted in Alaska
T: 907-339-7131
C: 907-227-3681
htrickey@schwabe.com

VIA EMAIL

Email: ben.hofmeister@alaska.gov

Benjamin J. Hofmeister
Assistant Attorney General
State of Alaska
P.O. Box 110300
Juneau, AK 99801

RE: APFC CEO Termination
Our File No.: 138818-269823

Dear Mr. Hofmeister:

The Legislative Budget & Audit Committee (the “LBA Committee”) is conducting an investigation into (1) the termination of Angela Rodell as Executive Director/CEO of the Alaska Permanent Fund Corporation (“APFC”), and (2) the processes adopted and used by the Board of Trustees for its annual evaluation of the Executive Director/CEO of APFC. The objective of the investigation is to determine whether legislation may be necessary to protect the independence of the APFC from undue political influence. The LBA Committee has retained Schwabe, Williamson & Wyatt to conduct a fair and thorough investigation into the termination of the former Executive Director. At the conclusion of the investigation, we will provide a written report to the LBA Committee with our factual findings.

On February 10, 2022, we contacted Chris Poag, General Counsel for APFC, via letter, asking to schedule a time to discuss the timing of interviews of members of the Board of Trustees and employees of APFC. On February 11, 2022, Mr. Poag advised us via letter that, while he was general counsel for APFC:

the primary attorneys assigned to the matters discussed in your letter are with the Department of Law (“Department”). As such, the Department represents APFC, the Board of Trustees, and the APFC employees mentioned in your

letter with respect to the LB&A inquiry. I have forwarded your letter to the Department. Please direct future correspondence to the Department of Law.

Mr. Poag further advised on Monday, February 14, 2022, that we should contact you in connection with this matter. Accordingly, we are making to you the same requests we made of Mr. Poag and APFC.

The LBA Committee is authorized to monitor and report on “the performance of the agencies of the state that perform lending or investment functions,” and to “hold[] these agencies accountable to statutory intent in their performance by recommending, where appropriate, changes in policy to the agencies or changes in legislation to the legislature.”¹ Under AS 24.20.201, the LBA Committee has the power to “require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling or furnishing requested information.”² Under AS 39.25.160, a state employee

may not intentionally (1) fail to give, or (2) direct, order, threaten, restrain, coerce, force, or prevent another person from giving, full cooperation to the legislative auditor or the legislative fiscal analyst in assembling or furnishing requested information to the Legislative Budget and Audit Committee or its staff if the person did not reasonably believe that the action or failure to act was legally justified. Violation of this subsection constitutes just cause for dismissal or other appropriate disciplinary action.³

As part of the LBA Committee’s investigation into the termination of Ms. Rodell and the policies adopted and implemented by the Board of Trustees for its annual evaluation of the Executive Director/CEO of APFC, we are requesting APFC’s cooperation in the production of relevant documents. Attached is a list of documents we are requesting from APFC. Some of these documents were previously the subject of a public records request from the LBA Committee but have not yet been provided to the LBA Committee.

We are also requesting APFC’s cooperation in the scheduling of interviews of each of the Board of Trustees and the following employees of APFC: Marcus Frampton, Valerie Mertz, Paulyn Swanson, and Chad Brown. Please advise as to their availability for interviews in the weeks of February 21st and 28th or March 7th and 14th. If you are unable to respond on behalf of any individual member of the Board of Trustees, please let us know and we will contact that Trustee directly.

¹ AS 24.20.156.

² AS 24.20.201(a)(3).

³ AS 39.25.160(l).

Finally, during the LBA Committee hearing on January 17, 2022, Mr. Poag and Mr. Richards stated that Mr. Richards would not be discussing the contents of discussions that were held during the Board of Trustees' executive sessions on December 8 and 9, 2021. Under Alaska Evidence Rule 501, only privileges provided by the Constitutions of the United States and/or Alaska, by enactments of the Alaska Legislature, or by rules adopted by the Alaska Supreme Court are recognized. While "subjects that tend to prejudice the reputation and character of any person" may be discussed in executive session under AS 44.62.310(c), that does not mean that such discussions are privileged from disclosure in the absence of some other privilege, such as the attorney-client privilege, or that a witness may refuse to answer questions about what was discussed in executive session.⁴

The LBA Committee's expectation is that Mr. Richards and the other Trustees will not, in the context of the interviews that will be conducted, continue to refuse to answer questions from the LBA Committee, or its appointed legal counsel, regarding those executive sessions in which it discussed Ms. Rodell's employment and performance. If the members of the Board of Trustees refuse to answer questions regarding the subject matters discussed at those executive sessions, the LBA Committee has the power to issue subpoenas to compel the production of records and attendance at depositions.⁵ Although we would

⁴ *C.f. Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584, 590 (Alaska 1990). *See also State ex rel. Marshall Cty. Comm'n v. Carter*, 689 S.E.2d 796, 803-04 (W.Va. 2010) ("the provision of the Open Governmental Proceedings Act, W. Va. Code §§ 6-9A-1 to 6-9A-12, which recognizes in specific and limited circumstances the right of governing bodies to meet in an executive session which is closed to the public is not intended to prevent the legitimate discovery in a civil action of matters discussed in an executive session which are not otherwise privileged."); *State v. District Judges for Chase County*, 728 N.W.2d 275, 279-80 (Neb. 2007) (finding that "[i]n view of the fact that the Open Meetings Act contains no language relating to a closed session discovery privilege, we conclude that no such privilege exists in Nebraska"); *Springfield Local Sch. v. Ohio Ass'n of Pub. Sch. Employees*, 667 N.E.2d 458, 467 (Ohio App. 1995) (ruling that "there is no absolute privilege to be accorded discussions held in executive session [although] a trial court, in its discretion, may limit discovery[.]"); *Dillon v. City of Davenport*, 366 N.W.2d 918, 921 (Iowa 1985) (open meetings act "does not specify that the discussions at the closed meeting acquire the status of confidential communications which are privileged from any use other than that specified."); *Connick v. Brechtel*, 713 So.2d 583, 587 (La. Ct. App. 1998) (finding "the fact that some matters may be discussed in executive session does not render the . . . discussions and actions taken in executive session privileged."); *Sands v. Whitnall School Dist.*, 754 N.W.2d 439 452 (Wi. 2008) (finding "no language in our own open meetings laws indicating that our legislature intended to create a broad discovery privilege for communications occurring in closed sessions of governmental bodies[.]").

⁵ AS 24.20.201(a)(2).

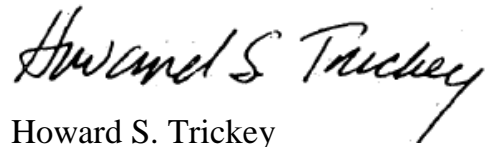
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prefer to not take such a needlessly confrontational and formal approach, the LBA Committee will issue subpoenas if necessary.

We are happy to discuss these matters at your earliest convenience and discuss a schedule regarding the interviews requested. I would suggest a call on Monday, February 21, at 10:00 a.m. The Committee has instructed us to press forward with this investigation in order to provide a timely report this Legislative Session. We look forward to our discussion Monday or such other time next week that works with your schedule.

Sincerely,

SCHWABE, WILLIAMSON & WYATT, P.C.

A handwritten signature in black ink that reads "Howard S. Trickey". The signature is written in a cursive style with a large, sweeping "H" and "T".

Howard S. Trickey

HST:jmh

Enclosure

cc: Senator Natasha von Imhof

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DOCUMENT REQUEST

1. All minutes of any meeting or work session of the Board of Trustees Governance Committee for the years 2016 through 2021.
2. All versions of the Board of Trustees Executive Director Performance Evaluation Policy in place for the years 2016 through 2021.
3. All versions of the Board of Trustees Board of Trustees Charters and Governance Policies in place for the years 2016 through 2021.
4. All documents referred to, presented, or relied upon the Board of Trustees during its executive sessions regarding Ms. Rodell's performance on December 8th and December 9th.
5. Any and all communications from 2019-present between Trustees and the executive branch of the State of Alaska relating to the performance of Ms. Rodell.
6. Any and all communications from 2019-present between Trustees and the executive branch of the State of Alaska relating to the decision to terminate Ms. Rodell.
7. Any and all communications from 2019-present between employees of the APFC and the executive branch of the State of Alaska relating to the performance of Ms. Rodell.
8. Any and all communications from 2019-present between employees of the APFC and the executive branch of the State of Alaska relating to the decision to terminate Ms. Rodell.
9. Any and all communications from 2019-present from any fund managers, investment bankers, or other third parties to the Board that either raised concerns with or praised Ms. Rodell's performance or role as Executive Director.
10. Any and all communications from 2019-present between Trustees and the executive branch of the State of Alaska relating to the performance of Ms. Rodell.