



Municipality of Anchorage

Assembly Information Memorandum

No. AIM XX- 2023

Meeting Date: February 7, 2023

From: ASSEMBLY CHAIR LAFRANCE

Subject: REQUESTS AND SUBPOENAS SERVED UPON THE DIRECTOR OF HUMAN RESOURCES FOR THE MUNICIPALITY

This information memorandum provides a record of the Assembly Leadership’s diligent efforts to attain the public release of documents withheld by the Human Resources Department pertaining to Mr. Gerace’s tenure as Anchorage Health Department Director.

On January 24, 2023, Chair LaFrance issued a subpoena to the HR Director, Mr. Niki Tshibaka, compelling him to attend an executive session of the Assembly that evening and produce for examination any documents in the investigation conducted by the HR department into Mr. Gerace’s tenure. Mr. Tshibaka appeared at that night’s assembly meeting and produced during executive session a memorandum. The memorandum, dated January 13, 2023, was labeled “Confidential” and “Deliberative Process Privileged.” The Municipal Attorney collected back every copy of the memorandum upon adjournment of the executive session.

On February 2, 2023, the Assembly leadership sent a letter to HR Director Tshibaka requesting the release of both the document examined at the executive session on January 24, 2023 and the source document upon which it was based as a public records under the Alaska Public Records Act. Additionally, the Assembly Chair issued a second subpoena, ordering the production of those documents no later than 5 p.m. February 7, 2023, so that they could be examined in the Assembly’s regular session that evening and accepted into the public record. Both these documents are attached.

On February 6, 2023, Mr. Tshibaka resigned his position as HR Director for the Municipality. His public resignation letter is attached.

Prepared by: Assembly Counsel’s Office

Respectfully submitted: Suzanne LaFrance, Assembly Chair
District 6, South Anchorage, Girdwood and
Turnagain Arm



Municipality of Anchorage

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Anchorage Assembly Leadership

February 2, 2023

Niki Tshibaka, Chief Human Resources Officer
632 W. 6th Ave., Suite 610
Anchorage, AK 99501
niki.tshibaka@anchorageak.gov

Sent electronically in .pdf format only

Re: Request for certain documents concerning the appointment, service, and resignation of former Anchorage Health Department Director Joe Gerace

Dear Mr. Tshibaka:

At a recent executive session you appeared and testified regarding the Department of Human Resources' investigation into the appointment, service, and resignation of former Anchorage Health Director Joe Gerace. Pursuant to a duly issued subpoena by the Chair of the Assembly, you produced for the Assembly's examination in that session a memorandum which provided some indication of the steps the Administration has taken to address the issues created by Mr. Gerace's brief tenure as Director.

As we have stated before, this is a matter of significant public interest. Despite this interest, the Assembly took these measured steps in our pursuit of the truth to preserve the privacy interests asserted by the Administration on behalf of Mr. Gerace. Over the past year we have sent numerous requests for information to the Administration and its various agencies. We issued a subpoena for and only examined these documents in executive session in order to preserve the confidentiality of the documents you possess.

After having taken up these matters, several Assembly Members stated in open session they had determined that nothing, either presented in your testimony or in the document you produced, implicated the privacy interests of Mr. Gerace to a degree to justify withholding them from the public. As such, the Assembly leadership wishes to release both the document you presented at the executive session and the audio recording of that session. We base this conclusion on the following:

Mr. Gerace was a public official. The Supreme Court of Alaska has explicitly held that public officials in the performance of their duties may be properly subjected to public scrutiny.¹ The Court has been consistent in holding that, where the personnel records of high level public officials overseeing significant public resources are in question, the balance weighs in favor of the interest of the citizens in knowing what the servants of government are doing and the citizens' proprietary interest in public property.² As an executive appointee, Mr. Gerace's salary, benefits, authorized leave, and résumé (such as it was) were already made part of the public record under AMC 3.30.173-

¹ See *Anchorage v. Anchorage Daily News*, 794 P.2d 584, 591 (Alaska 1990) citing *Kenai v. Kenai Peninsula Newspapers*, 642 P.2d 1316, 1323 (Alaska 1982).

² *Id.* (additional citations omitted).

174.³ At your recommendation, Mr. Gerace was entrusted with significant responsibility and resources (responsibility for several public facilities, over 100 public employees, and a budget exceeding \$14 million⁴). The public has every right to know the extent to which you have identified, addressed, and remediated the damage he has done. The documents in question are not pre-decisional, do not advocate certain positions or express opinions, and do not delve in any way into Mr. Gerace's "personal, intimate, or otherwise private life."⁵ As such we have been advised by counsel and do not believe there is any legal justification to withhold them from the public under the pretense of confidentiality or privilege.

Given the foregoing, the Assembly leadership hereby requests you produce the following documents as public records under Alaska Statute 40.25.110 and submit them as an AIM to be taken up at the Assembly's next regular meeting:

- The January 2023 memorandum styled as an investigation into Mr. Gerace's tenure as Health Director, that you produced at the January 24, 2023 executive session.
- The September 2022 document styled as an investigation into Mr. Gerace's tenure as Health Director, upon which the January 2023 memorandum was based.

To the extent the Administration believes any information contained within these documents is privileged, please precisely redact only the information you believe to be privileged and denote the specific nature of the privilege being asserted, either on the document itself or on an accompanying redaction log. This method of redaction is in keeping with both best legal practices and the spirit of the caselaw regarding privileged information.⁶

Please provide the requested documents to us either physically or via email **no later than 5p.m. Tuesday, February 7, 2023**. Should the Administration maintain its present position that requested documents do not constitute public records and are therefore not subject to disclosure, the Assembly leadership directs your attention to the attached subpoena compelling the production of these documents. We will appreciate your prompt attention to this matter.

Sincerely,



Suzanne LaFrance, Assembly Chair



Christopher Constant, Assembly Vice Chair

Cc: Mayor Dave Bronson
Kent Kohlhase - Acting Municipal Manager
Blair Christensen - Acting Municipal Attorney

³ See AIM 2022-615 & AM 651-2021(A).

⁴ AIMS 2022-6 & 2023-3.

⁵ *Anchorage Daily News* at 591.

⁶ See *Doe v. Alaska Superior Court, Third Judicial Dist.*, 721 P.2d 617, 626 (Alaska 1986).

Municipality of Anchorage

Suzanne LaFrance
Chair

Kevin Cross
Robin Dern
Kameron Perez-Verdia
Pete Petersen
Austin Quinn-Davidson



Dave Bronson
Mayor

Christopher Constant
Vice-Chair

Felix Rivera
Randy Sulte
Joey Sweet
Daniel Volland
Meg Zaletel

Barbara A. Jones, Municipal Clerk

Jennifer Veneklasen, Deputy Municipal Clerk

SUBPOENA TO PRODUCE DOCUMENTS IN THE NAME OF THE ANCHORAGE ASSEMBLY

Pursuant to the authority provided under Article IV of the Anchorage Municipal Charter, Section 2.30.085 of the Anchorage Municipal Code, and Assembly Resolution 2023-31:

To:
Niki Tshibaka
Chief Human Resources Officer
632 West 6th Avenue, Ste. 610
Anchorage, AK 99501
niki.tshibaka@anchorageak.gov

*Sent electronically and
served via certified mail*


YOU ARE HEREBY ORDERED TO PRODUCE for the Assembly's examination in a public meeting and to be accepted into the record, the documents listed in the Appendix to this subpoena.

Provide the requested documents either in person, by certified mail, or by electronic submission no later than **5 p.m. on Tuesday, February 7, 2023** to:

Chair Suzanne LaFrance
632 West 6th Avenue, Ste. 150
Anchorage, AK 99501
suzanne.lafrance@anchorageak.gov

Failure to obey the commands of this subpoena may be punished by contempt proceedings, in addition to any other remedy available by law.

This subpoena is issued this day, February 2, 2023, upon authorization of:


Suzanne LaFrance
Chair of the Assembly

ATTEST:


Municipal Clerk

SUBPOENA TO PRODUCE DOCUMENTS

To: Niki Tshibaka

APPENDIX

INSTRUCTIONS

1. Documents, communication and records must be produced in a form that is reasonably usable, such as PDFs or native file.
2. If you object to a request on the ground of privilege, please produce the requested document with redaction of the material over which you claim privilege. Please annotate, either on the document itself or on an accompanying redactions log, uniquely identifying the privilege asserted, and the holder of the privilege making the assertion.

DOCUMENTS REQUESTED

1. The January 2023 memorandum styled as an investigation into Mr. Gerace's tenure as Health Director, that you produced at the January 24, 2023 executive session.
2. The September 2022 document styled as an investigation into Mr. Gerace's tenure as Health Director, upon which the January 2023 memorandum was based.

February 6, 2023

Mayor Dave Bronson
Municipality of Anchorage
632 W. 6th Avenue
Anchorage, AK 99501

Dear Mayor Bronson:

Please accept my letter of resignation as Director of Human Resources (HR) effective immediately. I can no longer continue to serve in what has become an increasingly toxic, hostile, and demoralizing work environment, making the positive progress and forward momentum the people of Anchorage deserve and expect of this Administration virtually impossible.

During my tenure, HR has handled many difficult challenges and expectations, such as being directed to vet and onboard former Health Department Director, Joe Gerace, with a one business day turnaround. As you are aware, HR conducted its vetting and onboarding of executive appointments according to longstanding policy, processes, and standard operating procedures that preceded your Administration. The department professionally carried out its historic role with respect to executive appointments, applying those practices and procedures, even under tight timeframes.

Since 2022, HR's leadership team and I identified and began addressing dozens of initiatives to improve, streamline, and/or modernize our department's operations. You can find some of the department's numerous impressive operational achievements and successful innovations in its 2022 Annual Report, as well as some of the innovative strategic initiatives our leadership team had planned for 2023.

I am confident that your HR Department will continue to serve you and the Municipality with passion, professionalism, and diligence throughout the remainder of your Administration.

It has been a privilege to serve the people of Anchorage.

Sincerely,

Jean Christian Kanyiki Wa Tshibaka