

December 15, 2020

Jerry Gabrielatos
West Linn City Manager
22500 Salamo Rd. West Linn, OR 97068
JGabrielatos@westlinnoregon.gov

Dear Mr. Gabrielatos:

Last week lawyers for the City of West Linn provided me a copy of the December 2020 OIR report and invited me to respond to it.

It appears OIR's criticism of me rests primarily on its assessment of my decision in June of 2018 to recuse myself from the internal investigation the WLPD made of Mr. Fesser's tort claim notice and assign it to Capt. Hennelly.

On July 9, 2020, not having heard from anyone in city management of specific reasons for the city's decision to place me on administrative leave in April, I wrote a letter to the acting city manager, John Williams, in an attempt to account for my activities and decisions relating to the Michael Fesser matter. That letter addresses much of what is said about me in the OIR report.

I attach it here and ask that it, along with a copy of this letter, be made part of my official personnel file and be posted on the city's web site.

In summary fashion, I would like to emphasize the following:

1. My decision to recuse myself and assign the internal investigation to Capt. Hennelly was consistent with Oregon law enforcement practice,
2. OIR frequently characterizes that investigation as "cursory." That was not my direction to Captain Hennelly when I recused myself.
3. My instructions to Capt. Hennelly were: to thoroughly investigate the tort claim notice allegations; determine if there is evidence of criminal behavior within the WLPD that support the allegations in the tort claim notice; if so, refer the investigation to an independent law enforcement agency; if not determine and administer appropriate disciplinary measures.
4. Recusal from the internal investigation did not automatically extend to recusal from the subsequent civil law suit:
 - a) On the two occasions I was told to speak with the city councilors about the lawsuit, I was directed to do so by my superior, City Manager Stein, even after reminding her on both occasions of my recusal from the internal investigation, which by then had been completed.

I repeated to council the information I had been given by Capt. Hennelly and attorneys hired to defend the City against Mr. Fesser's lawsuit. At both meetings those lawyers and the City Attorney corroborated much of what I had reported to the Council.

Moreover, after reciting a number of legal flaws identified in Mr. Fesser's lawsuit, they essentially characterized it for the Council as meritless. Not being a lawyer, I assumed their opinions to be accurate.

b) The role I played in gathering discovery responses from WLPD for that lawsuit was merely logistical. I had been left that responsibility by the City to ensure that everything requested was fully provided and discovery deadlines were met.

5. The year and a half civil litigation which occurred between July 2018 and February 2020 uncovered serious problems in the WLPD investigation of Fesser, all of which occurred prior to my employment. To this day, I have never been fully briefed on exactly what occurred or how it was discovered. It was not until February of 2020, after the City's decision was made to settle the case, that I learned from the Clackamas County District Attorney's office of evidence of likely false statements made by Officer Reeves during the internal investigation. I placed Reeves on leave at that time. Most of what I now know to be true, I learned from the ensuing investigation by the District Attorney.

As I told the OIR investigators, in retrospect I wish I had turned WLPD's internal investigation over to an outside agency when my employment began in June of 2018. But at all times I was acting in good faith and following what I know to be appropriate police department practices.

The department I inherited from former Chief Timeus in June 2018 was a mess. Morale and staffing were low, professional best practices were lacking, and many policies and procedures were inadequate. My career in law enforcement prepared me to fix those things. I regret that I will not have the opportunity to complete the reforms I began.

I signed the severance agreement that you provided earlier this month, because as an "at will" employee, I understood that you could terminate my employment at any time.

I regret that you chose not to speak with me before making that decision.

Still I commend your goal of establishing a professional and unbiased police department for the City of West Linn. No one wants that more than I do.

Respectfully,

Terry Kruger

July 09, 2020

John Williams, Interim City Manager
City of West Linn, Oregon
22500 Salamo Road
West Linn, OR 97068

Re: Administrative Leave

Dear John,

It has been three months since the City of West Linn placed me on administrative leave. During this time, I have been intrigued by the discussions going on in our country to comprehensively reform and improve the way police departments serve the public, particularly those that seek to improve internal and external racial equity. I personally support many of the suggested changes and hope to be able to discuss them with you soon.

I am looking forward to meeting with members of the OIR Group retained by the City to perform an internal investigation into how the City handled the Michael Fesser case. The City's notice of investigation dated April 8, 2020 stated that the decision to place me on administrative leave was made, in part, so that "all parties (may) have the opportunity to clearly and completely answer questions and explain their actions" in regard to the Fesser case. There has been abundant publicity about that case and, it appears, a great number of inquiries made and opinions shared with you and the City Council by concerned citizens. Some of that pertains to me. Hopefully OIR will soon reach out to me so that I can address that, but in case they do not I would like to use this opportunity to set the record straight as it regards my conduct. I will be grateful if you will pass this letter on to OIR and members of the City Council.

Some History

I was honored by the challenge presented to me in 2018 to become Chief of the West Linn Police Department (WLPD). I have devoted most of my professional life to law enforcement and have worked consistently to uphold the highest principles of my profession. I believe that, in part, I was chosen because the WLPD was sorely in need of professional

leadership. When I arrived I encountered a lack of accountability, inadequate staffing, no trained detectives, poor communication and extremely low morale. I set about fixing all of those things on my first day, June 4, 2018. Ironically, that was also the day WLPD received Michael Fesser's tort claim notice.

The April 8, 2020 notice of investigation recites that "questions about (my) level of involvement in the litigation process and the comprehensiveness of the information provided to the City Council and management related to the litigation" are matters of concern to the City. I am not entirely sure from that description what all those questions are, but based on press accounts and publicly available correspondence with the City Council, I have tried to anticipate and address them here.

Recusal

On my first day on the job I received the tort claim notice and immediately notified the City Recorder, City Manager, and City Attorney. I read through the notice myself and understood the claims included in part, allegations of improper favors due to a relationship between former Chief Terry Timeus and the owner of A & B Towing Co., Eric Benson. I recognized Mr. Benson's name as someone I had casually known years before.¹

Correct procedure called for the WLPD to conduct an initial investigation into allegations presented in the tort claim and report the findings of that investigation to the City Manager and City Attorney. I believe I did the correct thing by recusing myself because of my prior association with Mr. Benson and some familiarity with Chief Timeus. I did not want any suggestion to be made that WLPD's investigation of the tort claim notice lacked integrity

¹ Let me briefly describe that relationship. In the fall of 2009, my son, Brett was entering West Linn High School, along with his closest childhood friend Jake Stoneking. Jake that very week was diagnosed with a brain tumor and ultimately died from it five years later. During those five years my family came alongside the Stoneking family and did our best to offer friendship and support to them during this heartbreaking struggle. In the course of that, I was introduced to Eric Benson and his family who I understood to have been friends of the Stonekings for twenty plus years. Occasionally our families socialized together around the Stonekings, the dads and sons enjoying fishing trips and a camping trip attended by many families. As of June 2018, I had had no social activity with Mr. Benson for approximately two years.

because of my previous relationship with Mr. Benson or former Chief Timeus, whose position I had just assumed.

I informed the City Manager of my decision face to face that very week and assigned supervision of the WLPD internal investigation to Captain Neil Hennelly. I instructed him to review the notice carefully; immediately refer the matter to an outside law enforcement agency (such as the Clackamas County Sheriff's Office) if evidence of criminal conduct by any member of the WLPD presented itself; otherwise to investigate the complaint, determine appropriate discipline, and report his findings to City management. On June 14, 2018, Captain Hennelly emailed the City Attorney, the City labor attorneys, the City insurer – and perhaps others – informing them of my recusal and notifying them that Captain Hennelly would be in charge of WLPD's internal investigation of the tort claim notice. (I assumed that if it was appropriate for any of them to forward that email on to the City Council that would have occurred.)

Thereafter, I had almost no involvement in WLPD's investigation of Mr. Fesser's allegations. As WLPD Chief, I occasionally inquired into the progress of the investigation and asked when it was expected to be completed. Captain Hennelly informed me that he had delegated to then Acting Lieutenant Oddis Rollins the job of reviewing relevant WLPD records and conducting necessary interviews. However, because of my recusal, I had no role in determining the scope of the investigation. I did not give directions as to what materials should be reviewed nor whom should be interviewed.² I had then and continue today to have a high regard for Neil Hennelly and now Captain Oddis Rollins. I knew Neil Hennelly to be a twenty five year veteran of the WLPD placed into the role of interim Police Chief for approximately a full year prior to my hire and that he was highly regarded by the City. Captain Hennelly assured

²After the investigation concluded I learned from AL Rollins that he had interviewed Sergeant Reeves and former WLPD Officer Mike Boyd; and had reviewed a number of documents including Sergeant Reeves' case report.

me that he had had essentially nothing to do with the WLPD investigation of Mr. Fesser. I felt that the investigation was in good hands.

The WLPD internal investigation conducted by Captain Hennelly concluded on July 24, 2018 and was forwarded on to city management. I was informed variously by Captain Hennelly and AL Rollins that their investigation determined:

- (1) Then Detective Reeves established probable cause that Mr. Fesser had embezzled money from A & B Towing Co.;
- (2) The arrest was lawful; and
- (3) No one within WLPD conducted illegal surveillance or violated the law.

Captain Hennelly issued Sergeant Reeves a written reprimand on July 24 for violating WLPD policies prohibiting the use of obscene and derogatory language while on duty, and for violating WLPD policies requiring proper documentation of items seized from a suspect. He also cautioned Sergeant Reeves for not following WLPD policies regarding the handling of cash seized from a suspect.

Sometime shortly after this I had a conversation with AL Rollins about the text exchanges Sergeant Reeves had had with Mr. Benson during Sgt. Reeves's investigation of Mr. Fesser and I also read the internal investigation report authored by AL Rollins. AL Rollins told me he chose not to additionally reprimand Sergeant Reeves for violating WLPD policies prohibiting the use of racist language while on duty, because Reeves's texts, as offensive as they were, were not racist in his opinion. The racist texts were all authored by Mr. Benson not Sergeant Reeves according to AL Rollins. AL Rollins also told me that the lack of depth he found in Sgt. Reeves's investigation of Mr. Fesser was not uncommon under the leadership of Chief Timeus. I had recused myself from being able to do anything about this particular episode involving Sergeant Reeves, but I strengthened my resolve to make sure that this sort of misconduct would not occur again and continued my efforts to build a competent and professional detective unit for WLPD.

Lawsuit

Sometime after the report of WLPD's internal investigation was forwarded to city management, I learned that Mr. Fesser proceeded with his lawsuit. The Salem law firm of Heltzel Williams was retained to defend the City and Andrew Campbell along with Casey Murdock were the attorneys put in charge of the case. I had no part in the decision to fight the case. Moreover, the limited activities I undertook to assist the City during the course of the lawsuit were all requested of me by the City Manager, City Attorney, or Mr. Campbell. I did not ask for them. All were aware that I had recused myself from WLPD's internal investigation.

Those activities consisted of:

- (1) Attending two executive sessions of the City Council (along with the City's attorneys) at the direction of the City Manager; and
- (2) Assuring that the obligation and collection of discovery materials from WLPD served on the City by Mr. Fesser's lawyer was met.

Press reports quoting Mr. Fesser's counsel have suggested my decision to recuse myself from WLPD's internal investigation of the tort claim was inconsistent with the limited role I was assigned to assist the City in its defense. I address the council meetings separately below.

Discovery requests were initially served on Mr. Campbell who forwarded them to the City of West Linn. To the extent they sought information from the WLPD they were then forwarded to me as Chief of the WLPD. As I would with any discovery request, I delegated the collection of that material to appropriate department personnel, and, after being informed the collections were complete, signed them and forwarded them on to the City's lawyers.

I was never deposed; did not attend any depositions; did not attend any hearings; did not participate in litigation strategy sessions; was not asked to review drafts of pleadings; and was only informed of the settlement terms after they had been recommended to the City Council by

the City's lawyers. I was frequently copied on emails from the City's lawyers but not asked for comment. I understood from them they did this to keep the Department's Chief "in the loop."

This was consistent with the minimal role I was expected to play after the case was filed. I was not asked to participate in any meaningful way but rather, at the direction of counsel, to manage collection of department information required for the litigation and make sure it was done correctly.

Council Meetings

Until this event occurred I had never attended an executive session of the City Council. On the two occasions in question, the City Manager told me to accompany her to executive sessions of the council after Mr. Fesser filed his lawsuit, though I reminded her of my recusal from WLPD's inquiry into the tort claim notice. One occurred on September 4, 2018; the other on February 19, 2019. I believe the City Attorney and City Manager briefed the council on the developments of the case both before and after my two appearances.

September 4, 2018

The City Manager often told Department heads to accompany her when she was before council and she told me to accompany her to this meeting on short notice. Besides myself, the City Manager and City Attorney also attended. I understand Mr. Campbell was expected to attend as well but was unable to do so.

The City Attorney spoke initially about the complaint. The transcript of that meeting discloses that he characterized Mr. Benson's texts as "careless" and "politically incorrect." He also told the Council that because Mr. Fesser had been charged by a grand jury, even though those charges were later dropped by the Multnomah County Deputy District Attorney, the claims in the complaint were not meritorious. (This is my characterization but you can read it for yourself at TT 32:49-36:00.) Based on what I knew from Captain Hennelly and AL Rollins, I

agreed with this characterization of the facts. Not being a lawyer I was in no position to offer an opinion on the merits of the lawsuit.

In response to a number of questions from council members about how the WLPD got involved in a case centered in Portland, I recited those facts as I was told them: Mr. Benson asked for assistance from Chief Timeus, who initially asked PPB to investigate but after PPB declined to do so due to the low known dollar amounts of loss to Mr. Benson, Chief Timeus assigned (then) Detective Reeves to do it; and that Detective Reeves was eventually able to establish evidence of greater amount of theft and have the Multnomah County District Attorney's office agree to charge it.

Council members also asked whether it was unusual for one police agency to investigate a crime occurring in another jurisdiction. I tried my best to explain that, while not common, Oregon police officers have state-wide authority and occasionally this practice occurs. However, I made it clear that the circumstances here, although legal, were not ideal (TT 51:18.) and I intended to convey to the council that the practice would not have occurred or be repeated under my watch . (TT 46:30.)

I then also made the following statement in response to another question:

Yeah, it's not an illegal investigation. There wasn't illegal surveillance. It wasn't an unlawful arrest. There wasn't a violation of his civil rights. These are the allegations. But it was a legitimate investigation. There was probable cause. They did arrest him lawfully. He was indicted for crimes, and then from there these other things occurred that left this door open, and Mr. Fesser has stepped through it. So the first indication that there was an issue would've been when we were served with the tort claim notice on June 4.

The basis of that statement were my takeaways from my conversations with Captain Hennelly and AL Rollins shortly after their internal investigation had wrapped up. Both told me, as I noted here earlier, that Mr. Fesser had stolen money from his employer, that he had been legally arrested, and no WLPD personnel had acted unlawfully or were motivated by race. At the

time I had no reason to doubt what I had been told and because of my recusal had made no independent investigation of those things.

My belief in the truth of these facts was only reinforced by the City's lawyers before and at the next meeting I was told to attend on February 19, 2019.³

February 19, 2019

As was the case on September 4, 2018, I was told by the City Manager to accompany her to this closed meeting. Also present were the City Attorney and Mr. Campbell, the attorney from Heltzel Williams, who by this time had been actively reviewing evidence and defending the case in court for several months. He did most of the talking. Among the things he told the council members were these:

- (1) The case is “fairly defensible”; there is “no strong evidence” WLPD officers did anything wrong; and he believed he had a good shot at getting the case dismissed through summary judgment (TT 12:17-14:01); and
- (2) WLPD had conducted a “legitimate criminal investigation” (TT 20:37).

My remarks to the City Council at that meeting were consistent with Mr. Campbell’s opinion that WLPD had acted legitimately and were again based on what I understood the facts to have been from the WLPD internal investigation. That understanding had just been reinforced by comments made by the attorneys who had been defending the case in court.

What most disturbs me about press accounts gratuitously mischaracterizing those remarks as a “vigorous defense” of my department, is that they unfairly imply that at the time I made them I somehow knew otherwise, or that I was aware of other facts that, when placed in context,

³ Here, I believe it important to note, that I did not speak to my recusal during this meeting because I assumed that the City Manager, the City attorney, the City insurer or the City's labor attorney's would have already relayed this to the Council if it was appropriate to do so. At this juncture it had been nearly three months since I had formally recused myself, sharing my prior relationship with Mr. Benson.

would cast doubt on those I learned from WLPD's internal investigation. That was not the case and the information that emerged afterward was all unknown to me at that time.

The first I learned of concerns anyone had with the WLPD internal investigation was in a meeting with Mr. Campbell early in 2020 after being informed that the City had decided to settle Mr. Fesser's claim for \$600,000. Up until that point I had assumed what I heard from the City's lawyers at those two City Council meetings would be the likely outcome of the litigation. I was taken aback to learn for the first time why that was no longer the situation, including that deposition testimony contradicted statements made by and about Sgt. Reeves during the internal investigation. Additionally, I was told that the Clackamas County District Attorney's Office now had concerns that Sgt. Reeves may have committed Brady violations. Taken together, this new information required me to take immediate action.

Other Possible Concerns

On February 12, 2020, in a meeting I called for, I met with you, the director of Human Resources, and my two captains and announced my decision to put Sergeant Reeves on administrative leave and institute an independent investigation by an outside agency into Reeves's conduct.⁴ This was based on a much greater amount of information now available for review that was not available during the WLPD's internal investigation, as a result of nearly 18 months of civil litigation. You may remember, it was during that meeting as we discussed what outside entity best to conduct the investigation that the Assistant to the City Manager walked into the meeting and shared that the Clackamas County District Attorney had just announced a decision to take on that independent investigation. The report of that investigation was issued this May.

⁴ Sgt. Reeves was promoted by Acting Chief Hennelly before I was hired.

Press accounts have completely taken out of context a remark I made at Roll Call on the day that I put Sergeant Reeves on administrative leave. Putting Reeves on administrative leave was the right thing to do as a result of the new information that had come to light about him, but I knew it came at a particularly stressful time for Sgt. Reeves and his family. As Chief I am well aware of the high incidence of suicide among police officers and had seen it myself. More police officers take their own lives than are killed by suspects each year. One of the biggest problems I encountered when I took over as Chief was the measure of low morale in the department. I had made it a priority to work on this and encouraged my officers every chance I had to be supportive and kind to each other. So when I spoke at Roll Call that day and announced my decision to put Sergeant Reeves on administrative leave, I reminded everyone to keep him and his family in their thoughts and prayers because of his situation at home. My intention was not to draw any conclusions whatsoever about the impending investigation of him, but only to suggest his fellow officers consider reaching out during a stressful time for Sgt. Reeves' family if they were so inclined.

Conclusion

I have to trust that everyone involved in the current independent investigation will fairly and objectively consider what I knew in the summer of 2018 and be able to distinguish my recusal from WLPD's analysis of the tort claim notices from the limited role assigned me to assist in the subsequent case. I know that I acted openly and with integrity, always striving to do right thing based on information given me. The sheer volume of information available now, coupled with careless accusations, misinformation and media coverage, unjustly cloud the issues and conceals the truth. I then, as I am now, fully committed to developing a professional law enforcement agency for this City, for which all can be proud to rely upon. What happened to Mr. Fesser at the hands of my department before I arrived is abhorrent to me. I have always been committed to doing the right thing with the information that I have. I have not and will not

tolerate any type of bias in policing. If integrity and professional leadership has ever been needed to move the WLPD forward, it certainly is now. It is my hope that I will be allowed to return to my job and continue the many positive changes I have initiated within the WLPD.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Kruger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Chief Terry Kruger