

Final Investigative Report
Case No. 09-01-0320-1

Scope of Investigation

In late March, the Mayor asked the SEEC to investigate whether any aspect of the City's response to the December 2008 snow storms violated the Ethics Code, and to mete out any penalties if there were Ethics Code violations.

The SEEC investigated to determine whether, in deploying equipment to plow the City's streets after the December 2008 snow storms, any City officers or employees misused their position, or City facilities or property at their disposal, for their private benefit or the benefit of others, and not for a City purpose. Such a misuse would violate SMC 4.16.070.2.a and 2.b, which provide as follows:

No City officer or employee shall:

- a. Use his or her official position for a purpose that is, or would to a reasonable person appear to be primarily for the private benefit of the officer or employee, rather than primarily for the benefit of the City; or to achieve a private gain or an exemption from duty or responsibility for the officer or employee or any other person...;
- b. Use or permit the use of any person, funds, or property under his or her official control, direction, or custody, or of any City funds or City property, for a purpose which is, or to a reasonable person would appear to be, for other than a City purpose....

The SEEC's jurisdiction over this matter begins and ends with these Ethics Code provisions. Consequently, staff did not investigate whether the storm response was mismanaged or well-managed, a subject on already addressed by the City Auditor's office.

Summary of Investigation

The SEEC Director interviewed Mayor Greg Nickels, Deputy Mayor Tim Ceis, Seattle Department of Transportation (SDOT) Director Grace Crunican and Deputy Director Anne Fiske-Zuniga, SDOT Manager Paul Jackson, and SDOT employees who were involved in the City's response to the December 2008 snow storms. Several of SDOT's rank and file employees did not wish to be identified for fear of retribution.

Staff also requested and received the original crew reports spanning the period between December 13 and 27. These crew reports are prepared by snow plow drivers as they do their work, and many of them contain detailed information on the routes plowed by the drivers. Staff reviewed approximately 1,000 crew reports showing routes plowed during the storms.

Staff also reviewed electronic mails sent and received by Director Crunican during the storm. The City Auditor's office briefed staff on their review of the storm response prior to the release of their April 29, 2009 report, which staff also reviewed.

Finally, staff reviewed media reports during the storm and in the aftermath of the storm.

Discussion

1. The SEEC found no evidence that Mayor Nickels, members of the Mayor's senior staff or cabinet, or any other elected officials, misused their official positions to secure special treatment from SDOT during the storm response.

If a City officer or employee demanded preferential treatment from SDOT during the December 2008 storm response, that conduct would constitute a misuse of position in violation of the Ethics Code. In some circumstances, even a request for preferential treatment could constitute a misuse of position.

SDOT Director Crunican told SEEC staff that she was never contacted by any elected official, member of the Mayor's office, or fellow department head seeking special treatment during the storm. Sometimes City councilmembers passed along constituent complaints to Ms. Crunican, but neither she nor SEEC staff, following a review of those electronic communications, would characterize them as attempts to secure special treatment for the complaining individuals. Ms. Crunican also denied ever seeking any special treatment for herself or others from her department.

Ms. Crunican did convey to Paul Jackson that the streets downtown were in bad condition and in need of additional plowing, but nothing about that communication violated the Ethics Code. The communication concerned the deployment of resources that the Director is charged with managing. It served a City purpose, and in no way accrued to the Director's personal benefit.

SDOT Deputy Director Fiske-Zuniga, who was Acting SDOT Director between the morning of December 23, 2008 and 1:00 p.m. on December 26, when Ms. Crunican returned from Portland, Oregon, also reported that she received no requests for special treatment from any City officers or employees.

Both the Mayor and the Deputy Mayor denied ever requesting special treatment, or ever learning that any other senior staff member or cabinet official had requested special treatment. The Deputy Mayor did tell SEEC staff that he informed Director Crunican that Admiral Way SW, an arterial, was plowed east of California Avenue SW but unplowed west of California Avenue SW, and that Director Crunican informed him that Admiral Way west of California Avenue was not a primary route. (Kevin Desmond, Metro's General Manager, also asked SDOT to plow Admiral Way all the way from Spokane Street to 63rd Avenue SW in a December 15 e-mail, identifying it as a "Transit Adverse Weather Problem area.") SEEC staff finds that the Deputy Mayor's inquiry to Ms. Crunican, even if viewed as a request to plow Admiral Way west

of California, served a City purpose, given the number of people who live west of California Avenue and rely on Admiral Way in their travels by car and bus. The Director does not find the communication to be an attempt by the Deputy Mayor to secure special treatment for himself or others.

Paul Jackson, who was SDOT's Street Maintenance Division Director in December, also denied receiving any requests for special treatment, either directly or conveyed to him through his chain of command.

One driver interviewed by SEEC staff said that he was dispatched to plow the Sylvan Ridge townhomes complex located on Sylvan Way SW between Delridge Way SW and 35th Avenue SW, and that when he asked why he was being directed to plow the development he was told by Mr. Jackson that Director Crunican ordered the work done. Director Crunican did not recall ordering that the complex be plowed and denied knowing anyone who lived in the development or was otherwise affiliated with the development. Mr. Jackson denied that he ordered the work done, let alone that the work be done at the Director's insistence. SEEC staff can find nothing in the crew reports establishing that the development was plowed. Accordingly, staff finds insufficient evidence to charge Director Crunican or Mr. Jackson with misusing their position or City resources for a non-City purpose in violation of the Ethics Code, by ordering that a plow be deployed to clear snow at a townhouse complex.

In summary, staff finds insufficient evidence to charge any City officer or employee with misusing their position in violation of SMC 4.16.070.2.a to secure special dispensation from SDOT during the December snow response.

2. The SEEC found insufficient evidence to file charges based on allegations that Paul Jackson ordered that the Mayor, the Deputy Mayor and the SDOT Director receive preferential treatment from SDOT plows.

If a City officer or employee accorded preferential treatment to themselves or others during the December 2008 storm response, that conduct would constitute a misuse of City resources in violation of the Ethics Code, barring any public purpose underlying the preferential treatment. (For example, directing a plow to clear a path to a house so that it could be reached by an ambulance clearly would not violate the Ethics Code.)

There are conflicting accounts of whether Mayor Nickels or any other high-ranking City officials received special treatment from SDOT. The Mayor told SEEC staff that he saw no plows on his residential street during the storm, nor did he see any evidence that his street had been plowed or de-iced. The Deputy Mayor and the SDOT Director shared similar accounts. Each stated unequivocally that their residential streets were not plowed.

One driver that SEEC staff spoke to, however, recounted that Paul Jackson pointed out the locations of the Mayor's house, the Deputy Mayor's house and the SDOT Director's house on a West Seattle map, and instructed him to see that their streets were cleared. According to this driver, Jackson said that plowing these streets was in "our best interests," and would "make

us all look better.” Another driver said that he did not see Jackson pointing out houses on a map, but did participate in plowing the residential streets around the SDOT Director’s house.

SEEC staff’s review of the crew reports yielded no documentary evidence that would corroborate the testimony that the streets of high-ranking City officials received special treatment. While there is evidence of plowing of residential streets in West Seattle, the streets that were plowed do not correlate with the residential addresses of the Mayor or other high-ranking City officials.

Paul Jackson denies ever ordering the Mayor’s, Deputy Mayor’s or SDOT Director’s streets be plowed. He denies even knowing what streets the Mayor and Deputy Mayor live on, let alone pointing to their locations on a map and directing that their streets, or the SDOT Director’s street, be plowed. According to Mr. Jackson, he never directed or authorized drivers to plow any routes not designated as primary or secondary routes on the City’s Winter Storm Response Plan. Deputy Director Fiske-Zuniga and Director Crunican both told staff that Mr. Jackson was, if anything, too wedded to the City’s Winter Storm Response Plan, resulting in the need to direct him, for example, to clear downtown streets that were not designated as primary or secondary routes on the Winter Storm Response Plan.

SEEC staff is left then, with competing oral testimony and no documents, photographs, or recordings to corroborate either version of events. In this case, the Director declines to file charges against Mr. Jackson for directing that City resources be deployed to provide special treatment to the Mayor and other high-ranking City officials. Two factors in this decision bear elaboration.

First, with two daily newspapers, two weeklies, as well as television stations, radio stations, blogs and other online news sources covering the City’s response to the December 2008 snow storms, it is reasonable to expect that some news outlet would have posted a contemporaneous account if high-ranking officials were receiving preferential treatment during a storm that left thousands stranded. In fact, the Mayor directed SEEC staff’s attention to a December 26, 2008 news segment on King 5 television, in which reporter Jesse Jones speaks to a delivery truck driver who delivers on the Mayor’s street and complains about the poor road conditions. It is not entirely clear that the video is taken on the Mayor’s street, but it is clear that Jesse Jones was in the Mayor’s neighborhood on December 26, speaking with someone who drove on the Mayor’s street, and he did not report that the Mayor’s street had received any special attention.¹ Though this fact alone does not establish that the Mayor’s street received no special attention over the two week course of the storm, the fact that no documentary evidence showing preferential treatment has surfaced weighs heavily on the Director’s decision not to file charges. If such evidence does emerge, the Director can always reopen an investigation.

Second, tensions in SDOT’s Street Maintenance Division cannot be discounted, since they would certainly be a factor in Commissioners’ assessment of witnesses the Director would call in any adjudicatory hearing. There are several news accounts documenting the polarized work environment that existed in SDOT’s Street Maintenance Division before Mr. Jackson was

¹ The video can be viewed at <http://www.king5.com/video/?z=y&nvid=316637>

reassigned last month. The Director has read news reports, and confirmed with someone who was present, that Street Maintenance Division staff broke into cheers and applause when they were told that Mr. Jackson was leaving the division. The Director does not believe he could establish a violation based solely on the testimony of individuals who were invested in Mr. Jackson's removal from his position.

Conclusion

The Director finds no evidence that either the Mayor or any other high-ranking officials sought preferential treatment from SDOT during the December snow storms. The Director did receive evidence that the Mayor and other high-ranking officials were accorded special treatment by Mr. Jackson, but based on (1) contrary evidence received from the Mayor and these other officials, (2) the lack of corroboration for either version of events, and (3) the poisonous atmosphere that existed at SDOT's Street Maintenance Division prior to Mr. Jackson's removal, the Director finds that the evidence is insufficient to charge Mr. Jackson with Ethics Code violations.