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October 5, 2022

Via E-mail Only: jengelke@northbendcity.org

Mayor Jessica Engelke
City of North Bend
835 California Avenue
North Bend, OR 97459

Re: Josh Scarberry
Letter of Representation and Public Records Request

Dear Mayor Engelke:

It is unfortunate, but not surprising, that we are communicating with you once again about North Bend City Manager David Milliron's actions. As you know, we have previously expressed serious concerns about City Manager Milliron's treatment of North Bend Police Department leadership during a quadruple homicide investigation¹. This time, we are investigating City Manager Milliron's false accusations against Josh Scarberry who serves as a Supervisory Transportation Security Officer (STSO) for the U.S. Department of Homeland Security.

Mayor Engelke, we intend to find out if City Manager Milliron acted on his own when leveling false accusations against Mr. Scarberry or if he acted under your direction or with your knowledge and consent.

Since we were just retained, we have not had an opportunity to review this matter in complete substantive detail. We do know, however, that on July 20, 2022, Mr. Milliron sent an email to Theresa Cook, Executive Director of the Coos County Airport District (Airport District), falsely accusing Mr. Scarberry of filing an unlawful police report. It may be that City Manager Milliron falsely accused Mr. Scarberry in order to gain leverage in negotiations with the Airport District or that by leveling these false accusations City Manager Milliron could threaten the Airport District with non-renewal

¹ We are also aware of many other serious accusations against City Manager Milliron during his previous employment with other municipalities.

of contractual commitments. Whatever the reason for City Manager Milliron's acts, the results of his actions caused irreparable harm to Josh Scarberry's personal and professional reputation and to his career as a federal employee.

The salient facts surrounding these events are as follows:

- On April 14, 2022, Josh Scarberry, in his role as an STSO for the TSA, initiated a Law Enforcement Incident Response Test to determine and evaluate the response time of local police to specific threats;
- Josh Scarberry was performing his duties within the scope of his employment at the TSA and pursuant to his obligations under federal law;
- North Bend Police Chief, Gary McCollough, among others, was notified in advance about the upcoming testing protocols;
- On April 14, 2022, Chief McCollough met in person with a member of the TSA to discuss the incident response test that would be performed later that day and to answer any questions;
- On July 20, 2022, City Manager Milliron sent an email to Theresa Cook accusing Josh Scarberry of filing a false police report which is a Class A Misdemeanor under Oregon Law. This email also leveled various threats to terminate certain agreements between the City of North Bend and the Airport District;
- On July 21, 2022, as a result of City Manager Milliron's accusations, Josh Scarberry temporarily lost access to secured areas at the airport and was placed on administrative leave pending the results of an investigation of City Manager Milliron's complaints.

It cannot be more clear that Josh Scarberry was merely performing his duties and obligations under the legal authority of the TSA and Homeland Security. It is also clear that Chief McCollough was notified ahead of time about the emergency response test and, in fact, met with the TSA prior to the emergency response test procedure. We know that as city manager City Manager Milliron has direct access to his police chief. More than three months passed between the April 14th emergency response test and the July 20th letter to the Airport District accusing Josh Scarberry of filing a false police report. This is certainly enough time for City Manager Milliron to consult with his police chief about the emergency response test and to educate himself about federal laws and regulations for such a test. It appears that City Manager Milliron did not bother learn about the April 14th emergency response test or the authority for it otherwise he would not have leveled false accusations against Josh Scarberry.

You should know that Josh Scarberry is a person with integrity and compassion for his fellow citizens. Mr. Scarberry is a dedicated public servant who has devoted more

than 20 years to protecting our citizens in his role at the TSA. Mr. Scarberry also served as a reserve police officer for the City of Coos Bay for nine years. Consequently, his reputation and credibility are vital to his professional life and to his place in the community.

Because of City Manager Milliron's actions and false accusations, Mr. Scarberry's personal and professional reputation are now irreparably harmed. Mr. Scarberry will forever have to state that he was placed on administrative leave when applying for promotion within his agency or when applying for new employment elsewhere. It is egregious that the harm that Mr. Scarberry has experienced was caused by city leadership. Mr. Scarberry and citizens of North Bend deserve better. And, while we anticipate obstacles and roadblocks to a simple public records request, we are, nevertheless, prepared to do what it takes to force transparency from the City of North Bend. To wit, please see the public records request, below.

REQUEST FOR PUBLIC RECORDS

April 14, 2022, to Present: All records to or from David Milliron with the search term "Scarberry".

April 14, 2022, to Present: All records to or from Jessica Engelke with the search term "Scarberry".

We anticipate a quick response to the requests, above. We also expect that a City of North Bend IT professional and not City Manager Milliron will be responsible for searching for the documents requested.

NOTICE TO PRESERVE AND LITIGATION HOLD

This letter also is intended to notify the City of North Bend, its officers and employees of their obligation to preserve electronic files and data related to Mr. Scarberry. For individuals, this also serves as notice of their obligation to preserve their personal electronic data. The City of North Bend may not destroy, conceal, or alter any documents or electronic files or any other electronic data generated by and/or stored on computers or any form of storage media.

The City of North Bend, its officers and employees also are on notice to preserve all emails, text messages, and cell phone records related to this matter and to advise all employees who may possess information relevant to this matter of their obligations under the law. Failure to comply with this notice may result in sanctions by the Court for spoliation of evidence.

Please feel free to contact me to discuss this matter.

Sincerely,

/s/ Roland Iparraguirre
Roland Iparraguirre
RI Law Group, LLC
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503-894-5635

Copy (via email): North Bend City Council