

**INVER GROVE HEIGHTS SPECIAL CITY COUNCIL MEETING
TUESDAY, DECEMBER 8, 2020 - 8150 BARBARA AVENUE**

****In-Person and Hybrid Meeting****

A. CALL TO ORDER and ROLL CALL:

The City Council of Inver Grove Heights met in a Special Session on Tuesday, December 8, 2020, in the City Council Chambers. The Pledge of Allegiance was recited. Mayor Tourville called the meeting to order at 7:00 p.m.

Present In-Person were: Council Members Piekarski Krech, Dietrich, and Perry; Assistant City Attorney Bridget McCauley Nason, Human Resources Director Janet Shefchik, and City Clerk Rebecca Kiernan. Attorney Scott Lepak, from Barna, Guzy, and Steffen Law Firm; Attorney Sarah McEllistrem.

Present Via Phone or Zoom: Councilmember Bartholomew

Legal:

A. Continued meeting pursuant to Minnesota Statutes Section 13D.05, subdivision 2(b) for preliminary consideration of allegations or charges against an individual subject to Council authority.

- 1. Public comment (speakers will be limited to three (3) minutes each)**
- 2. Consider acceptance of supplemental materials**
- 3. Consider Acknowledgement of Receipt of Supplemental Investigative Report**
- 4. Opportunity for Employee and Counsel to Speak**
- 5. Consider Acceptance of Investigative Report and Supplemental Investigative Report**
- 6. Consider potential imposition of discipline**
- 7. Other related discussion/action**

1. Public Comment.

City Clerk Rebecca Kiernan stated Public Comment would be limited to three minutes. There will be a timer. Names and addresses must be given.

Councilmember Dietrich asked if the City Clerk would be the timekeeper for meetings going forward. City Clerk Kiernan responded she would try her best.

Zoom caller:

Julie Shefchik, Safe at Home Program, asked how the City is functioning in its compliance with the Minnesota Data Practices Act. She was concerned about her attempt to get public data from the City regarding the matter. She stated she submitted her first request on August 10th and is waiting for information on how to pay. She has sent emails three times.

City Clerk Kiernan asked who the emails were sent to. Julie Shefchik responded the emails were sent to the City Clerk using the email address given. City Clerk Kiernan responded the last email sent to Ms. Shefchik was requesting payment. Payment has not been submitted; the documents have not been sent. Julie Shefchik responded the emails she sent on October 26th, November 4th, and November 29th

asked how to remit payment and she had not heard back. City Clerk Kiernan responded she did not receive an email on November 29th. She requested Ms. Shefchik resubmit her email and she would be glad to work with her. Julie Shefchik asked how to remit payment. City Clerk Kiernan responded it could be placed in the drop box outside of City Hall, mailed to City Hall, or put on a credit card by calling the front desk. Checks should be made out to the City of Inver Grove Heights, attention Rebecca Kiernan.

In-person:

Jean Day stated she has watched this unfold since the beginning and gave the following points the way she understood them:

- A. City Administrator Joe Lynch produced an email from his own computer, handed it over unredacted, to Janet Shefchik.
- B. Joe Lynch showed the same email to another Supervisor. It is unknown if it was shown or left with the person. She asked how many copies were made.
- C. Human Resources Director Janet Shefchik showed the email to a person, one who is responsible for knowledge of the City she represents, a Council Woman, not just another Supervisor. The Mayor claimed it takes three Councilmembers to approve such items but did not cite where it is stated or posted. All employees have this information for future knowledge, or they would be accused of fault.
- D. Janet Shefchik stated as early as last fall (one year prior) that she, knowing the correct hierarchy affecting this kind of issue, made it known there was an impartial Minnesota State Legal Group that should be brought in to handle matters. The recommendation was dismissed. She asked why.
- E. Joe Lynch called the Mayor to have City/State Lawyers conduct a data breach of an email that he himself had printed, unredacted, and circumvented known protocol of an investigation of claimed data breach.
- F. Lawyers were brought in with tax funded dollars. Expensive sleuthing missed the fact that Joe Lynch passed the breached email onto others. The extent of that is still unknown. These claimed impartial Lawyers seem to fixate on one person. She asked why. She asked why if there is a breach, has only one been on the stand over and over for months, when the other is not, when Joe Lynch originated printing it, but shared it to one or more.
- G. The Mayor has shown his "good old boys' stance" loudly proclaiming "guilty" wording rather than asking questions, commenting over and over about the data breach and who he pondered as the breach. He has to date, not broached on the real origins of the claimed data breach. She asked why.
- H. Whatever is to befall Ms. Shefchik should automatically be done to the original one who brandished an email so easily without redaction. This is a willful disregard of protocol, shared it with unknown numbers of people and departments. One has only claimed knowledge. Others may wish to remain silent rather than be pulled into this mockery and retaliated against that were privy to the claimed data breached email. Ms. Quade did a slanderous attack when obvious to anyone not personally involved or paid for by the City could see this was an incomplete investigation when two parties were involved. She stated Joe Lynch data breach.

Councilmember Dietrich stated she could speak to Point B about the three Councilmembers. She said it is unclear to her why the Mayor suggested that a data breach occurred at a September 9th Closed

Session. She commented the Mayor stated at the July 27th, 2020 Open Session: "any personnel information has to be obtained with the approval of three Councilmembers, a majority". He did not cite any law or regulation for this proposition but claimed to have found it in guidelines published by the League of Minnesota Cities. She stated those guidelines are not the law and do not Govern the Council or the City. She stated the review of the City Administrator's performance was conducted and authorized by the Council.

In-person:

Kelly Kayser, 1953 59th Court East, summarized the following:

- Regarding her question about who ordered the data breach.

After six weeks she received a response that the name of the person who ordered the data breach is considered private data.

- On December 1st she requested the City cite the portion of the State Statute or the City Data Practice Policy that was used to classify the name. She questioned if the Council was prevented from knowing who that person was. She has not received an answer yet.
- Asked why Government Attorney Scott Lepak spoke as though the City Administrator and the Mayor initiated the investigation. She questioned if that is who initiated it, if he did not commit a data breach. If it weren't anyone that was not in the Executive Session, how could that person know there was a data breach unless someone told him/her. This shows how unprofessionally this investigation has been handled from the start.
- Why this is not a data breach.

The email in question was not classified or maintained as protective data before it was shared. She stated she received the following notice when sending an email recently somewhere else: "You acknowledge and agree that emails are never completely private or secure. You understand that emails may be sent unencrypted and may be read or intercepted by others". She stated if accepting the report claiming the email was protected data, the onus is on the Council and the City to classify and maintain every email that contains personal information and ensure they are not forwarded, copied, printed, or deleted.

- Before this investigation, only the author's email, senior management, and the Council knew of the email's existence or its content. Now many know. The author is upset, employees in the City have seen Employment Lawyers meeting with witnesses. There is office chatter, Council meetings, media coverage, and more.
- The reason they are here in the first place is because the City Administrator casually passed around an employee's email.

There does not appear a valid reason for his doing so.

- There is a City Administrator with a history of making inappropriate remarks to a subordinate, who upsets the workplace with an apparent lack of the respectful workplace policy and passes around emails that do not need to be shared to possibly solicit some kind of reaction.
- There is an employee who writes an email to lament her unhealthy workplace, an HR Manager who is upset about being implicated in the unhealthy workplace but doesn't feel comfortable in speaking with her boss, a Council Member who seems to recognize the unhealthy workplace and tries to address it in a Closed Session, and an investigating Law Firm who seems more interested in pigeonholing an unclassified email than counseling the City on what appears to be serious violations of workplace safety standards.

She stated she has made several appeals to the Council regarding this matter and spent a lot of time compiling important questions, issues, and inconsistencies with this investigation. She hoped the Council would individually give serious and critical thought to this very important matter that affects people's lives. She was disappointed that three Council Members did not acknowledge her presence at the November Work Session a week after making her public comments. She urged the Council to reject the report on the basis that it is a sham. If not, the Council is failing the employees of the City and residents that elected them to represent our Community with integrity and discernment.

Phone:

Debra Kammerer, 8590 Ann Marie Trail, stated she has watched this go on for over a year. There is information that the public cannot have. She stated the only information she can get is what she can see going on during the meetings between Council Members. She spoke regarding the knowledge she has of Janet Shefchik, who she has known for 25 years. She stated that Janet was in Girl Scouts and she trusted her. She said that Janet is an asset to the Community and would be foolish to do anything that would not allow her to work here anymore.

2. Consider acceptance of supplemental materials.

City Attorney Bridget McCauley Nason stated the Council should have received two separate emails containing supplemental materials.

- Supplemental materials were classified as supplemental materials submitted to Council related to potential data breach by Employee/Counsel.
- Supplemental materials submitted to Council by others and previously received or to be considered for receipt.

She stated some of this information has already been received, some has not. She asked if the Council wishes to make a Motion to accept the supplemental materials that were identified in the emails sent to Council related to this matter to make them part of the record.

Motion by Piekarski Krech second by Perry to accept all supplemental materials.

Mayor Tourville stated supplemental material has been sent to all Council Members.

Ayes: 5

Nays: 0 Motion carried.

3. Consider Acknowledgement of Receipt of Supplemental Investigative Report.

City Attorney McCauley Nason stated in September the City Council adopted a Resolution acknowledging receipt of a document titled "Investigative Report". Since that meeting there has been a supplemental investigative report prepared. She stated she looks for Council to consider a Motion to acknowledge receipt of the supplemental investigative report. It is not the same as acceptance of the report, it is acknowledgement the Council has received the supplemental investigative report. She stated this was similar to what took place with the initial investigative report back in September.

Motion by Piekarski Krech second by Perry to receive the supplemental investigative report.

Ayes: 5

Nays: 0 Motion carried.

4. Opportunity for Employee and Counsel to Speak.

Human Resources Director Janet Shefchik stated tomorrow is her birthday and the one-year anniversary of her Mother's passing. It has been more than one year since this investigation and proceedings began. It started in the months prior to her Mother's passing, she lost her Stepdad in April. She stated this year has taken a toll on herself and her family. These proceedings have substantially added to that. She commented that employees are more than just numbers, they are human and need to be treated fairly, equitably, and equally. She stands strong for her fellow employees and as a testament to the most inspirational woman she has ever known.

She stated in January she did as requested and set up investigational interviews. She also participated in an interview even though she voiced concerns as to the purpose and under what authority it was taking place. She observed what she considered an unethical investigation of another employee but her stated fear of retaliation was ignored and mocked. Having been a witness in a prior investigation, she had then and still has now, reason to be afraid. Those reasons will come to light in the coming months, likely after these proceedings. She stated she was told via email that the investigation of the potential data breach was mandated and was given a Tennessean Warning to sign under that premise. Data Practices Law requires to tell the person you are requesting data from, the reason for the request and how that data might be used.

Ms. Shefchik stated in July 2020 she was informed that a complaint had been filed against her in regard to the data breach. She was told they would be bringing the item to Council, she may be subject to discipline, and she had a right to a Public Hearing. This was not the reason she was given when providing the information requested of her. Knowing the patterns of behavior and consequences to others who have been similarly charged, she requested a Public Hearing. She stated this hearing has been continued for months because the investigative report was inaccurate and incomplete.

She stated during the proceedings she has been blamed for the City undertaking the lengthy and expensive process. She did not choose the process, the City did. She has been repeatedly called a liar for not remembering exactly where she kept a single email in the months preceding her Mother's death. She has been accused of withholding information and delaying the process when it was shown on Attorney Scott Lepak's timeline the process was delayed by others and not her. She highlighted the following points from the supplemental investigation:

- The only new information is when Joe Lynch was finally presented with written questions. He now claims to have told her to put the complaint email into the employee's personnel file. This statement and/or request is absent from the first investigative report because it did not happen.
- An email containing complaints about other employees does not belong as an official record in a complaining emails personnel file for their Supervisor's to read about other employees.
- The employee has claimed they meant it only as a venting.
- City Policy makes it clear this email did not belong in the file and doing so would not follow the City's Record Retention Policy.

She stated three options have been provided by Attorney Scott Lepak to consider for discipline:

1. A reprimand.
2. Suspension.
3. Termination.

The reason for termination as presented by Mr. Lepak is based on a three-pronged fallacy:

1. A willful violation of the Data Practices Act. Willful, as with intention. They continue to try to spin this as a conspiracy, insinuate a clandestine meeting coordinated by her, and involving a briefcase. She has a lot of work to do and brings work home with her sometimes. She stated she had an email exchange with a Councilmember who asked her to meet and discuss staffing. There was no conspiracy. Her reason for discussing the email with the Councilmember was never to affect the City Administrators employment. She stated this is conjecture on the part of the Attorney's. There is no document to support or prove this. She stated she has been consistent from the beginning explaining that she was defending herself against the untruths in the email. She has said that when she was interviewed and what she has been saying for a year. She was attempting to protect her own employee from a smear campaign. She stated she was sorry she did not have better recall when asked in January where the single email was from September in the middle of all her life happenings. She commented the Councilmember has even stated during a prior Council Meeting that she requested a copy from her. She asked where that is reflected in any of the reports. It has not been revised to include new facts. There was no willful violation. A mistake in application of policy related to the redaction maybe, but not willful. She said as Attorney Quade stated during a Council meeting after calling her a liar, Data Practices Law is complicated.
2. Data Breach. The City made a latent request to the State to classify the data, the State would not opine. After reviewing the request, the State's top authority on the subject was unwilling to make a ruling. She stated she advised the City to get an opinion from IPAD many months prior, but her suggestion was ignored. After receiving a hard copy of an email complaint, she spoke with her boss, a Councilmember, about her concerns. It was City data about her, that is false. It was about others as well, but as a top Official, how a Councilmember handles the information was her responsibility. She chose to introduce it in a Closed Session and has already stated in a prior Council meeting that she did not commit a data breach. She stated if the Councilmember did not, and the City Administrator did not when he gave a copy to someone she does not even report to, then she did not. An employee fired off an email which the City Administrator did not want others to have a poor opinion about him from. This is the same reason she was upset, yet she is the only one accused of a data breach. It was not a data breach. A private email stayed private and was only shared with those with a legitimate need to know.
3. Non-Governmental Purpose. She is an employee of the City, as well as the City Administrator, the email author, and the employee's Supervisor. The Councilmember is an elected Official of the City. The email was not shared with anyone outside the City. Each purpose stated has a specific Governmental purpose related to its employees. There is not a single instance of the data being used for a non-Governmental purpose.

She stated all three premises are what was suggested the Council consider for discipline. It was not willful, no one can confirm there was a data breach, and not for a non-Governmental purpose. She asked how there can be an imposition of discipline under this premise, and why only on her. A

decision for discipline made now by lame duck Councilmembers would further her claims of retaliation, it would be wrong, and she would continue to fight outside these four walls.

She stated regardless of what happens tonight, she asked that the City Attorney's office provide training to management, Council, and others that explains the culpability and personal liability associated with ignoring wrongdoing. As well as actively participating in illegal retaliation of other employees. She stated she believes she is the best person in the organization given her experience to lead this initiative and to drive significant and positive changes for the City, its employees, and its citizens.

Sarah McEllistrem, represents Janet Shefchik, stated the last time she was here the Council launched the second investigation because she pointed out the flaws in the first one and was incomplete and inaccurate. The suggestion was taken to have IPAD submit an opinion on the subject. There was also a request from Council to see the data practices retainer. She stated she would address the questions that Mayor Elect Councilmember Bartholomew raised because they cover the key points and get at the evidence in the case. The following four concerns were raised by Councilmember Bartholomew:

1. The Retainer Agreement. The Retainer Agreement provided by Mr. Lepak's office with the City does not comply with the law. She read Minnesota Statute 13.05 Sub. 11 verbatim stating it "requires a Government entity, if entering a Contract with a private person, to perform any of its functions, all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter. The private person must comply with those requirements as if it were a Government entity. All Contracts entered into by a Government entity must include a notice the requirements of this subdivision apply to the Contract. If violating that section of the law, you are subject to remedies. Damages, civil damages, Attorney's fees, and penalties. The Legislature believes data was so important it required this provision be in the Retainer Agreements. She stated despite repeated requests for this, one has never been produced. It does not exist.
She questioned why it matters. Data Practice Laws are technical, nuanced, and complicated. If you cannot agree to comply with the terms of keeping the data confidential up front, you should not be doing the work. She stated it proves you do not know Data Practices Law.
2. Questioned why IPAD was not pursued earlier. Ms. Shefchik asked the Council to seek an advisory opinion from IPAD so they would be able to classify the data. They would be able to determine if it were private or confidential, or where it fell. August 3rd, she followed up with Council before all this expense was incurred. She asked the City Attorney's and Mr. Lepak for "any advisory opinions sought from the City from the State Commissioner in relation with this issue". On August 5th, Mr. Lepak responded "none". She stated Council wanted an opinion from IPAD. She said Janet Shefchik was not hiding or trying to be untruthful. Ms. Shefchik told Council to get the opinion. That was ignored and not advised by the Attorney to do so.
3. Asked what the connection between the expectation of employee privacy and how it relates to this matter. Whether or not the author of the email intended for anyone to see it does not determine classification of the data. The City's Information Technology Policy the email author signed states there is no assumption of privacy when using City email. She volunteered the information in her email, she was not asked for it, and not entitled to an informed consent. She

stated this is important because it is not data for a personnel file, an email containing complaints about another employee does not belong in an official record. This can be found by reading the City's Data Practices Policy that defines public and confidential data. This email was not private data nor to be included in the personnel file per the League of Minnesota Cities guidance manual. It was an employee venting.

4. Questioned why Joe Lynch's shared email was not a breach, what the rationale was, and why it was different. She stated documentation she sent on September 29th, the day after the late September 28th Council meeting, she read the following at that time under section Bi. "Joe Lynch provided her client with the unredacted email because she did not receive it originally. Joe stated he wanted her to see it, he did not ask her to put it into the file for any reason". She said she stated this at the meeting and documented it. On September 29th, she asked the Council to look at the first investigative report, it is not in there either. She stated Mr. Lynch never asked Ms. Shefchik to put it in the file, that is why it is not in the report. For the first time on October 6th, Mr. Lynch responded to questions posed in the supplemental investigation. For the first time he asserts he asked Ms. Shefchik to put it in the file. The supplemental report asserts that the sharing with the email author's Supervisor was to address the email author's responsibilities, it was an extension of a conversation that Mr. Lynch was having with the Supervisor. She asked why the Supervisor responded in the first report, "what is the purpose of this communication, how can I help her". It was not seen as an extension of any conversation of her responsibilities. She stated the rationale in the fourth question posed is as fraud with slip ups as this investigation. A biased investigation leads to a biased result.

She stated they had to highlight for the investigators that there were multiple shares of the email. The mail was not investigated. Neglected to begin by classifying the data, failed to get IPAD involved, the length of this investigation is not the fault of Ms. Shefchik's. Ms. Shefchik disclosed her role, who she spoke with, and what they talked about. She stated they believe any action against Janet in this report is retaliation. She encouraged the Council to use Ms. Shefchik's good knowledge, skill, and information to the Council's benefit. Use Ms. Shefchik to train Staff and Council, use her to show the City values all employees. Improve the City.

Ms. McEllistrem requested the report be rejected, no discipline be imposed, so Janet can get back to work without this distraction.

5. Consider Acceptance of Investigative Report and Supplemental Investigative Report.

City Attorney McCauley Nason stated Page 154 contains three separate Resolutions related to the potential acceptance and adoption of the investigative report and supplemental investigative report. Council has acknowledged receipt of the report but has not formally accepted them nor taken a position to the conclusion. Three separate Resolutions provide three different paths for Council consideration:

1. Resolution accepting and adopting the investigative report and supplemental investigative report. It accepts and approves both reports and adopts the findings and conclusions contained within. Based on the above, it finds that the employee therein caused a breach of the security of the data. The term is defined in MN Statute 13.055. This directs Staff to comply with the Statutory notification process found in that Statute and directs that any discipline may be

imposed as a result of the actions constituting the breach shall be the subject of the separate action of the Council.

2. Resolution rejecting the investigative report and supplemental investigative report. Finding that no breach of the security of data occurred as that term is defined in Statute and directs that no further action be taken. The Resolution on Page 157 finds that the Council rejects the investigative report and supplemental investigative report as written. It rejects the findings and conclusions contained within and based on the above finds that no breach of the security of data as that term is defined in Statute occurred with respect to the subject of the investigation. It finds there was no access by unauthorized persons, there was no intent to use the data for non-Governmental purposes, and there is no breach of the security of the data. All of those are defined terms found within the Statute, it further directs that no further action be taken at this time with respect to the matter.
3. Resolution accepting investigative report and supplemental investigative report as modified. This Resolution accepts and approves the investigative report and supplemental investigative report as written except as provided below:
 - It does reject the findings and conclusions contained within the reports with respect to the occurrence of a data breach and specifically finds there was no breach of the security of the data as outlined in the previous Resolution.
 - Directs that no further action shall be taken with respect to imposition of discipline against the employee identified in the investigative reports for conduct allegedly constituting a breach of the security of the data but that any discipline to be imposed on the employee as a result of any other misconduct occur by separate action of the Council.

She stated those are three Resolutions for Council consideration. For potential Motion, Council can take other action as it deems fit.

Councilmember Piekarski Krech stated it has been said multiple times for Ms. Shefchik to get back to work. She asked if she was still a full-time paid employee. Human Resources Director Shefchik responded she is not on leave, she is working.

Mayor Tourville stated this meeting has been requested to be an Open Meeting. He asked if anything pertinent could be discussed or questioned. City Attorney McCauley Nason responded at the request of the subject; this is an Open Meeting. Under data practices, the Council has the ability to discuss not public data at a public meeting to the extent it is reasonably necessary to do so. Any discussion of not public data does not change the classification of the data. Just because the Council is discussing this now, does not mean that someone could make a data practices request and obtain the data. If it is private data, it's classification would remain the same despite being discussed in a public Council meeting.

Mayor Tourville stated it is alleged the investigation that took place was illegal. City Attorney McCauley Nason responded she was not aware the investigation was done in an illegal manner. Attorney Scott Lepak, from Barna, Guzy, and Steffen Law Firm responded the Data Practices Act of 13.055 mandates an investigation of an alleged breach. It is a mandatory investigation.

Councilmember Piekarski Krech stated the report has a lot of items in it that have perplexed her, made her heartsick. She stated the City Council is the Legislative body, they do not run day to day with City Hall, they do not hire and fire employees or do employee interviews. They are here for big picture items. She commented in her years on Council she has never met with an employee at a restaurant outside of the City to discuss City business. She meets with employees in City Hall. She questions why this meeting was held outside of the City at a restaurant. She stated the lack of transparency has created a trust issue among Staff. She stated if the item was so critical that Ms. Shefchik thought it needed to be shared, Councilmember Dietrich is not her boss, she is a part of the Council body who enacts Legislative items. Each Councilmember individually does not have control or power, they only act as a body. She is concerned about selective sharing of information. She stated if the information was critical it should have been shared with all Councilmembers. She commented there is more than one person who has made an error in this process, she believes that should be dealt with also. She said it probably was not a breach, but definitely was a breaking of faith and trust.

Human Resources Manager Shefchik stated Councilmember Dietrich asked her to meet with her at Mendoberry to discuss staffing. It was not a clandestine meeting. She apologized if Councilmember Piekarski Krech felt slighted she did not speak with everyone. She stated she spoke with Councilmember Dietrich because her boss is the City Administrator and Councilmember Dietrich asked her opinion on Staffing. She was meeting with her and had an issue. She stated Councilmember Dietrich reached out to her. She found that refreshing. It was not meant to be secretive; it was a staffing meeting. She commented she trusted Councilmember Dietrich with this issue involving her boss.

Councilmember Piekarski Krech stated as Human Resources Manager, she of all people should be aware of the protocol when there is something that serious and concerning. It needs to go to Council, because just one Councilperson is not going to be able to deal with it. She did not feel slighted, she questioned the protocol.

Human Resources Manager Shefchik stated when she was first hired, she met Joe Lynch for lunch when he was making the offer to her. Councilmember Dietrich stated she has met with City Administrator Lynch outside of the City to go through budget talks more than once. It did not arise any concerns from her.

Mayor Tourville asked if she considered the contents of the email as Staffing issues. Ms. Shefchik responded no, she brought it up because she had just received it and was very upset at the things said. What was said in the email about her was wrong. She stated there are definitely items in the email that are disturbing.

Mayor Tourville stated he re-read the information about the email. The Councilmember did not ask for the email, the email was offered. Human Resources Manager Shefchik responded she spoke about the email; the Councilmember requested a copy. She stated the Councilmember stated the information in a private Council meeting. Mayor Tourville stated within HR, quick decisions need to be made, the email was brought with and then supposedly given.

Human Resources Manager Shefchik asked if Councilmember Dietrich received a copy. Councilmember Dietrich responded that was correct. Mayor Tourville stated the email had to have

come from the Human Resources Manager because she was the only one. Councilmember Dietrich responded that City Administrator Lynch was also passing out copies. Mayor Tourville asked Councilmember Dietrich if Joe Lynch gave her a copy of the email. Councilmember Dietrich responded she was not answering that question. Mayor Tourville stated she made it sound like he did. Councilmember Dietrich responded that City Administrator Lynch also handed it out to others. That information is in the report.

Human Resources Manager Shefchik stated she would like the Council to make a decision based on the three prongs the Attorney has mentioned. That is what the decision should be based on, not the emotional content of the email.

Councilmember Perry asked if the contents of the email took place prior to Councilmember Dietrich being on Council. Human Relations Manager Shefchik responded it was a bit of both. Councilmember Perry asked being that Councilmember Dietrich never had access or privy to prior, it should have been shared with the rest of the Council knowing that. Human Relations Manager Shefchik responded she shared it with Councilmember Dietrich because it was semi slanderous about herself.

Mayor Tourville stated he was not in full conclusion there was a breach. He believes there was a lot of misjudgment, and that it was handled incorrectly. He has questions about the investigative part. He responded to the IPAD discussion about the City not wanting to go that route, and stated it was discussed and looked into, they were asked to do the investigation, IPAD decided not to rule on it. He stated he cannot support a reference to a data breach.

Councilmember Bartholomew stated he was concerned about the classification as a data breach. He does not see it and is very skeptical about it. What concerns him is the actions of an employee during an investigation. He was concerned about the less than truthful comments during investigation. He stated it appears to almost impede the investigation. His concern is the impediment of the investigation and less than truthful facts and distortion. Even if the investigation is not warranted as the employee believes. He agreed the bar for data breach is not there. He is concerned about the employees' action during the investigation.

Councilmember Piekarski Krech stated there are things in the investigative report that need to be looked into further. With the data breach, every Attorney has their view. She stated it appears that every employee sign something, she has not signed anything and has City email. She was curious about that. She felt there are issues where there are things that happened that should not have along with behaviors. Those need to be dealt with outside the scope of what they are dealing with tonight.

Mayor Tourville stated the Resolution could be to accept the investigative report and supplemental investigative report. He asked if the Council says that we do not find data breach, they look at the possibility of a Resolution that may deal with the possibility of misconduct. He asked if Council thought the same. Councilmember Dietrich responded that was not what she was saying. She agreed there was no data breach. Whether spending taxpayer money to look into what City Administrator Lynch has done with data and if there has been misconduct, that would have to be discussed.

Motion by Piekarski Krech second by Perry to accept the Investigative Report and the Supplemental Investigative Report.

City Attorney McCauley Nason asked if the Councilmembers Motion was to approve the Resolution found on Page 159 of the packet. Accepting the investigative and supplemental investigative report as modified, or if it were to move to adopt the Resolution rejecting the report found on Page 157.

Councilmember Piekarski Krech stated it was to accept the report, but not take action. City Attorney McCauley Nason clarified stating on Page 159 there is a Resolution to accept the investigative report and supplemental investigative report as modified with the modification being the rejection of findings and conclusions solely with respect to the finding and conclusion that a breach of the security of the data occurred. Councilmembers Piekarski Krech and Perry both accepted the Motion as read by City Attorney McCauley Nason.

Motion by Piekarski Krech second by Perry to adopt a Resolution 2020-279 to accept the investigative report and supplemental investigative report as modified with the modification being the rejection of findings and conclusions solely with respect to the finding and conclusion that a breach of the security of the data occurred located on Page 159 of the Council packets.

Ayes: 5

Nays: 0 Motion carried.

6. Consider potential imposition of discipline.

Attorney Scott Lepak, Barna, Guzy, and Steffen Law Firm, stated Alternative 2 in potential discipline determines it has not established or inclusive about whether there was a breach. With Alternative 2, the potential discipline:

1. Keeping an unredacted copy of the email outside of City facility.
2. Not being candid and truthful during the investigation when responding about whether the email was provided to the Councilmember.
3. Despite knowing that she was the individual who supplied the email to the Councilmember she utilized her position in Human Resources in an effort to impede the investigation. Acknowledge the email contained private data but recommended against an investigation to determine how the email reached the Council. Whether discipline complied with the law. Also told one witness she did not have to talk to the Investigator.

He stated the question for Council is if those actions, or other actions, deemed to be policy violations, violations of expectations that the City, through the City Council, has towards an employee. If the answer is yes, what would be the appropriate action to take. There are three Resolutions:

1. Written reprimand.
2. Suspension.
3. Termination.

Human Resources Manager Shefchik wanted to address the item about the employee that said they did not need to participate. She said that was not true. She stated she is the one who set up the investigative interviews when requested.

Mayor Tourville stated he is concerned about the integrity and trust created in reference to the piece within the Human Resources Department. He stated in any other data breach activity within the City, the two people involved would be the HR Department and the City Administrator. Both were removed from this due to the conflict in the investigation. Both were investigated more than once. He stated the need to determine whether to move forward or not. He stated the City knows what to do regarding a data breach. He commented a question was posed to Mr. Kuntz, and Mr. Kuntz looked at the Statute and informed all five Councilmembers they were going to look at having an investigation. He stated another question that arose was if the Mayor has the right to contact anybody. Any City employee with the possibility of a data breach is supposed to go forward with that information so it can be looked at, according to State Statute. He stated it was not a data breach, it was a possible data breach.

Councilmember Bartholomew stated he understands there are two issues that deserve some type of reprimand either written or beyond. He stated he does not believe there is any reprimand due for handling of data. There was too much question about if they even have an issue with data practice. He stated with reading the report, he believes there was less than truthful comments made, and an impediment to the investigation as relative to the email. He would like to see those issues addressed. He stated the need for a clear policy that this is wrong, they should not do it, and why it is wrong. He stated the employee made a mistake, acknowledge that mistakes were made, and explain to the employee of the reprimand. He is leaning toward a written reprimand.

Councilmember Dietrich asked Councilmember Bartholomew to clarify if the written reprimand had inconsistencies with the City Administrator and the Human Resources Manager. Councilmember Bartholomew responded he did not see anything in the report reflecting the City Administrator. If there is an investigation and find the same thing, that could be the next issue. He stated if it is determined the City Administrator impeded the investigation and has less than truthful answers, there should be reprimand.

Councilmember Dietrich stated one inconsistency just came to light in October when the City Administrator stated he had asked the HR Director to put the information in the file. That never came to light in any investigations at the end of 2019 and beginning of 2020. Councilmember Bartholomew responded he heard that discussion as well and stated the Council should take that under consideration to try to determine what happened. If there is an inconsistency, they would go forward with a reprimand. Councilmember Dietrich asked how Councilmember Bartholomew would like that to go forward. Councilmember Bartholomew responded he did not currently have the answer. Mayor Tourville stated this is off topic and not on this Agenda. Councilmember Bartholomew stated this is not going away, he guarantees it.

Councilmember Piekarski Krech stated she could agree with a written reprimand. It goes to the lack of transparency and good faith in the beginning. She stated the report stated inconsistencies from one time to another. She understands that during grief a lot of things are done. When her husband died, she tried to keep a clear head. She sympathized with the HR Manager but there are other things that have to happen.

Councilmember Bartholomew asked who would write the reprimand. He asked if that would come after deliberation. Attorney Scott Lepak responded there are three Resolution options. Once Council reaches the determination there is a policy or expectation violations. The three options for action:

1. Written reprimand.
2. Suspension.
3. Termination.

Attorney Lepak stated those do not have rationales worked out. The Council has determined the item on not being forthcoming during the investigation and impeding the investigation. He stated the Resolutions could be adopted in their form; the record would reflect the rationale for that action.

City Attorney McCauley Nason stated a written reprimand is defined within the Personnel Policy.

Attorney Lepak stated once he receives Council direction, he would draft it and provide it to the Council.

Councilmember Perry stated she could agree with the written reprimand but not suspension or termination.

Motion by Piekarski Krech second by Perry for Resolution 2020-280 Regarding Written Reprimand to Janet Shefchik.

Councilmember Bartholomew asked if there was an understanding with the Motion that it just relates to the two points and does not consider the handling of data. Councilmember Piekarski Krech agreed.

Ayes: 4

Nays: 1 (Dietrich) Motion carried.

Mayor Tourville stated the City needs to have a policy with the HR Director that is very clear. One person cannot ask for information, it has to be three Council Members. These are guidelines most Cities in the State of Minnesota already have in place. He stated City Attorney Kuntz sent those guidelines out back in September. They are not in place but could be put in place.

B. ADJOURN:

Motion by Piekarski Krech second by Perry to adjourn the Special Session at 8:27 p.m.

Mayor Tourville thanked those that called in and those that attended the meeting.

Ayes: 5

Nays: 0 Motion carried.

Minutes prepared by Recording Clerk Sheri Yourczek