

Lack of candor smells like cover-up in South Tahoe

By Kathryn Reed



Why did three councilmembers want Jacqueline Mittelstadt fired?

Why did they fight to keep Johnny Poland off the streets?

Those questions and the ones below remain unanswered.

On Nov. 11, *Lake Tahoe News* sent an email to the city manager of South Lake Tahoe and the five councilmembers elected to represent all of the residents of the city. A deadline of 5pm Nov. 17 was given. With the budget and union negotiations going on, some leeway was given.

However, Councilmembers Kathay Lovell, Bruce Grego and Hal Cole never responded. Those are the three who initially voted to begin dismissal hearings against then City Attorney Mittelstadt and wanted to appeal the arbitration panel's decision that said Poland should be reinstated to the SLT Police Department.

Although the agreement between the now assistant city attorney and the city says both sides are to be silent on the issue, answering some of the questions presented would clearly not pose a breach of that agreement.

At some point the council needs to decide if the public which it represents and whose money it spends has more of a right to

know what's going on with that money and behind closed doors than a couple of employees caught in the crosshairs. Though, perhaps the silence indicates the majority's decision. The electorate, which will have a chance to vote in three new members next November, will get its chance to speak then.

Mayor Jerry Birdwell said via email, "Thank you for your email. Your questions are good ones and I hope you will have more success getting them answered than I have. I have been asking the City Manager most of these same questions for some time now, but I get no satisfactory answers from Mr. Jinkens. The citizens of South Lake Tahoe are entitled to know how their money is being spent.

"In June I openly asked for his resignation, and at this point I think the City Manager needs to be fired because he routinely, willfully ignores requests for information for councilmembers, the public, and from reporters."

Lake Tahoe News sent Birdwell a follow-up email asking him to answer the questions directed toward members of the council. He said he would. He never did.

I asked for all answers to be in writing. Birdwell and City Manager Dave Jinkens complied with that request. Councilman Bill Crawford left a voicemail.

Here are the questions that were sent via email to the six mentioned above and all of the answers provided:

1. How much money did the city spend on Johnny Poland:

a) Payments to him and the costs for his benefits while he was not working? Please breakdown the figures, ie, salary, health, retirement.

Crawford: "Regarding the cost of Johnny Poland's situation, I haven't any more information than you have on that."

b) What back pay is owed to him? Does this include interest?

If so, how much?

c) The \$75,000 Jinkens mentioned in April that was spent up to that point – please breakdown where/how the money went/was used.

d) The \$30,000+ the attorney was paid to fight the issue in EDC Superior Court; does that include all of her costs? Or does the city still owe her more?

e) How many hours of city staff time, including at the police department, went into the Poland case? Please break it down by department.

f) What dollar amount do those hours add up to?

Jinkens: City cost to appeal the decision of the “Hearing board” to the Superior Court on a Writ of Mandate as the date of my request to staff was \$35,131.18.

Note: The legal advisor for Mr. Poland and my office agreed before proceeding with the Hearing Board referenced below that either party could appeal a decision of the Hearing Board to the Superior Court. This agreement is what was relied on when the decision was made to appeal the ruling of the Hearing Board.

There were also costs incurred by the City before the matter went to trial to settle the case outside of court through a re-entry agreement for Mr. Poland, but I do not have the specific costs for these legal services that are part of the total legal bill from LCW.

City Legal Costs Associated (LCW) with the Notice of Discipline up to and including the hearing before the Hearing Board (three member panel):

The administrative process for handling disciplinary hearings against police officers is spelled out in State law and by agreement through existing memoranda of understanding, POBR

Peace Officer's Bill of Rights), and the City's Personnel Rules.

The process within the Department and in accordance with the rules is time consuming for all parties and costly. Whether or not a decision is ever made to appeal a disciplinary action to the Superior Court, the cost of the existing disciplinary appeal process is time consuming and expensive for all parties. The existing appeal process that is part of existing memoranda of understanding and our Personnel Rules needs to be revised, streamlined and simplified for the benefit of all parties to get a timely decision. In order to amend the City's disciplinary and appeal process, agreement between labor and management on the specific changes must be made after meeting and conferring in good faith in accordance with State law.

Billings from Liebert, Cassidy and Whitmore (LCW), the law firm that represented the Police Department during the appeal of Mr. Poland from a decision of the Police department to terminate him from 2007 on until the time of City's appeal to the Superior Court are estimated to be \$78,210.34.

The City Manager retained the services of an independent labor attorney (Linda Tripoli) to provide independent legal advice when Mr. Poland appealed the intention of the Police Department to terminate him to the City Manager. The independent legal counsel was intended to ensure that a separate legal review was done on the facts of the appeal and Law before the City Manager rendered a decision on Mr. Poland's appeal. The cost of these services is \$6,386.16

Cost of Court Recorder (1/2 paid by City, balance paid by Mr. Poland) is \$2,555.00

From the information I have to date the approximate total sum spent by the City for legal services regarding matters relating to Mr. Poland to be \$122,282.68

Note: Police Department management in the past years has also

used on a consultation basis the services of police labor lawyer specialist Marty Meyer who may have provided the Department with some advice during the course of the early IA, but I do not have details in this regard at this time. Such advice would now if needed be coordinated through the City Attorney.

Back Pay: The back pay calculation is currently being worked on by Finance, Human Resources, the City Attorney and Mr. Poland's legal counsel. It should be noted that Mr. Poland has been paid administrative leave since January 2009, and that the back pay will be reduced by his W-2s for other employment during the period he was off work with the City. Mr. Welty, his legal counsel, is to provide the W-2 to the City Attorney to help to calculate the proper payment.

Staff Time: Staff in the Police department did not keep specific records on how much staff time was spent by them during the disciplinary and appeal process. I know that they spent a lot of time on the IA and during the appeal. When the matter came to my office on appeal I spent many hours during the appeal hearing and reviewing the background information and reports on the matter, but I too do not know the exact number of hours spent.

I am told that Penal Code Section 832.5 requires that every law enforcement agency in California have in place a procedure to investigate complaints against peace officers. As with certain State mandated functions the City is reimbursed for certain costs but I do not yet know what that may be in this instance. The Police Department investigator in this case performed the investigation in accordance with his normal routine duties, not overtime so there is no additional PD cost.

2. When will Poland be back with the department?

3. What steps are needed to ensure he is ready to be back on

the streets?

4. What is the police department and/or the city doing to prevent something like this from happening again?

5. Regarding the city attorney issue, how much did it cost the city regarding the Jacqueline Mittelstadt issue?

a) How much compensation in terms of salary/benefits was she paid while she didn't work? Please breakdown the expense, salary, health insurance, retirement.

b) How much staff time and therefore money did it cost the city?

c) How much did the city spend on outside legal counsel?

6. What is going on with the complaint filed by Christine Vuletich against Patrick Enright and Jacqueline Mittelstadt?

7. What is the city's policy for handling complaints from one city employee against another?

8. Why was Mittelstadt originally hired to be city attorney and Enright assistant city attorney?

Crawford: Why was Mittelstadt city attorney in the beginning? Because it was felt, and I agreed, she would be better in the courtroom on her feet than Enright and because of his experience in redevelopment people thought he was better fitted for that, which is probably also correct.

9. At the time of hire, did the council believe Enright was qualified to be city attorney? Why or why not?

10. What makes Enright now qualified to do the job?

11. When Enright is out of the office (vacation, sick, etc.) will Mittelstadt have the "power" of city attorney or will she have to defer to the city council in order to make decisions at that level?

Crawford: I assume she would represent the City Attorney's Office if Enright can't make a City Council meeting. Someone should be there.

12. How did city staff and elected officials first find out about Mittelstadt's ongoing legal issues in Southern California? And when?

13. What bearing did that knowledge have on the council's Sept. 3 decision to proceed with dismissing Mittelstadt?

14. What happened between Sept. 3 and Nov. 3 for the majority of the council to change its mind and want to keep Mittelstadt employed?

Crawford: Mittelstadt, the turning point on that on not continuing to try to fire her was Whitmore did a very poor job in his presentation. It seemed he was deceptive and wasn't telling the truth about the complaints. He just failed. And, also, Jacqueline's attorney, he made Lovell look foolish when she said there was going to be a lawsuit anyways.

15. What type of background checks, reference checks, etc. were done before hiring Mittelstadt and Enright?

16. Is there a standard policy for hiring any staff member? What are those? And how do they differ for city attorney?

17. Any comments from anyone?

Crawford: One member of the City Council said (Mittelstadt) was a poor manager of office. I don't know how you determine that after two months.

Jinkens: I hope this matter better addresses your previous questions. Due to my commitment to respond to you (Nov.20), I am providing you with the best information I have to date on this matter based on the work of staff. The handling of police

disciplinary matters is time consuming and expensive. We need to ensure that those complaints against police officers are fully and completely investigated, protect the rights of police officers during the administrative process, and develop a more streamlined and less time-consuming and expensive process for the benefits of all parties.