

City of Bainbridge Island Ethics Board

RE: Advisory Opinion No. AO2009-04
Subject: Disclosure of confidential information disputed
Date Received: December 14, 2009

Thank you for your inquiry to the Ethics Board.

You have requested an opinion regarding whether a City Council member may have violated Section IIC of the City's Ethics Code in an instance in which the Council member allegedly provided—in response to a question posed by a citizen outside of those involved in negotiations—“general information about litigation and settlement discussions,” and more specifically that the Council member stated “that the City is in negotiations with litigants and that the City is responding.”

You allege that Council members and representatives of a citizen group in litigation with the City entered into “informal discussions” in an attempt to reach a settlement. You allege that no attorney representing either side was present and that no confidentiality agreement had been signed or agreed to orally. In addition, you allege that information provided by the Council member to a citizen(s) outside of negotiations was not “confidential information” and therefore does not constitute a “breach of privilege or confidentiality.”

Your request also provides some discussion of the definition of “confidential information,” which is not defined in the city's Code of Ethics but is defined in state law: “Confidential information” means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law” (RCW 42.52.010(6)).

The City of Bainbridge Island Code of Ethics (Section IIC) states:

Elected officials and former elected officials shall not disclose or use privileged confidential or propriety [sic] information obtained in executive session or otherwise in the course of their duties as a result of their position. No elected official and former elected officials shall disclose any such information except as required by law.

In this instance, if the alleged facts as presented in your request can be validated, that is, if the Council member made only general statements that could have been requested by any citizen under Washington State public disclosure law (RCW 42.56) and therefore cannot be considered “confidential information,” we find that the Council member did not in fact violate the Code of Ethics requirements for confidentiality.

We note that a previous finding (AO2009-02), which was submitted regarding the same or similar issue with a different set of allegations, and we would like to comment here on the current Code of Ethics and process, which are now under revision partly to address the very issue that is raised in the submission of these requests. As you may be aware, the Ethics Board does

not have investigative powers and is thus unable to establish the truth or falsity of the alleged facts put forth in a given request. The Ethics Board can, however, address the issue as presented in any request for an advisory opinion and write an opinion based on the existing Code of Ethics and process, as developed and approved by the City Council (Ordinance2005-31). If the Ethics Board finds that a violation of the Code may have occurred, the requestor is notified that he or she may pursue the matter as provided for in Article IV of the COBI Code of Ethics.

It is the intent of the Ethics Board to recommend revisions with full input from the City administration, the City Council, and the citizens of Bainbridge Island to eliminate or at least decrease the kind of situation described above, and to better fulfill the purpose and vision of the Ethics Board:

PURPOSE: The Board of Ethics will help to ensure that City government adheres to the highest standards of public service.

VISION: The Ethics Board will foster a culture of ethical behavior that helps to maintain and strengthen public trust and confidence in the government of the City of Bainbridge Island.