

PO Box 627
Lincoln City, OR 97367

September 27, 2016

Lincoln City City Council
801 SW Hwy 101
Lincoln City, OR 97367

Via: <city-council@lincolncity.org>

Re: **Numerous false statements** in your letter dated July 20, 2016

Honorable Councilors,

Thank you for your service.

I have reviewed your letter to me dated July 20, 2016, and need to point out **three serious falsehoods** and **several factual misstatements** contained in your letter:

In paragraph 2, it states "*The Recorder advised Council of your request for a fee waiver or reduction.*"

This is a false statement. The City Recorder did not advise you that a fee *reduction* had been requested, only that a fee waiver had been requested.¹ In fact, it appears you were not even provided a copy of my request.²

In paragraph 3, it states "*your request for Executive Session tapes is in your private interest not in the public interest.*"

This is factually incorrect. The tapes are the minutes of public meetings - where the public was mistakenly barred from attending - so the minutes are required to be released to the public, without exemptions, pursuant to ORS 192.420(1).³ That is clearly in the "public interest."

¹ City Council meeting, July 18, 2016. <https://youtu.be/sqD9mKPW4E4?t=1m>

² *Id.*

³ Lincoln County Circuit Court action 15CV22131. <https://goo.gl/KloU3a>

In paragraph 3, it states *“When Mayor Williams was accused of releasing confidential executive session materials you filed a lawsuit claiming all City Executive Sessions were illegal.”*

This is a false statement. I filed my lawsuit on August 20, 2015, and it wasn't until August 21, 2015 that the Ethics Commission received the 315-page ethics complaint authored by Mr. Appicello, that contained **several false accusations** against Mayor Williams. In fact, the complaint contained at least **five material falsehoods** against our Mayor, all of which were proven false by the Commission in a unanimous vote.⁴ While the Commission found our Mayor not guilty of all charges, they were very critical of Mr. Appicello, labeling him an “instigator.”⁵

In paragraph 3, it states *“The purpose of your lawsuit, as you have stated, is to protect Mayor Williams' right to hold office.”*

This is factually incorrect. I have stated several reasons for my lawsuit, including most principally to require you to follow the law, and be honest, transparent, and accountable to your constituents.

In paragraph 3, it states *“if you succeed in your attempt to invalidate the confidentiality protection afforded City executive sessions, Mayor Williams cannot be accused of violation of Council rules regarding disclosure of such confidential information.”*

This is a **seriously misleading statement**, as there is **no factual basis** for the **false allegation** that our Mayor released confidential information. Rather, Mr. Appicello freely admitted (on page 12 of the ethics complaint)⁶ that he divulged privileged and confidential information to a third party, without first getting your permission to do so. As such, not only does it appear that **Mr. Appicello violated ORS 9.460(3)**, but **he violated ORPC Rule 1.6(a)**, as well.⁷ These are serious violations and should be reported to the Bar, so Mr. Appicello's conduct can be appropriately handled.

In paragraph 3, it states *“You are aware of the investigation into Mayor Williams' alleged violation of Council rules.”*

This is a misleading statement, as I am aware of two separate investigations. The first investigation was initiated by Mr. Appicello in August, 2015, and after 12 months, over \$30,000 of our taxpayer's money on three different private attorneys, Russell Poppe, who's interrogated over 20 of our Mayor's supporters, and other honest citizens, Jens Schmidt, and now Ross Williamson. The second investigation was initiated by Mr. Appicello in September, 2015, when he secretly submitted to the Oregon DOJ **false allegations** that our Mayor and I are both criminals. I am not aware of Mr. Appicello's **false allegations** against us, as the four attorneys

⁴ Letter to Oregon Attorney General, dated April 26, 2016, pg. 2 and Exhibit 6, pg. 4.

⁵ Letter to Oregon Attorney General, dated April 26, 2016, pg. 3 and Exhibit 7, pg. 7 at 10.

⁶ Letter to Oregon Attorney General, dated April 26, 2016, pg. 2 and Exhibit 5.

⁷ Letter to Oregon Attorney General, dated April 26, 2016, pg. 2 and Exhibit 6, pg. 4.

you have going after our Mayor and I, Mr. Appicello, Mr. Poppe, Jens Schmidt, and Ross Williamson, have all refused to answer any questions regarding either investigation.

In paragraph 3, it states “*you offered to settle the lawsuit if the City agreed to drop the investigation of Mayor Williams.*”

This is a false statement. I never offered to settle my lawsuit, even if the City agreed to drop its two investigations of our Mayor. Back in October, 2015, I volunteered to *stay* my lawsuit, until the results of the first investigation were to be made known in December, 2015, to encourage the City to wrap up the investigation, and make public the results. But when the investigator provided his report, it was divulged only to you, and not to our Mayor, which means that you not only **violated ORS 192.660(2)(b)**, but you **violated our Mayor’s civil and constitutional rights**, including his right to due process, guaranteed him under the 14th Amendment.⁸

In paragraph 4, it states: “*Your claims [sic] to represent [sic] a member of the news media and to represent the public interest, in this context, are not credible.*”

This is factually incorrect. As I fit your qualifications as a member of the news media, as you allowed another blogger, named Dave Morgan, to attend numerous executive sessions in 2013 and 2014.⁹ As a result, you are required to accept all bloggers as members of the news media, not only to attend your private meetings, but to have standing to hold you accountable, when you break the law.

There is also a serious question of a conflict-of-interest. Not only did Mr. Appicello publish transcripts of you discussing unauthorized topics in your secret meetings last year, but he initiated some of these discussions, as well. Also, between March, 2013, and June 13, 2016, Mr. Appicello has been advising you that discussing unauthorized topics in executive session, is allowed under ORS 192.640(2). This is a clear misinterpretation of ORS 192.640(2), as it only allows unannounced topics in open session. It does not allow unannounced topics in executive session.

Finally, it appears to be a conflict-of-interest, and highly unethical, for Mr. Appicello to be involved in responding to my records request, as the Court may see this as an attempt to cover up violations not only of ORS 192.640(2), but of ORS 9.460(3), ORS 192.660(2)(b), ORS 192.660(6), ORS 192.660(8), and well as numerous ORPC rules.¹⁰

Thank you for your time and service.

Sincerely,

⁸ Letter to Oregon Attorney General, dated April 26, 2016, pp. 2 and 3 and numerous exhibits.

⁹ Lincoln County Circuit Court action 15CV22131. <https://goo.gl/KloU3a>

¹⁰ *Id.*

Ross Smith

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CCs:

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