

TO: File

FROM: Commissioner Michael Schirling

DATE: April 14, 2021 (technical corrections made subsequent to April 14 for accuracy)

RE: Follow-up Discussion with Human Right Commission (HRC) Chair - HRC Case No. PA18-0017 & HRC Case No. PA19-0006

Allegation: Discrimination in public accommodations based on race, color and gender.

Detail: On March 25, 2021, the HRC Commission found reasonable grounds to believe VSP discriminated against [REDACTED], the complainant, on the basis of her sex and her race. On this same date, the HRC chose not to pursue litigation in the public interest. In a April 14, 2021 email to the assigned Assistant Attorney General, sent later in the day on the date this memo was initially drafted, HRC Executive Director Bor Yang advised the Commission did not vote but determined it would not immediately file before the complainant's private claim expired. Additionally, it was reported to DPS that the complainant requested that the HRC not post the investigative report on its website out of concern for safety from the subject of the VSP investigations, and the HRC honored the complainant's request.

On or about March 26, 2021 Department of Public Safety legal counsel requested a complete copy of all records and correspondence associated with this case from the HRC. After the Commissioner's discussion with Chair Christie as outlined below, a review of emails provided by the HRC in response to the DPS request, reveals numerous email exchanges between HRC Investigator and the complainant in September and October. These messages include discussions about the complainant's internal affairs complaint and VSP's decision not to open an investigation, the complainant's rationale for finding discrimination based on sex and race, and the complainant's claims that certain bodycam footage demonstrates VSP "protecting" the subject of the VSP investigations, [REDACTED].

Also on or about March 26, 2021 I reached out via email to the Chair of the Human Rights Commission, Representative Kevin Christie, regarding a number of concerns about the case and the outcome. After a number of attempts to connect, our schedules aligned on April 14, 2021 at 1:36 pm. Acknowledging that the Chair may not be able to engage in an interactive dialogue about the matter, I outlined the following concerns:

1. The Department of Public Safety (DPS) is in possession of correspondence from the HRC investigator to the complainant in July 2020 in which the investigator clearly and unequivocally indicates that there is no legal basis to find discrimination.
2. The HRC investigator corresponded with the assigned Assistant Attorney General after July 2020 (and after the initial investigation had concluded and report was being drafted) also indicating that no evidence of discrimination had been found.
3. DPS was later shocked to receive the HRC findings that stated exactly the opposite of what had been telegraphed by the investigator on the occasions outlined above and in all contacts between the investigator and assigned counsel during the investigation.
4. I observed that after approximately page 70 of the HRC investigator's report the tone, tenor, and voice of the report appears to change substantively and further observed that, based on the totality of information available to us, it appeared that the decision of the investigator appears had been changed.

5. I was concerned that the full Commission was not aware of the details outlined above.
6. Next, I detailed my serious concern that a government body would take action that was then held in secret. I further commented that while I have concerns about publicizing a decision that I believe does not match the facts, one that will harm the employees involved, the idea that this decision is secret is deeply troubling.
7. Additionally, I noted that it appears from information received on April 13 by DPS, that the complainant in this matter may be distributing copies of the report despite the fact that she requested – and the Commission agreed – that it would not be made public. I failed to mention (because I forgot) that the complainant had indicated her request for the case not to be public was because she feared retaliation or backlash from the subject of the VSP investigations (or words to that effect).
8. Finally, I noted that there was no other outlet to raise these concerns or appeal the finding in any way other than calling the Chair.

In closing, I offered to discuss the matter further as necessary or appropriate.