

STATE OF NORTH CAROLINA
COUNTY OF GASTON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15-CVS-3203

DAN DEITZ and ELLEN DEITZ
TUCKER,

Plaintiffs,

v.

CITY OF BELMONT, ADRIAN MILLER,
in his official capacity as City Manager for
the City of Belmont,

Defendants.

**AFFIDAVIT OF BARRY WEBB IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

BARRY WEBB, being duly sworn, deposes and says as follows:

1. I am over the age of eighteen and competent to testify. I have personal knowledge of the matters set forth in this Affidavit.

2. I am familiar with the matters complained of by Plaintiffs in the above-captioned action.

3. I was the City Manager for the City of Belmont (the "City") for over fifteen years and retired from the position in February 2016. I was named a Defendant in the above-captioned action in my official capacity as City Manager, although my understanding is the suit was later amended following my retirement to name the City's current City Manager, Adrian Miller, in his official capacity.

4. Over several months during 2014, allegations of individual mismanagement and misconduct by specific individuals employed with the Belmont Police Department, with respect to other employees and resources of the Belmont Police Department, came to my attention and to the attention of Debra Brown, the City's Human Resources Officer, who also serves as the City Clerk.

5. Based upon the nature and extent of the allegations, I made the decision to recommend to the Belmont City Council an internal investigation of the misconduct alleged against the three specific individuals.

6. In October 2014, after reviewing the allegations of misconduct, the Belmont City Council approved the investigation of the misconduct alleged against the three specific individuals. The City engaged U.S. ISS Agency, LLC to conduct the investigation as an agent and representative of the City.

7. This investigation was initiated and performed as a result of my recommendation, as approved by the Belmont City Council. Prior to the investigation beginning, I gave information to U.S. ISS Agency, LLC regarding the misconduct that had been alleged. I also gave direction to U.S. ISS Agency, LLC regarding the alleged misconduct that needed to be investigated against the three individuals. The purpose of the investigation was not to perform a department wide assessment, but rather, to concentrate on the allegations of the misconduct against the three individuals.

8. There are employees of the City of Belmont who perform Human Resources functions for the City. However, the City does not have, and did not have at the time the investigation was begun, sufficient resources available to conduct the type of investigation that was needed for the allegations at issue.

9. Before the investigation began, all employees of the Belmont Police Department received the Preamble to Interview, attached hereto as *Exhibit A*.

10. Before giving interviews, all interviewees received and signed an advisement of their rights and waiver, attached hereto as *Exhibit B*, which included a written *Garrity* warning and informed the interviewee that the interview was being conducted as part of an official administrative investigation within the City of Belmont Police Department.

11. I also informed City employees that the U.S. ISS Agency, LLC investigators would be acting as agents of the City, and that I expected them to cooperate to the same extent as though the investigation was personally conducted by me or another officer of the City.

12. All City and Belmont Police Department directives, policies, and procedures applied to the investigation, to the same as extent as though the investigation was personally conducted by me or another officer of the City.

13. Pursuant to the direction I had given to U.S. ISS Agency, LLC regarding the specific matters that needed to be investigated, the scope of the investigation included only internal administrative and personnel matters concerning the allegations made against the three individuals of the Belmont Police Department. Complaints by members of the public or operations involving members of the public were not part of the scope of the investigation for which I engaged U.S. ISS Agency, LLC.

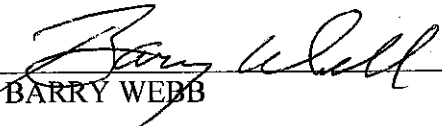
14. Any representations which may have been made by anyone to employees of the Belmont Police Department that the Department as a whole was under investigation were false.

15. As a result of the investigation, a report prepared by U.S. ISS Agency, LLC addressing the specific allegations of misconduct with respect to the three identified individuals was presented to the City (the "ISS Report"). The ISS Report served as the basis for planned disciplinary actions against the three specified individuals. Not all of the individuals remained with Belmont Police Department long enough for the planned disciplinary actions to be taken. However, I did take disciplinary action against one of the individuals investigated. This disciplinary action was taken as a result of the findings made in the ISS Report.

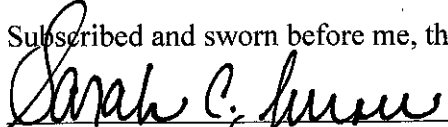
16. In refusing the requests made on behalf of Plaintiff for production of the ISS Report, I acted on my understanding that the ISS Report is a personnel record and is protected from disclosure to the public by N.C. Gen. Stat. § 160A-168. This was based on my understanding of the language contained in the applicable statute and my knowledge of the contents of the ISS Report. This was also based on my reading and interpretation of the North Carolina Court of Appeals decision in *David B. Wind v. The City of Gastonia*, 751 S.E.2d 611 (N.C. 2013).

FURTHER THE AFFIANT SAYETH NOT.

Executed this the 10th day of May, 2016.


BARRY WEBB

Subscribed and sworn before me, this 10 day of May, 2016.


Signature of Notary Public

Sarah C. Turner
Printed Name of Notary Public

My commission expires: Jan. 18, 2021