

Legislative Ethics Board

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COMPLAINT 2023 – No. 2

In re Dhingra
April 11, 2023

NO REASONABLE CAUSE – ORDER OF DISMISSAL

I. NATURE OF COMPLAINT

The Complaint alleges that Respondent violated RCW 42.52.070 and RCW 42.52.160 by using her position as an elected official in addition to state resources to publicly endorse and advocate for Dr. Martina Morris and Dr. Morris’s professional and political aspirations.

II. JURISDICTION

The Board has personal and subject matter jurisdiction. RCW 42.52.320.

III. PROCEDURAL HISTORY

Complaint 2023 – No. 2 was received on February 4, 2023 and discussed at the regularly scheduled Board meeting on March 27, 2023.

IV. FINDINGS OF FACT

1. Respondent Dhingra is a member of the state Senate representing the 45th legislative district. She assumed that seat in 2017, was elected in 2018 and re-elected in 2022.
2. Complainant operates an organization called Police Strategies, LLC. This organization uses data science and technology to help police agencies implement effective policies, training programs and accountability systems.
3. House Bill 1363 relating to vehicular pursuits was introduced during the 2023 session and prime sponsored by Rep. Alicia Rule. Senate Bill 5352 was the companion bill and was referred to the Senate Law & Justice Committee of which Respondent is the Chair. The Senate bill never received a hearing in the Law and Justice Committee.
4. On January 31, 2023, HB 1363 was heard in the House Committee on Community Safety, Justice & Reentry of which Rep. Goodman is the chair. Complainant was asked by Rep. Rule to testify as to the data that he had prepared regarding police pursuits. Complainant signed in to testify but was not called because there were more people signed in to testify than time allowed.

5. Had Complainant been called to testify, he would not have taken a position on the bill; he wanted to express his concern that the data provided by Dr. Martina Morris, who represented an advocacy organization called Next Steps Washington, was misleading and he wanted to present some additional data. Dr. Morris did testify. Complainant ultimately submitted written testimony.
6. The bill was subsequently passed to the House Transportation Committee which heard the bill on February 20, 2023. Dr. Morris, on behalf of the Washington Coalition for Police Accountability, testified in opposition to the bill . Complainant did not sign up to testify at that hearing.
7. On January 31, 2023, Complainant submitted written testimony on HB 1363. In his written testimony, Complainant stated that Dr. Morris’s claim that the current restrictions on police vehicle pursuits that went into effect in 2021 reduced pursuit related fatalities by 73% was incorrect. Complainant alleged that this statistic, which came from Dr. Morris’s development of the data, was flawed.
8. In his written testimony, Complainant stated that the Washington Traffic Safety Commission (WTSC), a state agency, collects detailed data on all traffic fatalities including those related to police pursuits. Complainant argued that the legislature should consider the data put together by the WTSC as it is more reliable than the “crowd-sourcing” data used by Dr. Morris. He also alleged in his written testimony that her data inflated the overall fatality numbers by 2%.
9. On February 2, 2023, Dr. Morris wrote a letter to Respondent and Rep. Goodman responding to the written testimony of Complainant. She began this letter by stating that Respondent “contracts with law enforcement across the state to provide dashboards and other data programs.” She then disputed his claim that data from the WTSC was reliable and stated that “it is well known that official government data sources consistently undercount deaths that result from police activities” citing a well-known police pursuit expert.
10. Respondent has never met either Complainant or Dr. Martina Morris.
11. Also on February 2, 2023, Leslie Cushman who is involved with the Washington Coalition for Police Accountability, an advocacy organization, sent Respondent and other legislators an email indicating that Dr. Morris had reevaluated her data because of the intense scrutiny it was receiving and had taken her website down to work on it and that it was back up. As a result of her review, Ms. Cushman indicated that Dr. Morris decided to remove 2 fatalities from the pre-reform period.
12. On February 3, 2023, Complainant wrote another letter to Respondent and Rep. Goodman responding to the allegations about his work made by Dr. Morris in her letter to them of February 2, 2023.
13. On February 3, 2023, Respondent received the following request from Jennifer Dowling at FOX 13 News:

I’m working on a story about the police pursuit bill, HB 1363. I was talking to some of those who support the bill who say that the data that was being used in opposition to the bill was incomplete

or incorrect. They are specifically disputing statistics cited by Dr. Morris and the Fatal Encounters Project. I'd like to talk to you about that. Also, those critics also say the data on her website has changed over the past few days. They point to that as questionable. See example below.

14. Upon receipt of this email from Ms. Dowling, Respondent's LA forwarded it to Respondent and Respondent's communications person with the query "thoughts?"
15. Respondent indicated that Ms. Dowling should "talk to Leslie Cushman and her group about this."
16. Respondent's public information officer then forwarded to Ms. Dowling Dr. Morris's letter and Leslie Cushman's email address.
17. Complainant was interviewed by Ms. Dowling and that interview aired on February 3, 2023. In that airing, Ms. Dowling stated that they reached out to Dr. Morris for comment but had not heard back from her by the time the story went on the air.
18. In his interview with Ms. Dowling, Complainant explained that the data used by Dr. Morris was flawed and why he believed it was flawed.

VI. ANALYSIS AND CONCLUSIONS OF LAW

A. Introduction

Complainant alleges that Respondent violated three provisions of the Ethics Act. First, the Complainant states that the attacks against him contained in Dr. Morris's letter were funneled through Respondent's office and because of that, Respondent damaged his professional reputation and the reputation of his company in violation of the harassment provisions of .070(4).

Second, the Complainant also alleges Respondent violated RCW 42.52.070(1) by using her position to secure special privileges for Dr. Morris and the advocacy organizations she represents. According to Complainant, Respondent has essentially made Dr. Morris the official spokesperson for Respondent's office on legislation related to police reform and Dr. Morris's statements were used by Respondent as her official position on issues.

Third, Complainant alleges that Respondent used persons, money or property under her official control for the private benefit or gain of Dr. Morris and the advocacy organizations she represents in violation of RCW 42.52.160(1).

B. RCW 42.52.070 – Special Privileges

RCW 42.52.070 provides in pertinent part as follows:

(1) Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

....

(4) For purposes of this section, and only as applied to legislators and employees of the legislative branch, "special privileges" includes, but is not limited to, engaging in behavior that constitutes harassment. As used in this section:

(a) "Harassment" means engaging in physical, verbal, visual, or psychological conduct that:

(i) Has the purpose or effect of interfering with the person's work performance;

(ii) Creates a hostile, intimidating, or offensive work environment; or

(iii) Constitutes sexual harassment. . . .

In a recent opinion, the Board held that the term "work environment" as used in the statute encompasses, in addition to legislators and legislative staff, "those who make a living working with legislators and legislative staff such as professional lobbyists and agency staff. [The term] was not meant to encompass those persons who occasionally work with legislators or legislative staff on certain issues but who make their living away from the legislature. For those persons, the legislature is not a "work environment." *In re Kraft*, 2022 – No. 9, pg. 4. Complainant does not make a living working with legislators and legislative staff; therefore, he is not covered by the harassment provisions of RCW 42.52.070(4).

The portion of .070(4) dealing with conduct that interferes with the person's work performance only applies to those persons who are part of the legislative work environment. The Board has previously determined that Complainant is not part of the legislative work environment; therefore, it is not necessary for the Board to consider whether Complainant's work performance was impacted by Respondent's actions in this matter.

Complainant's allegation that Respondent violated subsection (1) of RCW 42.52.070 is also without merit. Jennifer Dowling requested information about Dr. Morris's data from Respondent. Respondent instructed her communications officer to provide Morris's letter and the email address of another person who had information on the police pursuit issue, which he did. Respondent never spoke to the reporter.

That Dr. Morris did not respond to requests from the reporter to be interviewed is not the fault of Respondent. Complainant claims that his reputation was harmed by the release of the letter to the reporter and yet Complainant is the only person in this situation who agreed to be interviewed by the reporter about the police pursuit data including commenting that Dr. Morris's data was flawed.

C. RCW 42.52.160 – Use of Public Resources for Private Gain

RCW 42.52.160 prohibits the use of persons, property or money (public resources) under a legislator's official control or direction, or in his or her official custody, for the private benefit of self or another unless that use is part of the legislator's official duties. "Official duty" means those duties within the specific scope of an official's employment as defined by the agency, or by statute, or by the state constitution. RCW 42.52.010(12). It is within the official duty of a legislator to provide information he or she has received while performing legislative duties that is not confidential¹ to a member of the public, including a reporter, who is requesting it.

¹ "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(5).

V. ORDER

IT IS HEREBY ORDERED: that there is no reasonable cause to believe Respondent violated either RCW 42.52.070 or .160.



Tom Hoemann, Chair

Date: April 11, 2023