

August 17, 2023

Final Investigative Report Concerning Ombudsman Complaint 2023-0550

COMPLAINT

On April 26, 2023, following the April 20th Anchorage Election Commission's Public Session of Canvass and Adoption of the Election Canvass Report, a constituent contacted the Ombudsman. The constituent questioned, based on comments by the Election Administrator and other members of the election team during the Commission meeting, whether the Director of the Municipality's Office of Information Technology had developed and posted an OIT USB policy in order to provide support for an election observer's challenge of the April 4, 2023 Municipal election, with the intent of overturning the election results.

FINDINGS

The complaint involving the Director of the Municipality of Anchorage's Office of Information Technology is **JUSTIFIED**.

BACKGROUND AND TIMELINE

April 26, 2023, a constituent contacted the Ombudsman to express their concerns regarding the alleged actions of the Director of the Municipality's Office of Information Technology (OIT). The constituent had listened to the April 20th Anchorage Election Commission's (Commission) Public Session of Canvass and Adoption of the Election Canvass Report. During the meeting an election observer discussed an election challenge they had filed with the Commission regarding the use of USB drives by the election team. Based on comments made by the Election Administrator and other members of the election team, the constituent questioned if the Director had developed and posted an OIT USB policy to provide support for the election challenge. The policy had been posted on the OIT intranet the same day that the challenge was filed.

During his investigation, the Ombudsman reviewed relevant emails, memoranda, policies, codes, photos, and videos. The Ombudsman reviewed 1,500+ documents that were provided in response to his records request, which did not contain the redactions that were in the documents provided to the Assembly Chair and the media. The Ombudsman also spoke with multiple members of OIT staff, and former members of OIT staff.

The Ombudsman determined that for several years, across multiple administrations and Directors, OIT had an internal policy that required that OIT staff could not insert USB drives into

MOA equipment unless the drives were scanned by OIT personnel. This policy was internal to OIT and did not have MOA-wide applications. MOA Policy & Procedure 1-1, signed by Mayor Mystrom on April 8, 1997, requires that the development of any policy with MOA - wide applications be developed through a collaborative process involving all department directors and department policy coordinators, and the Office of Management & Budget (OMB), which is tasked with assigning a P&P number to the final, posted document, that has been signed by the Mayor. P&P 1-1 also requires that any new policy must include procedures for implementing the policy, and that MOA employees be informed regarding the policy.

During his review, the Ombudsman determined that the requirements of P&P 1-1 were not followed in developing the OIT USB policy that was posted on the OIT intranet at 1:28 pm on April 11, 2023. The OMB Director informed the Ombudsman that she was unaware of the policy's existence until she was contacted by the Ombudsman. The OIT Chief Information Security Officer (CISO) acknowledged to the Ombudsman that the policy posted on the OIT Policy Statements page was an internal OIT policy and was not an MOA-wide policy.

To assist in understanding the chain of events related to this matter, the Ombudsman developed a timeline –

- Fall 2022: OIT staff hold discussions regarding turning a long-standing OIT internal policy that requires that any USB drive inserted into any MOA asset be scanned by OIT staff into an MOA-wide policy. A draft policy is developed (28-41) that includes language that states “Personnel must not insert any unauthorized USB device into any piece of MOA owned equipment without authorization from the Information Technology Department (ITD) and only after devices have been scanned for malware.” The conversation goes dormant in January 2023.
- 03/22/2023: The MOA Records Specialist emailed a link to Policy & Procedure 1-1 to the OIT Director, Marc Dahl. P&P 1-1 outlines the process for developing policies and procedures with MOA-wide applications. Policy & Procedure 1-1 was signed by Mayor Mystrom on April 8, 1997.
- 04/06/2023: Sami Graham, an election observer with the Trueblood campaign, filed a complaint regarding the 04/04/2023 Municipal election. Graham expresses concerns that a thumb drive is used to transfer data from Dominion equipment to an MOA computer. She stated that there is no way to know if the thumb drive is blank. The complaint form stated that “We request that anytime any device is connected to the Dominion machine a qualified and mutually agreed upon member of M.O.A. IT dept. be present to supervise”.
- 04/07/2023: MOA Election Administrator Jamie Heinz responds to Graham’s complaint, and notes that the Election’s thumb drives 1. Are stored in a wall safe inside a locked room which requires a code and thumb print to open; 2. Are encrypted and reformatted each year according to Municipal IT practices; and 3. Require a password to receive any download of election results. Heinz determined that there was no “misconduct”, and that the complaint would be treated as a suggestion related to administrative or management concerns.

- 04/11/2023: The morning of April 11, 2023, Dahl contacts the CISO to restart the conversation regarding developing a USB policy. At 8:42 am, the CISO emails the January 2023 policy draft to Dahl. Dahl and the CISO exchange several emails regarding the language for the policy. Dahl noted that he did not see any reference to thumb drives and data exchange on critical infrastructure – language is added to the draft policy. After the language is added Dahl directs that the revised policy be posted on the OIT intranet page.
- 04/11/2023: A new OIT “Policy Statements” page is created, and the USB policy is posted on the MOA intranet at 1:28 pm. An OIT employee was instructed to create the page and post the policy by the CISO, at the behest of Director Dahl –
Access to or Connection of Removeable Storage (USB) devices
Personnel must not insert any unauthorized USB device into any piece of MOA owned equipment without authorization from the Information Technology Department (ITD) and only after the USB devices have been scanned for malware by ITD. All insertions into MOA critical infrastructure technology must also be approved and/or observed by ITD management and must follow ITD Change management processes and procedures regarding patch management and malware remediation.
 1. USB devices includes any external device that utilizes a USB connection type (i.e., Type-A, Type-B, Mini USB, Micro USB, Type-C, USB 2.0, 3.0, etc.)
 2. Critical Infrastructure includes any MOA service that if compromised would pose a great risk or cause significant impact to Municipal operations and/or resources.
- 04/11/2023: At 2 pm, Dahl emails the posted policy and an intranet page link to himself, from his MOA email address to his MOA email address.
- 04/11/2023: Graham, who filed the original election complaint, signed in at the MOA Election Center at 2:34 pm and subsequently filed a handwritten document on behalf of herself and two other election observers for the Trueblood campaign, John Henry and Daniel Smith. The header on the document, which would go to the Election Commission, read “Election Commission – Failure to Comply with Law or Alleged Illegal Election Practices”. The document quoted, word for word, the internal OIT policy that had been posted 66 minutes earlier on OIT’s internal MOA intranet page, whose existence was only known to three MOA employees at that time, and that was not publicly posted or accessible. The election challenge document stated that “It is completely possible that the USB device is depositing or altering data, intentionally or unintendedly, not simply retrieving data, thereby nullifying the results of the election”.
- 04/11/2023: At 2:37 pm, Dahl emails the policy and intranet link to Graham, who had filed the 04/06/2023 election complaint, and who subsequently filed the election challenge on 04/11/2023.
- 04/12/2023: Director Dahl is captured on the security video cameras at the MOA Election Center picking up one of the election observer complainants, John Henry, at 11:27 am, and then dropping him off at the Election Center at 1:12 pm.
- 04/14/2023: At 11:31 am, Dahl emails information to Graham regarding an item for the 04/18/2023 Special Assembly Meeting agenda, AO 2023-45, which would recognize the decision-making authority of the assembly with respect to uncodified mayoral

directives, policies, and procedures, and other uncodified policies and administrative practices as applied to the legislative branch.

- 04/14/2023: Graham files another election complaint that references AO 2023-45 and states that the ordinance, “written by Christopher Constant – a candidate in the current election – is a direct response to the appeal dated Apr. 11. It changes the processes and procedures of an election during the middle of an election.”
- 04/16/2023: MOA Election Coordinator, Jamie Heinz responds, via email, to Graham’s 04/14/23 complaint. The subject line is “2nd Appeal Re. Thumb Drive” –
“This email is in response to your second appeal regarding the thumb drive, which was filed on Friday, April 14th. In this second appeal, you note AO 2023-45 as item 5.A. on the Special Meeting Agenda for Tuesday, April 18th. Please note that the items up for public hearing at the April 18th meeting were introduced at the April 7th Special Meeting. Attached, you will find an email stating that the agenda deadline for items to be submitted to the Clerk’s Office for inclusion in the April 7th Special Meeting was noon on Wednesday, April 5th. Also attached you will find an email, sent out at 10:57 a.m. on Thursday, April 6th, which provides the entire packet of materials for the April 7th Special Meeting. You will see included in the packet, item 6.A., AO 2023-45.

This ordinance was in the works and submitted to the Clerk’s Office before noon on Wednesday, April 5th which is before your initial complaint was submitted the afternoon of April 6th and the timeline is purely coincidence.”

- 04/20/2023: The Anchorage Election Commission held their Public Session of Canvass and Adoption of the Election Canvass Report. Agenda item 5.C.a, under New Business, was *The Election Commission – Failure to Comply with Law or Alleged Illegal Election Practices* re MOA ITD USB POLICY STATEMENT. This was the election challenge filed by Graham, Henry, and Smith. After hearing from Graham and Heinz, the Commission votes to deny the election challenge.
- 04/26/2023: A constituent, who had listened to the 04/20/2023 Commission meeting, contacted the Ombudsman with their concerns regarding the actions of Dahl related to the development and posting of the OIT USB policy on the OIT intranet on April 11th.

ANALYSIS AND CONCLUSIONS

During his investigation of this matter, the Ombudsman considered all of the documents and records that were available to him, the statements of witnesses and OIT employees and former employees, his personal observations of Dahl at the MOA Election Center during the April 5, 2022 Municipal Election ballot tabulation processing and the May 26, 2022 Logic and Accuracy Testing for the June 21, 2022 Special Election, and the timeline of events, before making a determination. The key factor for the Ombudsman was the timing of events, which supports the conclusion that Dahl initiated and directed the revision and posting of the OIT USB policy to provide support for a challenge of the April 4, 2023 Municipal election that was filed by election observers with the Trueblood campaign.

Multiple governmental, business, and private organizations have implemented USB drive policies like the USB policy developed and posted on the OIT intranet page on April 11th - the Ombudsman acknowledges that many organizations consider such policies to be a best practice. However, documents show that Dahl restarted the conversation regarding the draft OIT USB policy on the morning of April 11th, after Graham had submitted an election complaint on April 6th that referenced the use of USB drives. The documents also show that Dahl had requested that the policy be revised to include a reference to thumb drives and the exchange of information on critical infrastructure, and that the policy be posted on the OIT intranet that same day – the day that Graham subsequently filed an election complaint that cited, word for word, the OIT policy that only three MOA employees were aware of, and that was not available to the public or publicly posted. Documents also show that Dahl emailed the policy to Graham on April 11th, the day that her election complaint was filed.

On April 14th, Dahl emailed Graham to inform her regarding an ordinance, 2023-45, that was being heard at a Special Assembly Meeting on April 18th. The same day, April 14th, Graham filed an election challenge that claimed that AO 2023-45 had been introduced in response to her April 6th election challenge, although the draft ordinance had been submitted to the Clerk's Office on April 5th. Dahl's emails to Graham demonstrate that he was acquainted with Graham and was feeding her information to assist her in formulating challenges to the April 4th Municipal election. Video surveillance recordings from the Election Center that show Dahl picking up and dropping off John Henry at the Election Center on April 12th, demonstrate that he is acquainted with Henry, who, along with Graham and Daniel Smith, submitted the April 11th election challenge on behalf of the Trueblood campaign.

Any reasonable person can connect the dots – there is no way to dismiss the timeline of events as merely coincidental – the timeline and supporting documents demonstrate that Dahl was acquainted with at least two of the three Trueblood election observers who filed the election challenge on April 11th, and that the dormant OIT USB policy development discussion was restarted on April 11th at the instigation of Dahl, who directed that the final policy be posted on the OIT intranet page that same day. The timeline, and Dahl's email to Graham demonstrate that Dahl was directing the development and posting of the policy to provide support for the impending election challenge. As an executive with the Municipality, Dahl has an obligation to remain politically neutral in the performance of his official duties – an obligation that he failed to meet multiple times regarding Graham's election challenges.

The Ombudsman's personal observations of Dahl's actions at the Election Center in 2022 demonstrate that Dahl has trouble separating his personal political beliefs from his role as an executive with the Municipality of Anchorage – the inability of any Municipal executive to separate their personal political beliefs from their professional role is problematic for the Municipality and Mayoral Administration that they serve.

AMC 28.80.015.B states that "All ballot tabulation processing using a software application shall be under the supervision of the municipal clerk and observance by at least one of the following selected by the municipal clerk:

1. Internal Auditor or designee.
2. IT director or designee.
3. Municipal ombudsman or designee.”

The Clerk invited the Internal Auditor, IT Director, and Ombudsman to observe the ballot tabulation processing at the Election Center on the evening of April 5, 2022. The Internal Auditor and Ombudsman arrived and joined the Clerk and elections staff in front of the election computers – the IT Director arrived and effusively greeted the election observers and joined them, rather than sitting with the other official Municipal ballot tabulation observers. The Director discussed the election with the election observers, while representing the Municipality as an official ballot tabulation observer. The Ombudsman was troubled by the actions of the Director and later that evening expressed his concerns to the Clerk and Election Administrator – the Ombudsman believed that it was inappropriate for the Director to be discussing the election and expressing partisan political opinions to election observers, while serving as an official Municipal ballot tabulation observer. The Ombudsman discussed filing a complaint with the Ethics Board but decided not to file.

The Ombudsman and Internal Auditor were invited to observe the May 26th, 2022 Logic and Accuracy Testing at the MOA Election Center, for the June 21, 2022 Special Election. Shortly after they arrived, Dahl arrived – he was present as a member of the public and was not representing the MOA. Dahl was provided with a yellow lanyard to wear around his neck – yellow signified that he was a member of the public and that he had to stay on the “yellow brick road”, a pathway outlined in yellow that circles the core area of the Election Center. Persons with yellow lanyards must stay on the outlined pathway. Dahl kept crossing the pathway’s boundary, entering areas of the Election Center that were off-limits to persons with yellow lanyards. The Clerk warned Dahl several times to stay on the pathway – when he thought that the Clerk was not looking, Dahl walked over to the reception desk, took off his yellow lanyard, reached across the reception desk to get a different colored lanyard, and put that lanyard around his neck. That lanyard provided greater access to areas within the Election Center. The Clerk observed Dahl’s actions and told him that he could not assign himself a different color of lanyard – he was present as a member of the public and he needed to wear a yellow lanyard.

An executive with the MOA told the Ombudsman that Dahl had commented to him, at work, that the April 2022 Municipal election had been “rigged”. Dahl’s comments, actions at the election center, and his actions regarding the April 11th development and posting of the OIT USB policy demonstrate a pattern of behavior that is troubling and that needs to be addressed – his actions and inability to separate his personal political views from his role as an executive with the MOA has damaged the reputation of OIT and has eroded the trust of MOA employees in the ability of OIT to be impartial and neutral. Given the wide-ranging access that OIT staff has to MOA facilities and systems, it is imperative that MOA employees have confidence in OIT’s ability to be impartial and neutral – the actions of Dahl as OIT Director have negatively impacted the hardworking, dedicated OIT employees who come to work everyday doing the best they can to keep the MOA functioning smoothly – they, and the public deserve better.

Based on the available evidence and the actions of the OIT Director, the Ombudsman finds this complaint regarding the Municipality of Anchorage, Office of Information Technology, Director to be **JUSTIFIED**.

Based on the investigation of this case, the Municipal Ombudsman recommends:

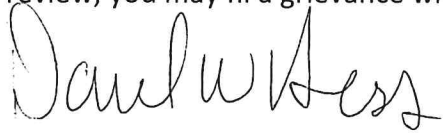
- That the Administration terminate Marc Dahl’s employment with the Municipality of Anchorage. His actions have damaged the reputation of the Municipality’s Office of Information Technology and has undermined the trust of other Municipal departments, agencies, and employees that is necessary for the department to accomplish its mission. His actions have also damaged the reputations of the hardworking, dedicated OIT personnel who were simply following the directives of their department director. ***The Administration did not provide a response to this recommendation.***
- That Anchorage Municipal Code be revised to apply the restrictions regarding participation in Municipal elections that apply to the Ombudsman’s Office to the directors of all Municipal departments, utilities, and enterprises. ***The Administration did not provide a response to this recommendation.***
- That the Assembly and Administration work together to develop and implement in Municipal Code penalties for tampering or attempting to tamper with Municipal elections. As a Home Rule Municipality that encompasses 40% of the state’s population, the Municipality should not have to rely on state statutes regarding tampering or attempting to tamper with our election. ***The Administration responded – “The Administration will work with the Assembly to develop and implement Municipal Code addressing tampering or attempting to tamper with Municipal elections.”***
- That the Administration implement and require annual ethics training for all Municipal employees. The company that currently provides our mandatory annual online training has an optional ethics module. ***The Administration responded – “The Administration recommends that all Municipal employees – from both the Executive Branch/Administration and Legislative Branch/Clerk’s Office/Assembly – receive annual ethics training, to include proper interaction between Municipal employees who work on critical election infrastructure and the public.”***

The Ombudsman reasonably believes that there may have been a violation of state election statutes and will be forwarding a copy of the Final Investigative Report to the State of Alaska, Office of Special Prosecutions.

The Administration was provided with a copy of the preliminary investigative report on July 25, 2023. The Administration’s written response was received on August 17, 2023. Their responses to the Ombudsman’s recommendations were incorporated into the final report, and their comments are appended to the report. The Administration, at the request of the Ombudsman, provided a copy of the preliminary report to Dahl on July 31, 2023, to allow him an opportunity to provide comments – he has not submitted any comments regarding the preliminary report.

Based on these findings and these recommendations, this case is closed.

If you object to the Ombudsman's decision to decline, discontinue, or close this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C. 2.60.165.

A handwritten signature in black ink that reads "Darrel W. Hess". The signature is written in a cursive style with a large, prominent "D" at the beginning.

Darrel W. Hess
Municipal Ombudsman



MUNICIPALITY OF ANCHORAGE
MAYOR DAVE BRONSON

DATE: August 17, 2023

TO: Darrel W. Hess, Ombudsman


FROM: Mario Bird, Chief of Staff *MLB*
Kent Kohlhase, Municipal Manager *KK*

SUBJECT: Preliminary Investigative Report Concerning Ombudsman Complaint
2023-0550

Please accept this as the Administration's response to the draft Ombudsman's report 2023-0550 dated July 24, 2023. The Administration is supportive of the process and would like to recognize that the Administration and its employees have cooperated to the fullest extent asked by the Ombudsman. The Administration agrees that Election integrity is critical to the legitimacy of the government and the public trust.

After reviewing the Ombudsman's preliminary report, the Administration appreciates the level of detail that went into the process. Please see our comments and areas of identified response below.

1. The Director of the Municipality of Anchorage's Office of Information Technology (OIT) did not follow Policy & Procedure 1-1, specifically regarding the publication of the revised OIT policy that appeared on the OIT intranet page on or about April 11, 2023. Though the process used by the IT Director was improper, the Administration will introduce an updated MOA-wide policy that accomplishes many of the OIT policy goals, including protection of MOA OIT assets, especially screening for malware that can enter an MOA system through a thumb drive or other standalone device.
2. The Administration recommends that all Municipal employees – from both the Executive Branch/Administration and Legislative Branch/Clerk's Office/Assembly – receive annual ethics training, to include proper interaction between Municipal employees who work on critical election infrastructure and the public.
3. The Administration will introduce a personnel policy or code change which applies to Municipal employees working on critical infrastructure during elections, specifically addressing appropriate limitations on communication between such employees and public or partisan vote observers.

4. The Administration will work with the Assembly to develop and implement Municipal Code addressing tampering or attempting to tamper with Municipal elections.
5. The Administration respectfully requests that the final report adhere to AMC 2.60.145 by removing any identifying information for municipal witnesses (excluding the subject employee).
6. Per the Ombudsman's request, Mr. Marc Dahl was provided a copy of your preliminary report on July 31, 2023, so that he may also provide comments. We ask that the Ombudsman's office please communicate directly with Mr. Dahl going forward. Please feel free to directly contact Mr. Dahl at:  should you wish to do so.

Thank you for receiving the comments of the Administration. It is respectfully requested that these comments be attached to the final report consistent with the Municipal Code. Here ends the comments of the Administration.