

Memorandum

To: Sally J. Daggett, Esq.

From: Tawny L. Alvarez, Esq.

Date: January 3, 2022

Re: Executive Findings – City of South Portland Investigation

The Complaint:

Brooke Bolduc, at the October 12, 2021 City of South Portland City Council meeting made the following public statement:

Hi my name is Brooke and I live in South Portland on Sawyer Street. I am dialing in today because . . . I have a roommate who basically lodged or made an instagram story about bad service that she and I had received as well as accusations of transphobia that we were hearing about. It was one instagram story and then one morning while I was at work my roommate, who is a person of color, and myself, (I am a person of color, I am black) hear that the police were called to our house over what basically equates to a bad yelp review; we are, it was, one post a week prior. And I wanted to highlight this because I find it very disturbing and upsetting that someone who runs on a platform of equality would basically weaponize their power both politically or rather racially to terrorize people in our community . . . I would like to lodge a formal complaint about this incident, and I would like it addressed or looked into. I can't let this go; it was completely violent and inappropriate, and I think especially considering the issue of George Floyd last year and the supposed or apparent awareness of racial issues. I find it very deeply alarming and offensive and disturbing. I can't even feel safe in my own home because of this situation. And I did make it clear that the inconvenience that Katie [Bruzgo] had experienced due to the bad press for her business, which is all completely warranted by the way, is really just, I just I find it completely inappropriate she would weaponize the police against black and brown people living in this community. There's been a complete lack of apology or any restitution for this so I would like for this to be addressed and looked at and looked into.

As a result, Attorney Sally Daggett, as the Corporation Counsel for the City of South Portland, hired me to investigate the allegations concerning an incident involving the Police Department's issuance of a Cease Harassment Notice to Sarah Williams.

The Charge:

First, to determine whether the Cease Harassment Notice issued to Sarah Williams on September 23, 2021, was supported by facts under the law. Second, to determine City Councilor Katie Bruzgo's involvement, if any, in the Cease Harassment Notice's issuance.

The Process:

Shortly after being engaged, I spoke briefly with Scott Morelli, the South Portland City Manager. We did not discuss the content of the complaint, but I did ask him to reach out to Katie Bruzgo to inform her that I had been engaged and that I would be reaching out to her. That same day I was able to connect with Katie Bruzgo by phone and asked her to provide me with images of the social media postings that were the basis for the Cease Harassment Notice. Katie Bruzgo indicated that she had not filed a complaint with the South Portland Police Department or asked for the Cease Harassment Notice to be issued. I indicated to her that if this was the case, we may not need to speak, but for now, I needed to understand the social media postings that led to police involvement.

Prior to receipt of any social media postings/images, I contacted and interviewed Mylo Nonni and Sarah Williams. I asked both of these individuals to send me copies of the documents/postings they had made on social media concerning Omi's Coffee Shop, Katie Bruzgo, or Naomi Hall. Mylo Nonni did not provide any follow-up documents. Sarah Williams provided copies of posts and a copy of the Cease Harassment Notice they (Sarah Williams uses the pronoun they/their) received. I requested that Sarah ask their roommate, Brooke Bolduc, to call me or otherwise contact me so I could understand Brooke Bolduc's experience. I received images and postings from Katie Bruzgo. I was able to have a phone interview with Brooke Bolduc and also a follow-up phone interview with Sarah Williams. Brooke Bolduc and Sarah Williams provided additional images of social media posts related to the matter.

I made a FOIA request to the City of South Portland and did not receive any substantively relevant documents. I spoke to Katie Bruzgo by phone a second time and asked her to provide me with any documents relevant to the matter. I interviewed Naomi Hall, who is Katie Bruzgo's wife, and the Complainant listed on Sarah Williams' Cease Harassment Notice. I asked Naomi Hall to provide copies of all of the documents relevant to the complaint and a copy of her statement/complaint to the police.

I was not able to interview Officer Steven Connors of the South Portland Police Department prior to his passing. Officer Steven Connors was the officer who issued the Cease Harassment Notices to Sarah Williams and Mylo Nonni. The police file indicates that he also interviewed Naomi Hall and Katie Bruzgo. If I had been able to interview Officer Connors I would have posed the following questions to him: 1) What role, if any, did Katie Bruzgo play in offering evidence as to the Cease Harassment Notices issued to Mylo Nonni and Sarah Williams?; 2) What posts or statements were identified by Naomi Hall or Katie Bruzgo as being harassing in nature?; 3) Were you aware prior to issuing the Cease Harassment Notices, either based on previous work, or through the social media posts, that Katie Bruzgo is a City Councilor?; 4) What standard does the City of South Portland Police Department use in

determining whether a Cease Harassment Notice should be issued? Upon providing oral findings to the Corporation Counsel, consistent with that set forth here, I obtained a copy of the City of South Portland Police Department file on the incident, which assisted in providing information concerning questions one and two above.

The Legal Standard:

A Cease Harassment Notice is issued when an individual engages in conduct that is intended to harass, torment and/or threaten a person without reasonable cause. The State of Maine Judicial Branch's publication, *A Guide to Protection from Abuse & Harassment Cases* (published June 2018)¹ defines harassment, which would entitle a victim to a Cease Harassment Notice, as:

- 1) Three (3) or more acts of intimidation, confrontation, actual or threatened physical force by the defendant, made with the intention of causing fear, intimidation, or damage to personal property, and which do in fact cause fear, intimidation, or damage to personal property; or
- 2) A single act or course of conduct constituting a serious criminal act, such as sexual assault, terrorizing, kidnapping, aggravated assault, arson, or violation of privacy; or
- 3) Violating or interfering with the plaintiff's constitutional or civil rights.

Id. at 21. This standard is set forth in state statute, 5 M.R.S.A. § 4651(2). The definition of harassment does not include any act that is protected by law. 5 M.R.S.A. § 4651(2).

In addition to understanding the legal standard related to the issuance of a Cease Harassment Notice, understanding of Section 230 of the federal Communications Decency Act is important, as all the speech at issue here occurred on social media. Section 230 of the Communications Decency Act, *Protection for private blocking and screening of offensive material*, provides in part:

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

....

(e) Effect on other laws

(1) No effect on criminal law Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

....

(3) State law Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No

¹ Available at: <https://www.courts.maine.gov/help/guides/pa-ph-guide.pdf> (last accessed Jan. 1, 2022).

cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

....

(f) Definitions

....

(2) Interactive computer service The term “interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider The term “information content provider” means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

47 U.S.C. § 230.

Factual Findings:

While there are dozens of Instagram or Facebook Story posts relevant to the current matter, there are only 17 Instagram or Facebook Story posts that were made prior to issuance of the Cease Harassment Notice. An Instagram or Facebook Story post is a twenty-four-hour post that can be found at the top of the Instagram or Facebook newsfeed. The content can be images, videos, or text, but the content will disappear after 24 hours unless the user saves the Instagram/Facebook Story as a highlight. Of the 17 posts relevant to this matter, seven (7) of the posts were made by the handle/username @mylosghost (an account operated by Mylo Nonni). These seven (7) posts were then regrammed/reposted by the handle/username @poonani.mami (an account operated by Sarah Williams). Regramming a post is when an Instagram user (someone who has an Instagram handle) reposts someone else’s post or story. Regramming can be done by taking a screenshot of the original post or story, and Instagram etiquette would be to give the original user/handle credit. As Mylo Nonni did not provide a response to my request for documents, I only have copies of Sarah Williams’ regrams of the content. No original posts from @mylosghost were provided by Naomi Hall or Katie Bruzgo to me, nor were any original @mylosghost posts in the police file. Naomi Hall provided the content of 10 Instagram and Facebook Story images (no original images from @mylosghost, only regrams from @poonani.mami) to the South Portland Police Department and provided a statement supporting her request for a Cease Harassment Notice.

Based on the police report for this matter, on September 17, 2021, Naomi Hall met with Officer Steven Connors at the South Portland Police Department to report an allegation that she was being harassed on social media by a former employee and a former customer. Officer Steven Connors requested that Naomi Hall e-mail the posts to him and complete a witness statement.

On September 18, 2021, Naomi Hall provided images of the referenced social media posts and statements on behalf of herself and Katie Bruzgo to Officer Steven Connors of the

South Portland Police Department in support of the issuance of Cease Harassment Notices against Mylo Nonni and Sarah Williams. After a September 22, 2021 meeting with Officer Steven Connors, Katie Bruzgo decided not to proceed with seeking a Cease Harassment Notice, but Naomi Hall wished to continue with the process. On September 22, 2021, Naomi Hall provided Officer Steven Connors with an updated statement in support of her request for the issuance of Cease Harassment Notices against Mylo Nonni and Sarah Williams. The similarities in the written statement provided by Naomi Hall to Officer Steven Connors on September 22, with the written statement by Katie Bruzgo, which was provided to Officer Steven Connors by Naomi Hall on September 18, leads me to believe that Katie Bruzgo either assisted Naomi Hall in writing her statement, or Naomi Hall used the sentiments previously expressed by Katie Bruzgo to support her request for a Cease Harassment Notice. Additionally, Naomi Hall's use of the phrases "our" throughout the statement, as well as the continuous use of allegations that are unsupported by the documents provided to Officer Steven Connors, are concerning.

During our interview, Naomi Hall stated to me that her reasoning for filing the request for the Cease Harassment Notice was because of the inclusion of images of her child in the postings and discussions about a personal family matter. Neither of these topics, however, were included in the documents that were submitted to the South Portland Police Department. While one post from @myloghost discusses Naomi Hall's parentage, it does not discuss the personal family matter she identified during her interview. As to the statement that there were posts including images of Naomi Hall's child, I do not find any posts made prior to the issuance of the Cease Harassment Notice to have included images of a child.

Conclusions:

I find that Officer Connors was aware of Katie Bruzgo's involvement with the matter and aware that Katie Bruzgo is a City Councilor. Officer Connors met with both Katie Bruzgo and Naomi Hall in connection with the matter. Katie Bruzgo provided a statement related to the matter, but indicated she did not wish to proceed with completing cease harassment paperwork. I find that her decision not to proceed, however, is immaterial based on the broadness of the complaints by Naomi Hall, the lack of reference to Naomi Hall in original posts made by Sarah Williams, the reference to Katie Bruzgo in the original post made by Sarah Williams, and the breadth of the Cease Harassment Notice.

Sarah Williams' amplification or regramming of @myloghost posts is protected under 47 U.S.C. § 230 and could not be used to support the issuance of a Cease Harassment Notice against her as set forth in 47 U.S.C. § 230(c)(1) ("No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider") and § 203(e)(3) ("No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.").

Calling an entity transphobic is not harassment, in the same way that calling an entity or individual racist is not harassment. It is an opinion based on an experience. As a result of all of the above, I make the following conclusions: (1) Sarah Williams did not threaten Naomi Hall, Katie Bruzgo, or Omi's Coffee Shop. (2) Naomi Hall, in requesting the Cease Harassment Notice, was acting on behalf of herself, Omi's Coffee Shop and Katie Bruzgo. (3) The only

independent content created by Sarah Williams, and alleged to support the issuance of the Cease Harassment Notice, is:

- (a) Tagging @mylosghost and @omiscoffeeshop;
- (b) A copy of an email from Sarah Williams to Omi's Coffee Shop requesting a refund and explaining their experiences. A reference is made to Omi's as transphobic, but the post did not directly make statements concerning Naomi Hall;
- (c) Statement directed to Omi's and Katie Bruzgo asking if they care about the community;
- (d) Statement concerning the delay in responding to a request for a refund from Omi's Coffee Shop; and
- (e) A post that conveys displeasure of a post made by @mylosghost noting that "Black and brown people can be talking about racial identity. It's not a white person's place to say who is and isn't a person of color or a black person."

These five statements represent the only original content created by Sarah Williams. Such content is insufficient to support a Cease Harassment Notice under 5 M.R.S.A. § 4651(2), as a reasonable person could not find that there were three or more acts of intimidation, confrontation, or actual or threatened physical force, nor was there a criminal course of conduct. This conclusion is further supported by the fact that none of Sarah Williams' original posts tagged Naomi Hall or were directed at Naomi Hall. Katie Bruzgo and Omi's Coffee Shop were, however, tagged in the posts—further supporting a conclusion that Naomi Hall was acting on behalf of herself, Katie Bruzgo, and Omi's Coffee Shop.

Accordingly, I find the contention Brooke Bolduc made at the City Council meeting to be substantiated in part. Whether the Cease Harassment Notice was directed at Sarah Williams because of her race is unclear, but Naomi Hall was aware of Sarah Williams' race based on social media images as well as real life interactions. This is evidenced by an allegation from Naomi Hall that Sarah Williams harassed Omi's Coffee Shop's staff at some point in the past.³ The Cease Harassment Notice, while requested by Naomi Hall, was premised on non-harassing posts concerning Omi's Coffee Shop and Katie Bruzgo, which were unrelated to Naomi Hall personally. The original content in posts created by Sarah Williams are the only relevant posts in determining whether a Cease Harassment Notice should be issued under 47 U.S.C. § 230(c)(1), because the regramming of another user's posts (in this case, Sarah Williams' regramming of Mylo Nonni's content) does not constitute speech or publication under the Communications Decency Act. When reviewing only Sarah Williams' original content, the posts could not be determined by a reasonable person to be acts of intimidation, confrontation, or actual or threatened physical force against Naomi Hall and, therefore, there was insufficient evidence to justify the issuance of a Cease Harassment Notice against Sarah Williams.

³ This allegation of harassment of staff is beyond the scope of this investigation but is not supported by any evidence provided in the police file in support of the Cease Harassment Notice or to me during the investigation.