SPRINGDALE CITY COUNCIL
COUNCIL INVESTIGATIVE COMMITTEE

* * *

The above-captioned proceeding took place before Chairperson Meghan Sullivan-Wisecup and Committee Member Jeffrey Anderson at the Springdale Municipal Building at 11700 Springdale Pike, Springdale, Ohio, on Thursday, the 5th of July 2018 at 7:00 p.m.

* * *
APPEARANCES:

On behalf of the Council Investigative Committee:

Dinsmore & Shohl, LLP

By: Alan H. Abes
Attorney at Law
255 East Fifth Street
Suite 1900
Cincinnati, Ohio 45202
513-977-8200
abes@dinsmore.com

* * *
MS. SULLIVAN-WISECUP: Good evening.
I'd like to call tonight's CIC meeting to order.
Let's start with the Pledge of Allegiance. Please stand.

(Pledge of Allegiance.)

MS. SULLIVAN-WISECUP: I actually accidentally left off roll call, so we'll add roll call. Jeff, are you here?

MR. ANDERSON: Present.

MS. SULLIVAN-WISECUP: I'm present as well. Both Jeff Anderson and Meghan Sullivan are present. Next, we have the approval of the June 21st minutes. Corrections?

MR. ANDERSON: I do. I'd like to make corrections for those minutes. I can just run through them. On page 1, it lists me as "Vice Chairman," I think that should say "Member." On page 11, Row 4, it says "of months" and it should say minutes, so instead of "of months," it should say "minutes." The full sentence was: Let me play back for a couple of minutes to make sure I understood the process that we've been through. The original minutes the draft minutes said "months." I did not talk that long.

On page 37, line 4, it says -- it has
an abbreviation, DAS, where the sentence says: It should not be more than the people who were at the DAS or in the attendance to begin with. I believe the word should be dais instead of DAS.

On page 24, line 13, it says: I guess my preference would be if we were just going to respond to that e-mail threat. I believe that should say thread. Those are the only changes I had.

MS. SULLIVAN-WISECUP: Okay. I don't think it was threatening. Okay. I will let them know, we'll make those changes. I didn't see any, but I didn't go through. I didn't notice those, so awesome, thank you.

MR. ANDERSON: So I guess I move to adopt the minutes as amended.

MS. SULLIVAN-WISECUP: I second. All in favor of adopting them as amended? Opposed? Abstained? Okay, those are accepted.

New business, we have introduction of our new legal counsel. We have Alan Abes from Dinsmore, and he has graciously come into the family here. Would you like to introduce yourself a little bit here, please?

MR. ABES: Sure. Alan Abes from
Dinsmore. I talked to council a couple of weeks ago in advance of my being retained, and I'm happy to help. Obviously, my job is determined by the committee, so whatever you ask me to do, that will be my role, and we'll keep it as efficient as we can to get our work done as quickly as we can.

MS. SULLIVAN-WISECUP: Welcome. We'll move now to investigative process. I think we just want to go through and talk about the options we have as far as our investigative process and make a decision on how we want to go forward with the investigative process.

Alan, did you want to kind of walk us through our options as far as investigative process going forward?

MR. ABES: Sure. So the committee has chosen to conduct its business in open meetings. So the bulk of what we do will be conducted here for the public to hear so there's no question about what's happening. Obviously, the purpose of the investigation is to determine what happened with respect to a sensitive situation that happened in the confidential executive session, and we want to make sure that everything we do is above-board and transparent.
and ultimately leads to an outcome.

   Within that context, we do have the option of having certain conferences privately with me under the case law from the First District Court of Appeals, which governs Hamilton County, that can be done under or for two reasons: One is to provide information and the second is to ask questions. So to the extent that we feel it's appropriate to have a private conference, because that's typically what's done with an attorney under the attorney-client privilege, also the attorney work product doctrine, the committee has the option of doing that. But we've decided or you've decided and instructed me that most of our work will be done in public.

   To the extent that we have certain communications with each other, those also fall into the case that I described, so those are attorney-client privileged, but the committee can always vote to wave attorney-client privilege with respect to anything that needs to come up in the meeting.

   MS. SULLIVAN-WISECUP: Okay. Jeff?

   MR. ANDERSON: Yeah. So we're just talking about our options in general. Going into
this, we've had a couple of meetings without you, and we had outlined some ideas for how we thought this could occur. We had listed a set of scope items in our first meeting that we thought is relevant for the CIC to take care of, so there were four different items that we believe were in scope for our work.

When we're talking about investigative process, it's really about, at least for this step, the first two scope items, which was to -- the first one was to investigate the breach and the second was to interview each person present to make an accounting in lieu of that. So the two major items that we're after there, and then there's some work product we need to make after that.

The process that we were thinking about is just a set of questions, right, so we've identified a number of people that we think that have information that would be relevant to our scope, and we're going to send them a list or a set of questions. And then I guess we have the option to either have written questions, all oral questions, a combination, or one and then the other; is that right?
MR. ABES: That's right. So in lieu of calling everybody to testify in an open committee session or otherwise and getting duplicative answers or getting information that's not particularly helpful, one option is to send everybody a set of written questions. My thought would be to send everybody the same master set of questions so they're answering the same inquiries, but also to send supplemental questions to certain people based on the facts as we know or suspect them right now.

In preparing to help you, I reviewed the relevant council minutes, and there were extended discussions about what we're investigating in those minutes. So it's clear that there are certain people who were involved in particular events or have certain knowledge, and we will want to ask supplemental questions about those events or the facts that they know or have communicated to council before.

So to the extent that we can streamline the process, it would make sense to send those written questions, and then when we get the answers back, then, we can evaluate what else we need. So at that point, we could either send
further written questions or we could call certain people in to testify live. It might be that we get 90 percent of what we need from the answers to the written questions, but there might be gaps or we might have further inquiries about their answers or their answers might be unclear, ambiguous, et cetera, so we would want to ask them questions in person to clarify. But it's really our option or the committee's option to do whatever you think is most efficient, and we'll conclude the investigation as quickly as possible but also as thoroughly as possible.

So you really have maximum flexibility. There's no prescribed rule for this. Whatever you think is the most appropriate method, you can choose. We would send out any questions pursuant to subpoena, so there's an obligation to answer those questions; otherwise, it would certainly be voluntary. And when we do that, we'll have people sign in front of a notary so they're swearing that the answers are true, and then when we get that back, then, we'll evaluate where we go from there.

My suggestion would be to have the answers come directly to me. At that point, they
are attorney work product, and they would not be public records, and then we could evaluate where we need to go from there. To the extent, however, that we rely on any of those answers in issuing the report, then, those answers would become public. So essentially, you can think of it as sending it to me as a mailbox. While it's in the mailbox, they're not public records; but to the extent we take them out of the mailbox and use them publicly, then, they become public records. So the potential downside is that anybody who is asked to answer the questions would not have a reasonable belief that their answers would be kept confidential. However, based on the way this investigation has been structured, I don't think that's a reasonable expectation anyway, and that's not really the way that you've decided to do business, which I think is perfectly appropriate.

MR. ANDERSON: So I think we should be clear about that, though, because that's a decision point that we've made and we've made decisions to that fact, but I don't know that we ever stated our opinions on that. I know there's kind of a -- there's conflict there, right, so do we feel that the people that we're asking the
questions of, that there's risk that they wouldn't be completely truthful if they knew it was going to be in the public eye? Or is there -- or do we feel like we'll get to a different set of truths if they feel that -- if there's some sort of confidentiality or blind associated with their answers? And I know there's ways that we can address that, but I'm curious what your view on that is.

MS. SULLIVAN-WISECUP: My view is, because I wasn't sure exactly -- as we had talked about before was, I wasn't sure exactly at what point in time it was going to be released or if those answers were going to be released in whole or in part depending on how the report came out. So I wasn't exactly sure until right now exactly what the confidentiality portion of that was definitely going to be. I know in life if there's an expectation of it being confidential, that people would be more honest; but at the same time, we did say that we wanted things to be open and we wanted things to be what they were. I'm kind of torn on it because I want the most truth possible, and I'm trying to figure out how exactly we would get the truth, or even, either way, if we'll get
the truth.

MR. ABES: Let me just add that when everybody signs their answers, they're going to sign what's called a verification, and the verification will be in front of a notary, and when they swear to their answers in front of the notary, they're swearing that they're telling the truth; and they will be answering the questions under subpoena, and, therefore, they are compelled to tell the truth. Now, obviously, we know that that doesn't guarantee anything, but same would be true if we had a live witness, for example.

MS. SULLIVAN-WISECUP: What if they choose not to answer the questions?

MR. ABES: They would be in breach of the subpoena. They would be in contempt of this committee. They have to answer the questions to the best of their ability.

MS. SULLIVAN-WISECUP: Okay.

MR. ANDERSON: Can you say more on that? I mean, this isn't -- this is a serious matter for us, but it's not a national security issue or it's not a federal case.

MR. ABES: Right.

MR. ANDERSON: What does it mean
practically if a resident gets issued one of these subpoenas, if they choose not to answer it or don't answer it as truthfully as they could and that later comes out through our testimony and it's recanted, is there a -- practically, like what does that practically mean for the resident? The reason I'm asking is that I think the number and the detail that we're asking for should be commiserate with that, right, so what is the practical reality of that?

MR. ABES: So there's a greater practical reality for an elected official, for example, because there are provisions in your charter and council rules that provide for cooperating with investigations of council. There's a greater practical reality for an employee because you can always discipline an employee for not being truthful. For a resident, there's not a lot of practical application, except if you jump through a lot of hoops, there's potential to have any order of this committee enforced by the court, but the chances of that happening are infrequent. The same is true, by the way, for live testimony. So it really doesn't matter for this question the form in which we send
the questions. We can have somebody here live, we can send them written questions, they can take whatever calculated risk they want to about how to answer those questions.

But I think that with all of the mechanisms we have in place, we have the subpoena power, we have the verification, we have the ability to call people back to testify in front of the committee, so at some point, you're relying on people's good faith to answer the questions honestly as they're swearing that they're doing. If they don't, then, our power is somewhat limited, especially from a practical standpoint. As you said, this is not a national security investigation. We're not going to spend untold dollars chasing people to the ends of the earth trying to find the answers.

We'll keep this cost proportionate. We'll decide as best we can on what's most efficient, calculated to get the best answers we can, and target purpose, and ultimately, when we issue the report, we use the best information we can get, and that's really all we're going to be able to do.

MR. ANDERSON: So with that in mind,
my view on it is that the questions and answers should be open. And the majority of witnesses to date are either current elected officials, administration, or prior elected officials, and I wouldn't -- I would hope that all of those people wouldn't -- I wouldn't question the answers that they gave, especially if they testify to them. So I would rather not have an expectation of confidentiality in the answers being given in at least our first round.

MS. SULLIVAN-WISECUP: Yeah.

MR. ANDERSON: Now, if it turns out through our investigation we find some things that take us down a rabbit hole that we don't expect, we can certainly change our approach, right? We can certainly -- there's nothing that restricts us from moving things into more of a closed session, if we needed to?

MR. ABES: No, there's not. It all depends on how you structure the inquiry. So I agree that for the first round, because we're asking everybody essentially the same set of questions except for the limited supplemental questions that we're planning, that it makes sense to have that in the open, but you never know where
an investigation is going to lead. To the extent that you find something that requires confidentiality, we can structure that in a way that keeps it confidential. The question is going to be ultimately when we issue the report, then, what has to become open that was previously kept confidential because it's now a part of the public report. But again, that depends on how we structure the report, and right now, it's premature to answer that question because we really don't know where the questions are going to take us. But I think that for now, the right approach to have everything open and then adjust on the fly as we need to.

MR. ANDERSON: As much as about good and open government as one specific case we're investigating, so open would be my preference.

MS. SULLIVAN-WISECUP: Open would be my preference as well.

MR. ANDERSON: So that was investigative process, we went down how to ask them, so a set of questions written initially; is that correct?

MS. SULLIVAN-WISECUP: We need to have a vote on that, but I --
MR. ANDERSON: I'm not asking what the questions are yet, just the process is to have written questions.

MS. SULLIVAN-WISECUP: Yes. I prefer to start with the written questions, and then if there's anything that needs to be supplemented, like he had said, that you can either send out another line of questioning written or call them in. I prefer to start with the written where everybody has the same, the few that are supplemented, and then see where that takes us. That's my preference.

MR. ABES: I think with the written questions, it's highly unlikely that you will ask each and every person to come in and testify. We'll pick the people whose answers suggest that more testimony is warranted.

MR. ANDERSON: I think there should be enough questions but not too many, and that may not be required unless there's conflict that we need clarified or a clarification question. I mean, the ideal happy is we send out the initial set of questions, get them back very quickly, thoroughly and completely compile them, and even though there's it's a year ago, there's sufficient
overlap, we can feel a good confidence of what happened and then make our determination.

    MS. SULLIVAN–WISECUP: Right.

    MR. ANDERSON: Okay. So written questions. What's the time period for those, like so how long do you typically give in these situations to return?

    MR. ABES: Right. So typically in a litigation setting, which is usually where you see questions like this, the Rules of Civil Procedure usually provide either 28 or 30 days to answer the questions. I think for these questions that we're contemplating, two weeks is appropriate. We're not sending nearly as many questions as I would send in a typical case. The questions are also not terribly complicated. Some of them are just identifying who do you recall was at a meeting, et cetera; that's not going to take very long. There will be a few questions that will require some thought, and to the extent that we decide to ask people, for example, what happened in the executive session, that will be a lengthier answer than some of the other questions require, but I don't think this is really going to require a whole lot of time for people answering the
questions. And to the extent that they need more
time, they can ask. If somebody needs an extra
day or week or few extra days, we can decide
whether to grant that.

MR. ANDERSON: So subpoena and
questions, I understand that that can be a very
formal undertaking. Do we have an ability to put
a cover letter on top of that from the City that
says, hey, this is what we're doing?

MR. ABES: Yes.

MR. ANDERSON: Some people aren't in
these sessions all the time. We can write a cover
letter?

MR. ABES: Yes. Even in the most
contentious high-stakes litigation, lawyers often
send cover letters that have further explanation.
So typically when I send a subpoena, for example,
I put in a set of topics or questions. I put in a
date by which I have to have a response. But then
I'll send a cover letter that says essentially,
hey, I'm sending you what I have to send you from
a formal standpoint, but if you need more time,
need a different date, need to discuss the scope
of the questions, let us know, and then we do.

So here we certainly have the ability
to send a cover letter that has a little bit of
more colloquial explanation of what we're doing,
little less formal, and then it lets people know
that they can contact me if they have questions,
they can contact me if they need more time, but it
also just explains what we're doing.

MR. ANDERSON: So you identified you
as the mailbox earlier for the responses. Those
clarifying questions in the subpoena, is that
typically the best way to do it, that they would
ask you for clarification on questions or should
that be one of or both of us?

MR. ABES: I think it should be me.
The subpoenas I would anticipate would come from
me. The return would come from me. They would
obviously be issued under the authority of the
committee, but I'm essentially acting as the
committee's representative here, and to the extent
that anybody has questions, I think it makes much
more sense to have legal counsel answer those
questions as opposed to one member of the
committee. You certainly don't want to have to
convene a meeting every time somebody has a
clarifying question, so it makes much more sense
to have that go through me. I can answer those
questions, and we don't have to worry about keeping or anything like that.

MR. ANDERSON: But we wouldn't be giving any of the respondents legal advice through that, it's still strictly limited, your time is strictly limited to responding to questions about how to respond --

MR. ABES: Yes.

MR. ANDERSON: -- or what the questions mean, not to provide them with guidance on what if I did this or what if I did this?

MR. ABES: We are not going to provide any legal advice at all. I have only been retained as counsel to the committee. I am not the lawyer for anybody who's receiving the questions. I am not authorized to provide them with legal advice. They are all free to seek advice from their own counsel, to the extent they need it. My personal opinion is that that's really not going to be necessary, certainly not for most people here. If anybody has a significant question about how to answer something, then, they should seek the advice of their own counsel, but we can't give it.

MS. SULLIVAN-WISECUP: Okay. Then,
so I was trying to think -- I had something earlier and I lost it because he was answering the questions. I should have written it down. I'm sorry. So when he was -- okay. So I want to make sure that I'm completely clear. So you'll send out the questions with a cover letter on it saying here's, you know, whatever. And then if they have questions, back to you, and then they'll get it back to you.

And then what happens after you have all of that? Will you meet with us, do you meet here and say it, or what happens, what's the next step after that?

MR. ABES: So some of that might depend on the answers we get.

MS. SULLIVAN-WISECUP: Okay.

MR. ABES: Obviously, if there are any bombshells in the answers or anything unexpected, we'll have to consider the appropriate path, but my guess is that I will review the answers, I will get a sense of where the answers need to take us for our next step, that I will meet with you privately to provide information only, no deliberation, no decisions per the case law, but to provide information only as to where
we need to go based on the answers. We will then
decide do we need to send more written questions,
do we need to have anybody in for live testimony.

At that point, the answers will still
stay in what we're calling the mailbox because
they are my work product. I'm really the person
who's at that point deciding how to advise the
committee based on the answers we've received.
And then we'll decide on the procedure.

It's only at the end of that
investigatory process that we'll decide what then
becomes public because we're going to rely on it
to issue our public report. But I think for the
bulk of the investigative process, then, we will
talk privately under the attorney-client
privilege, because what we're getting is not ready
for prime time yet. It's just raw data. Once the
raw data becomes the finished product, then,
there's a public product to share.

MS. SULLIVAN-WISECUP: Okay.

MR. ANDERSON: You had mentioned
follow-up questions, if they're needed, and what
they will be, and you're saying that that would
happen inside of the attorney-client meeting
reviewing the information?
MR. ABES: Nothing would be decided there because we're, again, not allowed to make any decisions, we're not allowed to have deliberations. All we're allowed to do in a private attorney-client meeting under these circumstances is to provide information and to ask questions about that information. To the extent that you then need to deliberate or make any decisions, we would do that in an open meeting.

MS. SULLIVAN-WISECUP: Okay. Do you have any further questions about the investigative process?

MR. ANDERSON: So I just want to play it back to make sure I didn't get lost in all of that. The investigative process, we're agreeing on the following: A set of written questions that we'll go through tonight to a set of respondents that we'll go through tonight. We will ask for written responses back within two weeks from when we issue the subpoenas on the CIC's authority. Those will come from Dinsmore letterhead with our names on it. They will respond back to Dinsmore with their written, notarized responses. They will be compiled. And then we will meet to receive that information, and then at that point,
determine an agenda for follow-on meeting. Whether that agenda needs to include further follow-on questions or live testimony will be a part of the deliberation, not content. And then we would make some decisions in our subsequent meeting as to do we have enough to complete our next step of the work product or whatever those next steps would be. Did I get that right?

MR. ABES: That's correct.

MS. SULLIVAN-WISECUP: That was my understanding as well, yes.

MR. ANDERSON: Okay.

MS. SULLIVAN-WISECUP: We're all on the same page.

MR. ANDERSON: Yes. In that case, I don't have any further questions on investigative process that we've agreed to tonight.

MS. SULLIVAN-WISECUP: Do we have to do a formal voting on it?

MR. ANDERSON: Unless Alan thinks we do. We don't have to vote on the process?

MR. ABES: No, no. I know we're going to discuss specific questions to ask, and we should take a vote on that.

MS. SULLIVAN-WISECUP: Yes. At the
last meeting, we had discussed -- or moving on to No. C, the list of persons to be questioned, at the last meeting, we had discussed making a list, and I have my list. Do you?

MR. ANDERSON: I do. I had agreed in the last meeting to follow up with the cable television.

MS. SULLIVAN-WISECUP: ICRC.

MR. ANDERSON: Thank you. The ICRC video of that meeting to see some clues to make sure, and then I compared that with the minutes that were posted for that meeting, and then I came up with my list. As we suspected, in the video, as soon as the committee voted to move to executive session, that was the end of the recording. So there was nothing -- you couldn't even see anyone getting up or leaving, but we did see everyone that was in the meeting, so it did confirm the minutes. Plus, I think I improved their viewer stats by probably 200 percent, so I'm sure they appreciated that. So my list, yes, is the -- do you want to go through it?

MS. SULLIVAN-WISECUP: Go for it, yes.

MR. ANDERSON: So I had who I would
believe to be in attendance at that meeting would be: At the time Councilman Bob Diehl, Council Person Emerson, Council Person Harlow, Council Person Hawkins, Council Person Shroyer, Council Person Vanover, City Administrator Derrick Parham, Mayor Webster, and Amanda Zimmerlin.

    MS. SULLIVAN-WISECUP: Assistant City Administrator.

    MR. ANDERSON: All right. In addition to those people that were -- oh, and then Ms. Ghantous, Council Person Ghantous.

    MS. SULLIVAN-WISECUP: Yes.

    MR. ANDERSON: In addition to those people that I believe were in the session -- that's the committee for in the session. In addition to that, I felt that Mick Higgins, the president, should also be included in the questions based on the discussions that Council Person Emerson had brought up in an open meeting.

    MS. SULLIVAN-WISECUP: That was the same people that I had in my extensive list. And then I had did have Tier 2, if needed, but after I saw the proposed questions, I don't think that we'll need those.

    MR. ABES: I'm sorry, did you mention
Jeff Forbes on that list?

MR. ANDERSON: I did not, no. Thank you.

MS. SULLIVAN-WISECUP: Legal counsel, Mr. Forbes.

MR. ANDERSON: Mr. Forbes as well.

MS. SULLIVAN-WISECUP: Yes.

MR. ANDERSON: That's what happens when you go from the minutes as opposed to the video.

MS. SULLIVAN-WISECUP: Yes. My list had everyone in executive session, and then that's it for my first tier of people, and this was on contingent on addressing all of the questions.

MR. ANDERSON: Based off of our last meeting, we agreed on our process that we would use to determine whether people should be called because we want to limit the questions to not conjecture, but that there's some reason that we're asking the questions, to limit the scope as much as possible but still get to the full facts of the matter. So we had agreed, I believe, that if you weren't believed to be in the session or named in one of the open meetings as having received or given information related to our scope
of work that there wouldn't be any other subpoenas until such time that other people were brought in through those answers, right?

MR. ABES: Yes.

MR. ANDERSON: So if there were people that had conversations with people, that would be in that second round of subpoenas just to confirm that they did or didn't?

MS. SULLIVAN-WISECUP: Yes, yes, I agree. That's what I had. So that is the list of persons to be questioned I have as well. So we are in agreement with that one as well.

MR. ANDERSON: Okay.

MS. SULLIVAN-WISECUP: We'll go on to questions, list of approval.

MR. ANDERSON: Yeah. So at this point, just for speed and clarity, I would like to make a motion to remove the attorney-client privilege related to three documents that were prepared by Dinsmore associates related to draft questions, work product for us to use as a basis for us to start with for our questions for tonight. So I make a motion to remove attorney-client privilege for those three documents.
MS. SULLIVAN-WISECUP: Second. Both of us agree. Aye? All right. We are free to discuss these questions. We want to start with the one that is the broad -- let me see, what is it, the City of Springdale --

MR. ABES: Maybe I should just explain.

MR. ANDERSON: Give some background on it.

MR. ABES: So I prepared three drafts for you. The first two drafts look like what we would send out. They have a caption on them. They have a verification at the end, and they're formatted in the way that we would send them out. I drafted one master set of questions intended for everybody who was in the executive session, so all of the questions pertain to what happened in the executive session and what happened in the aftermath. I drafted one set of questions that would only go to Mr. Higgins because he was not in the executive session, so we have some different inquiries for him.

Then, in the interest of time, I didn't format the last set of questions, but I drafted some potential supplemental written
questions for certain people who were in the executive session, because based on my review of the minutes from prior council meetings, those people have or potentially have certain information that's not appropriate to ask everybody who was in the executive session, and I just listed those questions on this document. But if we agree to send supplemental questions to those people, I would format them differently and send them separately to each individual.

MR. ANDERSON: But they would go in the same first wave of questions, but it would just be a specific list for that person?

MR. ABES: Yes. For their cover letter, I would change that accordingly so they know what I'm sending them.

MR. ANDERSON: For other people's benefit that don't have the documents that we just described -- and we don't have copies available today for anyone who wants them, but they are considered public record now that we're discussing them --

MR. ABES: They are now.

MR. ANDERSON: -- as draft questions. I just want to caution anyone that might be
looking at this later that you can request the drafts as written as we received them now that that's made public by the committee, but keep in mind, they were drafts done solely by Dinsmore and associates without consultation directly about any of the questions. So we'll go through those tonight. You can request them as we received them, but please don't treat them as if they're the questions going out until we've reviewed them and gone through them.

MR. ABES: That's correct.

MS. SULLIVAN-WISECUP: Okay.

MR. ANDERSON: Sorry, the way for them to get them if they were interested would be a normal records request to the administration?

MR. ABES: Correct.

MR. ANDERSON: They could request the documents that were referenced tonight, and we will make them available to the city administration so they'll be up on file.

MS. SULLIVAN-WISECUP: Also sent to the clerk.

MR. ANDERSON: You've got that, get that to Kathy?

MS. SULLIVAN-WISECUP: Absolutely.
MR. ABES: I would send only the questions, but not the previous cover note that I sent you, which remains attorney-client privileged.

MS. SULLIVAN-WISECUP: So only the files?

MR. ABES: Yes, the three work files.

MS. SULLIVAN-WISECUP: Okay.

MR. ANDERSON: Okay. So the first Word document, which is the general questions, that's the one you don't have?

MS. SULLIVAN-WISECUP: That's the one I don't have, not even a copy.

MR. ANDERSON: The first one, this would be the general, the executive session people we just listed, except for Mick Higgins, without the supplementals. So I did review these. I'm not sure, what do you think is the best way to go through them? I wasn't planning to read them.

MS. SULLIVAN-WISECUP: No.

MR. ANDERSON: Just if there were questions or comments about them. Overall, I was very happy with it, not just the formatting, but the depth of questions without being overly intrusive. It will be for the basic 13 questions,
which doesn't feel too burdensome, especially when you look at three or four of them are simple questions.

MR. ABES: State your name.

MR. ANDERSON: State your name, were you present type questions. And I mean, there's -- really, the meat of it is two or three questions that say what do you recall. There was one thing I think we should make sure is explicit, too, on this. We do reference another document that will be an appendix that was also removed from attorney-client privilege at that May meeting when we convened this committee, and that was a summary by the law office, by the law director, on his recollection of the meeting as the basis for people to provide their recollection. I feel like we should talk about that, about how we get the best accounting of the meeting without inciting too much group think but still keeping it neat and manageable.

So I like the idea of having that as the basis, but making sure it's clear that that's not an authoritative accounting of the meeting. That was something that was brought up in the council meeting, is how do we keep -- you know, it
wasn't even to make that document available because it could affect people's views of it. It's one person's remembrance. So how do we feel that that's the basis for some of the questions?

MS. SULLIVAN-WISECUP: I'm trying to remember how he worded it, what he was asking specifically about the --

MR. ANDERSON: Starts on Question 5.

MR. ABES: So I think the way it's set up is that I introduce the document and ask the recipient to read the document and then identify anything that they believe is inaccurate or incomplete about the document. But then there's a follow-up question asking every attendee to describe in as much detail as they can what happened in the meeting. So what I was trying to do was to avoid getting wildly different accounts because people didn't have any baseline, given that this was a year ago, more than a year ago now. The summary that I reviewed I thought was a good general summary. It was clear from the council minutes that it was intended to be only a general summary and not a word-for-word description of what happened at the meeting.

I think that some of the other
questions that are in the document will prompt
people to remember or place significance to
certain events that are not described in the memo
that the law director prepared, particularly a
couple of questions that are based on Council
Person Emerson's recollection of what happened
when she talked to Mr. Higgins at the polling
place in question, with respect to some raised
voices that allegedly took place in the session,
and with respect to some comments made by
particular council members, and there were a bunch
related to Mr. Higgins. Those items are not in
the law director's summary, so I think when the
recipients read the document as a whole, they will
have the baseline recollection, that they won't
have to waste time repeating what is contained in
the law director's memo, but they will be prompted
and reminded and asked specifically to say, okay,
what else happened at the meeting so they can
relay anything else that they think is
significant.

So my thought was to try to walk that
line between having people recreate something and
take a lot of time in doing so and not prompting
the group think and saying, oh, yes, everything
that happened in the meeting is there in Mr. Forbes' memo because clearly it's not. There's really no discussion of the tenor or tone of the meeting. It's more just a straightforward recollection of the content of the meeting. But I do think that we walk a line sufficiently that people will be free to say what else is on their mind and that they will certainly be prompted to do so.

MS. SULLIVAN-WISECUP: One thing that was in the scope as well was that we wanted to make sure that everyone gave their side of what happened in that executive session so that we had a better view of what had happened in the meeting, and I think that that was covered under the next question about No. 6. I think that with as much conversation as was done in the city council meeting once the summary was released, enough people said that that wasn't exactly what happened, and then we're hoping that they will elaborate and they will state their part of what happened.

MR. ABES: I didn't do this, but if you want, we could add a note to the question that references the exhibit and remind them what was
said in council, which was that this was not intended to be a word-for-word recitation of what happened in executive session. It's up to you.

    MR. ANDERSON: I don't know. Do you think that that's necessary?

    MS. SULLIVAN-WISECUP: I don't.

    MR. ANDERSON: I don't think that's necessary. You know, I read the question as it's written or as proposed and it certainly stays open-ended to me. It asks for an accurate and complete -- I mean, I could give a little bit on complete.

    MS. SULLIVAN-WISECUP: It was a year ago, over a year ago.

    MR. ANDERSON: It was over a year ago, but the piece that didn't come through in that part of it was more what you just described, what stood out to you in that session as opposed to a recitation of a summary of the facts. As I was thinking through that, I don't think that that's necessary, right, because our scope is to recreate exact as possible in the minutes what occurred in the meeting, that was one of the scope items. People's views or feelings that they got out of a meeting or in a meeting, I don't believe
that that is part of that scope. It's certainly relevant for some of the questions later if we're going to ask why -- if there was a breach, you know, you can talk about what was said and why, and then that's part of that and that's important. But in terms of recreating a record, what they feel is important isn't as relevant as what was said or what was done.

MR. ABES: I think that's right. To the extent that we do uncover that there was a breach and even uncover the source of that breach, then, motivation becomes important because depending on who would be the source of the breach, council would have the option of disciplining an employee or taking action against a council member as provided under the Charter of Council Rules, so motivation would be important. But right now, we're just trying to discover what actually happened, so I don't think we need to take that next-level step again.

MS. SULLIVAN–WISECUP: Right.

MR. ANDERSON: Are you on the same page?

MS. SULLIVAN–WISECUP: Yeah. I don't want to say I don't care, but for what we're
doing, I don't care how they feel. In our
minutes, it doesn't say Meghan felt sad or she
appeared to be glum. I want factual stuff.

MR. ANDERSON: Okay. All right. So
we talked about some of these base questions.
There's the demographics, whether you attended
questions, those are fine. Tell us who you think
was there, fine, so we can get some confirmation.
And then review the summary, and then give your
accounting, either your own total accounting or
amendments to that. And then there's some
questions about do you recall specific things that
were brought up in that council meeting, right.

So there was the whole question about
discipline and disciplining or felt disciplined,
that raised a lot of questions during our council
meeting about this committee in this instance. So
Questions 7 and 8 that were proposed are really
trying to get at that question. I'm wondering if
that's relevant right now. So, you know, to be
clear, right, it's asking if certain people used
raised voices or felt disciplined or asked
questions, and it calls out a few of the council
people because it was alleged in that other
meeting that that's what happened.
MR. ABES: Right.

MR. ANDERSON: That's where that's coming from?

MR. ABES: Yeah. So in the minutes of the -- I believe the May 2nd council meeting, there was an extended discussion where Mr. Higgins was present and he had a back-and-forth with Council Person Emerson. And, Meghan, actually you asked the question: What do you allege Mr. Higgins actually said about the executive session? And that's when Council Person Emerson identified these two items.

MR. ANDERSON: Okay.

MR. ABES: So what I'm trying to do with these questions is get corroboration of what was actually said in the meeting, because if she is alleging that that's what Mr. Higgins relayed to her, then, I do think that this initial stage we need to ask about whether that actually happened, what people recall about that.

The whole extended discussion of disciplining in the council meeting I thought was a little confusing and a little off the point. I didn't feel a need to ask a specific question about that because I think it resulted from people
talking past each other and not really being on
the same page. I don't think that that's really
the important point.

It seemed like Mr. Higgins thought
that disciplining an employee would be an
appropriate subject for executive session, and
then he was saying, well, did that or didn't that
happen, but that's not even a stated reason for
the executive session in the motion, so I think
that that's beside the point. But these two items
come directly from what Council Person Emerson
said and that's why they're important.

MR. ANDERSON: To be clear, this
isn't to bring up any ill will or feelings in the
meeting. We do need to ask these questions so we
can corroborate a claim that is core to the CIC
scope.

MR. ABES: That's exactly right.

MR. ANDERSON: I agree with that.

MS. SULLIVAN-WISECUP: Yes, as long
as it's within the scope, I'm okay with it.

MR. ANDERSON: Yeah. I had a
visceral reaction when I read those proposed
questions at first because there's obviously a lot
of emotion around a lot of this, right, you saw
that in some of the meetings?

MR. ABES: Right.

MR. ANDERSON: And rightly so. I didn't want this to come across as trying to pour salt in a wound or even allege that it happened. So I'm wondering if there's a way we can make that even more clear that it has to do with corroborating a claim in the May 2nd meeting; would that be appropriate here, because we reference the other meeting? Although, I'm worried that it might be confusing because it's too many meetings. Is there a way that we can make that more clear or do we even need to?

MR. ABES: I don't think we need to. And I share your concern because I was hesitant to reference specific council people by name in the questions because I do not want anybody to believe that they are a target of the investigation or that anything they did even prompted the investigation. But when the subject matter contained in Question 7 and 8 is the subject matter that is allegedly the content of the breach, I don't think we have any choice but to ask the question. And I don't think that it will be taken as accusatory, at least I hope not,
because it is certainly clear from the council
minutes that that was the subject of the alleged
breach. I think the only thing we could do, if
you want, again, is perhaps to reference the May
2nd minutes, so if people want to some context for
it, they could go back and take a look and see
that that's why we're asking the question. But
you didn't want to do that for the other question,
and it feels just as clunky for this as it did for
that.

MR. ANDERSON: I feel a little better
having talked about it. If anyone has questions,
they can ask us why, and if they ask you why this
is being asked, that would be the answer you would
give, it relates to or it's germane based off of
the meeting?

MR. ABES: Yeah, I would. This would
not be legal advice, obviously, but I would tell
them just in the interest of practicality that it
was discussed in an open council meeting that that
was the subject of the alleged breach and that's
why we're asking about it.

MR. ANDERSON: You can also reference
this meeting tonight and said we considered that
and do not feel that it has anything to do with
accusatory or it's just relevant to the facts that we're trying to find?

MR. ABES: That's correct. We should note that I drafted the questions. I don't have the slightest idea at this point whether there was a breach or, if so, who did it. I'm only going by what I read in the council minutes.

MS. SULLIVAN-WISECUP: When I read this at home, that's actually -- this question was the one that I had the notes on that I don't have the paperwork. I wanted to make sure that it wasn't accusing a person.

MR. ANDERSON: So you're okay with Questions 7 and 8 as written?

MS. SULLIVAN-WISECUP: Yes, now with the explanation, yes, yes.

MR. ANDERSON: Okay. So then ask questions about the -- now we're in the section where we were talking about the alleged breach based off the commentary from Council Person Emerson in the May 2nd meeting, and that describes the discussion that was allegedly had, potentially had --

MR. ABES: Right, potentially.

MR. ANDERSON: -- on Election Day
outside of a polling station. So this is responding to that breach incident. So we're asking about general questions to the first group of items, and then we're asking about specific things to determine the breach. But that's where this is coming from, the November 7th, Questions 9, and 10, and 11 are from that?

MS. SULLIVAN-WISECUP: Right.

MR. ABES: I did not expand the scope of the inquiry. The only allegations that I read stem from what was said on the election date of November 7th, 2017. I did not ask about any other conversations, any other time period, any other alleged breach. All of the facts I have point to what happened on that particular day, so I confined the inquiry to that particular day.

MR. ANDERSON: To be clear, that's the limited scope that I'm aware of based on the facts that we have on the record, was the assertion, the claim, from Council Person Emerson described on the date of the breach and then the session that was brought up that it was coming from it. Are you aware of any other dates that we need to have in this opening round based off of this?
MS. SULLIVAN-WISECUP:  I don't have any specific dates other than that. Nobody said on any other specific dates that anything was breached other than that. I know when Mr. Higgins was here, he said he felt that other things had possibly not been for the reasons that were stated for executive session. And then he said -- then, it was sent back to him, what did you think happened, he said he didn't know, he wanted us to tell him. But nothing specifically had been said, no specifics have been used, so as far as I was concerned, this is what our focus is.

MR. ABES:  Right. That was the subject of the lawsuit that he brought. He cited two other examples where he thought that the stated reason for going into executive session was not appropriate, but there were no facts in any of the pleadings that I reviewed that would give rise to us needing to ask any further questions. And there were certainly no other facts in the council minutes reflecting any other significant date or possible breach.

MR. ANDERSON:  I'm comfortable with that. I just want to make sure that we're explicit on that. You are as well?
MS. SULLIVAN-WISECUP: Absolutely, absolutely.

MR. ANDERSON: Those are good questions. The last two items that we have in this general questionnaire, one of them is whether you had prior communications -- this is one of the open-ended -- related to the rental permits, which was also the topic of that meeting. So we're trying to close the loop there, if there's assertions in the May meeting of, well, I had other discussions prior to executive where I got that information. So it's trying to get a complete picture there of where else that information could have come from other than executive session that could have been misunderstood. That's the point of Questions 12 and 13, around other conversations that you might have had around this one alleged breach date that occurred on November 7th?

MR. ABES: That's exactly right. There's discussion from multiple people in the council minutes that the information could have come from some source other than executive session. So to the extent that that's the allegation, then, I want to make sure that we ask
people who did you talk to, when did you talk to
them, what did you talk to them about with respect
to the rental inspection program, and let's see if
there is any information that corroborates that
statement.

MR. ANDERSON: To be clear, which we
agreed in the scope, I want to make sure we're on
the same page, we're not trying to assess the
content of that meeting, the fact that the
executive session was related to that, we're not
assessing any claims about constitutionality,
legality?

MS. SULLIVAN-WISECUP: Correct.

MR. ANDERSON: The content is not in
question in any of these questions?

MR. ABES: The scope of this inquiry
has nothing to do with the merits of the rental
inspection program or the legality of the rental
inspection program. It's just that that was a
topic discussed, and, therefore, we have to ask
about these other conversations that could have
taken place about that particular topic.

MS. SULLIVAN-WISECUP: Okay.

MR. ANDERSON: I'm comfortable with
that opening set of questions. Do you have any
other changes to the document?

MS. SULLIVAN-WISECUP: No. I was very comfortable with those. The only thing I had questions about were answered in 7 and 8.

MR. ANDERSON: Do you want to move to the next one?

MS. SULLIVAN-WISECUP: Yes. Do you want to accept these or do it all at one time?

MR. ANDERSON: We don't need to do motions to accept them.

MS. SULLIVAN-WISECUP: We're good. Okay.

MR. ABES: It's whatever you feel most comfortable with. It's not really necessary.

MS. SULLIVAN-WISECUP: We're going to go to the one that is specifically for Mr. Higgins.

MR. ANDERSON: So on this one, Mr. Higgins wouldn't be receiving the one we just reviewed because that's focused on council executive session content, there is some duplicate proposed here?

MR. ABES: Yes. He would only get one set of questions.

MS. SULLIVAN-WISECUP: Very general
questions in here, state your name, and then the
first few questions are about the conversation or
before the conversation. I don't have any
problems with these. They're pretty typical
questions that one would expect asking if anything
specific had happened, pretty much exactly what I
expected to see. I mean, to be honest, they were
pretty much exactly what I had expected to see.

MR. ABES: There are only nine
questions, including state your name.

MS. SULLIVAN-WISECUP: Yes.

MR. ABES: The questions all deal
with what did you discuss with Council Person
Emerson, what did you discuss with anybody else
with respect to the rental inspection program.
And we're also trying to find out, if there was a
breach, who might have relayed any information to
Mr. Higgins. If there was a breach, whoever
breached confidentiality didn't necessarily tell
Mr. Higgins, but whoever that person told could
have then told Mr. Higgins or it could have been
even further removed. So we're just trying to
figure out what was discussed, who told you, and
what did you talk about with respect to the rental
inspection program that could provide a source of
MR. ANDERSON: So I have one question. So what was proposed in Question 2, I'm concerned it might be too open-ended for this questionnaire. The question that's proposed, it says: State whether before the Emerson conversation you communicated in any way whatsoever with any attendee in connection with the executive session; if so, describe when, how, what you or she or he communicated. My concern with that is I think we need to bound it to related to the Emerson conversation or rental inspection. The resident that we're referring to has been very active in the community in a number of ways, is a frequent attendee of council meetings, he's PTA President, been on committees. So I feel like we need to -- I feel like if he reads this, he's -- it's going to be a big answer. Does that make sense?

MS. SULLIVAN-WISECUP: When I read through it, I thought that it said in connection with the executive session, so I was thinking it was only about that one when I read it, so I didn't even read it the way you read it. So what he's asking, yeah, yeah, because --
MR. ANDERSON: Do you see what I'm saying?

MR. ABES: I do see what you're saying. Obviously, if you were to ask about whether he talked about the council meeting with somebody, that could go on forever. But I tried to bound it by defining the executive session as the one in question on May 17th, 2017, so we're really just asking him did you talk about that executive session with anybody. But if -- can you think of a way to confine it even further?

MR. ANDERSON: Even what you just said there, I think if that was in the question, it would be cleaner. I'm just afraid if somebody isn't wanting to be as cooperative as possible that they might read that question a different way. So even I think if we revised that to say state whether there was a conversation that you communicated in any way whatsoever with any attendee related to the executive session, I feel like that's different.

MS. SULLIVAN-WISECUP: Than in connection to.

MR. ANDERSON: Am I reading it -- maybe I'm not -- I know I'm not an attorney. But
am I reading it too lay person?

MR. ABES: I'm not sure I quite see
the distinction between those.

MS. SULLIVAN-WISECUP: When I first
read it, I read it as meaning did you speak to
anybody about the executive session, you know,
instead of in connection to. You know what I
mean? My head automatically went to that.

MR. ABES: Should we reference the
content of the executive session?

MR. ANDERSON: Yeah, if we bound it
with that, I would feel a lot more comfortable.

MR. ABES: How about in connection
with the content discussed or the actions taken in
the executive session?

MR. ANDERSON: Perfect.

MS. SULLIVAN-WISECUP: Yes.

MR. ANDERSON: Are you good with
that?

MS. SULLIVAN-WISECUP: I'm very good
with that, anything to make it as clear as
possible.

MR. ANDERSON: Am I the only one that
would read it that way?

MS. SULLIVAN-WISECUP: Honestly,
after you said it, I started looking at a little closer. Oh, wow, I never looked at it that way.

MR. ABES: I think the more specific, the better, especially because we're not dealing with a Council Person, so I think that that's fair.

MR. ANDERSON: I would make the same adjustment to Question 3.

MR. ABES: I will do that.

MS. SULLIVAN-WISECUP: Yes.

MR. ANDERSON: And 4 as well. Oh, no, 4 is okay, 4 is okay there.

MS. SULLIVAN-WISECUP: He says pertaining to there.

MR. ABES: Sounds good.

MR. ANDERSON: I don't have anything else for this set of questions. Do you?

MS. SULLIVAN-WISECUP: No other changes. Then, the supplemental. Okay. The supplemental, can you make sure I have it?

MR. ANDERSON: 15.

MS. SULLIVAN-WISECUP: Just wanted to make sure I had all of the pages because I didn't staple these.

MR. ABES: For these, by the way, I
did catch a typo. Question 4, it says: Refers to the same question as question 3 above, so I can change that. So the people listed here are: Council Person Emerson, Mayor Webster, Council Person Shroyer, Council Person Hawkins, Law Director Forbes. The reason -- I'll just tell you briefly why I think we need some supplemental questions for them.

Obviously, Council Person Emerson is the one who alleged that Mr. Higgins told her information that he only could have learned in the executive session. They had a specific conversation on the Election Day of November 7th, 2017. We need to ask her more specific questions about that conversation. To the extent that she happens to answer these questions in the master set, that's fine, they can just refer back to her response; but I think that we need to ask her detailed questions about what exactly Mr. Higgins told her, who else might have heard or witnessed the conversation, if anyone. She said in the council minutes that she talked to Mayor Webster that day and relayed what happened with Mr. Higgins, so we need to ask her about that specific conversation; and obviously, to the
extent that she has anything in writing about
that, we would want to know. So I think we need
to ask her those very targeted questions.

The reason why I propose asking Mayor
Webster some additional questions is the same. He
had that conversation with Council Person Emerson
on that day and we need to ask him about the
conversation. To the extent that she told him
something on that day, it is essentially immediate
corroboration of what she's saying now, and it's,
therefore, important.

For Council Person Shroyer and
Council Person Hawkins, again, not singling them
out at all. It's just that the content of what
Council Person Emerson alleges Mr. Higgins told
her has to do with them and what happened with
respect to their comments or comments directed
toward them in the executive session. So simply I
would like to have them answer whether they talked
to Mr. Higgins with respect to the rental
inspection program before or after the meeting
because, again, when Mr. Higgins and Council
Person Shroyer spoke at one of the meetings, they
said, well, this is how else the information could
have come to light. So we're just closing the
loop, checking the boxes, asking everybody who could know about this conversation what was said to make sure that we have a full picture of that. There's really nothing else with respect to any other subject we would want to ask them. All of the questions directed to them are just did you talk to him, what did you talk about, do you have any evidence of what you talked about.

With respect to Mr. Forbes, obviously, being a lawyer, I always tread lightly when it comes to questioning a lawyer. The City and the Council have an attorney-client privilege with him. I know that you waived that with respect to certain matters regarding this investigation. So I want to be very careful in how we tread, but he is in many respects kind of a focal point because he was involved in defending the lawsuit that Mr. Higgins brought, and he also prepared the summary of the executive session, and he was obviously involved in a lot of the discussion in the executive session based on the stated reason for going into that session. So to the extent that anything came to light in the lawsuit that Mr. Higgins brought, I simply want to ask whether anybody representing Mr. Higgins told
Mr. Forbes anything that happened in the executive session, that way if -- and the answer might be no, and if the answer is no, that's fine. But to cover all of our bases, I want to make sure that in that adversarial setting nothing came out that would provide evidence for the inquiry that we're conducting here. And if something did come out, if the lawyer told Mr. Forbes what happened in the executive session, that lawyer really only would have gotten it from Mr. Higgins, and, therefore, it corroborates the allegations of the breach. So we do need to ask those questions. That does not require Mr. Forbes to disclose anything that is protected by the attorney-client privilege because everything in those questions would come from what happened -- what the other side told him in adversarial litigation, so there's no question of privilege there.

MS. SULLIVAN-WISECUP: I wanted to clarify something real quickly, just something that I had asked was, if his attorney had said something to him about any other executive session other than this one, we don't care, correct? I want to make sure that we're on the same page on this.
MR. ABES: We've not asked that question because, as we discussed a few minutes ago, the scope of this inquiry does not pertain to any executive session other than the one that took place May 17th. Now, if in the course of answering these questions, we find information that leads to another potential breach, we'll have to decide where to take that information, but that's not the point of the question. The only point of the question is to the extent that Mr. Higgins' attorney said anything about what happened in the May 17th executive session, then, we should know that.

MS. SULLIVAN-WISECUP: That was my clarification.

MR. ANDERSON: And when I read the questions, I read them that they all specifically state about this executive session, questions defined in the terms at the top of the subpoena. Agreed, if there's something else that we assert, we wouldn't ignore it?

MS. SULLIVAN-WISECUP: Okay.

MR. ANDERSON: We will look at it and take it where it takes us, right?

MS. SULLIVAN-WISECUP: Right.
MR. ANDERSON: If we need to go back then and report to council as a whole that there's this additional finding in this investigation, we certainly have the opportunity to change or revise our scope. I wouldn't ignore it.

MS. SULLIVAN-WISECUP: Right.

MR. ANDERSON: But we're not asking for it.

MS. SULLIVAN-WISECUP: I just wanted to make sure that we were clear on that. We weren't looking for anything. We were asking specifically about this executive session?

MR. ABES: That's right.

MR. ANDERSON: To be clear, we have never asserted this council or the committee -- the council as a whole or this committee has asked the law director to waive attorney-client privilege on the lawsuit that we're talking about.

MR. ABES: Correct.

MR. ANDERSON: Right. So that privilege still remains and none of these questions would require us to do that because the way -- this would be things that their attorney would have said that is not protected by privilege.
MR. ABES: That's correct. Anything that adversaries say to each other is not protected by an attorney-client privilege, so we're not in any way asking for a waiver or suggesting that there should be a waiver of the attorney-client privilege between Mr. Forbes and the City. Anything the other side told him, that's fair game.

The remainder of the questions to Mr. Forbes -- and there unfortunately are more of them to him than to anybody else -- deal with what happened in the executive session and any further discussions of the rental inspection program. So it's clear from the council minutes that Mr. Forbes provided that summary that we discussed with respect to the first set of questions. I want to make sure that we have the full picture of what happened. Again, he said that he was not providing a word-for-word recitation.

Now that we have a clear direction for the committee, there might be other events that took place that he would recall that would have significance in a way that they did not have significance before, so we should be thorough. To the extent that he claims that there is an
attorney-client privilege with respect to any of these questions, then, it would be appropriate for that question to be put before the committee. The committee would then decide whether it wants to ask the full council to waive that privilege. Council may decide not to do that, you might decide not to do that, and that's perfectly appropriate. But I don't think we would be doing as thorough an investigation as we should if we don't at least ask the question do you have the information, and then we can decide to pursue that information. And we could decide that the attorney-client privilege outweighs the need for that information and, therefore, we would not pursue it any further; but we should at least make an informed decision about that and not just assume that if he has the information that we shouldn't pursue it because it might be privileged.

With respect to the rental inspection program, again, he might be able to corroborate certain discussions that were had outside of the executive session. It's possible that either he spoke to Mr. Higgins or people who spoke to Mr. Higgins then spoke to Mr. Forbes. To the
extent those discussions were privileged, we'll have the same discussion I just described. To the extent they're not privileged or we want to waive the privilege, then, it's just independent factual corroboration for an innocent reason for what Mr. Higgins did.

MR. ANDERSON: So Mr. Forbes would get the 15 or the 13 base questions and then another 15 questions that we're proposing tonight, some of them being slightly different?

MR. ABES: Yes. But he's also the most equipped to answer questions of this nature, so I don't think it will bother him too much.

MS. SULLIVAN-WISECUP: I think you should write a couple more.

MR. ANDERSON: I was going to suggest that, except then I realized that we're asking attorneys to ask questions to other attorneys that we're being billed for. I do find these questions to be appropriate. I don't have any questions or comments about these.

MS. SULLIVAN-WISECUP: I'm good on those. So now that we've agreed on these questions --

MR. ANDERSON: Can we talk a little
bit more about the cover letter we talked about because we didn't have that as a draft product? The questions I think --

MS. SULLIVAN-WISECUP: Yes, we're good, crystal clear on them.

MR. ANDERSON: How do we close out an appropriate cover letter so that we can get this submitted without having another meeting just to review a cover letter; do you have thoughts on that?

MR. ABES: I don't think you need to review the cover letter. The cover letter is going to be pretty bare bones. I'm not going to write a three-page cover letter. I'm going to write a one-or-two-paragraph cover letter. It's simply going to explain why people are receiving what they're receiving. It's going to give them just a little bit of explanation as to how they can respond. It will let them know if they have questions, they can contact me. I will try to keep it as friendly and explanatory as possible so people are not confused and so people are not intimidated. But most of the people who are receiving this are either on the council or employed by the City, they know this is coming.
It's really Mr. Higgins who is the only person who is not affiliated with the City formally who may not have the full context as to what's happening, but he can call me, ask me any questions he wants about.

MR. ANDERSON: I'd like to be somewhat -- the subpoena documents look very formal, and I think they're appropriate to do that. I would like to see at least some language at the top -- I mean, I want to recognize, yes, they are elected officials, but we are asking for help without admittedly a lot of formality behind it, short of contempt of council, which is serious but not -- I mean, if you want to be obstructionist, you could. So I would like for a cover letter to be a little bit more friendly in asking for help without removing the teeth. Like I want it to have the weight that the subpoena has, but it should say that the City of Springdale needs your help and explain about the executive session and why it's important. I believe Mr. Higgins knows that, but I think that that same cover letter could be used.

MR. ABES: We could certainly ask for help and say something to the effect of you need
to protect the executive session and promote good
government of the City and et cetera.

MS. SULLIVAN-WISECUP: Yes.

MR. ANDERSON: Yes, I think that's important. And then where do they go if they have questions, that would be true for the elected officials, the city workers, and the residents that are getting that, right? So there's a couple of things that people might ask if they have questions about the subpoena, right, who do they contact, and you mentioned it would be you. You know, even does the City do notary services or do they need to go to the bank? You see subpoenas all the time and it may seem normal to you, but it's not normal to us.

MS. SULLIVAN-WISECUP: I know most lawyers have to have their notary.

MR. ABES: Don't have to, but most do, yeah.

MS. SULLIVAN-WISECUP: Every lawyer I ever met had one.

MR. ABES: So I can see if we can put something in there about that. It's a little bit of an inconvenience to go get it notarized. The reason I put that in there is because without the
verification in front of the notary, it's not sworn testimony, and we want sworn testimony.

MR. ANDERSON: I'm fine with it being notarized. I just want it recognized that getting subpoenas is not normal for most people and asking somebody who gets a letter in the mail to take action within two weeks and also go -- write your answers down as clean as possible, swear to it, have it notarized, it's not normal.

MR. ABES: I understand. If I were sending a subpoena to a large corporation, I wouldn't worry about that so much. But plenty of times in litigation, I've had to send subpoenas to individual witnesses who are just caught in the litigation because it's third party. All attorneys have their way of softening that blow because sometimes people don't understand. They think they're being sued or they don't understand why they're getting this or they think they have to go get a lawyer. So yes, plenty of times I've explained to people, no, here's what it really is. So I will soften it as much as I can.

MR. ANDERSON: Right. Not going to tell them not to get an attorney, but I don't want them to think that they can't ask us questions
first. Then, the dais looks intimidating, but I would rather they contact you or they contact us and we tell them to call you.

MR. ABES: Right. And this is certainly a less painful way for them to provide their information than if we were to call them in one by one to testify in front of the committee.

MR. ANDERSON: Might want to mention that in the letter, this is for their convenience, allows them to answer on their own time and not necessarily, but possible, have to come in at an appointed hour and be asked questions.

MS. SULLIVAN-WISECUP: I, personally, would feel more interrogated if I had to stand right there and answer in front of -- you know, what I mean?

MR. ABES: That would be a much more painful experience.

MS. SULLIVAN-WISECUP: Yeah. I don't think anybody really wants that.

MR. ANDERSON: Right. That's what I'm saying, this is an opportunity in the letter to say, hey, we're asking for help, and it is an inconvenience, but they're doing this for you too.

MR. ABES: I'll put that in.
MR. ANDERSON: Do you have anything else on the cover letter? It feels important to me because subpoenas scare me. I saw that as work product that came out and I was like, oh, my gosh.

MS. SULLIVAN-WISECUP: First, I thought, oh, that's legal.

MR. ABES: So a question for you and you might not know the answer. Council has subpoena power.

MS. SULLIVAN-WISECUP: Yes.

MR. ABES: I don't know when council has invoked that subpoena power or whether we have forms that the City uses. I can certainly craft the subpoena based on what I would use in court and use the City's name, but I don't know if there's a form that the City uses for that.

MS. SULLIVAN-WISECUP: Mayor Webster, do you know if we've ever had to?

MAYOR WEBSTER: (Shaking head.)

MR. ANDERSON: Do a quick Lexis search.

MR. ABES: Probably not. So I will use a typical subpoena form and use the City's name on it.

MR. ANDERSON: That's fine. Are you
good with that?

MS. SULLIVAN-WISECUP: I'm very good with that.

MR. ANDERSON: Sorry. The City's name, so just to be clear, when we're writing these questions, it's from the City of Springdale City Council, Council Investigative Committee, so it's from the committee?

MR. ABES: The committee is issuing the subpoena, yes.

MR. ANDERSON: Because the council has the authority, right, to do the subpoena?

MS. SULLIVAN-WISECUP: Yes.

MR. ABES: So do committees.

MS. SULLIVAN-WISECUP: Yeah. Okay.

So on the cover --

MR. ABES: So the cover letter will be appropriately explanatory and friendly.

MS. SULLIVAN-WISECUP: Okay.

MR. ANDERSON: I don't think I need to review it.

MS. SULLIVAN-WISECUP: I don't think I need to review it. I trust Dinsmore to do their thing. Okay. Then, we will move on to old business. Wait, actually, a question first. So
how long will it take realistically, when do you think that those will go out?

MR. ABES: Probably the beginning of next week.

MS. SULLIVAN-WISECUP: Okay.

MR. ANDERSON: The dates we put in, if it goes out at the beginning of next week, we're going to ask for responses by, we should have those dates set.

MS. SULLIVAN-WISECUP: I don't have a calendar in front of me. Hold on.

MR. ABES: The other logistical point is, unlike when we're in court, there is no rule that I have found in any of the Council documents prescribing the manner in which the subpoenas must be served. So sometimes if you're in litigation, personal service is required, sometimes certified mail service is appropriate. There's really no rule that I've found that dictates what constitutes effective service for a City of Springdale Council Investigative Committee subpoena.

So my thought is -- well, first, to ask you whether you have a preference for serving a hard copy and in what manner? I think except
for Mr. Higgins, we could deliver all of the
subpoenas by e-mail. We could follow it up with a
hard copy. I don't think that that's necessary
for people affiliated with the City. For
Mr. Higgins, we probably want to deliver it to his
home address, which I would need to get, if we
have it.

MR. ANDERSON: Yeah. There's
actually three of them that need to be done that
way, because Former Council Person Harlow and
Diehl would need home service as well.

MR. ABES: So for those, you know, it
can be an impediment to send them certified mail
because it requires a signature. Sometimes people
don't sign for their certified mail and there's a
delay in delivery. Sometimes they're just not
home to sign for certified mail. Sometimes the
post office leaves a card that says you have to
come to the post office to sign for it and that
never happens. So I would think regular mail
service would be sufficient in the absence of any
rule dictating otherwise.

The other option is to have somebody
from the City hand-deliver the subpoenas and place
them in the mailboxes, not chasing people down
and, you know, accosting them at the CVS, but just placing them in the mailboxes.

    MR. ANDERSON: If you have thoughts or I can share mine.

    MS. SULLIVAN-WISECUP: I have some concerns about sending it in US mail because people will say they didn't receive it. I like something to have like a receipt or something. I'm very big on receipts.

    MR. ABES: We could send it FedEx.

    MR. ANDERSON: I don't think it would be appropriate for a city administration person to deliver a council subpoena. I would be comfortable hand-delivering to a mailbox so it came from the council committee. I'm also fine with FedEx or UPS, all of those are fine.

    MS. SULLIVAN-WISECUP: I'm fine with either one as long as I know it's been delivered to their home.

    MR. ABES: Let's send it FedEx.

    MR. ANDERSON: I think FedEx is fine, UPS, or whatever the lowest cost is.

    MR. ABES: We usually use FedEx, but whatever, sure.

    MS. SULLIVAN-WISECUP: So if this
goes out --

MR. ANDERSON: If it went out on the 10th, that gives until July 31st, which is a nice round date at the end of the month.

MR. ABES: Well, two weeks would be sooner.

MR. ANDERSON: If it went out on the 10th -- oh, that would be three weeks, sorry.

MS. SULLIVAN-WISECUP: Okay.

MR. ANDERSON: If it went out on the 10th, 2-day or next-day service, they would receive it on the 11th or 12th?

MR. ABES: I'll account for the next-day service and have it due two weeks from the date of the receipt as opposed to mailing.

MS. SULLIVAN-WISECUP: Looking like the 26th or 27th, right around there.

MR. ANDERSON: That's at least a week before our -- so that would be after the July council meeting, which is fine, but before our August CIC meeting, so that would give us an opportunity the week of -- well, I guess it would be the beginning of July, the 31st, and August to have that informational meeting we discussed based on responses.
MS. SULLIVAN-WISECUP: Right.

MR. ANDERSON: And in advance of our August 2nd meeting.

MR. ABES: Right.

MS. SULLIVAN-WISECUP: Okay.

MR. ABES: What is the -- how would you prefer I get the e-mail addresses for the people I need?

MR. ANDERSON: On the council, the people who are still with the City, we can provide a list. Do you want to do that?

MS. SULLIVAN-WISECUP: Yeah, I will.

MR. ANDERSON: It's also on the City web page. I know some people are looking to change them. You feel e-mail service is appropriate, you've never had a problem with that? We don't need to do hard copies. I prefer digital.

MR. ABES: Well, what I'll do is I will include a PDF and a Word file so they can type their responses directly into the Word file and won't have to worry about running out of space or anything of that nature. For the people who receive service by FedEx, I will let them know that if they e-mail me, I will be glad to send
them a Word file if they want it.

MR. ANDERSON: Okay. Then, maybe we can do an announcement at the 11th meeting, we have a council meeting on the 11th, maybe we can do an announcement, too, to let people know that questions have been issued, and if they have not received them and feel they should have by the 12th or 13th, reach out to us.

MS. SULLIVAN-WISECUP: Come out of the woodwork.

MR. ABES: Yeah. To answer your question, there just is no prescribed method of service for the City, and I would expect that upon receipt, anybody who is affiliated with the City would consider that sufficient service.

MR. ANDERSON: Okay. Great. I'm good with that.

MS. SULLIVAN-WISECUP: My next question is: Do we feel the need to still have our July 19th meeting, since we're sending these out? We won't have anything really to discuss until we get everything back in. Do we have anything -- can you think of anything potentially that you want to discuss on the 19th?

MR. ANDERSON: So I would want to
hold off making a call there until maybe the 16th or 17th, because it's certainly possible we could have responses back that we may want that meeting in order to have an additional set of questions go out. And if we -- let me ask this question, then, first. Would we ever consider reviewing any of the responses before we have all of the responses?

    MR. ABES: Sure. If we have a critical mass that's worth looking at, yes. We're not going to hold up the process if one or two people delay getting us their responses.

    MR. ANDERSON: So it's certainly possible that we could have a critical mass certainly of the elected officials who might respond fast enough that we might use that meeting, if there's additional questions. I'm not opposed to it.

    MS. SULLIVAN-WISECUP: No. I just wanted to make sure.

    MR. ANDERSON: Hate to cancel it and want it.

    MS. SULLIVAN-WISECUP: We have until the 17th to cancel and that's our choice. I just want to let everybody know that we do have quite a few people that come out, and we want everybody to
have advance notice, and that's why I asked that
question. I don't want anybody to show up and not
know that we canceled it. If we cancel it, it
will go out with the same notice. I will ask that
they put it on the Facebook page and on the
website.

MR. ANDERSON: If it's canceled, it
will be canceled by the 17th, close of business
the 17th.

MS. SULLIVAN-WISECUP: Yes.

MR. ANDERSON: It would show up as a
Facebook announcement, and also on the Calendar of
Events on the Springdale front page calendar, it
would say CIC Meeting and it would say in
parentheses Canceled?

MS. SULLIVAN-WISECUP: That's what
I'm asking for, yes, yes. Okay. So I can kind of
leave that and let us know preferably by the 16th
if we have enough to really --

MR. ANDERSON: Maybe we can have a
communication plan today for that, right? So
maybe we can -- what would be reasonable for us to
at least get notice that you've received responses
when they come in, I've received response from and
nothing more as an e-mail; is that okay? I would
like to know when they're coming in.

MR. ABES: I'll let you know as I receive responses.

MS. SULLIVAN-WISECUP: So we'll know if we have a decent enough amount.

MR. ANDERSON: Right. Because I think we would make the determination if it's a critical mass and having that second meeting.

MS. SULLIVAN-WISECUP: I'm saying to you that we will know.

MR. ANDERSON: So we'll know as they come in.

MS. SULLIVAN-WISECUP: Yes. One is a not a critical mass or depends on who it is.

MR. ANDERSON: Okay.

MS. SULLIVAN-WISECUP: Okay. That's that, cool. Do we have any -- do you have any old business that you want to bring up?

MR. ANDERSON: No, thank you.

MS. SULLIVAN-WISECUP: I have nothing. We have not received any communications. Have you received any communications?

MR. ANDERSON: (Shaking head.)

MS. SULLIVAN-WISECUP: Any communications from the audience? State your name
and your address.

    MAYOR WEBSTER: My name is Doyle Webster, 1424 Peak Drive, Springdale, Ohio.

Little hard to follow the questions without having a document, and I understand the process there, but if you could clarify this for me. On the allegation in Mr. Higgins' letter that we went into executive session to discipline an elected official, now, is that going to be a question? I sort of got the impression sitting there -- and maybe that was being a little glossed over, the disciplinary thing, and I would hope that that's not the case.

    MR. ABES: It's not specifically a question because his lawsuit covered whether there was an appropriate reason to go into executive session, and that lawsuit has been resolved pursuant to an agreed entry. The allegation from Council Person Emerson was that Mr. Higgins told her certain things that were discussed in the executive session, but at least in the minutes, those are limited to certain things that were said to Council Person Shroyer and certain comments that were made by Council Person Hawkins. The whole discussion of whether an employee was being
disciplined seemed to stem from Mr. Higgins' belief that --

MAYOR WEBSTER: Well, he didn't say employees. He said that an elected official was being disciplined.

MR. ABES: Okay. Either way, it seemed to stem from his belief that that's one of the reasons in the statute for going into executive session, and he seemed to have some idea that that must have been the reason why the executive session was called, but the stated purpose for the executive session in the motion was to discuss imminent litigation. So I know there was an extended discussion about that in the council minutes, but I don't see how it's related to the allegation of whether there was a breach of confidentiality. Those seem to me to be two different questions.

MAYOR WEBSTER: Yeah, I think that that has a direct bearing. I think if we knew everybody's answer to that, we would know who the leader was.

MS. SULLIVAN-WISECUP: It is a part of the question.

MR. ABES: Do you mean the answer to
why the executive session was called or whether it was for the purpose of discipline?

    MAYOR WEBSTER: No. It's a simple question to all of the elected officials, was the disciplinary action taken in that executive session, that's all you have to ask. It's a simple yes or no.

    MR. ANDERSON: So, Meghan, you were going to say something?

    MS. SULLIVAN-WISECUP: Yeah. I was going to say when we were going over some of these questions, it asks about the raised voices or if anyone was being yelled at or expressed agreement or opposed any statement or question. It goes over things like that, but it doesn't use the word discipline, but it has other verbiage that basically expresses discipline.

    MR. ANDERSON: If I can add to that.

    MS. SULLIVAN-WISECUP: Yes.

    MR. ANDERSON: I think if Mr. Higgins responds back and states that the things that he heard about were related to discipline or not, then, that would be something that we would want to investigate further. Black-and-white question of did we discipline an official, we're not
adjudicating the legality of the executive session
at all, that's not in our scope. So I agree that
the questions we're asking are related to that,
but they're only related to determine whether or
not there's a breach of executive session
confidentiality, not whether or not somebody was
disciplined or felt disciplined or may have been.
The reason all of that -- some of that will come
out when people give their recollection, but I
think that the questions we have get to the facts
that are related to our scope. I don't think an
additional question to elected officials to that
is necessary, do you?

MS. SULLIVAN-WISECUP: No, because
like I said, with the questions that he did or
that are listed here, it's asking them
specifically to say what had happened. So when
they say specifically what happened, you'll see if
there was or was not discipline or if people said
certain things or didn't say certain things. That
is specifically asked in here as to what was said,
so that will be answered.

MAYOR WEBSTER: Okay. Just for the
record, in my opinion, you're missing a golden
opportunity.
MS. SULLIVAN-WISECUP: And that could very well be a follow-up thing once we get the initial. We don't know until we get the answers. Anyone else? Second call. Third and final call. Okay. I will close the communications.

MR. ANDERSON: Move to adjourn.

MS. SULLIVAN-WISECUP: Okay. Thank you. You guys have a great night.

(Thereupon, the proceedings were concluded at 8:32 p.m.)

* * *
STATE OF OHIO )
COUNTY OF MONTGOMERY ) SS: CERTIFICATE

I, Lisa M. Conley Yungblut, a Notary Public within and for the State of Ohio, duly commissioned and qualified,

DO HEREBY CERTIFY that the above-named proceeding was reduced to writing by me stenographically in the presence of the parties and thereafter reduced to typewriting.

I FURTHER CERTIFY that I am not a relative or Attorney of either party, in any manner interested in the event of this action, nor am I, or the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).
IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Dayton, Ohio, on this 16th day of July 2018.

LISA M. CONLEY YUNGBLUT, RMR, CRR
NOTARY PUBLIC, STATE OF OHIO
My commission expires 7-28-2019