

City of New London
OFFICE OF THE MAYOR

October 22, 2012

Margaret Ackley
Chief, New London Police Department
Police HQ
New London, CT 06320

Chief Ackley,

Following inquiries from both the Police Community Relations Committee and the New London Police Union, I ordered an investigation by the City's Law Department of certain emails you sent to a private citizen, Ms. Kathleen Mitchell. Specifically examined was an email sent on September 29, 2011.

In addition, I ordered the Chief Administrative Officer, Jane Glover, to review the findings presented by the Law Department and make any independent recommendations to me regarding this matter.

The Law Department concluded part of their investigation on June 7, 2012 and the rest on August 29, 2012. These reports determined that you potentially violated Police Department General Orders 2.1 and 12.0 and past practice relating to Department Heads and the City Manager. The Chief Administrative Officer made her recommendation to me on September 19, 2012. (These findings and memorandums are attached to this letter for your review).

You were given written notice to appear at a pre-disciplinary hearing to respond to these charges. The hearing was to be conducted by me, at which time you would have the opportunity to be heard and to be represented by Counsel. That hearing was held on October 11, 2012 at City Hall. Counsel represented you at this hearing and both you, and your Attorney, were heard from.

Your Attorney requested clarifications and certain information from the City's Law Department. I granted this request and gave you and your Attorney one week to respond. All information requested was provided to your Attorney on October 12, 2012. You did not object to the one-week response period and duly made your reply on October 19, 2012. (A copy of your reply is also attached).

I have reviewed all materials in this matter and conclude as follows:

Preliminary Matters

You raise two points that require disposition before any determination can be made on the main charges against you. The first is that you have already been disciplined regarding this matter by the Chief Administrative Officer and, second, that you have First Amendment rights in this matter that preclude discipline.

First, regarding the issue of prior discipline, I find that this argument is without merit.

Section 39d(b) of the Charter of the City of New London establishes the office of Chief Administrative Officer as the "principal managerial aide to the Mayor". No specific powers, or duties, are assigned to this officer in this, or any other, section of the Charter. Under the provisions of Charter Section 39 (b), Section 40 and Section 73, the control of the Police Department, and any potential discipline of the Chief of Police, rests solely with the Mayor.

The conversation you reference in your reply of October 19, 2012, taking place on or about March of 2012 between you and the Chief Administrative Officer, cannot be construed as discipline as the CAO had no power or authority to issue discipline. As a Mayoral managerial aide, this conversation can only be construed as managerial advice, not discipline. Only the Mayor can issue discipline to the Chief of Police.

Second, you assert a First Amendment right to make the communications you did, in the manner you did.

I am very sympathetic to the view that the First Amendment should be read in broad and absolute terms (See: The Bill of Rights, NYU Law Review, by Justice Hugo Black, 1960.) This, however, is not, and has never been, the judicial consensus on First Amendment law.

The United States Supreme Court case of *Garcetti v. Ceballos* established the doctrine that when public employees make statements relative to their official duties that they are not speaking for First Amendment purposes and are not shielded from employer discipline. To my best knowledge this case is still controlling precedent on this point and has been duly applied in the Connecticut Courts.

I therefore conclude that your assertion of First Amendment protection does not prevent discipline against you in this matter.

General Order 2.1 and Past Practice for Department Heads

The main charge regarding a potential violation of this GO, and the past practice of Department Heads discussing and coordinating with the City Manager, is that you went outside the chain of command in your communication of September 29, 2011 by not gaining prior approval of then City Manager Denise Rose. This general order does not address the substance of any communication and relates more to internal functioning within the Police Department.

You assert that you did discuss these matters with Manager Rose while the Law Department investigation shows that Manager Rose denies giving approval for this communication.

A plain reading of the Order gives no indication, however, that such public communications require prior approval of the City Executive for a Chief of Police to engage in such a communication. I could find no clearly articulated prior policy on this point. It appears that the policy was unwritten and customary only.

I certainly agree with the Chief Administrative Officer who classifies this communication as "unprofessional behavior". I also recognize that you yourself have acknowledged, "I could have exercised more prudence in this communication".

It is certainly my order and instruction to you not to engage in such communications in the future without prior direct approval from me.

As the policy was vague and unclear, however, and as this communication also occurred before the new form of government took office and a clear policy could be articulated, and as evidence conflicts as to whether approval was in fact given; I find:

No Violation of General Order 2.1, and that No Discipline is warranted.

General Order 12.0

The main charge in relation to your potential violation of this General Order is that you communicated official business of the department to an unauthorized person. It is further asserted that the intent of such communications was to criticize publicly officers under your command.

You assert that "my comments might possibly be perceived as critical of Officers Lynch and Wheeler (sic), they were private...". I cannot agree with this assertion.

You communicated to a private citizen, who is not a City employee, with instructions on how to obtain and discuss official City business in a public forum. Such

discussions would have negative perception effects on officers within your command and control. This is the case even if the substance of the communication was truthful and even if the information was otherwise releasable if requested by a private citizen.

This communication falls outside the boundaries of proper managerial conduct. If such communications were allowed to occur they could serve as a disciplinary tool outside the proper forum for such proceedings. Such communications, if allowed, could target individual department officers unfairly and would serve to seriously undermine confidence in any Chief's ability to effectively lead the department.

The tenants of your communication appear clearly to conflict with the language and intent of General Order 12.0. I therefore accept the recommendations of the Chief Administrative Officer and the Law Department and find that you:

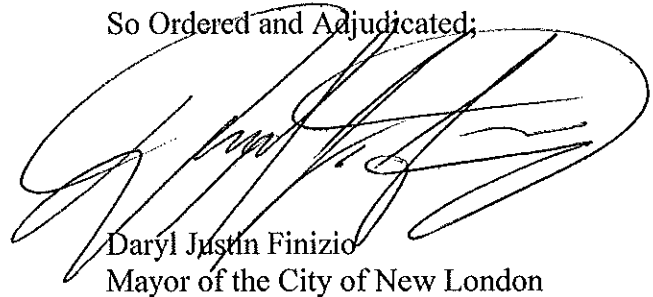
Violated General Order 12.0 and receive this Written Reprimand for that Violation

Conclusion

I am confident that these types of communications will not occur in the future. If any such communication is requested from you but you have doubt as to whether to respond or communicate, inform my office and proceed only when given direct authorization by me.

I also order that you communicate to all members of your department clarifying that such communications that discuss internal police business and contain comments that would be deemed to be critical of fellow officers not occur in the future and that the department's chain of command, under the City Charter, ends with the Mayor.

So Ordered and Adjudicated;

A large, stylized handwritten signature in black ink, appearing to read 'Daryl Justin Finizio', is written over the printed name and title. The signature is enclosed within a large, hand-drawn oval.

Daryl Justin Finizio
Mayor of the City of New London

Honorable Daryl Justin Finizio
Mayor, City of New London
State Street
New London, CT. 06320

October 19, 2012

Dear Mayor Finizio:

I do not agree with Assistant Law Director, Attorney Estep's interpretation that I violated police department policies pursuant to a September 29, 2011 private e-mail between myself and a New London citizen. Although perhaps I could have exercised more prudence regarding the communication, my comments in that particular e-mail raised issues of public concern and were important to furthering community relations and dialogue between the citizens of New London and their government.

In hindsight I would have obviously chosen a different forum. However, I did not violate any articulated policy set out by the law director. Just cause discipline cannot be reduced to a one size fits all application as the law department is attempting to do.

All of the comments contained in the private email were truthful. None were malicious nor did they bring discredit to my department. In fact, they legitimized an attempt to change a culture often resistant to progressive change and dominated by outdated policies and secrecy.

As I stated in the pre-disciplinary hearing on October 11, 2012, my comments in the e-mail were intended to preserve the Police Community Relations Committee ("PCRC"). At the time, that committee was under attack from certain members of the department who did not believe that the public had the right to know about civilian complaints brought against police officers—as a citizen I had a different opinion. My comments were contained in a private e-mail and my intent was to make sure that the PCRC continued to provide transparency and community oversight regarding complaints made against the New London Police Department (NLPD). The comments did not pertain to "official business of the department" as the law director states incorrectly—the comments pertained to civic involvement and community activism.

Since I have become Chief of Police I have tried to implement policies that offer accountability and transparency to the NLPD, while at the same time keeping public safety and the professionalism of our officers at the forefront of our mission. My comments in the e-mail were consistent with that mission.

As you are well aware—through your administration's efforts to transform institutional norms—these are not easy goals to accomplish when the culture is not open to change. As evidenced by my e-mail, policy implementation and change is not always performed as gracefully as one would hope. Despite that, however, I do not relinquish my First Amendment rights simply because I am also a government employee.

I will now address the actual speech and the alleged policy violations: First, it would be unfair to impose further discipline should you find that it is warranted. The issue was addressed previously and I have already been reprimanded by your office regarding the e-mail, which I accepted without protest.

In March 2012, I was approached by Chief Operating Officer Jane Glover concerning the e-mails in question. I was told that your office considered the communication outside bounds of public communication. I was disciplined verbally and told to discontinue the communications and exercise more discretion. I complied. Any further discipline regarding the same issue would just be piling on at this point and frankly, unfair.

Second, an honest reading of the policies articulated reveal that my speech was not expressly violative of any inner departmental policy but an attempt by the law department to fit a square peg into a round hole and punish me for speech that I have already been accountable for.

For example, the law director claims that the email—and my requesting that the citizen not share my comments—was an “intentional act of keeping the information from the proper administrative chain of command as required by the City’s policies.” Respectfully, that is absurd.¹

NLPD Police Department General Orders 2.1 states:

Policy: “that it is the policy of the *New London Police Department* to maintain an efficient and effective division of work by utilizing a clear and consistent chain of command. It is the policy of the NLPD that supervisory personnel are accountable for activities of employees under their immediate control.”

My communications with Ms. Mitchell were private and pertained to citizen involvement with a joint police/community relations committee. It is the policy of the NLPD to “maintain an efficient and effective division of work by utilizing a clear and consistent chain of command. It is the policy of the *NLPD that supervisory personnel are accountable for activities of employees under their immediate control.*” (Emphasis added).

An objective reading of that policy relates to internal police matters and mandates that *officers of the department* follow the chain of command *within the department*. There is no language in the policy stating that I am required to report to the Mayor’s office regarding any concern I might have within my own department, regarding my officers interfering with the PCRC. I am not saying that open dialogue between the

¹The Law Director attempts to cite unspecified and unarticulated “past practice” policies that involved past City Managers and the Chief of Police to support imposing further discipline upon me. That argument lacks merit because just cause discipline requires specificity and a semblance of due process, not Kafkaesque charges that cannot be enunciated by the accuser.

police chief and the mayor's office is not important; I am simply saying that policy 2.1 does not require it as the law department hypothesizes. Contrary to Attorney Estep's assertions, I did in fact have an on going dialog with City Manager Rose regarding issues with the PCRC.

My communications with the citizen were private and pertained to civic involvement with a joint police/community relations committee. It was not official police business, nor did involve my official duties as Chief of Police. Moreover, nowhere in the policy cited does it state that I am mandated to notify the Mayor regarding my civic concerns with an organization that is operated in conjunction with the public.

To conclude that my email violated this policy based on the Law Director's interpretation would not only be wrong but an exercise of intellectual dishonesty.

NLPD Police Department General Order: 12.0 "Divulging Information" states:

"A member or employee of the department shall not divulge to any unauthorized person in or out of the department any information concerning the business of the department and shall not talk for publication, be interviewed, make public speeches on police business, or impart information relating to official business of the department unless authorized by a superior officer.

The policy mandates that a member or officer shall not: (1) divulge to any unauthorized person (2) any information concerning the business of the department; (3) shall talk for publication; (4) any information relating to official business of the department.

The law department also suggests that I violated Rules 1, 3, and 4 of that policy.² Again, an objective and honest reading of those rules reveals that my comments (which I admit could have been chosen differently) were not to "publicly criticize or malign" any member "so as to discredit or cause disrespect to the department." If anything, the comments should be interpreted as respecting and crediting the NLPD by advocating away from "closed door" policies that created a flssured relationship between the police department and the public that we are sworn to serve and protect.

²Rule 1: "Respect and Courtesy: All members of the department must be respectful, courteous, and orderly at all times. In the performance of their duty, they must be attentive and conscientious, control their tempers, and exercise the utmost patience and discretion. They should refrain from harsh, violent, coarse, obscene, profane, and disparaging language." Rule 3: "Mutual Respect: Offices shall be respectful in their words, actions, and attitudes towards their supervisors. They shall be civil and considerate towards each other. They shall not engage in any altercations, physical or otherwise, with any other members of the department, either on or off duty. A member or employee of the department shall extend the proper courtesy and respect towards all officers of this and other department, and to public officials." Rule 4. "Criticism and Malicious Gossip: A member or employee of the department shall not publicly criticize or malign any other member or employee so as to direct discredit or cause disrespect to the department."

Although my comments might possibly be perceived as critical of Officers Lynch and Wheeler, they were private—the e-mail specifically mentioned that it was *not meant for public dissemination*. They were meant to advocate for increased civic involvement in a Committee that I strongly endorse and support. The comments concerned the PCRC and the members Lynch and Wheeler's attempt to disband that organization—the comments did not involve, nor divulge, any confidential "official business of the department" that was not available to the public upon request. Accordingly, to attribute discipline based on G.O. 12.0 would simply not comport with the plain language of the policy.

Since becoming Chief of Police I have had to withstand vitriolic attacks from certain members of my department that are resistant to modernizing our police department. My comments in the email were an in-artful attempt to maintain a needed transparency of certain aspects of the department through civic involvement. I recognize, however, that the public concern raised in the e-mail could have been raised in a different format and through different channels.

I have always been willing to accept responsibility for my actions and for any policy that I clearly violated. In the present case I did not violate any clearly defined policy and to the extent that I did, I have been previously reprimanded for that conduct.

In the future I look forward to working with you and your administration in the furtherance of creating a modern, efficient, and, transparent police department. My commitment to the NLPD and the citizens of New London has never been stronger. Therefore, I will continue to advocate for programs that increase the efficiency and professionalism of my department while at the same time maximizing our commitment to keeping our citizens safe.

Thank you for your open-mindedness and support.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Hilly". The signature is written in a cursive style with a large, looped initial "M" and a long, sweeping tail that ends in a small flourish.

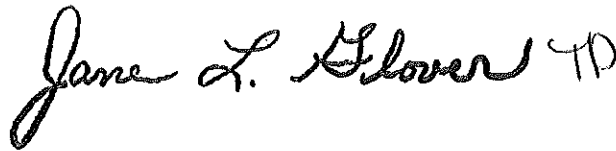
MEMORANDUM

TO: The Mayor

FROM: Jane Glover, CAO

RE: Chief Ackley's Emails

DATE: September 19, 2012

Handwritten signature of Jane L. Glover in cursive, followed by the initials "JD".

I have reviewed the law director's reports relevant to Police Chief Margaret Ackley's emails concerning both the Police Community Relations Board and Officer Todd Lynch and in my opinion the discipline the law director has recommended is appropriate.

I believe the Chief should get a formal written reprimand to clarify the administrations' position that this sort of unprofessional behavior will not be tolerated.

If this memo is unclear, I am always available to talk.

CONWAY, LONDREGAN, SHEEHAN & MONACO, P.C.

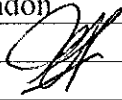
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City of New London
Interdepartmental Memorandum

This document is confidential. It relates a communication privileged by the attorney-client relationship and is thus exempt from public disclosure under the Connecticut Freedom of Information Act. It should be filed or stored separately from public documents in order to avoid accidental disclosure.

TO:	Daryl Justin Finizio, Mayor of the City of New London
FROM:	Jeffrey T. Londregan, Esq., Law Director's Office 
DATE:	August 29, 2012
RE:	September, 2011, email from Chief of Police re: Officer Lynch

This memo is in response to your request that I research and review whether an email sent by the Chief of Police on or about September 29, 2011, violated any laws, policies or procedures for comments made therein toward New London Police Officer Todd Lynch. Please note that I have limited my review only to any issues or actions that impact the City of New London. I did not review or research if any of the private individuals mentioned and/or named in the email would have a private cause of action for any comments made against them in the email by the Chief.

The email of September 29, 2011, contains comments made by the Chief of Police to a private citizen. The main topic of the email is the Police Community Relations Committee, however, the Chief does make certain comments about Officer Lynch, who is an officer within her department. These comments allege that Officer Lynch was attempting to have the Police Community Relations Committee disbanded so that, "citizens won't have access to hearing what complaints have been filed and exactly what was investigated," that Officer Lynch has more complaints against him than any other officer, and that Officer Lynch needs to be kept "in check." Based upon my research of certain facts, it appears that these comments violated the standing policy and procedures in place at the time regarding raising issues and matters first with the City Manager.

At the time the email was sent, while there were no formal written policies, past practice indicates that all department issues and matters within the administration of the City were to be brought by Department Heads to the City Manager if they were not subject to internal department discipline. This hierarchy is confirmed by reviewing New London Police Department General Order 2.1, which states that the Chief of Police is to report to the City Manager. The City Manager would then review and/or investigate the matter, and then decide how things should proceed. Failure to follow a City Manager's policy and procedure could have resulted in disciplinary actions by the City Manager of the Department Head in question.

In speaking with former City Manager Denise Rose, the Chief of Police sent this September 29, 2011, email with her complaints about a fellow officer to a third party without first informing and notifying the City Manager of those concerns. Therefore, sending this email violated the policy and procedures existing at the time within the City's administration. The delivery of the email without any notification to the City Manager is potentially made more serious with the comment in the email asking the private citizen to not forward the email to anyone. This could be interpreted as an intentional act of keeping information from the proper administrative chain of command (i.e. City Manager).

Moreover and notwithstanding general City policies, the comments made by the Chief in the email stating that Officer Lynch was attempting to get rid of a City Commission in order to keep information from the public, and that he has more complaints against him than any other officer, violate New London Police Department General Order 12.0, which states that no member of the department shall publicly criticize or malign any other member so as to directly discredit or cause disrespect to the department.

While it may be argued that such an email falls within the protection of the First Amendment rights of the Chief, it should be noted that the United States Supreme Court in Garcetti v. Ceballos has held that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline. This case was recently cited as valid precedent by the Connecticut Supreme Court earlier this year. Considering the comments made in the subject email are directed at/towards a New London police officer (that the Chief oversees) and his alleged motivations towards a public Committee that reviews actions of the department headed by the Chief, I do not think that the First Amendment would afford protection to the statements and comments made in this email pursuant to the U.S. Supreme Court's holding in Garcetti.

You have also asked me to outline what discipline you could impose. As set forth in my previous memorandum to you regarding the impact of the subject email towards the Police Community Relations Committee, the range of discipline is as follows:

1. Verbal warning
2. Written warning
3. Suspension with pay
4. Suspension without pay
5. Termination

As with my previous memorandum on the subject, the actions taken by the Chief seem to fall within numbers 1 and 2 of this disciplinary range. I would think some type of warning, verbal or written based upon your preference, would be appropriate with a statement from you outlining what type of procedure you will expect the Chief to follow in the future when she has complaints or issues about officers within her department. Since the email has now been made public, perhaps some type of written apology from the Chief to Officer Lynch is something to consider; however, whether that is necessary is completely within your discretion.

CONWAY, LONDREGAN, SHEEHAN & MONACO, P.C.

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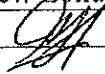
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TO:	Daryl Justin Finizio, Mayor of the City of New London
FROM:	Jeffrey T. Londregan, Esq., Director of Law 
DATE:	June 7, 2012
RE:	Police Chief Emails Regarding Police Community Relations Committee

This memorandum is in response to your email to me asking me to contact former City Manager Denise Rose regarding this matter and appropriate discipline if any, for the Chief sending the email complaining about the Committee to a private individual.

Denise Rose confirmed for me that the Chief of Police never spoke to her regarding the Police Community Relations Committee and its wishes and desires to disband or expand their powers. As such, the Chief did violate the City regulations and procedures that were in place at the time by not first bringing her complaints and concerns to the City Manager before sharing them with someone else outside of the administration.

With regards to what discipline you could impose, the range of discipline seems to be as follows:

1. Verbal warning
2. Written warning
3. Suspension with pay
4. Suspension without pay
5. Termination

The actions taken by the Chief seem to fall within numbers 1 and 2 of this disciplinary range. I would think some type of warning, verbal or written based upon your preference, would be appropriate with a statement from you outlining what type of procedure you will expect the Chief to follow in the future when she has complaints or issues. Since the email has now been made public perhaps some type of written apology from the Chief to the Police Community Relations Committee to the chairperson is something to consider; however, whether that is necessary is completely within your discretion.

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