

**Dunwoody Council Member Dr. Adrian G. Bonser
41 Perimeter Center East
Suite 250
Dunwoody, GA 30346**

06/10/2013

Mayor Mike Davis
City Council Members
41 Perimeter Center East
Suite 250
Dunwoody, GA 30346

Dear Mr. Mike Davis,

Please accept this letter as a formal complaint against Assistant City Attorney Lenny Felgin and, Hearing Officer Ms. Jennifer Keaton. The facts to substantiate this complaint are contained in the attached Exhibits 1 and 2.

Count 1

Section 2-261 of the Code of Ethics states, "No action may be taken on any complaint which is filed later than one year after a violation of this article is alleged to have occurred, and a complaint alleging a violation must be filed within six months from the date the complainant knew or should have known of the action alleged to be a violation."

The complaint against me alleged an ethic violation based upon a sent email dated 07/03/2012. The date of the filed ethics complaint was 04/15/2013. This date is greater than 6 months from the date the recipient received the email.

The Assistant City admitted that the complaint was filed beyond the statute of limitations.

In violation of the Code of Ethics, Assistant City Attorney Lenny Felgin willfully and knowingly forwarding a filed complaint against me in direct contradiction of the Code of Ethics.

Count 2

Section 2-261 of the Code of Ethics states, "No action may be taken on any complaint which is filed later than one year after a violation of this article is alleged to have occurred, and a complaint alleging a violation must be filed within six months from

the date the complainant knew or should have know of the action alleged to be a violation.”

The complaint alleges an ethic violation based upon a sent email dated 07/03/2012. The date of the filed ethics complaint was 04/15/2013. This date is greater than 6 months from the date the recipient received the email.

In violation of the Code of Ethics, Hearing Officer Jennifer Keaton willfully and knowingly proceeded with a hearing against me in direct contradiction of the Code of Ethics.

STATE OF GEORGIA
CITY OF DUNWOODY
AFFIDAVIT

Personally appeared before the undersigned officer duly authorized to administer oaths, Dr. Adrian Bonser, who on oath deposes that the statement in the foregoing Complaint are true and correct to the best of her knowledge and belief. The affiant further acknowledges that false statements made in this Complaint may result in prosecution against them for false swearing, a felony under O.C.G.A. 16-10-71.

Adrian G. Bonser
Dunwoody Council Member Dr. Adrian G. Bonser

Sworn to and subscribed before me
This 10th day of June, 2013

Sharon Lowery
Notary Public

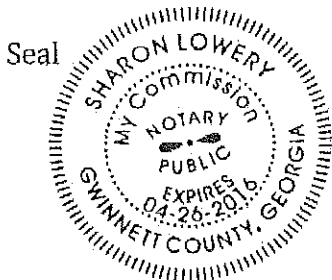


EXHIBIT 1



41 Perimeter Center East, Suite 250
Dunwoody, Georgia 30346
P (678) 382-6700 F (678) 382-6701
dunwoodyga.gov

April 22, 2013

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED
AND REGULAR MAIL

Stephen T. Chipka
1682 Manhasset Drive
Dunwoody, Georgia 30338

RE: April 15, 2013 Ethics Complaint

Dear Mr. Chipka,

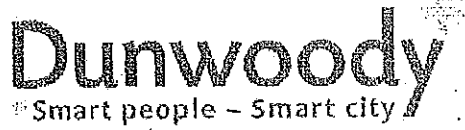
This correspondence acknowledges the City's receipt of your April 15, 2013 Ethics Complaint against Councilmember Adrian Bonser. This letter is written pursuant to Section 2-257(c) of the City of Dunwoody Ethics Code. Under said Code Section, the City Attorney's office reviews the Ethics Complaint for all procedural filing requirements of Section 2-256.

Section 2-256(c)(2) requires that every Count of a Complaint state the "specific section of this Article alleged to have been violated." The above-referenced filed Complaint names three Counts against Councilmember Bonser. Only Count 3, however, references part of the Ethics Code, specifically Section 2-222, alleged to have been violated. Counts 1 and 2 reference Section 2.09 of the City Charter, which is not the procedurally appropriate section to base an Ethics violation on. As such, it is the determination of the City Attorney's Office, that Counts 1 and 2 of the Complaint are not in conformance with the requirements of Section 2-256 and, pursuant to Section 2-257, said Counts are hereby dismissed without prejudice. Pursuant to Section 2-257, you may refile Counts 1 and 2 of this Complaint within thirty days of receiving this dismissal or, if you choose to, you may file an appeal of this dismissal of Counts 1 and 2 with the duly appointed Hearing Officer for this Complaint, Jennifer Keaton, by filing a notice of same within five (5) days of receipt of this dismissal with the City Attorney's office.

Count 3 of the above-referenced Complaint is deemed to comply with the procedural requirements of Section 2-256 and will be forwarded to Hearing Officer Keaton by April 22, 2013.¹

¹ The City Attorney's office does note here that the alleged violation stems from the July 3, 2012, e-mail directed by Councilmember Bonser to Complainant Stephen Chipka. Section 2-261 of the Ethics Code states that the Ethics Complaint must be filed within six months from the date the Complainant knew of the action alleged to be a violation. The six month period thus expired on January 3, 2013. Thus, it is the opinion of the City Attorney's office that the Complaint would be dismiss-able by virtue of this Statute of Limitation. However, even though a Statute of Limitations is, traditionally, a procedural determination, it is not one of the factors listed in Section 2-256 and, therefore, in an abundance of caution, the City Attorney's Office reserves this decision to the review and determination of the Hearing Officer.

#G.1.



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dunwoodyga.gov

Further notification regarding the investigation of this Complaint, including any questions the Hearing Officer may have for you, will come from the Hearing Officer directly. The City Clerk will notify you of the date of the hearing on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonid Felgin". The signature is written in a cursive style and extends across the width of the page.

Leonid Felgin
Assistant City Attorney

Cc: Adrian Bonser
Jennifer Keaton, Esq.

~ 2 ~

ATTORNEY CONFIDENTIAL COMMUNICATION

MEMORANDUM

To: City of Dunwoody Board of Ethics

From: Cecil G. McLendon, Jr., City Attorney

Date: January 16, 2013

Subject: Preliminary Analysis of Ethics Complaint against Mayor Mike Davis, Councilmembers Doug Thompson, Denis Shortal, Terry Nall, Lynn Deutsch and John Heneghan, City Manager Warren Hutmacher and City Clerk Sharon Lowery

In accordance with Chapter 2, Section 2-258 of the City of Dunwoody Code, this memorandum is the preliminary analysis of the Ethics Complaint filed against Mayor Mike Davis, Councilmembers Doug Thompson, Terry Nall, Denis Shortal, Lynn Deutsch and John Heneghan, City Manager Warren Hutmacher and City Clerk Sharon Lowery by citizen Joseph Hirsch on December 17, 2012. The complaint states the allegation that City Clerk Sharon Lowery deliberately violated the Open Records Act by failing to timely provide Mr. Hirsch with requested documents on or around February 15, 2012 and that the Mayor, Councilmembers and City Manager improperly interfered with Sharon Lowery releasing said documents.

Section 2-258(a) provides that any person may "file a written complaint, signed and sworn in the presence of a notary, with the City Clerk alleging a violation of" the Ethics Code. Pursuant to Section 2-258(a), this Complaint is incomplete as it was not a notarized Complaint apparently being signed by the Complainant without presence of a notary.

Section 2-258(b) requires that the Complaint "shall specify the provisions of this Article alleged to have been violated and facts alleged to constitute the violation." The Complaint does provide allegations of facts and attaches several exhibits as back-up for same, including e-mails sent to and from the City Clerk, Mayor, Council and City Manager regarding the issues discussed in the Complaint. The Complaint, however, does not indicate a provision of the Ethics Code on which the alleged violations are based. Section 2-258 specifically states that the Complaint must allege which "provisions of this Article" are alleged to have been violated. The Complaint does not reference any such provisions.

In addition, Section 2-263 states that "a complaint alleging a violation must be filed within six months from the date the complainant knew or should have known of the action alleged to be a violation." The last date stated in the Complaint is February 21, 2012, and the last date evidenced in the exhibits attached is February 27, 2012, over six months from the December 17, 2012 filing of the Complaint. The facts alleged to be a violation in the Complaint occurred prior to February 27, 2012, and all of the e-mails presented as factual evidence were sent by February 27, 2012.

ATTORNEY CONFIDENTIAL COMMUNICATION

Accordingly, the date on which the Complainant "knew or should have known of the action[s] alleged to be a violation" is a significant issue. Though the Board of Ethics must make the factual finding regarding the date Mr. Hirsh knew or should have known of the actions he alleged were violations, it appears that the actions took place over six months prior to the Complaint being filed. Without due cause being shown to justify the Complainant not being aware of the alleged violation, the Complaint is untimely.

Finally, City Attorney's office does not venture an opinion, nor does it rule on the substance of the allegations in the Ethics Complaint, as that is the jurisdiction of the Ethics Board. It is the City Attorney's preliminary analysis, however, that the Complaint is procedurally deficient in its: (1) failure to have a notarized signature, (2) failure to cite sections of the Ethics Ordinance alleged to have been violated and (3) if supported by the appropriate factual finding of the Board of Ethics, having been filed beyond the statute of limitations as set out in the Ordinance.