



King County Office of the Ombuds

516 Third Avenue, Room W-1039
Seattle, WA 98104
Phone: 206-477-1050 Fax: 206-296-0948

Whistleblower Improper Governmental Action Complaint

(# _____ office use only)

Please review the Whistleblower Protection Code Summary and the Whistleblower Protection Code (KCC 3.42) before completing this complaint form. We encourage employees to contact the Ombuds Office before filing a whistleblower complaint.

Pursuant to the Whistleblower Protection Code (KCC 3.42), I am reporting what I believe to be improper governmental action.

I am currently employed by King County: Yes No

Name, position, and department of person(s) I believe to have engaged in improper governmental action:

Dow Constantine; Bob Burns
Christie True; See also Attached KRB KRB

Type of Improper Governmental Action:

Which type of improper governmental do you believe has occurred? Please check all that apply. If you know the particular law that has been violated, please provide it.

Violation of state or federal law or rule or county ordinance or rule
King County Ethics Codes, including 3.04.020, 3.04.030 ; K.C.C. 4.57
Please cite applicable state or federal law or rule, or county ordinance or rule

Abuse of authority

Gross mismanagement

Substantial and specific danger to the public health or safety

Gross waste of public funds

Preventing dissemination of scientific opinion or altering technical findings without scientifically valid justification

including cut not limited to: KRB

Basis for reporting:

How do you know the information you are reporting?

- Personal or direct knowledge
- Others have told me about the situation
- Other (please explain):

Allegation of Improper Governmental Action:

Describe the alleged improper governmental action. Please be specific and include details and examples (who, what, when, where, how). What is the frequency of alleged improper governmental action? Attach an additional piece of paper as necessary.

Please see attached.

Names and positions of those who may have witnessed the alleged improper governmental action:

Please see attached.

Please list any additional evidence or documentation that would support your allegation of improper governmental action, and indicate whether you can personally provide that information. (You may provide us with supporting evidence when you file this report. If you are not supplying us supporting evidence at this time, please indicate when and how you plan to do so.)

Such documentation and other evidence will be provided. Such includes but is not limited to, "Second Amendment to the 2013 Concession Agreement for Seattle Event Solutions, Inc.," attached.

Complainant Declaration

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Kevin R. Brown 4/11/18 Seattle, WA
Signature Date and Place (city, state)

Kevin Brown

Name (please print)

EPI - RESIDENTIAL ADDRESS

Home Address

EPI - RESIDENTIAL ADDRESS

City State Zip Code

EPI - PERSONAL WIRELESS TELEPHONE NUMBER

Contact phone number(s)

EPI - PERSONAL ELECTRONIC MAIL ADDRESS

Contact email address

Whistleblower Complaint # _____

Confidentiality

The whistleblower code protects the identity of an employee who reports improper governmental action to the extent allowed by law, *unless* that employee consents in writing to have his or her identity revealed.

If you do **not** wish to have your identity kept confidential, please sign below.

*I hereby waive the confidentiality provision of KCC 3.42.040 and **consent to having my identity revealed.***

Complainant's signature

Date

Whistleblower Protection Code Summary

We request that you read the Whistleblower Protection Code Summary and sign below before filing your complaint.

I acknowledge that I have read the Whistleblower Protection Code Summary and I understand its contents.

Employee Signature

Date

4/11/18

April 11, 2018

Over the last year the Parks Division has been preparing for the expiration of two contracts at Marymoor Park – the concert series contract and the contract to provide concessions of alcohol and food to the concert series. We have received specific direction from Christie True, based on discussions she has had with the Executive's Office, that has resulted in concerns I have about a fair and open process. This has been a recurring issue over the last 6 years with respect to these contracts.

I would like to provide a recap of the past 6 years – all supported by texts, emails, messages, contracts, spreadsheets, public disclosure requests, calendared meetings, and meeting notes from the following individuals: Dow Constantine, Sung Yang, Christie True, Bob Burns, Dave Meinert (SES), Marcus Charles (SES), Alex Kochan (AEG), Rob Thomas (AEG) and others to include Executive Office staff and Parks staff.

On January 31, 2012 I was asked by Executive Dow Constantine via text to meet he and his Chief of Staff (Sung Yang) at a bar called Local 360 to discuss Marymoor Park that night.

At the bar Marcus Charles and Dave Meinert were introduced to me as friends of Dow. We went into a private room in the bar along with a person named Alex Kochan, the NW Manager for AEG Entertainment.

The topic of discussion was the concert series at Marymoor Park. The specific discussion centered on how Dow felt that the current concert promoter should be replaced by a partnership between AEG (Alex) and SES (Dave and Marcus).

In ending the meeting, a directive from Dow to me and Chief of Staff Sung Yang was to identify a strategy to immediately find the current promoter in breach of contract and replace with AEG/SES.

Despite a Parks recommendation against termination, Sung Yang and Bob Burns (Department Deputy Director) called numerous meetings times on this issue. I was instructed by Sung to consult

with the PAO who, via a 2/8/12 memo, found it would be a legal risk to the County to terminate the contract early.

With the contract to expire the following year, I was directed by Sung and Bob to take steps to ensure that AEG/SES were awarded the 5 yr. multi-million dollar contract for concert series and concessions.

These steps included: Being directed to hold a very abbreviated and unpublished KC Parks RFP process to ensure no other competition (one other company did apply coincidentally). I was told to sit on the review panel, score the proposals to ensure AEG/SES was awarded the contract. This, despite the other applicant being rated higher by panel staff due to revenue stream and experience.

Specifically, I was coerced by Sung Yang and Bob Burns to tell staff that potential "intangibles" AEG/SES brought to the table were the reason for choosing them over the better qualified applicant. Although in bid, these proposed items were never implemented.

Upon awarding the contract, SES began to immediately step away from almost every commitment they made in their proposal that included payment of leasehold excise tax, management of the Clise Mansion, special events, etc. Very little of the initial proposal was actually implemented.

At the same time they sought, and with Executive approval, obtained additional revenue sources not intended to be part of providing concession for a concert series. These included specifically: Not paying any fee for lucrative Cirque contract; Obtaining revenue share for sponsorships KC/AEG obtained.

These actions cost the County (Parks Division) hundreds of thousands of dollars annually. For example, SES stated they would maintain, manage, book and cater gatherings for Clise. But they have not. So, for over 5 years no revenue has been realized.

No less than 50 times did I make my concerns known to my bosses, Christie True and Bob Burns. I felt that this was highly unorthodox and contrary to the public's interest. At the end, due to my

comments and opposition, I was removed from any negotiations. The final contract was negotiated by Sung Yang and Bob Burns.

To formalize, Bob Burns came down to my office and I was directed to sign the 5 year agreement which, after contentious conversation, I did sign, as instructed, with the initials UD (for "under duress") between my first and last name to document my protests and opposition.

When I requested an immediate meeting to discuss with Christie True, I was told that the challenges were the result of my staff's inability to negotiate contracts. This despite the hundreds of agreements they negotiate annually successfully. A veiled threat followed. "It's a good thing you signed".

This situation was incredibly emotional and distressful to me and for the entire time I was a wreck personally. For financial reasons (sole provider), I did as I was told.

The problems did not stop there. After implementation, numerous issues arose with the partner SES however it was made very clear by the Executive's Office and the DNRP Director's Office that we were to accommodate SES in any way. A few examples included King County having to pay a deposit for liquor for Cirque du Soleil as SES refused, SES attempted to pay a different amount (roughly \$100 vs \$10,000 per show) than the contract stated.

New issues continued to arise. The Executive had told SES that there was money in the budget for a new fair and he wanted them to run it. When discovered another group was doing this work (CHOMP!), meetings were called by the Executive to find out why AEG/SES not included.

In addition, AEG/SES and the Executive pushed for extending their 5 year agreement to 20 years, despite the fact it is my understanding that we are not permitted to enter into this type of agreement without Council or Procurement approval. And despite the fact that SES was not performing based on their proposal that led to the contract award.

Sung Yang directed Bob Burns and I to investigate avenues to make this extension possible as well as a plan to increase the occupancy from 5,000 to 7,500. This included the development of strategies that would purposely skirt county processes and council review.

Again, I met with both of my bosses (Bob Burns/Christie True) and told them that I did not support this. The issue of the 20 year contract extension and expansion of the venue died only when two of the partners (Marcus Charles and Rob) spoke too publicly about their goals and created risk.

And on June 14, 2017, despite assurances from both Christie and Bob that we would have a fair and open process for both the concert and concession services, Christie True came unannounced to my office and instructed me that Dow wanted to ensure that SES was awarded the next concert concession contract as both the concert and concession contract were to soon expire. No mention was made of the concert contract, just that SES would get the concessions.

Despite this directive, I restated to Christie that we wanted partners who would best utilize the assets at Marymoor, be a good partner and most importantly provide a revenue stream to support park operations. After this meeting I directed staff to reach out to numerous groups to seek competition consistent with the normal practice.

Through this outreach, we received proposals we felt were more consistent with our goals and would utilize the Clise Mansion that has been vacant for 5 years and provide better revenue. I briefed Christie on this positive news and she at that time told us to continue to proceed.

Within days, multiple Executive Office staff contacted myself and Jessica to inquire about both the AEG contract and new amendments they wanted us to add as well as the SES contract "renewal". Bob Burns had also received these calls.

Immediately after on November 22, 2017, and contrary to what she told me before, Christie tells me there was no way we could pursue other proposals than what Dow directed, even though these

other proposals were better than the SES agreement. Christie directed me and my team to develop an RFP process that she and Executive must preapprove.

In 25 years, this is the only instance where I have been directed to steer a contract to a certain party or have it pre-approved by the Executive. Since I have been Parks Director, I have never had the department or the Executive express any interest or involvement in any contract with the exception of this one involving friends of the Executive.

On March 12th, 2018 Christie abruptly directed us to pull the RFP that we had been working on for months and draft an extension to give SES the contract for another year. There was still time to have any amendments she had wanted to have, made to the RFP, which would have been the normal process, but she instead ordered the RFP pulled and an extension to be awarded to SES. She told me (wrongly, and in a threatening manner) that this had to happen because my staff and I had "mismanaged" the concessions RFP process.

On March 19, 2018 at 4:00 PM I called Caroline Whalen and asked if she had time to talk with me to discuss challenges I had been having with my superiors. Caroline responded that she was in a meeting but could talk at 4:30. As I wanted to discuss this delicate issue in person, I walked up to the Chinook building and waited in one of the meeting rooms outside her office for the call. I waited until 6:00 and then returned to my office at the King Street Center. Caroline called shortly after stating she had forgotten to get back to me. I again asked to meet to discuss issues centered around Christie and Dow and she offered 11:30 the following morning. I met with Caroline and shared the background as I have shared with you today. She told me she felt the next step would be to meet with Susie Sloneker, HR attorney for KC. On the following Tuesday, I again shared the background with Susie (with my counsel present) and she indicated she would look into the situation. Susie also mentioned that if we felt this met the criteria of whistleblower actions, we could contact the Ombudsman. It was suggested that I remain out of the office on approved sick leave until an effort at resolution could be established.

On March 29, 2018 my attorney and I met with Jon Stier to gain a better understanding of how an Ombudsman investigation gets initiated and completed and to provide Jon with the background you have heard so far. At the time of our meeting with Jon we were still trying to work with the PAO and HRD on potential opportunities for internal resolution, therefore no formal report was filed.

On March 30, 2018 Susie spoke with my attorney and apparently based on conversation with the Executive Office, stated that she had secured the right for Parks to seek a different concessionaire other than SES for 2018 concerts. Susie also stated that Parks would be able to work independently of the Executive Office and the Department Director's Office on this issue. In addition, a communications consultant or workplace relationship facilitator (Lisa Fitzhugh, Creative Ground) was also brought in to work on "trust" issues between me and Christie.

Based on what Susie told my counsel, on Monday April 2, I met with my team and they quickly went to work towards securing new concessionaire services, making phone calls and successfully soliciting interest from two prospective concessionaires in the region. However, late on Monday, I was informed that the County had already signed a contract extension with SES, at least a week earlier (March 20), for all concession services at Marymoor through November 17, 2018. On Tuesday morning, April 3, my lawyer and I contacted Susie to inquire what her knowledge and understanding of the contract extension meant. She said she did not know the contract extension to SES had been made. She also said she could not respond to any questions or issues related to the contract – her issues were strictly HR. She told me and my lawyer that I should work with attorneys specializing with contracts so shortly after this call with Susie I met with this attorney who represents Parks (Barb Flemming). [Previously, in email a few days before, Christie had specifically told me and my staff we did not need to consult the POA about the SES contract extension she had directed us to work up.] After her consultation with the attorney specializing in contract law (Tom Kuffle), she informed me that the extension with SES was binding. Contrary to what we had been

told by Susie, there was no opportunity in 2018 for anyone other than SES to provide concession services at Marymoor.

I unfortunately had to go back to my staff and let them know that we no longer had the ability to seek alternative concessionaire services for 2018, but that our focus should be the development of a fair, transparent and open process for a five year contract for years 2019-2023. That was a really challenging conversation.

On Friday, April 6, 2018, the communications or workplace facilitator consultant was scheduled to meet with Christie at 9:00 and with me at 10:00, in an effort to gain more background and develop next steps as to our relationship. Upon meeting the consultant, she explained her background in politics and her shift to non-profit and consulting work. I, in turn, explained my background and gave the same information as I have given to you. She appeared somewhat shocked at the story, so I asked her what Christie had told her about the situation. Her response was that Christie indicated that the issues were all recent, and she mentioned only there had been 2017 concessions “process” challenges between me, her and the Executive. The consultant told me she directly asked why the Executive was so interested in this concession contract and that Christie did not respond. The consultant was disappointed with Christie, and stated that in her feedback to Susie she would tell her she was not a neutral party – that her work needed to focus on Christie. She felt I had been clear in my communications on this issue for several years. I was also very frustrated that Christie, in a meeting that was intended to start building trust, left out 5 years of really important information.

This has been and continues to be an unbelievably emotional and stressful ordeal for me, my family and my co-workers. In bringing this issue up to Christie and Bob countless times I have been yelled at, bullied, threatened, intimidated and treated as if I did not know how to manage staff or contracts. I have feared losing my job and at times I have contemplated quitting my job due to the constant anxiety and concern with respect to actions taken by others and directed of me. It has

been made clear to me by my superiors that if I did not do as I was told, I would be treated as insubordinate and could potentially lose my job.

In my entire career, have never endured such a mentally and emotionally challenging issue as this.

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From: Brown, Kevin
Sent: Tuesday, March 27, 2018 5:35 PM
To: True, Christie; Emerson, Jessica; Patterson, Lorraine; Amerasinghe, Felix
Cc: Terry, Kathryn
Subject: RE: Concessionaire Contract

Christie

With all respect, I am finding your emails to me of last evening and this morning to be confusing. You instructed me and my team to pull the RFP we had been working on with you for months and which did go out in a timely manner and in a manner that could have been amended, and instead grant a one year contract extension to SES. You have repeatedly told me and my team that you need to be directly involved and to direct or approve our actions, even though it is not the normal process in this agency. We have been and are trying to follow your directions, as your reports.

As to the matter of what appears to be a need for council approval to do what you have asked us to do, please see title 4 of the Code which states as follows:

4.57.020 Terms of contract. The county may enter into a concession contract under this chapter for a term not to exceed 35 years. The county council must approve any concession contract with an original term that exceeds five years. For the purposes of this section "original term" includes extensions that could be effective without county approval.

The county shall establish a contract fee based on, among other factors, the revenue generated by the concessionaire from recreation user fees, admission fees, sales of goods and services, and other revenue sources directly related to the use of subject property, with the goal of maximizing revenues to the county. However, the contract fee may be reduced to reflect expenditures by the concessionaire for capital improvements. In addition, the concessionaire may receive credit for

the provision of recreational program scholarships to qualified participants and the sponsorship of programs and events on the premises for developmentally disabled or challenged athletes or other activities that primarily benefit the public. Revenue received under concession contracts shall be applied solely to parks and recreation purposes.

Please also note that it appears I will need to be on sick leave for at least a couple more days.

Thank you.

Kevin

From: True, Christie
Sent: Tuesday, March 27, 2018 4:54 PM
To: Emerson, Jessica
Cc: Brown, Kevin; Terry, Kathryn
Subject: Re: Concessionaire Contract

Under 7.12.150 it refers to other county agreements and based on the process and contract I believe you fall under goods and services. At some point I think we need to review the contracting process you are using and think about more going through procurement esp. for these types of vendors.

On Mar 27, 2018, at 4:47 PM, Emerson, Jessica
<Jessica.Emerson@kingcounty.gov<<mailto:Jessica.Emerson@kingcounty.gov>>> wrote:

I have not gone over it with Danielle. Historically all of our concession agreements have been developed under 7.12.150 and 4.57.020 based on the Omnibus ordinance 14509 and subsequent work with PAO.

If there is a better way, I am all for it. I'll look into it.

Thanks!

From: True, Christie
Sent: Tuesday, March 27, 2018 4:42 PM
To: Emerson, Jessica
<Jessica.Emerson@kingcounty.gov<<mailto:Jessica.Emerson@kingcounty.gov>>>
Cc: Brown, Kevin <Kevin.Brown@kingcounty.gov<<mailto:Kevin.Brown@kingcounty.gov>>>;
Terry, Kathryn <Kathryn.Terry@kingcounty.gov<<mailto:Kathryn.Terry@kingcounty.gov>>>
Subject: Re: Concessionaire Contract

Jessica

I do not think Section 4.57 governs this contract. I believe this RFP and contract fall under the provisions of the typical goods and services process managed by procurement. Have you gone over this with Danielle?

On Mar 27, 2018, at 3:38 PM, Emerson, Jessica

<Jessica.Emerson@kingcounty.gov<<mailto:Jessica.Emerson@kingcounty.gov>>> wrote:

Hi Christie,

Attached is the Waiver request information that we would submit online. You mentioned that you could take a look. Please let me know if you have any edits, otherwise we will move forward.

Thanks,
Jessica

From: True, Christie

Sent: Tuesday, March 27, 2018 7:24 AM

To: Brown, Kevin <Kevin.Brown@kingcounty.gov<<mailto:Kevin.Brown@kingcounty.gov>>>;

Terry, Kathryn <Kathryn.Terry@kingcounty.gov<<mailto:Kathryn.Terry@kingcounty.gov>>>;

Emerson, Jessica

<Jessica.Emerson@kingcounty.gov<<mailto:Jessica.Emerson@kingcounty.gov>>>

Cc: Amerasinghe, Felix

<Felix.Amerasinghe@kingcounty.gov<<mailto:Felix.Amerasinghe@kingcounty.gov>>>;

Patterson, Lorraine

<Lorraine.Patterson@kingcounty.gov<<mailto:Lorraine.Patterson@kingcounty.gov>>>

Subject: Concessionaire Contract

I spoke with Danielle on the ferry this morning. In order to extend SESs contract you need to draft a waiver and run it through the approval process. The waiver should explain that due to the long lead time for a liquor license we ran out of time to run a competitive procurement process in time for the concerts to start which would have left us without concessions. It should note that we will start the process much earlier to prevent a similar occurrence next year.

You can obtain a template or copies of others from procurement. I believe they have a sharepoint site with them. Felix may also be able to help you.

I am not aware of any requirement for council review and approval and neither is Danielle. There is no need for PAO engagement. If there is something different about this contract that requires PAO and council review you will need to tell me why.

Please make getting the waiver and contract extension a priority.

Thank you.

<2018_WaiverRequests_Procurement_SES.docx>

**SECOND AMENDMENT TO THE 2013 CONCESSION AGREEMENT FOR
SEATTLE EVENT SOLUTIONS, LLC**

RECITALS

- A. On January 28, 2013, King County Department of Natural Resources and Parks through its Parks and Recreation Division ("King County") entered into a Concession Agreement ("Agreement") with Seattle Event Solutions, LLC ("Concessionaire") to provide food and beverage services, including alcoholic beverages for select Marymoor Park events. Together, the Concessionaire and King County are referred to herein as "the Parties."
- B. The Agreement was first amended to extend through April 29, 2018 to coincide with Teatro Zinzanni's *Love, Chaos and Dinner* show run at Marymoor Park, permitting the Concessionaire to provide needed and beneficial support services for these events.
- C. Both Parties now wish to amend the Agreement a second time to extend the Term through November 17, 2018 to coincide with Cirque du Soleil America, Inc.'s show performances, which will take place in Marymoor Park from August 13 to November 16, 2018.

THEREFORE, the Parties agree to amend the Agreement as follows:

- 1. Section 1.3, Term and Effective Date, shall be replaced in its entirety with the following:

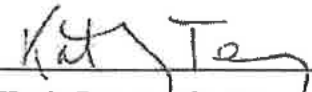
The duration of this Concession Agreement shall begin on the date it is fully executed by both parties, as evidenced by their signatures, and end on November 17, 2018.

All other terms, conditions, specifications and requirements of the Agreement shall remain unchanged and in full effect, except as amended herein.


Approved by:

KING COUNTY

SEATTLE EVENT SOLUTIONS, LLC

for 

Kevin Brown, Director
Parks and Recreation Division



Marcus Charles, Principal
Seattle Event Solutions, LLC

3/20/18

Date

3/16/2018

Date

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JAMES DOW CONSTANTINE, 2017

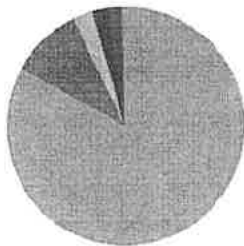
Overview	Contributions	Expenditures	Loans	Pledges
Independent Expenditures	Debt	Reports		

Cash contributions: \$1,343,161.84

In-kind contributions: \$7,661.14

↓ View/Download

Contributions by contributor category



Individual: \$1,124,594.26

Click chart to display dollar amounts.

Contributor name contains

MDC



Largest total contribution by source matching "marcus"

Amounts shown are aggregate totals of cash and in-kind contributions.

NAME	CITY	STATE	CASH/IN-KIND	AMOUNT
CHARLES MARCUS	SEATTLE	WA	Cash	\$2,125.00
MARCUSE EDGAR DR.	KINGSTON	WA	Cash	\$300.00
MARCUSS MARY F	SEATTLE	WA	Cash	\$250.00
COURTNEY MARCUS	SEATTLE	WA	Cash	\$206.00
MARCUSE LINDA	KINGSTON	WA	Cash	\$50.00

Follow the money FAQ

Data reflects what has been reported by the candidate's campaign, is updated once per day, and may not reflect the most recent report.

Public Disclosure Commission

711 Capitol Way S. #206
 PO BOX 40908
 Olympia, WA 98504-0908

Toll Free 1(877) 601-2828
 Phone (360) 753-1111
 Fax (360) 753-1112
 Email pdc@pdc.wa.gov

Staff contacts

Largest total contribution by source matching "MDC"

Amounts shown are aggregate totals of cash and in-kind contributions.

NAME	CITY	STATE	CASH/IN-KIND	AMOUNT
MDC HOLDINGS II LLC	SEATTLE	WA	Cash	\$2,000.00
MDC HOLDING INC.	SEATTLE	WA	Cash	\$1,250.00
MDC HOLDING LLC	SEATTLE	WA	Cash	\$300.00

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Staff contacts

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Other resources

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Largest total contribution by source matching "thomas robert"

Amounts shown are aggregate totals of cash and in-kind contributions.

NAME	CITY	STATE	CASH/IN-KIND	AMOUNT
THOMAS ROBERT	BURIEN	WA	Cash	\$1,000.00
THOMAS ROBERT	SEATTLE	WA	Cash	\$1,000.00

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Clear

Largest total contribution by source matching "meinert"

Amounts shown are aggregate totals of cash and in-kind contributions.

NAME	CITY	STATE	CASH/IN-KIND	AMOUNT
MEINERT DAVID	BURIEN	WA	Cash	\$1,500.00
MEINERT DAVID	SEATTLE	WA	Cash	\$500.00

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