

MEMORANDUM

December 21, 1998

TO: Honorable John Talbott, Mayor
Members of the Spokane City Council
Bill Pupo, City Manager
Peter G. Fortin, Deputy City Manager

FROM: James C. Sloane, City Attorney

SUBJECT: Disclosure of Confidential Information - Individual Liability -
City Indemnification

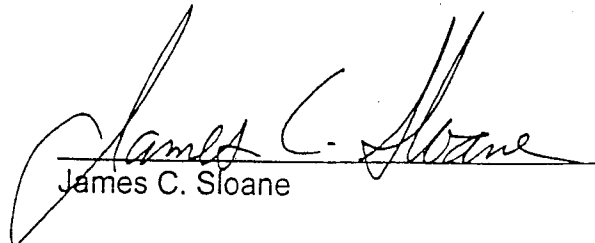
Late last week this office was contacted by Mr. Duane Swinton, attorney for the developers of Riverpark Square. Mr. Swinton indicated that, in conversations with a reporter for the Wall Street Journal it was disclosed that the reporter has a copy of a confidential letter written March 20, 1998, by Mr. Swinton to Mr. Stanley Schwartz of this office. The subject of the letter was the essential elements of the developer's lease with the Nordstrom Corporation and other confidential and proprietary details of the leasing relationships between the developer and tenants of the Riverpark Square Project. Only eight copies of this letter were ever made; one for the Office of the City Manager and seven for the Mayor and City Council's Office. The original letter was kept by Mr. Schwartz in his file on the Riverpark Square Project. The letter was distributed to the Mayor and City Council, and the City Manager's Office under a cover memo identifying that the matters contained in the letter were extremely confidential and should not be disclosed. The letter itself was stamped confidential and contained a paragraph outlining the extremely sensitive nature of the proprietary information contained therein.

The disclosure of this letter to the Wall Street Journal reporter creates a significant risk of liability for the City of Spokane because it is a clear breach of the confidentiality agreement between the City of Spokane and the developer of Riverpark Square. If this disclosure results in a serious disruption in the development of the project, the developer has indicated they will pursue a claim against the City of Spokane and any individuals who may have been responsible for the disclosure of this confidential and proprietary information. Moreover, the disclosure violates an order of the Spokane County Superior Court which mandated that details concerning the Nordstrom's lease were to remain confidential so long as the HUD 108 loan application was still pending.

The disclosure of this letter places the City of Spokane, and the individual who disclosed the letter, in serious risk of being found in contempt of court, as well as being the basis of a claim brought by the developer or Nordstrom.

The City of Spokane has, by ordinance, (SMC 4.01.090) provided for the defense and indemnification of elected and appointed public officers, employees and agents of the City of Spokane against liability by reason of any action taken in the bona fide performance of their official duties. It is the opinion of this office that the disclosure of a confidential letter, identified as such, does not constitute the good faith performance of a public duty. The public policy of the City of Spokane, as adopted by the City Council, sanctions the City's participation in the Riverpark Square development project. All documents executed by the City of Spokane have been pursuant to specific City Council authority, including the confidentiality agreement related to the proprietary information provided by the Riverpark Square developer to the City staff and the City Council, as a part of the development of the project.

If litigation arises the Office of the City Attorney would be disqualified because we would be called as witnesses to explain the chain of custody of the letter. This disqualification of the City Attorney's Office as representatives of the City would require the retention of private counsel to defend the City of Spokane, all City Council Members and all other City officials who had access to the letter. The private law firm would continue to provide legal representation of all City officials named in the lawsuit until such time as a specific individual was identified as the person who had disclosed the confidential letter, at which time, legal representation at public expense would cease. The only limitations on the City's policy of indemnification of public officers against claims of liability for acts taken in their official capacity is (1) the officer must have been acting in a matter in which the City had an interest, (2) the officer must have been acting in the discharge in the duty imposed or authorized by law; and (3) the officer must have been acting in good faith. In the opinion of this office, an intentional disclosure of confidential information, which has been identified as such, is clearly outside the scope of the good faith performance of office by either an elected or appointed official. Therefore, the City would have no authority or responsibility to provide indemnification of that individual.


James C. Sloane