



DISTRICT OF COLUMBIA | OFFICE OF THE INSPECTOR GENERAL

CONFIDENTIAL VIA HAND DELIVERY

May 10, 2024

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue NW, Suite 504
Washington, DC 20004

The Honorable Kenyan R. McDuffie
Chairperson
Committee on Business and Economic
Development
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue NW, Suite 506
Washington, DC 20004

The Honorable Anita Bonds
Chairperson
Committee on Executive Administration
and Labor
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue NW, Suite 404
Washington, DC 20004

The Honorable Brianne K. Nadeau
Chairperson
Committee on Public Works and
Operations
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue NW, Suite 108
Washington, DC 20004

Subject: Independent Counsel Report – *Confidential*

Dear Chairman Mendelson and Chairpersons McDuffie, Bonds, and Nadeau:

Enclosed is the *OIG Independent Counsel Report* (hereafter "Report"). On January 19, 2024, I notified you that the Office of the Inspector General (OIG) had retained Arnold & Porter Kaye Scholer LLP as Independent Counsel in response to Council legislation.¹ D.C. Law 25-112² directs the OIG to provide the Independent Counsel's findings and recommendations to the Mayor and Council no later than 120 days after contract award.

¹ D.C. Bill 25-0381, the "Sexual Harassment Investigation Review Emergency Act of 2023," (introduced on July 10, 2023, and enacted with Act Number A25-0202, on July 31, 2023).

² Sexual Harassment Investigation Review Clarification Temporary Amendment Act of 2023, D.C. Law 25-112 (effective from Jan. 23, 2024, expires Sept. 4, 2024) (amending D.C. Law 25-0079, the Sexual Harassment Investigation Review Temporary Act of 2023).

CONFIDENTIAL VIA HAND DELIVERY

INDEPENDENT COUNSEL REPORT

May 10, 2024

Given the Report's subject matter and to maintain the confidentiality of the parties involved, the OIG will not publicize the Report. As Council Oversight Committee Chairs, with oversight over agencies and matters discussed within the Report, I request that you maintain the Report's confidentiality.

Should you have any additional questions, please feel free to contact me at 202-727-2540.

Sincerely,


Daniel W. Lucas
Inspector General

DWL/mnw

Enclosure

OIG INDEPENDENT
COUNSEL
REPORT



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CONTENTS

I. INTRODUCTION 7
II. THE INDEPENDENT COUNSEL TEAM 9

EXECUTIVE SUMMARY

I. EXECUTIVE SUMMARY 13
II. SECTION I: REVIEW OF MOLC INVESTIGATIONS 15
III. SECTION II: INVESTIGATION INTO FINDINGS AND ITEMS OUTSIDE THE SCOPE OF THE MOLC INVESTIGATIONS 17
IV. SECTION III: RECOMMENDATIONS FOR CHANGES TO THE DISTRICT'S CURRENT SEXUAL HARASSMENT COMPLAINT AND INVESTIGATION PROCEDURES..... 19

SECTION I: REVIEW OF THE MOLC INVESTIGATIONS

I. SCOPE 23
II. METHODOLOGY 24
III. BACKGROUND INFORMATION 25
 A. The Mayor's Office of Legal Counsel 25
 B. DC Executive Branch Offices and Reporting Lines 25
 1. Executive Office of the Mayor 25
 2. Office of the City Administrator 25
 3. Office of the Deputy Mayor for Planning and Economic Development 26
 4. Lines of Authority 26
 C. Select DC Government Personnel 26
IV. APPLICABLE LAW AND POLICY 28
 A. Mayor's Order 2017-313 28
 B. DC Department of Human Resources Issuance 30
 C. Human Rights Enhancement Amendment Act of 2022 31
V. CHRONOLOGY OF EVENTS 32
 A. The Initial Complaint 32
 B. The MOLC Director Advises the Mayor to Follow Order 2017-313 33
 C. The MOLC SHO is Selected to Conduct the Investigation and the MOLC Assumes Agency Responsibility Over the Complaint 35

CONFIDENTIAL

1. Neither OCA nor EOM Has a Designated SHO.....	35
2. MOLC Leadership Decides the MOLC SHO is the Best Alternative	36
D. The Initiation of the Investigation and Significant Intervening Events	38
1. The MOLC Takes Steps to Ensure Confidentiality and Independence	38
2. The MOLC SHO's Initial Attempts to Interview Complainant #1 and Mr. Falcicchio	38
3. Mr. Falcicchio Resigns	39
E. Public Announcements Concerning the Investigation	39
1. The Mayor's Press Release and Subsequent Clarification by MOLC	39
2. The Public Response from Lawyers for Complainant #1	39
3. MOLC Participates in a Mayoral Press Conference About the Investigation	40
F. A Second Complainant Comes Forward.....	41
G. Lawyers for Complainants Make Broader Public Allegations	42
VI. THE CONDUCT OF THE MOLC SHO'S INVESTIGATIONS	42
A. Summary of Investigative Steps Taken by the MOLC SHO.....	42
B. The MOLC SHO Decides to Expand the Scope of the Investigations	44
C. The MOLC SHO's Approach to the Complainants and Witnesses	45
1. The MOLC SHO's Demeanor with Complainants.....	45
2. The MOLC SHO's Approach to Witness Reticence	46
3. The MOLC SHO's Failure to Obtain Certain Physical Evidence	48
VII. EXTERNAL INFLUENCES ON THE MOLC SHO'S INVESTIGATIONS	49
A. Perceived Lack of Independence of the MOLC	49
B. Actions by Counsel for Complainants	49
C. Pressure to Complete the Investigations	49
1. From the Mayor's Office	49
2. From the Public	50
D. The MOLC SHO Acted Independently from MOLC Leadership	50
VIII. THE MOLC'S FINDINGS AND CONCLUSIONS	51
A. A Draft Investigative Report is Sent to MOLC Leadership	51
B. The MOLC Makes Agency Findings and Conclusions	52
C. The Summary of Findings and Conclusions Related to Complainant #1 is Released.....	53
D. The Public Reaction to the Release	55
IX. SUBSEQUENT EVENTS	55
A. Complainant #1's Counsel Express Concerns About the Release.....	55

CONFIDENTIAL

- B. MOLC Participates in a Second Mayoral Press Conference Concerning the Investigations 56
- C. Complainant #1 is Featured in a *Washington Post* Exclusive 57
- D. Referrals are Made to Other Agencies..... 58
- E. The Second Report is Completed and the Summary of Findings is Released..... 58
- F. Councilmembers Request to View the Reports 60
- G. Mayor’s Order 2017-313 is Updated..... 61
- X. FINDINGS..... 61
 - A. The MOLC Correctly Concluded that Mr. Falcicchio’s Conduct Violated the Mayor’s Order..... 62
 - B. The Original Decision to Follow the SHO Process Should Have Been Revisited 62
 - 1. The Original Decision to Follow the SHO Process Was Reasonable..... 62
 - 2. Intervening Events That Should Have Caused Reconsideration of the Exclusive Use of the SHO Process..... 64
 - C. The Original Decision to Assign the MOLC SHO Led to Unintended Consequences 66
 - 1. The Decision to Assign the MOLC SHO to Investigate Apparently Caused the MOLC to Assume Agency Responsibility for the Complaint 66
 - 2. The MOLC SHO Did Not Have Adequate Resources or Supervision 67
 - 3. Having MOLC Conduct the Investigations and Make the Agency Findings Caused the Perception of a Lack of Independence 68
 - D. The MOLC SHO Was Impartial and Independent and Conducted Herself Professionally 70
 - E. The MOLC SHO’s Investigations and Final Reports Were Extensive and Well-Intentioned, But They Could Have Been Improved and Did Not Always Comport With Best Practices..... 72
 - 1. The Investigations 72
 - 2. The Reports 74
 - F. The Public Release of Summary Findings Over a Holiday Weekend Resulted in a Series of Unintended Negative Consequences. 77
 - 1. The Timing and Public Nature of the Release of Summary of Findings..... 78
 - 2. The Failure to Provide Complainant #1 and Her Counsel with Meaningful Advance Notice .. 79
 - 3. The Problematic Content of the First Summary of Findings..... 79
- XI. CONCLUSION..... 80

SECTION II: THE INDEPENDENT COUNSEL'S INVESTIGATION

I. SCOPE	82
II. METHODOLOGY	83
A. Witness Interviews and Re-Interviews	83
B. Records	84
C. Consultations with OIG Contract Administrator	85
III. BACKGROUND INFORMATION	85
A. District of Columbia Government Hiring Practices.....	85
1. Relevant Offices	85
2. DMPED and EOM Hiring Processes.....	86
IV. INVESTIGATIVE FINDINGS	89
A. There is Insufficient Evidence to Establish That Mr. Falcicchio Caused Sexual Attraction-Based Hiring Decisions.....	89
1. Mr. Falcicchio’s Role in the DMPED and EOM Hiring Processes.....	89
2. No Evidence of Improper Hiring or Promotion of a [REDACTED] Employee	90
B. There is Insufficient Evidence to Establish That Mr. Falcicchio Caused Favorable Personnel Actions Based on Acceptance or Toleration of Sexual Advances. However, His Apparent Favoritism Contributed to Workplace Tensions	90
C. There is Insufficient Evidence to Establish That Mr. Falcicchio Caused Retaliatory Personnel Actions Based on Rejection of Sexual Advances	92
D. Mr. Falcicchio Dated, or Made Sexual Overtures Toward, Two Subordinates in Addition to Complainants #1 and #2	93
E. The MOLC Appropriately Referred a Third Complainant to BEGA and OIG	94
V. CONCLUSION.....	96
VII. APPENDIX.....	98
A. Records of Any Prior Allegations of Harassment Involving Mr. Falcicchio	98

SECTION III: RECOMMENDATIONS

I. SCOPE AND METHODOLOGY	102
II. CONCLUSIONS AND RECOMMENDATIONS	102
A. General Observations.....	102
B. The 2023 Mayor’s Order	103
C. Recommendations.....	105

CONFIDENTIAL

1. Consider Creating a Centralized Sexual Harassment Oversight Function.	105
2. Consider Changes to the Existing SHO Process.....	108
3. Consider Enhanced Mandatory Training for Supervisors and EEO Counselors.....	111
4. Provide Complainants With Additional Information on Their Options.	111
5. Consider an Anonymous Hotline.	112
6. Consider Naming a Law Enforcement Liaison.	113
7. Ensure Cooperation Across the District Government.	113
8. Consider a Mechanism for Expedited Contracting.....	113
9. Consider Issuing Guidelines for Public Release of Investigative Findings.....	114
D. Conclusion	114

I. INTRODUCTION

This Report is submitted to the Inspector General for the District of Columbia in accordance with contract CW111138 and pursuant to D.C. Act 25-293, the “Sexual Harassment Investigation Review Clarification Emergency Amendment Act of 2023.” D.C. Act 25-293 states that the Inspector General for the District of Columbia shall hire and direct independent counsel to:

- (1) Review investigations of complaints of sexual harassment and violations of Mayor's Order 2017-313, effective December 18, 2017, against the Deputy Mayor for Planning and Economic Development and Chief of Staff to the Mayor as of January 1, 2023;
- (2) Investigate other findings and items outside of the scope of prior investigations pursuant to paragraph (1) of this section, including hiring and promotion practices, workplace culture, and allegations of retaliation against complainants; and
- (3) Review and make recommendations on sexual harassment complaint and investigation procedures of the District government.

The Independent Counsel has found that while serving as Deputy Mayor for Planning and Economic Development for the District of Columbia and Chief of Staff to the Mayor, Mr. John Falcicchio (i) committed acts of sexual harassment against two female subordinates who came forward with formal complaints; (ii) engaged in a consensual relationship, on an intermittent basis, with one other subordinate; and (iii) engaged in behaviors that likely violated Mayor's Order 2017-313 with respect to a third subordinate who did not file a complaint, is no longer employed by the District, and declined to participate in the Independent Counsel's investigation. In addition to causing significant emotional distress for the victims of his sexual harassment, Mr. Falcicchio's actions contributed to an atmosphere of distrust and suspicion amongst certain District employees, and sparked rumors about the fairness and integrity of the District's hiring and promotion practices under his aegis.

Mr. Falcicchio's acts came to light after one subordinate (Complainant #1) retained private legal counsel who sent a complaint and supporting evidence to the Mayor and the Director of the Mayor's Office of Legal Counsel (MOLC). The complainant's counsel alleged that Mr. Falcicchio had violated Mayor's Order 2017-313, the “District Government Sexual Harassment Policy, Guidance and Procedures,” and requested the prompt initiation of an independent and thorough investigation into Mr. Falcicchio's conduct. Based on a confluence of factors, the MOLC took agency responsibility to investigate and adjudicate the complaint, and an attorney within the MOLC (who was a trained “Sexual Harassment Officer” (SHO) under the Mayor's Order) began an investigation. Shortly thereafter, Mr. Falcicchio resigned his employment and the lawyers for the complainant made public the nature of the allegations and the existence of the MOLC's

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investigation. Two additional complainants subsequently came forward, one a DC government employee and subordinate to Mr. Falcicchio (Complainant #2), and the other a member of the public seeking to do business with the District (Complainant #3).

The MOLC SHO ultimately conducted two investigations. Following each investigation, the District publicly released a summary of the MOLC's findings. The findings substantiated the underlying claims of sexual harassment, found certain claims unsubstantiated, and also included an inventory of claims against Mr. Falcicchio that the MOLC deemed were beyond the scope of its remit, including that Mr. Falcicchio had used his position of power to cause sexual attraction-based hiring decisions, rewarded individuals with favorable personnel actions for engaging in sexual conduct (or staying quiet about his behavior), retaliated against employees, and dated or attempted to date subordinates. The timing and content of the release of findings from the first investigation caused the DC Council and the press to raise questions and concerns about the investigative process, including the independence of the MOLC. The DC Council also expressed concerns over the disposition of the allegations that had not been fully addressed by the MOLC, as well as the process by which complaints of sexual harassment are handled and investigated by the District.

As set forth in detail in this Report, the Independent Counsel's review established that despite several investigative and other missteps and misjudgments during the course of the MOLC's undertakings, the MOLC and its SHO acted in good faith and with integrity throughout the process. We further found no evidence that the Mayor or any of her senior staff attempted to improperly influence the investigations or findings. Finally, while the MOLC's conclusions were supported in fact and law, because of the circumstances surrounding the investigations, there was the inexorable appearance that the MOLC's work was not truly independent. This appearance was compounded by the additional serious allegations that were publicly revealed in the summary of the MOLC's investigative findings, but described as being beyond the scope of the MOLC's review.

The Independent Counsel conducted a separate investigation into these other serious allegations. Where substantial and credible evidence enabled us to reach a conclusion with confidence based on a preponderance of the evidence, the Report states that the investigation established that certain actions or events occurred. A statement that the investigation did not establish particular facts does not mean there was no evidence of those facts, or that the alleged events did not, in fact, occur. As noted above, we found that Mr. Falcicchio initiated, engaged in, and attempted to engage in sexual or romantic relationships with multiple subordinates. However, we did not find that Mr. Falcicchio used his authority to specifically hire personnel based on his sexual attraction to them. We likewise did not find that he promoted, transferred, or terminated

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any employees based on their acceptance, or rejection, of his sexual advances. That said, Mr. Falcicchio's actions contributed to workplace tensions among some subordinates, fostered an environment that led at least one subordinate to terminate her employment, and caused significant distress for the two employee-complainants.

Finally, this Report sets forth our recommendations for modifications to the process by which the District handles complaints and investigations of sexual harassment. These recommendations flow from and are supported by the evidence collected in our review and investigation, as well as our specific findings. In some instances, we point out the absence of guidance or conflicts in the existing guidance. In others, we make recommendations about changes to current policies and procedures.

* * *

This Report consists of three sections:

Section I describes the results of our review of the investigations of complaints of sexual harassment and violations of Mayor's Order 2017-313 against Mr. Falcicchio. Section II is the report of investigation into other findings and items outside of the scope of prior investigations, including hiring and promotion practices, workplace culture, and allegations of retaliation against complainants. Section III comprises our review and recommendations on the sexual harassment complaint and investigation procedures of the District government.

II. THE INDEPENDENT COUNSEL TEAM

The Independent Counsel is composed of five attorneys from the law firm of Arnold & Porter Kaye Scholer LLP who have extensive collective experience in sexual harassment claims, investigations, and government service.

- Deborah Curtis leads the team. She is a former Assistant U.S. Attorney in the District of Columbia, who recently joined Arnold & Porter as a partner in the White Collar Defense and Investigations Practice after having served as the Central Intelligence Agency's Deputy General Counsel for Litigation and Investigations. She conducted and supervised hundreds of investigations during her nearly 30 years in public service. While at the CIA, she advised the CIA leadership on its handling of sexual assault and sexual harassment allegations, including streamlining the organizational structure and processes for reporting workplace harassment. She also drafted internal procedures for sexual harassment inquiries to ensure synchronization with EEOC functions and law enforcement obligations, and recommended a focal point for victim advocacy and support. Ms. Curtis also oversaw the CIA's legal

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response to an ongoing investigation by the House Permanent Select Committee on Intelligence into CIA's handling of sexual assault and harassment allegations, including a legislative proposal to create an Office of Victim and Whistleblower Counsel at the CIA. She is also a former Judge Advocate with extensive expertise in sex-related cases. She was appointed by the Secretary of the Air Force to serve as the sole lawyer on a "Crisis Action Team" to conduct an independent investigation into widespread allegations of sexual harassment and gender discrimination at the U.S. Air Force Academy and make recommendations for institutional changes.

- Josh Alloy leads Arnold & Porter's Washington, DC labor and employment practice and serves in the Investigator role for this matter. With over 20 years' experience, Mr. Alloy has a broad labor and employment background that encompasses counseling, investigations, litigation, and transactional work. He is regularly called on to lead and conduct extremely sensitive workplace investigations into allegations of harassment, discrimination, and retaliation. Recent work includes his representation of a federal charitable organization in connection with day-to-day employment advice, including conducting anti-harassment training and conducting a sensitive internal investigation into allegations of sexual harassment by a senior executive; leading an internal investigation into hostile work environment and retaliation claims at a federally regulated facility; overseeing an internal investigation into sexual harassment claims at a DC-based think tank; and leading an internal review of a federal agency's employment policies, practices, and EEO complaints. Mr. Alloy also regularly provides strategic and high-level advice to government agencies, public and private companies, non-profit organizations, and boards of directors with respect to employment practices and employer obligations under federal and state law, including the review, development and drafting of effective anti-harassment and discrimination policies and practices, and conducting interactive in-person sexual harassment trainings.
- Elizabeth Carney serves as an Associate Attorney on this matter. She focuses on internal and government investigations, white collar criminal defense, and commercial litigation. She helps clients respond to and defend against government investigations, conduct internal investigations, and navigate complex, multidistrict litigations. Relevant work includes her pro bono representations of Dr. Caitlin Bernard in an investigation by the State of Indiana's Attorney General after lawfully reporting that she performed an abortion on a ten-year-old child following the child's rape, as well as her representation of an individual in connection with her status as a crime victim. Prior to attending law school, Elizabeth worked at the U.S. Department of Justice for four years as a paralegal specialist.

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May 10, 2024

- Eliza Buergethal serves as an Associate Attorney on this matter. She has experience in government investigations, white collar defense, and commercial litigation. Her practice includes issues relating to the protection of reproductive rights.
- Samuel Witten is Counsel at Arnold & Porter and assists the team in an advisory capacity. He is a former director of the U.S. Department of State's Office of Law Enforcement and Intelligence, where he served as the State Department Legal Adviser's Office liaison to the Justice Department and FBI on law enforcement investigations and prosecutions. He also served as State Department Deputy Legal Adviser (the agency's Deputy General Counsel) and testified frequently at the U.S. Congress on issues relating to law enforcement, including on international cooperation related to human trafficking and migrant smuggling. At Arnold & Porter, among other roles, he counsels clients on compliance with corporate social responsibility and has assisted with internal investigations.

The Independent Counsel does not and will not represent the DC government in any other capacity related to this Report or its findings.

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May 10, 2024

OIG INDEPENDENT COUNSEL EXECUTIVE SUMMARY



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EXECUTIVE SUMMARY

I. EXECUTIVE SUMMARY

A. Introduction

On March 8, 2023, an attorney hired by an employee of the District of Columbia government sent a letter directly to Mayor Muriel Bowser and Mr. Eugene Adams, Director of the Mayor's Office of Legal Counsel (MOLC), accusing Mr. John Falcicchio, then Chief of Staff to the Mayor and Deputy Mayor for Planning and Economic Development (DMPED), of acts of sexual harassment against a [REDACTED] female subordinate. In the letter, the attorney made demands for an investigation and requested the preservation of evidence in support of a claim; appended to the letter were several graphic images purporting to capture some of Mr. Falcicchio's misconduct. Upon advice of counsel (the MOLC Director), the Mayor approved the appointment of an attorney from within the MOLC to investigate the complaint under the Sexual Harassment Officer (SHO) procedures set forth in Mayor's Order 2017-313, "District Government Sexual Harassment Policy, Guidance, and Procedures." The MOLC also assumed agency responsibility over the complaint, including the authority to issue findings and conclusions.

In the ensuing weeks, Mr. Falcicchio resigned from the DC government, and a second subordinate came forward with similar sexual harassment allegations against him through the same private attorney. A third person, who was a member of the public, then made claims of misconduct by Mr. Falcicchio unrelated to sexual harassment and those allegations against him later evolved to include sexual harassment.

Counsel for the two District employee-complainants made numerous public statements about the allegations and investigation. The District issued press releases and held press conferences to respond to the public outcry. On June 16, 2023, the MOLC concluded its investigation into the first complaint and, on June 17, 2023, the District publicly released a summary of findings and conclusions describing two "substantiated" allegations of sexual harassment and six "unsubstantiated" allegations.¹

This series of events, capped off by the release of the MOLC's findings over the Juneteenth holiday weekend, raised significant public concerns about a possible lack of independence of investigations into mayoral appointees and subordinate agency heads accused of sexual

¹ On July 31, 2023, the District released a summary of investigative findings related to the second complainant; two allegations of sexual harassment were "substantiated" and two other allegations were "unsubstantiated." The MOLC ultimately declined to investigate the claims made by the member of the public because they were beyond the scope of Mayor's Order 2017-313.

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harassment.² On June 27, 2023, the Mayor transmitted a letter to Daniel W. Lucas, Inspector General for the District of Columbia, attaching the summary of findings from the first investigation and calling his attention to three of the unsubstantiated allegations.³

On July 11, 2023, the Council of the District of Columbia passed the “Sexual Harassment Investigation Review Emergency Act of 2023.” This legislation required the Inspector General for the District of Columbia to hire and direct an independent counsel to:

- (1) Review investigations of complaints of sexual harassment and violations of Mayor’s Order 2017-313, effective December 18, 2017, against the Deputy Mayor for Planning and Economic Development and Chief of Staff to the Mayor as of January 1, 2023;
- (2) Investigate other findings and items outside of the scope of prior investigations pursuant to paragraph (1) of this section, including hiring and promotion practices, workplace culture, and allegations of retaliation against complainants; and
- (3) Review and make recommendations on sexual harassment complaint and investigation procedures of the District government.⁴

The Council adopted this law “in order to ensure public trust and give greater confidence to District employees that allegations of sexual harassment will be taken seriously and handled without influence.”⁵

B. The Independent Counsel

Pursuant to contract CW111138, the law firm of Arnold & Porter Kaye Scholer LLP acted as Independent Counsel and on January 15, 2024, we commenced a three phase review and investigation. We delivered this final Report to the Inspector General for the District of Columbia on May 10, 2024. In making the findings and recommendations that follow, we are mindful of the benefit of hindsight.

* * *

² See Sexual Harassment Investigation Review Congressional Review Emergency Declaration Resolution of 2023, § 2(b).

³ June 27, 2023 Letter from Mayor Bowser to Inspector General Daniel W. Lucas.

⁴ B25-0381, the “Sexual Harassment Investigation Review Emergency Act of 2023,” as amended by D.C. Act 25-293, the “Sexual Harassment Investigation Review Clarification Emergency Amendment Act of 2023.”

⁵ See Sexual Harassment Investigation Review Congressional Review Emergency Declaration Resolution of 2023, § 2(b).

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II. SECTION I: REVIEW OF MOLC INVESTIGATIONS

A. General Observations

Under the best of circumstances, achieving both the fact and the appearance of independence in the conduct of internal investigations is difficult, whether the investigation occurs in the government or the private sector. In a sensational, politically charged setting such as here, this existing tension is further complicated when factoring in obligations to provide answers not only to the Mayor, but to a private attorney who is publicly demanding justice for her clients, as well as to the heightened expectations of the DC Council and the public. In addition to the responsibility of public institutions to determine whether sexual harassment has occurred so that appropriate steps can be taken to ensure the safety and well-being of the victims and the workplace, such institutions, through their government counsel, must attempt to limit liability and damages arising from claims, much like a fiduciary to a corporation. The reasons for this approach are entirely valid. However, when the same government lawyers also undertake to conduct an independent investigation, these competing imperatives may carry the appearance of being irreconcilable.

B. Methodology

In our review, the Independent Counsel evaluated the actions of District officials across key decision points and tested the conduct of the MOLC's investigations against the rigors of Mayor's Order 2017-313 and other District laws and policies, as well as best practices for internal investigations.⁶ We conducted interviews, including of the MOLC and the employee-complainants, as well as of other District officials we deemed significant to our purpose. Finally, we obtained documents and records and consulted with subject matter experts where appropriate.

C. Findings

First, the MOLC's conclusions that Mr. Falcicchio committed acts of sexual harassment against two subordinates in violation of Mayor's Order 2017-313 were well-grounded in factual and legal bases.

Second, the MOLC acted with integrity and professionalism throughout the process of conducting two high-profile investigations of sexual harassment by a senior official.

⁶ See "Uniform Principles of Investigations and Good Practice Guidance," Global Investigations Review.

Third, there was no indication that the Mayor of the District of Columbia, or any member of her senior staff, tried to improperly influence the conduct, scope, or findings of the MOLC investigations.

Fourth, we found that once Mr. Falcicchio tendered his resignation on March 17, 2023, the decision to continue to use the SHO process should have been revisited. This is not to say that continued investigation of the allegations was inappropriate, to be certain. But at this juncture, several of the purposes of the SHO process – to stop continued sexual harassment, protect employees/victims, and provide some form of due process to alleged harassers – had been obviated by Mr. Falcicchio’s departure. Thus, some consideration should have been given to whether the investigation, in whole or part, would have been more appropriately or efficiently handled by independent investigators, by other DC government entities, or by law enforcement.

Fifth, despite the best of intentions, certain aspects of the MOLC’s investigations could have been better handled to ensure (1) that the process fully complied with Mayor’s Order 2017-313, other District policies, and best practices for independent investigations – and that it *appeared that way* to the complainants and the public; (2) that decisions made by the MOLC SHO in scoping, structuring, and resourcing the investigations were practical and appropriate under the circumstances; and (3) that prompt referral to, or assistance from, other District government agencies or law enforcement was more actively considered or sought.

Sixth, Mayor’s Order 2017-313 did not adequately delineate which agency should be responsible for receiving and handling a complaint made against someone who was both a Deputy Mayor and the Chief of Staff to the Mayor. The MOLC assumed this agency responsibility over both complaints and then took extraordinary measures to try to ensure the confidentiality of the complainants and the independence of the MOLC’s investigating attorney. Those decisions, while made in good faith, likely operated to the detriment of the investigative process itself and contributed to public concerns and misperceptions about the independence of the investigations and findings.

Seventh, the combined effect of various public statements – by lawyers for the complainants, the Mayor’s Office, and the MOLC – was to create the unfulfilled expectation that the District would conduct a much broader investigation into Mr. Falcicchio’s activities than was contemplated or feasible under Mayor’s Order 2017-313.

Finally, the public release of the findings of the first MOLC investigation over the Juneteenth holiday weekend was not in bad faith. However, such a release was unprecedented under Mayor’s Order 2017-313 and its timing led to unnecessary questions about the motivations of the Mayor’s Office and the MOLC. Finally, the form and content of the release was demoralizing

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to the complainant and misleading to the public, because despite substantiating the underlying sexual harassment allegations, it misleadingly suggested that the complainant had brought forward eight separate claims and failed to establish most of them.

III. SECTION II: INVESTIGATION INTO FINDINGS AND ITEMS OUTSIDE THE SCOPE OF THE MOLC INVESTIGATIONS

A. Scope

In addition to reviewing the MOLC's work, the Independent Counsel conducted an investigation to resolve the following four questions that arose during the course of the MOLC SHO's investigations but were ultimately deemed by the MOLC to be beyond the scope of the Mayor's Order:

- (1) Whether Mr. Falcicchio used his position of power as DMPED and Chief of Staff to the Mayor to influence sexual attraction-based hiring decisions in the District of Columbia;
- (2) Whether Mr. Falcicchio used his position of power as DMPED and Chief of Staff to the Mayor to reward individuals with favorable personnel actions (*e.g.*, promotions) for engaging in sexual conduct with him or for staying silent about his sexual-related behavior;
- (3) Whether Mr. Falcicchio used his position of power as both DMPED and Chief of Staff to the Mayor to cause retaliatory personnel actions (*e.g.*, demotions) against District employees who rebuffed his sexual advances; and
- (4) Whether Mr. Falcicchio dated or attempted to date subordinates within the Executive Office of the Mayor or the Office of the Deputy Mayor for Planning and Economic Development.⁷

We also reviewed the MOLC's decision not to investigate allegations against Mr. Falcicchio brought forward by a member of the general public seeking to do business with the District.

B. Methodology

During our investigation, we interviewed and attempted to interview numerous individuals with information we judged to be relevant to the above questions. We also sought and evaluated

⁷ We structured our investigation around the allegations made by the complainants that the MOLC had determined went beyond the scope of its remit. While these allegations and our findings necessarily implicate workplace culture, our mandate did not include a wholesale organizational climate assessment or employee satisfaction survey.

District records and statistical data. Where appropriate, we credited and relied upon the existing record from the MOLC investigations and concentrated our investigative resources on areas that had not been investigated – such as hiring and promotion practices – or issues that we concluded required reopening or supplementation. In sum, our findings are based on facts we found to be credible and as well-developed as possible under the circumstances.

C. Findings

First, Mr. Falcicchio committed acts of sexual harassment against the two employee-complainants, as found by the MOLC, and engaged in behaviors that likely violated Mayor's Order 2017-313 with respect to a third subordinate.⁸ Many of the steps Mr. Falcicchio reportedly took to initiate or try to initiate sexual relationships with these subordinates were strikingly similar, and strongly suggest that Mr. Falcicchio had a *modus operandi*. In the case of the third subordinate who did not file a complaint, Mr. Falcicchio's unwanted sexual advances and the favorable attention he displayed toward her in the office caused her to have feelings of isolation and contributed to her decision to leave the DC government. In the case of the two employee-complainants, both said that Mr. Falcicchio's actions led to significant emotional distress.

Second, Mr. Falcicchio engaged in a consensual romantic relationship with one other subordinate, on and off, for an extended period of time.⁹ The fact that Mr. Falcicchio felt free to date one subordinate and engage and attempt to engage in sexual activity with other subordinates, highlights one of the shortcomings of Mayor's Order 2017-313, which did not outright prohibit such relationships.¹⁰

Third, based on our investigation, including witness interviews and a review of all available documentary evidence, there were no complaints of sexual harassment against, or sexual harassment-related investigations conducted into, Mr. Falcicchio prior to the two employee-complainants coming forward in 2023.

Fourth, we found no dispositive evidence that Mr. Falcicchio orchestrated the hiring or promotion of individuals based on his sexual attraction to them, or that he caused beneficial or retaliatory official personnel actions to occur based upon whether individuals, including the complainants, accepted or tolerated his sexual advances. Such personnel actions initiated or

⁸ The MOLC SHO's investigation and interview notes describe behaviors that likely violated Mayor's Order 2017-313 with respect to a third DC government employee-subordinate who did not file a complaint against him and who declined to participate in any further interview as part of the Independent Counsel's investigation.

⁹ Although Mayor's Order 2017-313 required the Director of the DC Department of Human Resources to develop reporting mechanisms for workplace sexual or romantic relationships, this relationship was not officially reported and we are not aware of any reporting mechanisms being put in place prior to the issuance of Mayor's Order 2023-131.

¹⁰ The new Mayor's Order 2023-131 prohibits such relationships.

influenced by Mr. Falcicchio would have been detected by others in senior positions within District government, and those officials who we interviewed credibly disclaimed knowledge of any such activities. Our confidence in these findings is reinforced by a lack of any appreciable anomalies in official records that would suggest such inappropriate personnel decisions took place.

Fifth, we found that Mr. Falcicchio showed favoritism toward certain employees, including some female subordinates, and that this attention, or lack thereof, contributed to workplace tension and caused interoffice disputes and grievances to erupt amongst his subordinates.

Finally, we found that the MOLC appropriately declined to investigate under Mayor's Order 2017-313 allegations of inappropriate conduct (including one allegation of attempted sexual misconduct) by Mr. Falcicchio that were brought forward by a third complainant, who was neither an employee nor a DC government contractor at the time. The MOLC did direct the third complainant to file complaints with the Board of Ethics and Government Accountability, the Office of the Inspector General, and the DC Office of Human Rights.

IV. SECTION III: RECOMMENDATIONS FOR CHANGES TO THE DISTRICT'S CURRENT SEXUAL HARASSMENT COMPLAINT AND INVESTIGATION PROCEDURES

A. Scope and Methodology

As set forth in this Report, despite the unusual nature of the facts presented here which contributed to a "perfect storm" of unique circumstances, there are important lessons learned that led us to make both specific and general recommendations for improved ways for the District to address and manage sexual harassment complaints and investigations.

In making the recommendations that follow, we carefully weighed the investigative shortfalls and public misperceptions that we identified in our review of the MOLC's work, as well as systemic concerns and issues identified during our investigation. We also considered Mayor's Order 2023-131, which supersedes Mayor's Order 2017-313, and addresses some, but not all, of the issues we identified during our review and investigation, including (i) requiring independent outside investigations into complaints made against high-ranking officials and (ii) prohibiting sexual and romantic relationships between supervisors and subordinates. Finally, we consulted with relevant officials in several other major cities and took into account the sexual harassment complaint and investigation policies and procedures of Baltimore, Boston, Chicago, New Orleans, and Philadelphia.

B. Recommendations

- *Consider Establishing a Centralized Oversight Function*

Such an oversight panel could be drawn from a pool of senior representatives from the DC Department of Human Resources, the Executive Office of the Mayor, the Office of the City Administrator, and the DC Office of Human Rights. This oversight panel could be tasked with screening complaints and, where appropriate, assigning experienced investigators to guide and assist SHOs to ensure that processes are followed consistently and competently. Critically, these senior oversight officials would be well-positioned to jointly evaluate and judge whether an independent investigation may be necessary. An oversight panel would also address several of the issues identified in our review, including the lack of adequate supervision, challenges with scoping the investigations (including how to deal with allegations of retaliation and new allegations that may expand the scope of an investigation beyond what is feasible or appropriate), difficulties with collecting evidence or uncooperative witnesses, and avoiding conflicts of interest and the appearance of a lack of impartiality. The oversight panel could also ensure cooperation with SHO investigations across agencies in the DC government.

- *Enhance Training for Designated SHOs and "Super SHOs"*

SHO duties must be clearly delineated and SHOs should receive ongoing, enhanced interactive training and materials on issues such as developing an effective investigation plan, evidence collection, the standard of proof, identification of allegations, scoping of investigations, interaction with private attorneys, and laws governing privacy and confidentiality. The lack of effective training, guidance, and materials was repeatedly mentioned by multiple individuals who have acted as SHOs. The District could also consider identifying a cadre of specially-trained "super SHOs" who could deploy from their agencies to manage particularly complex, unusually sensitive, or very large investigations.

- *Issue Guidelines for Crimes Reporting and Name a Law Enforcement Liaison*

Because the line between sexual harassment and criminal activity is sometimes unclear, or additional facts may emerge during an investigation, we recommend issuing guidance that, at a minimum, would assist SHOs in the identification of potential criminal activity and signal when an immediate consult with an agency general counsel or law enforcement is appropriate. We suggest the District also consider designating a law enforcement liaison to serve as an ongoing, real-time SHO resource during investigations.

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- *Provide Complainants with Additional Information*

A high priority should be to ensure that a complainant making sexual harassment allegations knows about all concurrent and alternative options that are available to address their concerns, including administrative options under the 2023 Mayor's Order, as well as the ability to bring complaints to other District government agencies or to law enforcement. While such avenues of complaint are described in the Mayor's Order, employees have not necessarily read or understood their options, and a fact sheet could be developed for SHOs to provide and explain to all complainants.

- *Develop a Policy Governing the Public Release of Information*

The District should establish clear guidelines on when and under what circumstances a sexual harassment investigation's findings may be publicly disclosed, as well as the legal contours and limits of any such disclosures, so that all parties (SHOs, complainants, witnesses, employees, and accused) are well-aware of this possibility.

- *Establish a Streamlined Contractual Mechanism for Independent Investigations*

The District could consider establishing an expedited process to contract with and establish a budget for independent investigators in matters where, at the discretion of the oversight panel, or the Mayor (or the Office of the Inspector General, as set forth under the 2023 Mayor's Order), an independent investigation is deemed appropriate.

- *Open an Anonymous Tip Line*

An anonymous complaint hotline or email box would provide another safe avenue for making a complaint and could serve as a useful indicator or starting point for an investigation.

May 10, 2024

OIG INDEPENDENT COUNSEL

SECTION I: REVIEW OF MOLC INVESTIGATIONS



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SECTION I: REVIEW OF MOLC INVESTIGATIONS

I. SCOPE

The Independent Counsel's mandate in the first phase was to review investigations into complaints of sexual harassment and violations of Mayor's Order 2017-313 (alternatively, the "Mayor's Order") against the former Deputy Mayor for Planning and Economic Development and Chief of Staff to the Mayor, John Falcicchio. The Independent Counsel identified two such investigations, both of which were conducted by the MOLC in 2023.¹¹

The Independent Counsel team reviewed the extensive investigative materials underlying the MOLC's sexual harassment investigations and findings, including 45 interview transcripts of all witness interviews, relevant DC agency records, social media posts, photographs, emails, text messages, and complainants' statements and letters, with attachments. In total, we collected over 350,000 documents. We interviewed seven individuals involved in, or familiar with, the investigation (including the two complainants who were employees of the DC government), following up where appropriate to obtain additional documents or conduct additional interviews. We also took statements from officials of the DC government who had familiarity with the investigations, including the General Counsel for the Executive Office of the Mayor, the General Counsel for the Office of the Deputy Mayor for Planning and Economic Development, and the Deputy General Counsel for the Executive Office of the Mayor, learning from each additional background on the investigation and its context. This broad scope of inquiry has allowed us to understand the contours of the investigations by the SHO and the context in which they were conducted.

¹¹ After extensive inquiry, the only known "prior investigations of complaints of sexual harassment" into Mr. Falcicchio were those investigations conducted by the MOLC in response to the allegations made in 2023 by Complainant #1 and Complainant #2 which are the subject of the Independent Counsel's Review in Section I. Our due diligence included a review of Mr. Falcicchio's personnel file, inquiry of various pertinent witnesses and DC officials, and responses from relevant District government offices that no such records exist in response to our requests seeking "any and all records of prior complaints or allegations of sexual harassment, hostile work environment, bullying, or retaliation involving John Falcicchio during his employment with the District of Columbia in any capacity."

We note that DC Office of Human Rights was the only office that refused to respond to our request, citing statutory restrictions on the release of such information. "All discrimination and harassment complaints or charges filed with DC OHR are confidential pursuant to the D.C. Human Rights Act (DCHRA)." See D.C. Code §§ 2-1402.52(c)(2); 2-1401.02(16)(C). The DCHRA mandates that complaints filed with DC OHR are to be confidential and only available to the parties after the investigation has closed and the reconsideration period has passed. D.C. Code §§ 2-1401.02(16)(C) & 2-1402.52(c)(2)). Nevertheless, based on our inquiries of and discussions with officials within DMPED and EOM, as well as MOLC, and our review of relevant records, we have no reason believe that any complaints were filed with DC OHR other than those related to the complaints filed with and investigated by the MOLC that were the subject of the first phase.

CONFIDENTIAL

II. METHODOLOGY

In the first phase, we reviewed the conduct of the investigations by the MOLC SHO against the existing framework of Mayor's Order 2017-313 and relevant DC Department of Human Resources (DCHR) guidance. We also independently tested the MOLC's investigations against best practices for internal workplace investigations.¹² Those best practices include maintaining the independence of the investigator from actual or apparent conflicts; complying with governing law and policy; maintaining the confidentiality of the investigation with defined procedures for the protection of the complainants and the accused; ensuring fairness of the investigation such that it is conducted impartially and without bias; diligently working to meet the needs of the investigation, with adequate time allotted and investigative resources applied that are commensurate with the needs of the investigation; and conducting the investigation competently, with adequate staffing and appropriately trained personnel, a well-scoped investigation, and proper handling of witnesses, records, and sound conclusions.

Given our mandate, we did not undertake a full re-investigation of the complainants' accounts of acts of sexual harassment committed by Mr. Falcicchio against them. After reviewing the original interview transcripts which included extensive detail, we determined that such an endeavor was unnecessary given our mandate of focusing on the investigations that had taken place and the detailed record that was available to us. We further did not want to take any steps that would unnecessarily risk retraumatizing the complainants. We did, however, interview Complainants #1 and #2 on matters we deemed relevant to our review, including the conduct and comprehensiveness of the MOLC investigation itself and the effects of certain actions by DC government officials related to the investigations, including the release of the summary findings and other public statements.

To develop our analysis and findings, we also prepared a detailed and annotated factual chronology relating to the investigations, including the events that led to the complaints, the contacts with DC government officials by counsel for the complainants, the actions of key DC government officials, the conduct of the investigation, the conclusions reached, the release of information about the investigation, and other key facts about the investigations of the complaints. We appreciate the cooperation of the numerous officials of the DC government who provided us information and enabled us to develop the factual chronology.

¹² These best practices were informed by the "Uniform Principles of Investigations and Good Practice Guidance," published by the Global Investigations Review and our experience conducting sexual harassment and other workplace investigations.

III. BACKGROUND INFORMATION

A. The Mayor's Office of Legal Counsel

The MOLC was statutorily created in 2014, coincident with the first election of an Attorney General for the District of Columbia.¹³ As the “legal arm of the executive branch,” MOLC’s primary role is to supervise, assist, and support the general counsels of the subordinate executive agencies, as well as to provide advice to the Mayor.¹⁴ MOLC also resolves disputes of law within and between executive branch agencies.¹⁵ At all times relevant to this Report, the MOLC consisted of a Director, Deputy Director, Chief of Staff, Special Assistant, four Associate Directors, and a Law Clerk.

B. DC Executive Branch Offices and Reporting Lines

1. Executive Office of the Mayor

The Executive Office of the Mayor (EOM) includes the Mayor’s Chief of Staff, general counsel, subordinate staff, a communications team, and other suboffices. The Mayor’s Chief of Staff is responsible for planning, organizing, managing, directing, and overseeing the day-to-day operations of the EOM and its staff.

2. Office of the City Administrator

The Office of the City Administrator (OCA) is responsible for the day-to-day management of DC government, sets operational goals, and implements the Mayor’s policy decisions and DC Council’s legislative actions.¹⁶ OCA comprises a Chief of Staff, a General Counsel, an Assistant City Administrator, the Office of Budget and Performance and Management, the Office for Gun Violence Prevention, a Chief Equity Officer, and the Deputy Mayors’ Offices.¹⁷ Five Deputy Mayors report to the City Administrator: Deputy Mayor for Education, Deputy Mayor for Health and Human Services, Deputy Mayor for Planning and Economic Development, Deputy Mayor for Operations and Infrastructure, and the Deputy Mayor of Public Safety and Justice.¹⁸

¹³ Eugene Adams, Feb. 1, 2024 Interview; D.C. Code § 1-608.51a.

¹⁴ Until 2014, the general counsels of all subordinate agencies were deemed part of the Office of the Attorney General. Eugene Adams, Feb. 1, 2024 Interview.

¹⁵ Eugene Adams, Feb. 1, 2024 Interview.

¹⁶ *Organization Charts for Agencies and Office Under the Mayor’s Authority*, Executive Office of the Mayor, available at <https://mayor.dc.gov/node/1532191>; D.C. Code § 1-204.22 (7).

¹⁷ *Government of the District of Columbia Organizational Chart*, Executive Office of the Mayor, available at <https://mayor.dc.gov/sites/default/files/dc/sites/mayoromb/publication/attachments/DCGovtOrgChart2019.pdf>.

¹⁸ *Id.*

3. Office of the Deputy Mayor for Planning and Economic Development

DMPED has a broad portfolio spanning real estate and business development, opportunities and programs, and District services. As discussed below, Mr. Falcicchio acted as Deputy Mayor of DMPED (DM) from on or around July 2019 until his resignation in March 2023.

4. Lines of Authority

The Mayor is the Chief Executive of the District. The MOLC Director is one of four seniormost officials who report directly to the Mayor. The others who report directly to the Mayor are the Mayor's Chief of Staff, the City Administrator, and a Senior Advisor.

C. Select DC Government Personnel

- John Falcicchio. Mr. Falcicchio had a career in DC government spanning two mayors. Relevant to this Report, his association with the present Mayor began in 2007, when he managed her campaign for the DC Council. Upon the Mayor's election, Mr. Falcicchio became the director of the transition team and, on January 2, 2015, he was named the Mayor's Chief of Staff (CS), a position he held continuously until his resignation on March 17, 2023.¹⁹ Mr. Falcicchio also served as interim Deputy Mayor of DMPED beginning in July 2019²⁰ and on July 28, 2020, the Council confirmed his appointment as DM.²¹ He was unique among the five Deputy Mayors in that he had a dual role as the Mayor's CS and DM.
- Eugene Adams. Mr. Adams has served as the Director of MOLC since September 2020.²² Immediately prior, he was the Chief Judge of the Office of Administrative Hearings for DC, having been confirmed by the DC Council in the summer of 2015. Mr. Adams also

¹⁹ Report #1, at 7; Mayor's Order 2015-002, Appointment-Chief of Staff, effective Jan. 2, 2015, 62 DC. Reg. 791 (Jan. 16, 2015).

²⁰ *Mayor Bowser Appoints John Falcicchio as Interim Deputy Mayor for Planning and Economic Development*, Executive Office of the Mayor (July 2, 2019), <https://mayor.dc.gov/release/mayor-bowser-appoints-john-falcicchio-interim-deputy-mayor-planning-and-economic-development>; Mayor's Order 2020-034, Appointment-Acting Deputy Mayor for Planning and Economic Development, effective Feb. 28, 2020. 67 DCMR 2619 (Mar. 6, 2020).

²¹ Report #2, at 8 (citing DC Resolution 23-0494, Deputy Mayor for Planning and Economic Development John Falcicchio Conformation Resolution of 2020, effective July 28, 2020. 67 DCMR 9431 (Aug. 7, 2020)).

²² Report #2, at 8 (citing DC Resolution 23-0494, Deputy Mayor for Planning and Economic Development John Falcicchio Conformation Resolution of 2020, effective July 28, 2020. 67 DCMR 9431 (Aug. 7, 2020)).

²³ *Eugene Adams*, Mayor's Office of Legal Counsel. <https://molc.dc.gov/biography/eugene-adams-0>; Mayor's Order 2020-098, Appointment - Director, Mayor's Office of Legal Counsel September 23, 2020.

CONFIDENTIAL

held several management positions at the Office of the Attorney General from 2002-2015, including that of Chief Deputy Attorney General.²³

- Vanessa Natale. Ms. Natale is the Deputy Director of MOLC who served previously as General Counsel for the DC Office of Administrative Hearings. Ms. Natale and Mr. Adams became acquainted while they were both at the Office of the Attorney General after she joined the office in 2007 as Chief of the Public Safety Division.²⁴
- The MOLC SHO. The MOLC SHO is an Associate Director in MOLC, who previously served under Ms. Natale in the DC Office of Administrative Hearings. She has more than ten years of legal experience, including in employment law and personnel matters.²⁵ She is also a trained SHO for the District. As the designated MOLC SHO, she conducted the two investigations that are the subject of this Report.²⁶
- MOLC Attorney. The MOLC Attorney is an Associate Director in MOLC, who also previously served under Ms. Natale in the DC Office of Administrative Hearings. She has approximately eight years of legal experience.
- Complainant #1.²⁷ [REDACTED]
- Complainant #2. [REDACTED]

²³ *Id.*

²⁴ Vanessa Natale, Feb. 1, 2024 Interview.

²⁵ MOLC SHO, Feb. 5, 2024 Interview.

²⁶ She never met or worked with Mr. Falcicchio, and she is not responsible for DMPED legal matters. Prior to the MOLC investigations, she had never met either complainant.

²⁷ Our Review was conducted under the confidentiality protections afforded it by the District of Columbia Office of the Inspector General. While we use the appellations “complainant” and “witness” throughout this Report, we note that we took no other steps to disguise identities as we drafted. We did not take additional steps because we judged that even though certain information in the report could tend to reveal the identities of the complainants, we deemed those facts and circumstances necessary to our analysis. Accordingly, we urge caution before releasing this Report.

CONFIDENTIAL

IV. APPLICABLE LAW AND POLICY

A. Mayor's Order 2017-313

On December 18, 2017, the District issued Mayor's Order 2017-313, "District Government Sexual Harassment Policy, Guidance, and Procedures." It is incorporated herein by reference.

Of relevance to this Report, the Mayor's Order mandated, among other things, that each DC government agency²⁸ designate a SHO to investigate claims of sexual harassment within 60 days of receiving a complaint. Each agency is also required to submit the name of their SHO and any changes or updates to the DC Office of Human Rights. SHO investigations serve a personnel management purpose, to enable prompt assessment of risk, and to inform swift workplace disciplinary actions or remedial interventions.²⁹ The SHO process was not intended as a substitute for other avenues of relief including the Equal Employment Opportunity Office (EEOC), the DC Office of Human Rights, the Board of Ethics and Government Accountability (BEGA), or the Office of the Inspector General. The Mayor's Order also stated that while a sexual harassment complaint is investigated, the alleged harasser may be transferred or reassigned to mandatory administrative leave with pay.

The Mayor's Order also addressed "Consensual Relationships," strongly discouraged romantic or sexual relationships between employees and supervisors and acknowledged that conduct that was once welcome or consensual may become unwelcome. The Mayor's Order directed that "[o]nce the conduct is no longer welcome, and the formerly-consenting employee, or a supervisor, agency designee or counsel, tells the other party to stop, all unwelcomed behavior of a sexually harassing nature must cease."³⁰ The Mayor's Order further directed the Director of DCHR to develop and propose reporting mechanisms for sexual or romantic relationships in the workplace.³¹

²⁸ The term "agency" means any unit of the District of Columbia government required by law, by the Mayor of the District of Columbia, or by the Council of the District to administer any law, rule, or any regulation adopted under authority of law. The term "agency" shall also include any unit of the District of Columbia government created by the reorganization of 1 or more of the units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency. Code of the District of Columbia

§ 1-603.01

²⁹ Vanessa Natale, Feb. 1, 2024 Interview; EOM GC, Feb. 12, 2024 Interview; MOLC Attorney, Feb. 5, 2024 Interview.

³⁰ Mayor's Order 2017-313, Sexual Harassment Policy, Guidance, and Procedures, effective Dec. 18, 2017, 64 D.C. Reg. 13138 (Dec. 22, 2017) ("Mayor's Order 2017-313"). This particular policy has been expressly superseded by Mayor's Order 2023-131 (Oct. 31, 2023).

³¹ Mayor's Order 2017-313. We are not aware of any reporting mechanisms being put in place prior to the new Mayor's Order issued in 2023.

The Mayor's Order further required that an employee must either: "(A) tell the person who is engaging in offensive or inappropriate sexual conduct to stop and that such conduct is unwelcome; or (B) ask the employee's supervisor or counsel or the agency's designated SHO to advise the person that the conduct is offensive and unwelcome."³²

Also, the Mayor's Order defined "hostile environment sexual harassment" as conduct that is "severe or sufficiently pervasive as to alter working conditions" and "has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment."³³ According to the Mayor's Order, those protected from sexual harassment included employees, contractors, interns, and other persons engaged by the District to provide permanent or temporary employment services at DC worksites inside and outside DC agencies; members of Boards and Commissions; and applicants for employment with the District of Columbia government. The Mayor's Order did not explicitly include members of the public interacting with or dealing with DC government employees in its "Protection" section.³⁴ However, we note that DCHR published an "Easy-to-Read Digest" of the Mayor's Order, which included members of the public dealing with government employees under its description of those who are protected from workplace sexual harassment.³⁵

According to the Mayor's Order, when an allegation of sexual harassment was reported to a SHO within an agency, including allegations of criminal conduct, the agency shall notify the agency's General Counsel, who in turn must notify MOLC of the allegation. Where there was an allegation of criminal misconduct, "[t]he complainant at his or her choice may report the alleged criminal violation to a law enforcement agency, including the Metropolitan Police Department."³⁶

The Mayor's Order also required that if a complaint was against a Deputy Mayor the report must be submitted to the City Administrator and if the complaint was against the Mayor's General Counsel or the Mayor, an independent consultant must be hired to conduct an investigation, and a final investigative report shall be submitted to the Inspector General for the District of Columbia for review.³⁷ The Mayor's Order did not make special provision for complaints against the Chief of Staff for the Mayor, which is within the agency of the EOM. Nor did it explain how to report or handle complaints made against someone in dual leadership roles.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Easy-to-Read Digest: Mayor's Order 2017-313*, D.C. Department of Human Resources (April 6, 2018), <https://dchr.sp.dc.gov/policy/PCA/EDPM/Issuances/01%20Easy%20To%20Read%20Digest%20OHR%20FINAL%20hnk%20040618%20cir.pdf>.

³⁶ Mayor's Order 2017-313.

³⁷ *Id.*

Finally, there was no provision in the Mayor's Order concerning the public announcement of the existence of a complaint or investigation, or the public release of any findings.

B. DC Department of Human Resources Issuance

On December 31, 2019, the DCHR issued guidance (DCHR Issuance)³⁸ on the SHO process. Several provisions of this Issuance are relevant to this Report, including the following:

- Reports made against a Deputy Mayor should be referred to and investigated by the SHO in the OCA.³⁹
- Due to their role in advocating for, or defending, the agency, DCHR recommends that agencies do not select the General Counsel or attorneys in an agency's Office of General Counsel to serve as the SHO.⁴⁰
- Once a SHO receives notice of a sexual harassment complaint, their role is to "accept, review, and investigate sexual harassment claims by gathering information and preparing a written report outlining the investigation, the facts gleaned from the investigation, and any recommendations within 60 days after a claim is reported."⁴¹
- A SHO must: (1) gain a full understanding of the complaint; (2) immediately notify the agency General Counsel, who must notify the MOLC within 3 days; (3) acknowledge receipt of complaint, notify the complainant that the matter is being investigated, and contact the complainant to gather more information; (4) make any additional required communications; (5) investigate; and (6) prepare and deliver a report to the agency head.⁴²
- Although those investigating the reports of alleged sexual harassment must take reasonable steps to ensure that the details of the complainant and investigation remain confidential, "the alleged harasser is entitled to notification of the allegations and must be given an opportunity to respond."⁴³

³⁸ *Sexual Harassment Reports and Investigations*, District of Columbia Department of Human Resources (Dec. 31, 2019), <https://edpm.dc.gov/issuances/sexual-harassment-reports-and-investigations/>.

³⁹ *Id.* The Issuance does not address reports made against the Chief of Staff, or against someone with dual roles.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

The DCHR Issuance also describes the investigative steps a SHO is required to follow when investigating the complaint: (1) define the scope of the investigation; (2) recommend immediate action to the agency (if necessary – for example, if the alleged harasser and complainant need to be separated); (3) determine if there are any conflicts of interest; (4) plan the investigation; (5) interview witnesses; (6) gather documentary and physical evidence; (7) evaluate the evidence; (8) write a report; and (9) provide the report to the agency head (including what the investigation entailed and confirmed or did not confirm).⁴⁴

The DCHR Issuance also instructs that the SHO “will want to open every interview with similar remarks” and provides a roadmap for a SHO to use, including, among other things: stating their purpose and role in the investigation, explaining the process they are following, and explaining that the interview will “be treated as confidential as much as possible.”⁴⁵

Importantly, the SHO must also “weigh the evidence and determine what happened based on the evidence.” It is the SHO’s responsibility to determine what the facts are in the investigation, and to “tell the story with facts.”⁴⁶

Finally, the DCHR Issuance repeatedly recommends that the SHO consult with and seek guidance from the agency’s General Counsel because such guidance may be necessary for the SHO to gain access to relevant information and evidence, to ensure the cooperation of agency witnesses, or resolve any conflicts of interest. Once the SHO has concluded the investigation, according to the policy, they must share the completed investigation report with the SHO’s agency head so that the agency can issue its Notice of Findings and Conclusions. The findings and conclusions are then to be provided to MOLC, the complainant, and the alleged harasser. There is no discussion about a public release of information in the DCHR Issuance.

C. Human Rights Enhancement Amendment Act of 2022

On July 25, 2022, the Mayor signed the Human Rights Enhancement Amendment Act of 2022, which, among other things, amended the D.C. Human Rights Act (DCHRA) by broadening the definition of “harassment” and how it should be interpreted by those reviewing complaints of sexual harassment.⁴⁷

The new section of DCHRA expanded employee protections by eliminating the “severe or pervasive” standard to establish a hostile work environment. The law now requires that a finder of fact shall consider the “totality of the circumstances” and view conduct based on multiple protected

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ D.C. Code § 2-1402.11(c-2)(3), available at <https://code.dccouncil.gov/us/dc/council/code/sections/2-1402.11>.

characteristics in totality, “rather than in isolation.”⁴⁸ “Conduct need not be severe or pervasive to constitute harassment, and no specific number of incidents or level of egregiousness is required.”⁴⁹

V. CHRONOLOGY OF EVENTS

A. The Initial Complaint

On the afternoon of March 8, 2023, an attorney representing Complainant #1, sent an email and attached letter to the Mayor and Mr. Adams. The letter stated that Complainant #1 had retained the attorney’s law firm to represent her in a sexual harassment claim against the District.⁵⁰ Specifically, Complainant #1’s counsel alleged that “over the past several months, John Falcicchio, your Chief of Staff and the Deputy Mayor for Planning and Economic Development, has sexually harassed [Complainant #1], a subordinate employee [REDACTED], in violation of your Order on the District of Columbia’s Sexual Harassment Policy.”⁵¹ The letter detailed the alleged sexual harassment and included attachments of messaging app communications and graphic photographs.⁵² The letter also described alleged mistreatment of Complainant #1 by Mr. Falcicchio and other DMPED senior staff: “In retaliation for [Complainant #1’s] refusal to have sex with [Mr. Falcicchio], he manipulated her at work, at times pulling her off staffing for certain events and shunning her, but other times giving her special opportunities and attention” and “other senior employees at DMPED also began to treat [Complainant #1] with hostility, which suggested that they knew about or suspected an inappropriate relationship with Mr. Falcicchio, and that such a relationship was tarnishing her reputation.”⁵³ The letter stated that Mr. Falcicchio had told Complainant #1 that “he would show her who was in charge if she did not follow his advice and stay quiet about how he (and other senior staff) had treated her.”⁵⁴ The letter also alleged that “[b]ased on the comments employees have made to Complainant #1, we are confident that Mr. Falcicchio has sexually harassed other female employees, including [Complainant #2], and retaliated against them when they refused his sexual demands.”

In addition to an investigation, complainant’s counsel requested the following: “Given the severity of the misconduct and the fear that he engenders among his staff in general, and [Complainant #1] in particular, we request that he be placed on leave immediately pending the completion of the investigation. He should be directed to have no contact with [Complainant #1]

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Report #1 at 14; March 8, 2023 Letter from counsel for complainant to Mayor Muriel Bowser, copying Eugene Adams.

⁵¹ March 8, 2023 Letter from complainant’s counsel to Mayor Muriel Bowser, copying Eugene Adams.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

CONFIDENTIAL

May 10, 2024

or any other potential witnesses and he should be further instructed to refrain from taking additional adverse actions against [Complainant #1], including making disparaging and false comments about her.”⁵⁵ The letter concluded by asking that the District take appropriate steps to preserve all potential evidence, which included taking possession of “all devices Mr. Falcicchio used to text and/or send lewd, sexualized photographs, videos and other messages to [Complainant #1] and other female employees.”⁵⁶

Mr. Adams was alarmed, and given the graphic images and sensational allegations, was concerned that whoever had administrative access to the Mayor’s official email account may have been an unintended recipient. He reached out to the Mayor immediately, but she said she had not yet seen the letter because she was at an official event. Mr. Adams then emailed the letter directly to the Mayor and they made plans to connect that evening after she had a chance to review the letter.⁵⁷

Mr. Adams also contacted the Chief Technology Officer (CTO) in the District’s Office of the Chief Technology Officer (OCTO), to verify that the CTO, Adams, and the Mayor were the only ones who had accessed or had access to the email from Complainant #1’s counsel. Mr. Adams was concerned about the allegations being leaked, particularly as that might affect the integrity of the investigation, the confidentiality of the complainant (the importance of which was highlighted in the letter), and the rights of Mr. Falcicchio. Mr. Adams believed that email communications were routed to the Mayor’s correspondence unit and could be viewed by numerous members of the Mayor’s staff.⁵⁸ The CTO confirmed for Mr. Adams that the only individuals who had opened or forwarded the letter at that time were Mr. Adams and the Mayor.

B. The MOLC Director Advises the Mayor to Follow Mayor’s Order 2017-313

Mr. Adams next called Ms. Natale to inform her about the complaint and seek her recommendations on next steps in advising the Mayor. Ms. Natale turned to the MOLC SHO and MOLC Attorney, who expressed their collective view to Ms. Natale that the Mayor’s Order governed the situation and should be followed. Ms. Natale relayed that information to Mr. Adams.

The Mayor called Mr. Adams back later that evening and they talked about the allegations. According to Mr. Adams, the Mayor appeared blindsided and disappointed. The Mayor asked Mr. Adams, “What do I have to do?” Mr. Adams explained that the Mayor’s Order required that “the allegations have to be investigated,” and he stressed to the Mayor that it was important that Mr. Falcicchio be treated “like anyone else.” After consulting with his subordinates, Mr. Adams

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Eugene Adams, Feb. 1, 2024 Interview.

⁵⁸ Eugene Adams, Feb. 1, 2024 Interview; Eugene Adams, Feb. 9, 2024 Interview.

CONFIDENTIAL

walked the Mayor through the SHO process, including where the SHO was expected to be found, *i.e.*, in the OCA, and how the process would work. He also informed her that he (Mr. Adams) would alert Mr. Falcicchio, to inform him that he would be placed on administrative leave and, consistent with counsel for Complainant #1's request, advise him to have no contact with Complainant #1. The Mayor was generally aware of the SHO process, but not in the weeds of the procedures. She agreed with Mr. Adams that it was important to adhere to the Mayor's Order when investigating the allegations.⁵⁹ Both Mr. Adams and Ms. Natale reiterated to the Independent Counsel that the Mayor appeared to be shocked by the allegations.⁶⁰

Mr. Adams contacted Mr. Falcicchio over the telephone the following day, on March 9, to inform him of the allegations against him; he also advised Mr. Falcicchio to avoid any contact or communications with [Complainant #1].⁶¹ He further informed Mr. Falcicchio that Mr. Falcicchio was being placed on administrative leave but that it was contemplated that some essential work, such as signing District real estate documents, would still need to be conducted by Mr. Falcicchio.⁶² During the telephonic conversation with Mr. Falcicchio, Mr. Adams also described the contents of the March 8 letter, to which Mr. Falcicchio responded in words to the effect, "That's not all there is to it."⁶³ Despite the anticipation that Mr. Falcicchio may need to continue to perform some essential functions, Mr. Adams also instructed Mr. Falcicchio to return any government-issued equipment, *i.e.*, phones, laptops, desktop computers, that he may have used to send communications, emails, or other messages to Complainant #1.⁶⁴ Mr. Adams sent a follow-up email to Mr. Falcicchio the next day, stating

[T]he government's response to these allegations as provided for in the attached Mayor's Order. . . outlines your rights and responsibilities here as the government begins its inquiry into the allegations. As you know, this matter will initially be referred to the Sexual Harassment Officer (SHO) in the City Administrator's Office for the investigation today. During it[s] pendency, it is very important that you do not have ANY contact with the alleged victim or any of your staff or colleagues who may have knowledge or information about aspects of this matter or who might be contacted as actual or potential witnesses during this investigation.⁶⁵

⁵⁹ Report #1, at 14; Eugene Adams, Feb. 1, 2024 Interview.

⁶⁰ Eugene Adams, Feb. 1, 2024 Interview; Vanessa Natale, Feb. 1, 2024 Interview.

⁶¹ Report #1, at 15; Eugene Adams, Feb. 1, 2024 Interview; Eugene Adams, Feb. 9, 2024 Interview.

⁶² Mr. Adams is unaware if Mr. Falcicchio ever received a formal letter placing him on administrative leave. Eugene Adams, Feb. 9, 2024 Interview.

⁶³ Eugene Adams, Feb. 9, 2024 Interview.

⁶⁴ March 9, 2023 Email from Eugene Adams to John Falcicchio. The CTO had the primary responsibility to collect Mr. Falcicchio's devices and equipment, and Mr. Adams recalled that they were turned in without any concern. Eugene Adams, Feb. 9, 2024 Interview.

⁶⁵ Eugene Adams, Feb. 1, 2024 Interview; March 9, 2023 Email from Eugene Adams to John Falcicchio.

CONFIDENTIAL

Until his resignation nine days later, on March 17, Mr. Falcicchio continued to conduct certain business-related duties, as contemplated by Mr. Adams at the time Mr. Falcicchio was placed on administrative leave.⁶⁶ One such act was an email sent by Mr. Falcicchio giving instructions to his DMPED staff which copied Complainant #1 via a group email address. Complainant's counsel called Mr. Adams to complain. Mr. Adams informed her that Mr. Falcicchio was on administrative leave and that the applicable process was being followed.⁶⁷ Another recipient of Mr. Falcicchio's business-related instructions during this time was the individual who later became Complainant #2.

C. The MOLC SHO is Selected to Conduct the Investigation and the MOLC Assumes Agency Responsibility Over the Complaint

I. Neither OCA nor EOM Has a Designated SHO

On March 9, MOLC discussed the complaint and next steps at an internal meeting.⁶⁸ Mr. Adams and Ms. Natale attempted to identify the appropriate SHO to investigate the allegations. First, Ms. Natale contacted the OCA General Counsel, because the Mayor's Order required that sexual harassment allegations against a Deputy Mayor should be investigated by the OCA. However, the OCA General Counsel informed Ms. Natale that OCA did not have a SHO and that it usually relied on the DCHR SHO for sexual harassment investigations. Next, the General Counsel at DCHR informed Ms. Natale that his agency did not presently have a dedicated SHO either, and instead contracted with a former DC Metropolitan Police Department (MPD) officer to investigate sexual harassment allegations.⁶⁹ Ms. Natale did not feel comfortable having the city use the former MPD officer for this investigation because he was not a District employee or a trained SHO.⁷⁰ Ms. Natale then called the General Counsel for the Mayor's Office, to see if the EOM had a SHO. The EOM GC, who had been made aware of the complaint against Mr. Falcicchio,⁷¹ was not able to identify a SHO in EOM and stated that EOM would typically use SHOs from either the DC Department of Parks & Recreation or the DC Department of Public Works.⁷²

⁶⁶ We note the inconsistency between the continued performance of at least some official duties and the earlier instruction to surrender government-issued devices. Nonetheless, we understand that, at some point, Mr. Falcicchio did surrender those government-issued devices.

⁶⁷ Eugene Adams, Feb. 9, 2024 Interview.

⁶⁸ MOLC SHO, Feb. 5, 2024 Interview.

⁶⁹ Report #1 at 15; Eugene Adams, Feb. 1, 2024 Interview; Vanessa Natale, Feb. 1, 2024 Interview.

⁷⁰ Vanessa Natale, Feb. 1, 2024 Interview; MOLC SHO, Feb. 5, 2024 Interview.

⁷¹ Eugene Adams, Feb. 9, 2024 Interview, "Vanessa and I had conversations with [EOM GC] as all of this was breaking."

⁷² Vanessa Natale, Feb. 1, 2024 Interview; Vanessa Natale, Feb. 9, 2024 Interview.

CONFIDENTIAL

MOLC felt it was important to appoint a SHO who was trained by the District and did not report to Mr. Falcicchio either in his role as CS or as DM. This narrowed the options considerably but did not cause the MOLC to abandon the SHO process in favor of an outside referral. Mr. Adams believed the allegations were outside of the scope of the Office of the Inspector General's (OIG) mandate, which is focused on waste, fraud, and abuse.⁷³ Mr. Adams speculated that there may have been some informal discussions about having someone outside of MOLC conduct the investigation but, if so, he was not involved in those informal discussions and was unaware of a formal meeting or call to discuss the possibility of OIG or another agency taking over. He did not think it wise to bring someone from the outside in, because it would have taken too much time to bring them up to speed. Given the time-sensitive nature of the allegations, the investigation needed to begin promptly, and Mr. Adams believed that MOLC was in the best position to do it.⁷⁴

2. MOLC Leadership Decides the MOLC SHO is the Best Alternative

MOLC conversations about who would be the best SHO under the circumstances continued into the following day, March 10. During one such discussion between Mr. Adams, Ms. Natale, MOLC SHO, and MOLC Attorney, MOLC Attorney pointed out that MOLC SHO was a trained and experienced SHO.

In 2018, MOLC SHO had attended a SHO training seminar held by DCHR. She also attended an additional SHO training in 2019 conducted by DCHR. This training included a presentation titled "Investigating Sexual Harassment Complaints: Critical Tools and Strategies for DC Government Sexual Harassment Officers" and went through the sexual harassment analyses SHOs are required to perform.⁷⁵ Part of the SHO training dealt with how to speak to witnesses who may have experienced traumatic events. MOLC SHO also attended outside continuing legal education courses on sexual harassment cases, including one taught by Complainants' counsel.⁷⁶

MOLC SHO previously conducted at least four SHO investigations at the agency level, some of which required her to consult with other SHOs and agency general counsel about the investigations. And as an Associate Director in MOLC, she reviewed and assessed SHO findings issued by other DC agencies, consulted with other SHOs and agency general counsels about sexual harassment investigations, and assisted with MOLC's tracking and reporting on sexual harassment investigations.⁷⁷ MOLC serves as a repository of all SHO investigation findings and conclusions.⁷⁸

⁷³ Eugene Adams, Feb. 9, 2024 Interview.

⁷⁴ Eugene Adams, Feb. 9, 2024 Interview.

⁷⁵ December 31, 2019 Email to DCHR SHO distribution list.

⁷⁶ MOLC SHO, Feb. 5, 2024 Interview.

⁷⁷ MOLC SHO, Feb. 5, 2024 Interview.

⁷⁸ Mayor's Order 2017-313, V. (d) 3.

In addition to her SHO training and experience, MOLC SHO had experience in employment and personnel law. MOLC leadership believed that a SHO who was also a lawyer would conduct a more thorough investigation, based on the SHO reports they had seen and reviewed in the past.

Finally, both Mr. Adams and Ms. Natale were extremely concerned that sensitive and salacious details, including the complainant's identity, would spread through the DC government during the investigation. Complainant's counsel also stressed in the March 8 letter that the District of Columbia was to "protect [Complainant #1's] identity while preserving [evidence]," and asked that it "do not identify [Complainant #1] in a manner that indicates she asserted claims against the District of Columbia."⁷⁹ Mr. Adams and Ms. Natale believed that assigning MOLC SHO as the SHO alleviated those concerns, as MOLC would be able to better control the dissemination of information and maintain confidentiality.

For the above reasons, MOLC leadership determined the MOLC SHO would be an appropriate alternative SHO.⁸⁰ Accordingly, Mr. Adams proposed that she serve as the SHO, and the Mayor approved the appointment.⁸¹ The MOLC SHO was assigned to investigate the initial complaint on March 10.⁸²

There is no indication that Mr. Adams discussed with the Mayor the decision that in addition to the MOLC SHO conducting the investigation, the MOLC, as opposed to the OCA or EOM (given Mr. Falcicchio's dual role as CS and DMPED), would also become the District agency to assume responsibility for adjudicating the complaint, including issuing written notification to the parties of the agency's findings and conclusions. That the MOLC Director would serve as agency head to handle the complaint seemed to be an assumption, as there was no known discussion of other options, such as providing the MOLC SHO's investigative report to the City Administrator to make findings, or the secondment of the MOLC SHO to OCA for purposes of conducting the investigation. Nor did the MOLC appear to contemplate that another office or official within EOM should handle the complaint. Although MOLC is technically part of EOM, it was outside of Mr. Falcicchio's chain of command, and MOLC was concerned that others within EOM worked very closely with Mr. Falcicchio, might become witnesses, or could have evidence that could be relevant to the investigation.⁸³

⁷⁹ March 8, 2023 Letter from complainant's counsel to Mayor Muriel Bowser, copying Eugene Adams.

⁸⁰ Report #1, at 15; Eugene Adams, Feb. 1, 2024 Interview.

⁸¹ Report #1, at 15; Eugene Adams, Feb. 1, 2024 Interview; Eugene Adams, Feb. 9, 2024 Interview.

⁸² Report #1, at 16.

⁸³ Eugene Adams, Feb. 1, 2024 Interview.

D. The Initiation of the Investigation and Significant Intervening Events

1. The MOLC Takes Steps to Ensure Confidentiality and Independence

At the outset, Ms. Natale and Mr. Adams took extraordinary measures to (1) guard against the dissemination of sensitive details and confidential information from the complaint and (2) maintain independence throughout the investigation, including from EOM and other DC government offices and agencies. Further, MOLC leadership did not direct the course of the MOLC SHO's investigation, including decisions about scope, interviews, and evidence collection. The MOLC leadership was, however, generally aware of the contours, milestones and challenges of the investigation.

2. The MOLC SHO's Initial Attempts to Interview Complainant #1 and Mr. Falcicchio

On March 13, the MOLC SHO received an email from an associate at the law firm of Complainant's counsel (hereinafter individually, and collectively with Complainant #1's counsel, referred to as "counsel for Complainant(s)" or "Complainants' counsel") requesting that an interview of Complainant #1 be conducted that week: "Given the urgency and sensitivity of this matter, we hope to set up an interview this week. Please let us know your availability at your earliest convenience."⁸⁴ Approximately one hour later, the MOLC SHO replied and attempted to schedule the interview. The associate attorney then informed the MOLC SHO that her boss was out of town on business for the week and requested that they instead set up a time to conduct the interview the following week of March 20.⁸⁵

The MOLC SHO also requested an interview with Mr. Falcicchio on March 13 through his then-counsel.⁸⁶ Sometime thereafter, the MOLC SHO learned from Mr. Adams that Mr. Falcicchio had a new legal counsel. The MOLC SHO then reached out to his new counsel on March 16 to set up an interview.⁸⁷

⁸⁴ March 13, 2023 Email from complainants' counsel to MOLC SHO.

⁸⁵ March 13, 2023 Email from complainants' counsel to MOLC SHO. The original March 8, 2023 letter from complainants' counsel stated that Complainant #1 would be made available "immediately" for an interview, and a subsequent email from her associate attorney to the MOLC SHO on March 13 stressed the urgency of the matter and requested an interview "this week." However, when the MOLC SHO wrote back to the associate attorney one hour later requesting an interview that week, the associate attorney responded that her boss was out of town for the week and that they would need to set up time the following week instead. Accordingly, Complainant #1 was first interviewed by the MOLC SHO on March 20, 2023.

⁸⁶ March 13, 2023 Email from MOLC SHO to counsel for Mr. Falcicchio.

⁸⁷ March 17, 2023 Email from Mr. Falcicchio's counsel to MOLC SHO.

CONFIDENTIAL

3. Mr. Falcicchio Resigns

Mr. Falcicchio submitted his resignation to the Mayor on March 17, citing “personal matters” and a desire to pursue other opportunities.⁸⁸ His resignation was made public that same day as part of a longer press release, with the relevant part of the release noting only that: “[w]e also thank Deputy Mayor John Falcicchio for his years of service to the District as he transitions to the private sector.”⁸⁹ Mr. Falcicchio’s counsel then responded to the MOLC SHO’s March 16 email, citing Mr. Falcicchio’s resignation and stating that he “will not make himself available for an interview with you.”⁹⁰

E. Public Announcements Concerning the Investigation

1. The Mayor’s Press Release and Subsequent Clarification by MOLC

On Monday, March 20, the Mayor announced that MOLC would be investigating Falcicchio’s departure in the following public statement: “I know you have many questions, but please understand that as this is a sensitive matter that includes privacy concerns, we will not be able to discuss it any further. . . . However, I am able to say that the circumstances of his departure led me to initiate an investigation. . . . late last week.”⁹¹ On March 21, Ms. Natale clarified for the *Washington Post* that the Mayor had misspoken; the Mayor had actually learned of the complaint and ordered the investigation into Mr. Falcicchio a week earlier than she said at the press conference.

2. The Public Response from Lawyers for Complainant #1

Also on March 20, complainant’s counsel released the following statement, presumably in response to the Mayor’s announcement, revealing more about the allegations:

⁸⁸ March 24, 2023 Email from Eugene Adams to Vanessa Natale.

⁸⁹ Michael Brice-Sadler and Paul Schwartzman, *John Falcicchio, Bowser's top political adviser, departs from DC government*, Wash. Post, Mar. 17, 2023.

⁹⁰ March 17, 2023 Email from Mr. Falcicchio’s counsel to MOLC SHO, re Sexual Harassment Investigation. We note that on March 30, the MOLC SHO again requested to schedule an interview with Mr. Falcicchio. This time, Mr. Falcicchio’s counsel responded the next day, April 1, saying that he would be available for an interview on April 12. However, on April 3, Mr. Falcicchio’s counsel informed the MOLC SHO that the interview needed to be postponed. After the MOLC SHO followed up, counsel stated that they would check Mr. Falcicchio’s availability for an interview. MOLC SHO did not hear back from Mr. Falcicchio’s counsel to reschedule the interview, and despite her repeated efforts, Mr. Falcicchio never made himself available for an interview or agreed to respond to written questions. Report #1, at 19; April 14, 2023 Email from Mr. Falcicchio’s counsel to MOLC SHO.

⁹¹ *Statement from Mayor Bowser on the Departure of John Falcicchio from DC Government*, Executive Office of the Mayor (Mar. 20, 2023), <https://mayor.dc.gov/release/statement-mayor-bowser-departure-john-falcicchio-dc-government>.

CONFIDENTIAL

“We represent an employee of the District of Columbia who came forward to report serious allegations of sexual harassment by former Chief of Staff and Deputy Mayor for Planning and Economic Development John Falcicchio. It is our understanding that this behavior is longstanding and our client is cooperating fully with the investigation, which Mayor Bowser initiated immediately. Our client is courageous. She came forward to ensure accountability and protect other women. Given the gravity of our client’s allegations – which involve unwelcome advances and sexual contact – we ask the media to respect her privacy.”⁹²

The press release also included the following appeal: “We encourage everyone affected to contact [the MOLC SHO], the Associate Director of the Mayor’s Office of Legal Counsel, at [email address], who is leading this investigation.”⁹³ It is noteworthy that the MOLC SHO did not receive any communications as a result of this statement.⁹⁴ However, after counsel made her name public without her permission, the MOLC SHO faced what she described as *ad hominem* attacks on social media and by the press about her competence and partiality, during and after the investigation, which she described as “very hurtful.”⁹⁵

3. MOLC Participates in a Mayoral Press Conference About the Investigation

The EOM decided to hold a press conference concerning the investigation of Mr. Falcicchio. EOM believed someone from MOLC was best positioned to speak publicly about the matter because MOLC understood the rules governing confidentiality. This, coupled with Ms. Natale’s straightforward demeanor, caused EOM to determine that Ms. Natale should be the MOLC point person for the press. Although Ms. Natale was reluctant to take on this role, she agreed to do so out of a sense of duty to the Mayor’s Office and to ensure the investigation remained confidential.⁹⁶

On March 22, at the request of, and in coordination with, communications office officials within EOM, Ms. Natale attended the press conference and fielded questions about the investigation. For example, when the Mayor was asked if she had been aware of any complaints or concerns regarding Mr. Falcicchio before these allegations arose, Ms. Natale replied, “Mayor Bowser cannot comment on that right now.” When the same question was asked a few minutes later, Ms. Natale interjected, saying that she was the attorney involved in overseeing the investigation, that she [Ms. Natale] could not speak to the Mayor’s knowledge, and that the

⁹² *Sexual Harassment Complaint Filed Against Mayor Bowser’s Former Chief of Staff and Deputy Mayor John Falcicchio*, by complainant’s counsel.

⁹³ *Id.*

⁹⁴ MOLC SHO, Feb. 5, 2024 Interview.

⁹⁵ *Id.*

⁹⁶ Vanessa Natale, Feb. 1, 2024 Interview; Vanessa Natale, Feb. 9, 2024 Interview.

May 10, 2024

Mayor's knowledge was not the focus of the investigation. A different reporter asked if Ms. Natale was the Mayor's lawyer. Ms. Natale stated MOLC advises all attorneys in the agencies "as well as advise the Mayor."⁹⁷

F. A Second Complainant Comes Forward

On March 29, Complainant #1's counsel sent a letter to Mr. Adams outlining the allegations of a second client, Complainant #2, against Mr. Falcicchio. The letter alleged that "throughout the course of her employment, Mr. Falcicchio wielded his authority as [Complainant #2's] direct supervisor to sexually assault, harass, and retaliate against her."⁹⁸ The letter detailed the various sexual unwelcome advances and encounters Complainant #2 experienced from Mr. Falcicchio over several months in 2020. It also explained the health issues Complainant #2 continued to suffer because of these traumatic events.⁹⁹ The letter alleged that Complainant #2 had the following claims against DC and Mr. Falcicchio: common law sexual assault,¹⁰⁰ sexual harassment, and retaliation under Title VII of the Civil Rights Act of 1964, and sexual harassment and retaliation under the DC Human Rights Act.¹⁰¹

Mr. Adams immediately notified the Mayor about the second complaint and delivered a hard copy to her. Mr. Adams explained that in his previous conversations with complainants' counsel, he asked that they send these types of communications to him and he would provide them to the Mayor; as noted previously, he was concerned that if they went to the Mayor's email other people on her communications team would see them.¹⁰² Mr. Adams also explained to the Mayor that from MOLC's perspective, the allegations of Complainant #1 and Complaint #2 appeared to overlap, in that they involved Mr. Falcicchio and DMPED, and likely similar witnesses. Accordingly, the MOLC leadership recommended that the MOLC SHO should also investigate the new complaint. The Mayor agreed with Mr. Adams' advice and counsel.¹⁰³ On March 30, the MOLC SHO was assigned to investigate the second complaint.¹⁰⁴

The MOLC did not increase the MOLC SHO's resources, seek assistance from another agency, or make a referral of Complainant #2's allegations to any outside authority, including law

⁹⁷ D.C. Mayor's Office, *Mayor Bowser Holds Press Availability*, YouTube.

⁹⁸ March 29, 2023 Letter from complainants' counsel to Eugene Adams.

⁹⁹ *Id.*

¹⁰⁰ Arnold & Porter referred this matter to the OIG because of possible criminal activity.

¹⁰¹ March 29, 2023 Letter from complainants' counsel to Eugene Adams.

¹⁰² Eugene Adams, Feb. 1, 2024 Interview.

¹⁰³ Eugene Adams, Feb. 1, 2024 Interview.

¹⁰⁴ Report #1, at 19.

CONFIDENTIAL

enforcement.¹⁰⁵ With respect to a possible law enforcement referral, Mr. Adams and Ms. Natale assessed that given the nature of the allegation and because Complainant #2 was represented, her counsel was in the best position to determine whether the complainant should report the matter to law enforcement, as opposed to MOLC making any referral unilaterally.

G. Lawyers for Complainants Make Broader Public Allegations

Counsel for Complainants released the following statement on March 31:

We represent a second employee of the District of Columbia who has brought forth serious allegations of sexual harassment by former Chief of Staff and Deputy Mayor for Planning and Economic Development John Falcicchio. Her allegations are extremely disturbing and reflect a longstanding pattern of sexual harassment and predatory behavior by Mr. Falcicchio. Our client courageously came forward with her complaint because she wants justice for herself and other survivors. She intends to work with the District's investigators to ensure accountability and we ask that you respect her request for privacy at this time.¹⁰⁶

A spokesperson for Complainants' counsel explained that their "word choice was deliberate" and "[t]here was a clear pattern of sexually exploitative behavior preying on women who were less powerful than he was."¹⁰⁷

VI. THE CONDUCT OF THE MOLC SHO'S INVESTIGATIONS

A. Summary of Investigative Steps Taken by the MOLC SHO

The MOLC SHO prepared for and planned the investigations and interviews by drafting interview questions and reviewing relevant materials, including her SHO training materials, the Mayor's Order, DCHR Issuance, relevant statutes and caselaw. She conducted an initial interview of Complainant #1 on March 20 and two subsequent interviews of her on April 26 and May 11, all at the offices of complainants' counsel, for a total of approximately seven hours; and conducted an initial interview of Complainant #2 on April 6 and one subsequent interview of her on June 20, both at the offices of complainants' counsel, for a total of approximately four hours.

¹⁰⁵ Mr. Adams stated that because the complainants were represented by competent counsel, counsel would be best positioned to determine whether their clients would be comfortable going forward with a law enforcement investigation. Judging the facts as alleged, Mr. Adams did not believe that they automatically triggered a duty to refer the matter to law enforcement.

¹⁰⁶ March 31, 2023 press release from complainants' counsel.

¹⁰⁷ Paul Schwartzman, *2nd DC employee accuses Falcicchio*, Wash. Post (April 1, 2023).

Based on the interviews of the complainants, the MOLC SHO developed extensive witness lists consisting of numerous individuals, including current and former employees, with potential information related to the allegations. The MOLC SHO also sought interviews of 12 individuals believed by Complainant #1 to have engaged in romantic or sexual relationships with Mr. Falcicchio. Six of those individuals denied having any type of romantic or sexual engagement with Mr. Falcicchio. One individual stated that she had engaged in a long-term consensual relationship with him. One individual stated that he told her he had a romantic interest in her, which she declined without further repercussions, and that he engaged in conduct that made her uncomfortable at times. The remaining four individuals were no longer employed by the District and either refused to be interviewed by the MOLC SHO or failed to respond to requests for an interview.¹⁰⁸

Between March 21 and May 25, the MOLC SHO conducted a total of 33 interviews and follow-up interviews (of a total of 23 individuals) related to the allegations made by Complainant #1, and between April 6 and June 20, conducted a total of 18 interviews and follow-up interviews (of a total of 13 individuals) related to the allegations made by Complainant #2.¹⁰⁹ The MOLC SHO also gathered and reviewed extensive documentary evidence, including tens of thousands of pages of emails and other documents, and the government email boxes (.pst files) for the employee complainants and Mr. Falcicchio. The MOLC SHO also requested that certain individuals' government emails be searched with specific terms related to Complainant #1's allegations of retaliation.¹¹⁰

The MOLC SHO also collected emails from a former EOM employee, whom Complainant #1 had alleged was terminated from her position because she had information related to Mr. Falcicchio's relationships with junior staffers that she had shared with Complainant #1.¹¹¹ On May 11, two of the MOLC SHO's colleagues, Attorney Advisors with MOLC, began reviewing the emails collected. In total, the MOLC SHO and her colleagues reviewed an estimated 15,000 documents during the investigation.

Finally, the MOLC SHO reviewed and took comprehensive notes on hundreds of pages of documentary evidence in possession of the complainants, including text messages and photographs. Complainants' counsel denied the MOLC SHO's multiple requests to review these documents in the MOLC's office or to send the documents through a secure online mechanism.

¹⁰⁸ We note that the MOLC SHO's report and the public summary got these numbers wrong.

¹⁰⁹ The MOLC SHO's investigation into Complainant #2's complaint and allegations was delayed to accommodate the completion of the first investigation and report.

¹¹⁰ MOLC SHO Document Review Tracker; Report #1, at 51-54; Complainant #1 Interview 1 Tr. at 32:1-12, 33:23-35, 34:18-33, 35:3-5, 55:23-26, 59:33-35.

¹¹¹ MOLC SHO Document Review Tracker; Report #1, at 72; Complainant #1 Interview 1 Tr. at 37:31-33; Complainant #1 Interview 3 Tr. 34:16-39.

CONFIDENTIAL

leaving the MOLC SHO with no choice but to review these materials in person at the offices of complainants' counsel over the course of five separate visits totaling approximately 17 hours.

The MOLC SHO did not acquire or attempt to acquire the government-issued electronic devices of either complainants or Mr. Falcicchio. She likewise did not acquire or attempt to acquire access to the personal electronic devices of either complainant or Mr. Falcicchio.

B. The MOLC SHO Decides to Expand the Scope of the Investigations

During her March 20 interview with the MOLC SHO, Complainant #1 raised issues that went beyond Mr. Falcicchio's alleged sexual harassment. These broader claims included allegations that Mr. Falcicchio used the office as a "dating pool" and that hiring and promotion practices at DMPED were affected by how employees responded to Mr. Falcicchio's sexual advances. In reaction, the MOLC SHO, during this interview, urged Complainant #1 to file a complaint on these additional issues with an EEO Officer or the DC Office of Human Rights (DC OHR).¹¹² Complainant #1 also identified numerous individuals, both current and former DC government employees, as possibly having knowledge related to her allegations and as noted above, 12 individuals from the workplace who Complainant #1 believed may have engaged in a sexual or romantic relationship with Mr. Falcicchio.¹¹³ The individuals identified by Complainant #1 served as the basis for the MOLC SHO's witness list; she interviewed (or attempted to interview) most names provided by Complainant #1 during her initial March 20 interview. Although some interviewees identified additional people the MOLC SHO should talk to, Complainant #1 was the main source and driver of the investigation.¹¹⁴

MOLC leadership wanted to insulate the MOLC SHO from others at MOLC during the investigations at a time when complainants' counsel continued to aggressively engage MOLC leadership about the pendency of the respective claims. Because she had autonomy as a result, the MOLC SHO alone decided the scope of the investigation. The MOLC SHO explained to the Independent Counsel, "As the investigator, I made the decision on the scope of the investigation based upon my interpretation and analysis of Mayor's Order 2017-313. I may have orally consulted with my [MOLC] colleague, [MOLC Attorney], but the scope of the sexual harassment complaint was ultimately my sole decision."¹¹⁵

¹¹² Complainant #1 Interview Transcript 1, 1:39-46; Complainant #1 Interview 2 Tr. at 17:21-33, 19:4-5.

¹¹³ MOLC SHO, Feb. 5, 2024 Interview; *MOLC's Summary of Findings from the Sexual Harassment Investigative Report*, Mayor's Office of the Legal Counsel (June 17, 2023), https://molc.dc.gov/sites/default/files/dc/sites/molc/page_content/MOLC-Summary.pdf.

¹¹⁴ MOLC SHO, Feb. 5, 2024 Interview; *MOLC's Summary of Findings from the Sexual Harassment Investigative Report* (June 17, 2023), Mayor's Office of the Legal Counsel, https://molc.dc.gov/sites/default/files/dc/sites/molc/page_content/MOLC-Summary.pdf.

¹¹⁵ MOLC SHO, Feb. 5, 2024 Interview.

C. The MOLC SHO's Approach to the Complainants and Witnesses

1. The MOLC SHO's Demeanor with Complainants

The MOLC SHO represented herself as extremely caring during her interactions with the complainants.¹¹⁶ According to Complainant #1, “[The MOLC SHO] was empathetic, she listened, did not cut [me] off. She spent hours to try and get at the truth the best she could.”¹¹⁷ Complainant #2 noted, “[The MOLC SHO] is a kind woman . . . [she] was saddened when I [told] her what happened, as a human being and as a woman . . . [she was] very patient but tried to do it in a way that was not traumatizing to me.”¹¹⁸

The MOLC SHO's non-confrontational, supportive, and even companionable approach persisted even when she encountered gaps or inconsistencies in the complainants' accounts.¹¹⁹ This was most evident during the MOLC SHO's third interview of Complainant #1. Complainant #1's original description of the harassment portrayed Mr. Falcicchio as the sole instigator of sexual-related behaviors. However, once the MOLC SHO was granted viewing access to some of the text messages between Complainant #1 and Mr. Falcicchio, an apparent inconsistency emerged. Specifically, the text messages revealed that at times, Complainant #1 appeared to be encouraging Mr. Falcicchio's sexual-related behavior. As a result, the following line of questioning occurred:

MOLC SHO: “In some of the exchanges that you have with [Mr. Falcicchio], he seems to be pulling away and you seem to...seemingly seek to continue the romantic relationship. Can you tell me what was going on [there] . . . Can you explain to me the context or background and what you were thinking during your receipt of these messages?”¹²⁰

Complainant #1: “[I was] horrified that I was going to lose my job” and “in hindsight now, I was increasingly more desperate to keep his attention to keep my job.”¹²¹

Complainant #1: “I wanted to keep catching him in the act so that I could further document what he had done.”

MOLC SHO: “So I wanted to hear, yeah, what exactly you were thinking and feeling and whether did, you mentioned that you felt like you would not be able to keep your job.”

¹¹⁶ Complainant #1, [REDACTED] Interview; Complainant #2, [REDACTED] Interview.

¹¹⁷ Complainant #1, [REDACTED] Interview.

¹¹⁸ Complainant #2, [REDACTED] Interview.

¹¹⁹ MOLC SHO, Feb. 5, 2024 Interview; Complainant #1, [REDACTED] Interview.

¹²⁰ Complainant #1 Interview 3 Tr. at 10:1-9.

¹²¹ Complainant #1 Interview 3 Tr. at 10:21-22.

Complainant #1: "Oh yeah. Immediately."

MOLC SHO: "Because he loses interest or what have you."

Complainant #1: "Or if I reject him."

MOLC SHO: "Exactly."¹²²

* * *

MOLC SHO: "I mean, did you really want to go over to his place or were you just trying to appease him?"

Complainant #1: "Probably trying to appease him."¹²³

At another point in the third interview, Complainant #1 remarked, "I have more than I'm even giving you," referring to evidence she purportedly obtained during the alleged sexual harassment by Mr. Falcicchio. Instead of following up and seeking details and access to that additional evidence, the MOLC SHO's response to Complainant #1 was, "That's incredible."¹²⁴ The MOLC SHO's companionable approach caused Complainant #1 to remark in an interview with the Independent Counsel that the MOLC SHO "gave us [Complainant #1 and her counsel] more information than we gave her."

2. The MOLC SHO's Approach to Witness Reticence

The MOLC typically began witness interviews with the following prefatory remarks:

I'm an Associate Director with the Mayor's Office of Legal Counsel. I'm also a trained sexual harassment officer, and I'm an [sic] investigating sexual harassment claims made against John Falcicchio, the former Deputy Mayor for Planning and Economic Development, and the former Chief of Staff for the Mayor. I'm a neutral fact finder, so I haven't reached any conclusions at this stage.

I'm going to do my best to ensure the confidentiality of what you share with me. However, some aspects of what we've discussed, I might need to disclose to other witnesses, the complainant, as well as the alleged harasser.

¹²² Complainant #1 Interview 3 Tr. at 10:43-11:4.

¹²³ Complainant #1 Interview 3 Tr. at 11-20-22.

¹²⁴ Complainant #1 Interview 3 Tr. at 75: 28-30.

Despite the above statement, the MOLC SHO believed some witnesses were not completely forthcoming with her out of a sense of loyalty to the Mayor and her senior staff expected at EOM and because people generally feared Mr. Falcicchio. The MOLC SHO further surmised that witnesses expressed trepidation when speaking to the MOLC SHO out of fear that people would find out that they had been interviewed in relation to the allegations against Mr. Falcicchio. The MOLC SHO believed that her role as a DC government employee also likely impacted witnesses' ability to fully trust her.¹²⁵ Both complainants also stated that the MOLC SHO told them she (the MOLC SHO) had a challenging time getting people to be completely open and honest with her. Witnesses also relayed to Complainant #1 that they feared losing their jobs for even participating in the investigation.¹²⁶

The MOLC SHO's approach to witness reticence is demonstrated in the excerpt below of an interview with a member of the DC Metropolitan Police Department [REDACTED]. [REDACTED] Complainant #1 identified this witness as someone who could, based on Complainant #1's conversations with the witness, give a first-hand account of Mr. Falcicchio's sexual harassment-related activities and corroborate, in part, Complainant #1's broader workplace-related allegations. The interviewed proceeded as follows:

MOLC SHO: "[D]id you observe any interactions between Mr. Falcicchio and other staff members of the district government or other district government employees that made you uncomfortable?"

MPD Employee: "No"

MOLC SHO: "Okay. Did you hear any rumors about how John treated his staff?"

MPD Employee: "No."

MOLC SHO: "Did you hear any rumors about John that you would characterize as inappropriate or sexual in nature?"

MPD Employee: "No."

MOLC SHO: "Okay. Did you hear any rumors about any other DMPED staff members that you would characterize as inappropriate or sexual in nature?"

MPD Employee: "No."

¹²⁵ MOLC SHO, Feb. 5, 2024 Interview; Complainant #1 Interview 2 Tr. at 4:32-5:23.

¹²⁶ Complainant #1, [REDACTED] Interview; Complainant #2, [REDACTED]

MOLC SHO: "Did you ever observe John behave towards staff or anyone else that you would characterize as inappropriate or sexual in nature?"

MPD Employee: "No."

MOLC SHO: "Okay. Did you ever hear any rumors about John having a sexual and or romantic relationship with any district government employee?"

MPD Employee: "No."

The MOLC SHO did not ask meaningful follow-up questions.

3. The MOLC SHO's Failure to Obtain Certain Physical Evidence

a. Evidence in the Possession of Complainants' Counsel

Despite assurances on multiple occasions, including in the March 8 letter, that Complainant #1 would provide copies of all relevant documentary evidence, complainants' counsel ultimately refused to do so, citing concerns over confidentiality and possible releases under the Freedom of Information Act. Although the MOLC SHO was granted access to certain, but not all, of this documentary evidence, as stated above, she did not make any attempt to gain physical custody of this evidence through a compulsory process.

b. Evidence on Electronic Devices

Even though the attachments to the March 8 letter included copies of graphic photographs of Mr. Falcicchio which Complainant #1 stated she took on her "work phone," the MOLC SHO never attempted to gain access to Complainant #1's government-issued electronic or personal devices as part of the investigation.¹²⁷ The MOLC SHO explained that she requested and received access to official government emails. We note there is likely substantial overlap in all the materials reviewed by the MOLC SHO, including evidence she reluctantly reviewed in the offices of complainants' counsel, with that which would have been found on the devices. However, the MOLC SHO acknowledged that she should have obtained access to the actual devices as well.

Also, as noted above, the MOLC SHO similarly did not attempt to gain access to *any* of Mr. Falcicchio's electronic devices.

¹²⁷ MOLC SHO, Feb. 5, 2024 Interview.

VII. EXTERNAL INFLUENCES ON THE MOLC SHO'S INVESTIGATIONS

A. Perceived Lack of Independence of the MOLC

Both complainants viewed the MOLC as the “Mayor’s lawyers”¹²⁸ whose job it was to defend the Mayor and, by virtue of his close political relationship with the Mayor, Mr. Falcicchio.¹²⁹ Complainant #1 stated that some witnesses thought that whatever they said to the MOLC SHO would be reported immediately to the Mayor. This sentiment is also reflected in the MOLC SHO’s credibility assessment of the MPD employee discussed above, who “was not a cooperative witness” and that “[g]iven [REDACTED] [he] may have had a motive to be evasive.”¹³⁰

The Mayor, the MOLC, and DMPED are also physically located in the same building; this meant that the MOLC SHO’s interviews of witnesses were conducted in the same building where other employees who were simply curious about the high-profile investigation worked.

B. Actions by Counsel for Complainants

In addition to pursuing claims against the District with MOLC leadership, counsel for complainants were actively involved in the MOLC SHO’s investigative interviews of their clients. During the interviews, complainants’ counsel at times injected themselves and offered their opinions to the MOLC SHO. As noted above, counsel also frequently issued headline-grabbing press releases, influencing the public narrative, and increasing the pressure on the MOLC SHO.

C. Pressure to Complete the Investigations

1. From the Mayor’s Office

Approximately every two weeks during the investigations, the Mayor asked Mr. Adams how the investigations were coming along and when the reports would be finished. However, the Mayor gave Mr. Adams “carte blanche,” never making any attempts to change the direction or scope of the investigations.¹³¹ As the Mayor’s Order’s 60-day deadline for the SHO investigations approached, the Mayor asked Mr. Adams for a draft of the report. He instead orally summarized the report for the Mayor, giving high-level details about the number of people the MOLC SHO interviewed, the practical issues she had encountered such as getting witnesses to talk, and the fact that counsel for the complainants were putting up roadblocks that were slowing the investigative

¹²⁸ Complainant #1, [REDACTED] Interview; Complainant #2, [REDACTED] Interview.

¹²⁹ *Id.*

¹³⁰ Report #1, Exhibit List, Summary of Interviewee Credibility Analysis, at p.14.

¹³¹ Eugene Adams, Feb. 1, 2024 Interview.

progress. Specifically, Mr. Adams told the Mayor that complainants' counsel was not letting the MOLC SHO view Complainant #1's evidence outside of counsel's office, and that counsel had delayed Complainant #1's interview by a week even though they stated Complainant #1 would be available to the MOLC SHO immediately. According to Mr. Adams, the Mayor was frustrated with the pace of the investigations, but understood these factors had an unavoidable impact on the completion of the report.¹³²

Although the MOLC SHO was never contacted by, or even encountered, the Mayor during the investigations, the MOLC SHO was aware of this pressure to complete the report in a timely fashion.

2. From the Public

The MOLC SHO was also privy to the media coverage of the investigation, which was only amplified following counsel's release of the MOLC SHO's name to the public without her consent. This unwarranted exposure, coupled with the DC Council's scrutiny of the investigation's independence, was constantly present as the MOLC SHO sifted through the voluminous evidence and conducted her interviews.

D. The MOLC SHO Acted Independently from MOLC Leadership

In an effort to ensure investigative integrity and independence, Mr. Adams delegated all investigative decision-making authority to the MOLC SHO. While MOLC leadership received investigation updates from the MOLC SHO, they deliberately insulated the MOLC SHO once complainants' counsel began engaging MOLC leadership in settlement discussions.¹³³ Counsel for complainants made clear from the outset that they were interested in pursuing claims and potential litigation against the District and were engaging with MOLC in MOLC's role as the senior lawyers for the District. For example, in correspondence with MOLC through March and April 2023, counsel routinely used the Subject Line: "[Complainant #1] v. District of Columbia and John Falcicchio."¹³⁴ Later, on May 15, Mr. Adams invited complainants to submit a settlement demand to reach an informal resolution of the matters. The Mayor later asked Mr. Adams if MOLC advised proceeding with resolving Complainant #1's claims. Mr. Adams stated that he believed that Complainants' counsel's actions, specifically how the allegations were laid out in the complaint and subsequent media coverage, indicated she was aiming for a quick resolution via settlement.

¹³² Eugene Adams, Feb. 1, 2024 Interview.

¹³³ Eugene Adams, Feb. 1, 2024 Interview; Eugene Adams, Feb. 9, 2024 Interview; Vanessa Natale, Feb. 1, 2024 Interview. According to Mr. Adams, the MOLC plays an active role in advising the Mayor on settlement of claims, both formally (when delegated by the Mayor) and informally as part of the standard administrative claims review and approval process. Eugene Adams, Feb. 9, 2024 Interview.

¹³⁴ See March 13, 2023 Email from Complainants' counsel to MOLC SHO.

In addition to discussions about a possible monetary resolution, complainants' counsel sought relief from MOLC leadership concerning Complainant #1's present employment situation.¹³⁵ [REDACTED]

[REDACTED]

138

VIII. THE MOLC'S FINDINGS AND CONCLUSIONS

A. A Draft Investigative Report is Sent to MOLC Leadership

Once the MOLC SHO completed the initial draft of the investigation report related to Complainant #1's allegations on Friday, June 16, it was transmitted to Mr. Adams, Ms. Natale, and the Mayor, as contemplated by the Mayor's Order and DCHR Issuance.¹³⁹ Ms. Natale had reviewed all witness transcripts.¹⁴⁰ Mr. Adams and Ms. Natale noted that on receiving the draft, they were both impressed and surprised by the scope of the allegations addressed in the investigation and the report's length and breadth.¹⁴¹

The report into Complainant #1's allegations totaled 88 pages, not including a binder of attached exhibits and a credibility assessment. The report was divided into eight parts: (i) executive summary, (ii) background, (iii) applicable policy and law, (iv) the investigation, (v) documents and physical evidence, (vi) allegations and findings, broken into eight distinct categories of allegations, (vii) conclusions, and (viii) recommendations. The report included a list of anonymized persons interviewed, a chronology of the investigation, evidence collected and reviewed, an analysis of the allegations, findings, and conclusions, and recommendations for sexual harassment policies and procedures. The MOLC SHO recommended further investigation

¹³⁵ May 18, 2023 Letter from complainants' counsel to Adams.

¹³⁶ *Id.*

¹³⁷ May 18, 2023 Letter from complainants' counsel to Adams.

¹³⁸ May 18, 2023 Email from Vanessa Natale to complainants' counsel.

¹³⁹ MOLC SHO, Feb. 5, 2024 Interview; Eugene Adams, Feb. 9, 2024 Interview.

¹⁴⁰ Vanessa Natale, Feb. 9, 2024 Interview.

¹⁴¹ Eugene Adams, Feb. 1, 2024 Interview; Vanessa Natale, Feb. 1, 2024 Interview.

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into allegations of a “toxic” workplace and discriminatory hiring and promotion practices. The report also contained a credibility assessment for each witness, as well as legal analysis contained in the report’s section detailing applicable policy and law, and throughout the MOLC SHO’s finding relating to retaliatory interactions with the DM/CS in the workplace and at events. The report used the standard for sexual harassment as put forth in the DC Human Rights Enhancement Amendment Act of 2022.¹⁴²

A MOLC Attorney drafted proposed findings and conclusions for Mr. Adams, who assumed the role of agency head for the complaint, meaning Mr. Adams would issue findings and conclusions for the investigation.¹⁴³ The draft findings and conclusion contained descriptions of the claims, broken into the same eight distinct allegations used by the MOLC SHO in the report, with bold faced and all capitalized “**SUBSTANTIATED**” or “**UNSUBSTANTIATED**” findings, and the MOLC’S reasoning. Notably, Complainant #1 had not spelled out or delineated her allegations into the eight claims presented in the report or findings and conclusions.¹⁴⁴

The MOLC Attorney, believing all SHO findings should be adopted unless the agency has an issue with how a SHO conducted an investigation, adopted all of the MOLC SHO’s findings.¹⁴⁵ Allegation No. 1, Physical Sexual Advances, Allegation No. 2, Inappropriate Messages, and Allegation No. 7, Threatening Behavior, were all found **SUBSTANTIATED** by the MOLC SHO and adopted by MOLC Attorney.¹⁴⁶ Allegation No. 3, Sexual or Attraction-Based Favoritism, Allegation No. 4, Bullying by DMPED Senior Staff, Allegation No. 5, Transfer/Demotion, Allegation No. 6, Retaliatory Interactions with the DM/COS in the Workplace and at Events, and Allegation No. 8, Retaliatory Post-Complaint Treatment were all found **UNSUBSTANTIATED** by the MOLC SHO and adopted by MOLC Attorney.¹⁴⁷

B. The MOLC Makes Agency Findings and Conclusions

Ms. Natale and Mr. Adams reviewed the report and discussed the draft findings and conclusions.¹⁴⁸ Ms. Natale told Mr. Adams she did not believe Allegation No. 7, Threatening Behavior, had been substantiated based on Ms. Natale’s review of the evidence, including her review of the interview transcripts.¹⁴⁹ Mr. Adams and Ms. Natale also decided the allegation that an EOM employee was fired to intimidate Complainant #1 was too attenuated to be

¹⁴² Report #1, at 9.

¹⁴³ MOLC Attorney, Feb. 5, 2024 Interview.

¹⁴⁴ Complainant #1, [REDACTED] Interview.

¹⁴⁵ MOLC SHO, Feb. 5, 2024 Interview; MOLC Attorney, Feb. 5, 2024 Interview; See Mayor’s Order 2017-313.

¹⁴⁶ MOLC Attorney, Feb. 5, 2024 Interview.

¹⁴⁷ June 17, 2023 Notice of Findings from MOLC to Complainant #1 and John Falcicchio.

¹⁴⁸ Eugene Adams, Feb. 9, 2024 Interview; Vanessa Natale, Feb. 9, 2024 Interview.

¹⁴⁹ *Id.*

substantiated.¹⁵⁰ As a result, Mr. Adams and Ms. Natale changed Allegation No. 7 from **SUBSTANTIATED** to **UNSUBSTANTIATED** based on Ms. Natale's recommendation.¹⁵¹ Mr. Adams did not ask the MOLC SHO to further investigate Allegation No. 7.¹⁵²

Mr. Adams and Ms. Natale also adopted the draft findings that Allegation No. 4 was **UNSUBSTANTIATED**, although the narrative text of the findings says the alleged treatment "does not fall within the scope of Mayor's Order 2017-313."¹⁵³ Similarly, Allegation No. 8 was designated **UNSUBSTANTIATED**, even though:

In accordance with Mayor's Order 2017-313, the Complainant's allegations of retaliation that have occurred since filing her sexual harassment complaint are not within the SHO's purview for this investigation. The Complainant has been instructed to file, and should file, any complaint of retaliation with an EEO Counselor within 180 days of the alleged retaliation.¹⁵⁴

If the finding reflected that the alleged treatment did not fall within the scope of the Mayor's Order under which the MOLC SHO was operating, a finding of substantiated/unsubstantiated was not warranted.

On or about June 16, Ms. Natale and Mr. Adams adopted all other findings of the MOLC SHO's draft report.¹⁵⁵ Ms. Natale immediately informed Complainants' counsel telephonically that the MOLC had substantiated findings of sexual harassment against Complainant #1 but did not substantiate the claim that she had been demoted in retaliation.¹⁵⁶ During that conversation, Complainants' counsel did not challenge Ms. Natale or MOLC for these findings.¹⁵⁷

C. The Summary of Findings and Conclusions Related to Complainant #1 is Released

On Saturday, June 17, at 4:57pm, Ms. Natale sent counsel for Complainant #1 and counsel for Mr. Falcicchio a notice of the findings and conclusions of the report related to Complainant #1.¹⁵⁸ Mr. Adams also sent the findings and conclusions to the Mayor.¹⁵⁹ The Mayor called Mr.

¹⁵⁰ *Id.*

¹⁵¹ MOLC Attorney, Feb. 5, 2024 Interview; Eugene Adams, Feb. 9, 2024 Interview; See June 17, 2023 Notice of Findings from MOLC to Complainant #1 and John Falcicchio.

¹⁵² Eugene Adams, Feb. 9, 2024 Interview.

¹⁵³ June 17, 2023 Notice of Findings from MOLC to Complainant #1 and John Falcicchio.

¹⁵⁴ *Id.*

¹⁵⁵ Eugene Adams, Feb. 9, 2024 Interview; Vanessa Natale, Feb. 9, 2024 Interview.

¹⁵⁶ Vanessa Natale, Feb. 9, 2024 Interview.

¹⁵⁷ *Id.*

¹⁵⁸ Vanessa Natale, Feb. 1, 2024 Interview; June 17, 2023 Email from Vanessa Natale to complainants' counsel and counsel for Mr. Falcicchio; June 17, 2023 Notice of Findings from MOLC to Complainant #1 and John Falcicchio.

¹⁵⁹ Eugene Adams, Feb. 9, 2024 Interview.

Adams and asked him to prepare a version of the findings and conclusions that would be suitable for public release.¹⁶⁰ The Mayor believed that in this situation, it was extremely important to release the findings. Mr. Adams advised against such a release, particularly since the DCHR Issuance only instructed that the findings are to go to the parties.¹⁶¹ Nonetheless, at the Mayor's request, Mr. Adams and Ms. Natale drafted a "sanitized" version of the findings (hereinafter "Summary of Findings") that they judged could be released, if necessary.¹⁶² Mr. Adams sent the draft Summary of Findings to the Mayor.¹⁶³

At approximately 9:00 pm on June 17, Ms. Natale received a call from a *Washington Post* reporter.¹⁶⁴ The reporter informed Ms. Natale that he had received an email containing what purported to be the findings and conclusions of the sexual harassment investigation into Mr. Falcicchio. The reporter read the email aloud to Ms. Natale; Ms. Natale recognized the contents of the email to be an accurate description of the findings and conclusions that had been provided to counsel for Complainant #1 and counsel for Mr. Falcicchio a few hours earlier.¹⁶⁵ The reporter did not identify the sender of the email (only that it came from a gmail account with no apparent association with any of the parties), and asked Ms. Natale if the information was "real" and if MOLC was going to make the summary public.¹⁶⁶ Ms. Natale called Mr. Adams to relay her conversation with the reporter.¹⁶⁷

Then, at around 11:00 pm on June 17, the CTO called Mr. Adams and informed him that "[Complainants' counsel]" had leaked the findings and conclusions to the press, so EOM had gone ahead and posted the Summary of Findings to the MOLC website to "get ahead" of any potential press coverage of the findings.¹⁶⁸ Mr. Adams informed Ms. Natale¹⁶⁹ who, in turn, attempted to reach complainants' counsel to let her know that there had been a public release of the Summary of Findings.¹⁷⁰ Ms. Natale was unable to contact complainants' counsel until the following day, June 18.¹⁷¹

¹⁶⁰ Eugene Adams, Feb. 1, 2024 Interview.

¹⁶¹ *Id.*

¹⁶² Eugene Adams, Feb. 1, 2024 Interview; Vanessa Natale, Feb. 1, 2024 Interview.

¹⁶³ Eugene Adams, Feb. 1, 2024 Interview.

¹⁶⁴ Vanessa Natale, Feb. 1, 2024 Interview; Eugene Adams, Feb. 1, 2024 Interview.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Eugene Adams, Feb. 1, 2024 Interview.

¹⁶⁸ Eugene Adams, Feb. 1, 2024 Interview; Vanessa Natale, Feb. 1, 2024 Interview; See MOLC's Summary of Findings from the Sexual Harassment Investigative Report, Mayor's Office of Legal Counsel (June 17, 2023), <https://molc.dc.gov/page/molc-reports>.

¹⁶⁹ Vanessa Natale, Feb. 1, 2024 Interview; Eugene Adams, Feb. 1, 2024 Interview.

¹⁷⁰ *Id.*

¹⁷¹ Vanessa Natale, Feb. 1, 2024 Interview.

D. The Public Reaction to the Release

On Monday, June 19, the *Washington Post* reported on the timing and manner of the release of the Summary of Findings—late Saturday night over a holiday weekend. This received prompt backlash from several DC council members and the public.¹⁷²

Complainants' counsel released a statement the following day, June 20, stating she and her client were "gratified that the [MOLC] report substantiates our client's serious allegations of sexual harassment by [Mr. Falcicchio]."¹⁷³ MOLC also reacted to the *Washington Post* article, issuing a statement that the report was released on that Saturday evening, soon after the Mayor and other parties involved were notified, in "response to ongoing and repeated inquiries and the heightened public interest in the investigation."¹⁷⁴

IX. SUBSEQUENT EVENTS

A. Complainant #1's Counsel Express Concerns About the Release

On June 21, complainants' counsel sent a letter to Mr. Adams and Ms. Natale expressing her concerns and frustrations about the release of the Summary of Findings to the public, and the failure to provide her office with advance notice.¹⁷⁵ According to this letter, the MOLC SHO had previously informed complainants' counsel that the MOLC's findings would be released only to her and counsel for Mr. Falcicchio.¹⁷⁶ Complainants' counsel's letter said that she was primarily concerned because the Summary of Findings contained information that she believed would identify Complainant #1 and feared that the report for Complainant #2's investigation would similarly include identifying information.¹⁷⁷ Complainants' counsel also believed the Summary of Findings' release over a holiday weekend was an attempt by the Mayor's Office to "bury" the findings.¹⁷⁸

Complainant #1 told the Independent Counsel that she also felt the inclusion of the dates of her interviews in the public release would indicate to her supervisor that she was the complainant based on days she was not in the office, and that her "voice" could be heard from direct quotes included in the Summary of Findings from her interviews.¹⁷⁹

¹⁷² Paul Schwartzman, *Falcicchio harassed staffer*, *DC Finds*, Wash. Post, June 19, 2023.

¹⁷³ Complainants' counsel, *Statement on Findings of Sexual Harassment Investigation Into Mayor Bowser's Former Chief of Staff and Deputy Mayor John Falcicchio*, by complainants' counsel.

¹⁷⁴ Michael Brice-Saddler, *DC mayor defends investigation into behavior of former deputy*, Wash. Post, June 21, 2023.

¹⁷⁵ June 21, 2023 Letter from complainants' counsel to Eugene Adams and Vanessa Natale.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Complainant #1, [REDACTED] Interview.

Complainants' counsel later issued a public statement "in response to inconsistencies from DC Mayor Muriel Bowser and District officials regarding the sexual harassment investigation of [Falcicchio]." ¹⁸⁰ In the statement, counsel said they were "disheartened" to hear the Mayor's comments regarding the release of the findings and that they were concerned over the release of private details without Complainant #1's consent. ¹⁸¹

On June 23, Mr. Adams responded directly to complainants' counsel, ¹⁸² explaining that the MOLC had believed that any public posting of the Summary of Findings would not occur until Tuesday, June 20, but once MOLC learned that the posting had been made by EOM on June 17, his office had immediately attempted to alert her. ¹⁸³ Mr. Adams challenged Complainants' counsel's claims that MOLC had breached Complainant #1's confidentiality as disingenuous, pointing out to her that Complainant #1 had admitted during interviews that she had already revealed her identity as the complainant to two coworkers and had also spoken to the *Washington Post* about her allegations. ¹⁸⁴

B. MOLC Participates in a Second Mayoral Press Conference Concerning the Investigations

On June 21, the Mayor held a news conference to address questions and criticisms about the Summary of Findings and the timing of their release. ¹⁸⁵ During the press conference, the Mayor stated that she stood by her decision to release the Summary of Findings that Saturday night, instead of waiting for three days after receiving the findings, because immediate release of the information was in the public interest. The Mayor reiterated that she had consulted with MOLC, and that both she and MOLC believed the Summary of Findings could be shared with the public without harming the complainant. ¹⁸⁶ Ms. Natale also participated in the press conference, stating that the allegations of Complainant #1 did not rise to a criminal level and refusing to answer questions about who had been interviewed because the investigation remained confidential. Ms. Natale also explained that the MOLC SHO's report was for internal purposes and not for public consumption.

¹⁸⁰ Complainants' counsel, *Statement on the Public Release of Sexual Harassment Investigation Into Mayor Bowser's Former Chief of Staff and Deputy Mayor John Falcicchio*, (June 21, 2023), by complainants' counsel.

¹⁸¹ *Id.*

¹⁸² June 23, 2023 Letter from Eugene Adams to complainants' counsel.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ DC Mayor's Office, *Mayor Holds Press Briefing*, YouTube (June 21, 2023), Michael Brice-Saddler, *D.C. mayor defends investigation into behavior of former deputy*, Wash. Post, June 21, 2023, <https://www.youtube.com/watch?v=ii1eZeMYHdc>; Michael Brice-Saddler, *DC mayor defends investigation into behavior of former deputy*, Wash. Post, June 21, 2023.

¹⁸⁶ Michael Brice-Saddler, *DC mayor defends investigation into behavior of former deputy*, Wash. Post, June 21, 2023.

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C. Complainant #1 is Featured in a *Washington Post* Exclusive

On June 25, an extensive story about Complainant #1 ran in the *Washington Post*.¹⁸⁷ The article provided identifying details that went well beyond those posted in the Summary of Findings, and revealed additional relevant evidence that Complainant #1 had not made available to the MOLC SHO during the investigation.¹⁸⁸ The article stated Complainant #1 was still employed by DMPED, quoted text exchanges that Complainant #1 did not turn over to MOLC, and stated she had discussed sexual encounters between her and Mr. Falcicchio with friends and family.¹⁸⁹ Of note, Complainant #1 revealed to the *Washington Post* she had written Mr. Falcicchio via text message, “[j]ust know even when I don’t say I want it, I want it.”¹⁹⁰ Complainant #1 explained to the *Washington Post* that she did this to encourage Mr. Falcicchio so Complainant #1 could document his advances.¹⁹¹ The MOLC SHO had no knowledge of these particular text exchanges prior to their publication in the *Washington Post*.¹⁹² The MOLC SHO and others within MOLC felt that Complainants’ counsel and Complainant #1’s decision not to provide all relevant evidence to MOLC was a hindrance to the investigation; however, no steps were taken to compel the production of that evidence.¹⁹³ Complainant #1 explained that she had gone to the press to ensure there would be public interest and scrutiny around the allegations.¹⁹⁴ In an interview with the Independent Counsel, Complainant #1 also took great issue that six of the claims were labeled as “UNSUBSTANTIATED” because it made her “look like a liar.”¹⁹⁵

Counsel for Mr. Falcicchio did not respond to the *Washington Post*’s requests for comment on the article.¹⁹⁶ A public relations firm representing Mr. Falcicchio told the *Washington Post* that their client was “quite eager to respond,” but was following advice from legal counsel to “defend himself only in the proper forum since legal proceedings are ongoing.”¹⁹⁷

¹⁸⁷ Paul Schwartzman and Emma Brown, *Woman details allegations against top Bowser deputy*, Wash. Post, June 25, 2023.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² MOLC SHO, Feb. 5, 2024 Interview; MOLC Attorney, Feb. 5, 2024; Vanessa Natale, Feb. 1, 2024 Interview; Eugene Adams, Feb. 1, 2024 Interview.

¹⁹³ *Id.*

¹⁹⁴ Complainant #1, [REDACTED] Interview.

¹⁹⁵ *Id.*

¹⁹⁶ Paul Schwartzman and Emma Brown, *Woman details allegations against top Bowser deputy*, Wash. Post, June 25, 2023.

¹⁹⁷ *Id.*

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D. Referrals are Made to Other Agencies

On June 27, the Mayor transmitted a letter to Daniel W. Lucas, Inspector General for the District of Columbia, calling his attention to three unsubstantiated allegations listed in the Summary of Findings related to Complainant #1.¹⁹⁸

On June 29, Complainants' counsel released a public statement "strongly urg[ing]" the Mayor to consider an independent investigation by the DC Attorney General's Office, instead of the Inspector General, to investigate the workplace-related allegations.¹⁹⁹ Complainants' counsel also criticized the Mayor's Order as having an outdated legal standard because it "requires a complainant to prove in some instances that a work environment was 'severe or sufficiently pervasive' to establish a violation of the Order."²⁰⁰ Notwithstanding the out-of-date language in Mayor's Order 2017-313, the MOLC SHO and Ms. Natale confirmed that the MOLC had applied the correct legal standard (that had become law in 2022 with the updated DCHRA) to its findings and conclusions.²⁰¹

Both complainants filed charges with outside offices during the pendency of the investigation. On May 22, Complainants' counsel filed a Charge of Discrimination on behalf of Complainant #2 with the EEOC and the DC OHR.²⁰² A complaint with an EEO Counselor was also filed on behalf of Complainant #1.²⁰³ On July 24, Complainant #1 filed an Initial Written Complaint with the Office of Human Rights.²⁰⁴ On November 15, Complainant #1 filed a Charge of Discrimination with DC OHR and the EEOC.²⁰⁵

E. The Second Report is Completed and the Summary of Findings is Released

On July 6, Complainants' counsel reached out to the MOLC SHO to see when the second report would be finalized.²⁰⁶ The MOLC SHO responded the next day stating she was hoping it would be completed by the week of July 14.²⁰⁷ On July 13, Complainants' counsel emailed the MOLC SHO again asking for updates on the timing of the report.²⁰⁸ The MOLC SHO replied that

¹⁹⁸ June 27, 2023 Letter from Mayor Bowser to Inspector General Daniel W. Lucas.

¹⁹⁹ *Statement from Complainants' counsel on Bowser OIG Investigation.*

²⁰⁰ *Id.*

²⁰¹ Vanessa Natale Feb. 1, 2024 Interview; MOLC SHO Feb. 5, 2024 Interview.

²⁰² *See* December 27, 2023 Email from complainants' counsel to EEOC and DC OHR, copying Complainant #2.

²⁰³ November 15, 2023 Charge of Discrimination by Complainant #1.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ July 7, 2023 Email from MOLC SHO to Complainants' counsel.

²⁰⁷ *Id.*

²⁰⁸ July 13, 2023 Email from complainants' counsel to MOLC SHO.

May 10, 2024

she was aiming to finish the report by July 17 or 18, and stated Ms. Natale was the best point of contact regarding any release of the findings.²⁰⁹

On July 20, the MOLC SHO completed the initial draft of her report of Complainant #2's allegations, which she submitted to Mr. Adams, Ms. Natale, and the Mayor.²¹⁰ The second investigation report was 62 pages, and like the first report, was divided into eight sections, contained a comprehensive list of witnesses, evidence and investigatory steps, an analysis of the allegations, findings, and conclusions, recommendations for improvements to policies and practices, and recommendations for further investigation of certain broader allegations. In addition, it contained an appendix with the MOLC SHO's specific credibility assessments of each witness, as well as a detailed binder of exhibits.

The MOLC SHO broke down the claims into four allegations.²¹¹ Allegation No. 1, Physical Sexual Advances, and Allegation No. 2, Unwanted Romantic Attention, were **SUBSTANTIATED** by the MOLC SHO.²¹² Allegation No. 3, Retaliatory Interactions by the DM/COS, and Allegation No. 4, Retaliatory Treatment by Senior Staffer at DMPED, were **UNSUBSTANTIATED** by the MOLC SHO.²¹³ Allegation No. 4, however, did "not fall within the scope of Mayor's Order 2017-313."²¹⁴

MOLC Attorney again assisted in drafting a notice of findings for the parties.²¹⁵ On July 20 and 21, MOLC Attorney sent Mr. Adams and Ms. Natale her draft notice of findings and conclusions for Complainant #2's report, adopting all findings made by the MOLC SHO.²¹⁶ Mr. Adams replied with edits.²¹⁷ Because the first report's findings and conclusions were made public, both MOLC and Complainant #2's counsel operated under the assumption that the second report's findings would be posted in a similar manner as with the first report.²¹⁸ In contrast to the first findings and conclusions, Mr. Adams and Ms. Natale adopted all of the draft findings of Complainant #2's report.²¹⁹

²⁰⁹ July 14, 2023 Email from complainants' counsel to MOLC SHO.

²¹⁰ Report #2, at 1.

²¹¹ *MOLC's Summary of Findings from the Sexual Harassment Investigative Report*, Mayor's Office of Legal Counsel (July 31, 2023), <https://molc.dc.gov/page/molc-reports>.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ MOLC Attorney, Feb. 5, 2024 Interview.

²¹⁶ July 21, 2023 Email from MOLC Attorney to Eugene Adams and Vanessa Natale; MOLC Attorney, Feb. 5, 2024 Interview.

²¹⁷ July 21, 2023 Email from Eugene Adams to Vanessa Natale, MOLC Attorney, and MOLC SHO.

²¹⁸ Vanessa Natale, Feb. 9, 2024 Interview.

²¹⁹ See July 24, 2023 Email from MOLC Attorney to Eugene Adams and Vanessa Natale; See *MOLC's Summary of Findings from the Sexual Harassment Investigative Report*, Mayor's Office of Legal Counsel (July 31, 2023), <https://molc.dc.gov/page/molc-reports>.

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Due to concerns over confidentiality, complainants' counsel negotiated certain terminology included in the public summary of the findings.²²⁰ Complainants' counsel did not want certain terms used or locations of certain incidents specified, and further threatened dire repercussions for her client if the requested changes were not made.²²¹ Ms. Natale believed stating Complainant #2 went to Mr. Falcicchio's apartment was important for reasons of transparency, to show the severity of the allegations extending beyond the workplace.²²² Nevertheless, many of the changes requested by complainants' counsel were implemented by Ms. Natale.²²³

On July 31, Ms. Natale sent the final notice of findings and conclusions to counsel for Complainants and for Mr. Falcicchio.²²⁴ Ms. Natale then sent the summary of findings and conclusions destined for MOLC's website to counsel for Complainants and for Mr. Falcicchio.²²⁵ The MOLC's Summary of Findings from the Sexual Harassment Investigative Report was posted on the MOLC website the same day.²²⁶

Complainants' counsel released a statement in response to the publication, stating they were "gratified" that the report substantiated the allegations and hoped the DC government would implement reforms to safeguard others from the same conduct.

F. Councilmembers Request to View the Reports

In or around late October 2023, a Councilmember's office sent a request to Mr. Adams asking to see a copy of the MOLC SHO's investigation reports. Mr. Adams was aware that at least one other Councilmember had also expressed an interest in seeing the reports. Mr. Adams spoke to the Mayor about the requests, and, due to confidentiality concerns, Ms. Natale reached out to complainants' counsel for her input. Although complainants' counsel objected to allowing anyone else to see the reports, Mr. Adams said that the Mayor eventually agreed to allow the Councilmember (and any other Councilmember who was interested) to view the reports in person, alone (without staff), at the MOLC's offices. Mr. Adams is not aware of any Councilmember coming to the MOLC's offices to view the reports.²²⁷

²²⁰ Vanessa Natale, Feb. 1, 2024 Interview; MOLC SHO, Feb. 5, 2024 Interview; MOLC Attorney, Feb. 5, 2024 Interview.

²²¹ Vanessa Natale, Feb. 1, 2024 Interview; MOLC SHO, Feb 5, 2024 Interview.

²²² *Id.*

²²³ *Id.*

²²⁴ July 31, 2023 Email from Vanessa Natale to complainants' counsel and counsel for Mr. Falcicchio.

²²⁵ July 31, 2023 Email from Vanessa Natale to complainants' counsel.

²²⁶ *MOLC's Summary of Findings from the Sexual Harassment Investigative Report*, Mayor's Office of Legal Counsel (July 31, 2023), <https://molc.dc.gov/page/molc-reports>.

G. Mayor's Order 2017-313 is Updated

On October 31, 2023, Mayor's Order 2023-131, Updated District Government Sexual Harassment Policy, Guidance, and Procedures, was issued, superseding Mayor's Order 2017-313.²²⁸ The Order updated the definition of Sexual Harassment in accordance with current law: "[i]n determining whether sexual harassment has taken place, the DC Human Rights Act states that 'conduct need not be severe or pervasive to constitute harassment' and that 'no specific number of incidents or specific level of egregiousness is required'" to find sexual harassment occurred.²²⁹

Also under the updated order, if allegations of sexual harassment are made against a Deputy Mayor, the complaint:

[S]hall be referred to the Inspector General to determine if the allegation is credible, in which case it shall be referred for independent investigation. Such investigations shall be carried out by an entity outside the District Government and those reports shall be provided to MOLC (or the City Administrator if the allegation is against the Director of the MOLC) and the Inspector General.²³⁰

X. FINDINGS

In making the findings that follow, we are mindful of the benefit of hindsight. In sum, despite what we believe after review were good intentions by MOLC and others involved, we have identified certain aspects of the two investigations into the complaints of sexual harassment and violations of Mayor's Order 2023-131 against Mr. Falcicchio that could have been better handled to ensure (i) that the process was in compliance with best practices, and that it was viewed that way by the complainants and the public, and (ii) that decisions by the MOLC SHO in structuring and developing the investigation and its findings were practical and appropriate under the circumstances. Notably, as our review of the record now shows, despite the diligent good-faith efforts of the MOLC SHO, several factors combined to result in public misperceptions concerning the independence and competence of the MOLC SHO's investigations and raised associated questions for the DC Council and the public, and these misperceptions were expressed as the prevailing view in the media.

²²⁸ Mayor's Order 2023-131, Updated District Government Sexual Harassment Policy, Guidance, and Procedures, 70 D.C. Reg. 14685 (Oct. 31, 2023), <https://dchr.dc.gov/mayor%E2%80%99s-order-2023-131-DCHR>.

²²⁹ *Id.*

²³⁰ *Id.*

Before we turn to additional analysis, we address questions and speculation about the independence of the investigation from political influence. In this regard, we found no evidence during our review that the Mayor of the District of Columbia, or any of her senior staff, attempted to interfere in any way with the conduct, scope, or findings of the MOLC SHO's investigations. Quite the contrary, as discussed below, out of extreme concern over confidentiality and independence, and to ensure both the appearance and fact of impartiality during the conduct of the investigations, the MOLC SHO was effectively cordoned off from supervisory guidance. This was, in hindsight, to the detriment of the MOLC SHO's Investigative Reports and some of the information made public, as the MOLC SHO became, in effect, the sole decision-making center for both investigations.

Finally, we find that the MOLC SHO took reasonable investigative steps and worked industriously. In hindsight, there are issues we examine in this Report about (i) the broad scope of issues the MOLC SHO sought to address, (ii) whether at key points that scope should have been adjusted or issues referred to others, (iii) adherence to best practices for the collection and preservation of evidence, and (iv) how the conclusions could have been better framed.

Despite our critical retrospective review of some of the past decisions, we conclude that the MOLC SHO acted professionally, in good faith, and with the intent to meet her obligation as a SHO.

A. The MOLC Correctly Concluded that Mr. Falcicchio's Conduct Violated the Mayor's Order

Our review of the record developed during the MOLC SHO's investigations fully supports the MOLC's conclusion that Mr. Falcicchio engaged in sexual harassment and conduct that violated the Mayor's Order as to both Complainant #1 and #2. While we take issue with whether the MOLC should have been acting as agency head for this purpose, the manner in which the MOLC SHO parsed the complainants' allegations and, the public release of the findings, we nonetheless conclude that the findings and conclusions were sound and grounded in factual and legal bases.

B. The Original Decision to Follow the SHO Process Should Have Been Revisited

1. The Original Decision to Follow the SHO Process Was Reasonable

Our review found that the Mayor's decision, on or about March 9, to order an internal investigation of the sexual harassment allegations set forth in the March 8 letter from the complainant's counsel was reasonable under the circumstances. Our review found no evidence

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that the decision, which invoked a well-recognized mechanism to address these kinds of cases within city government, was motivated by a desire to “bury” the allegations or to protect the Mayor’s Office or Mr. Falcicchio.

First, the decision to initiate the SHO process was consistent with the Mayor’s Order setting forth the process used here. Importantly, once Mr. Adams brought the March 8 letter to the Mayor’s attention (immediately after receiving it), the Mayor sought and received legal advice from him, as the MOLC Director, and he advised that the SHO process should govern these allegations. The MOLC Director also informed the Mayor that according to the Mayor’s Order and DCHR Issuance, sexual harassment allegations against the Deputy Mayor are to be investigated by the SHO within the OCA.²³¹

Second, the SHO process enables prompt and proportionate personnel disciplinary decisions when allegations of sexual harassment are made against employees. Both the MOLC Deputy Director and the Mayor’s General Counsel separately referred to the SHO process as a risk mitigation device and process for addressing personnel-related matters. As long as Mr. Falcicchio remained employed (which turned out to be only a few more days after the first complaint was made), he was in a position to expose the District to greater risk, and taking immediate steps to address that ongoing risk, including by initiating a SHO investigation, was reasonable.

Third, beyond these internal processes and legal advice that led to the decision, we note that counsel for Complainant #1 not only concurred that the decision to conduct an internal SHO investigation made sense but actively requested it. Counsel’s March 8 letter specifically cited to Mayor’s Order 2017-313 (which contemplates the SHO process) and requested that the Mayor initiate an investigation into the allegations. The March 8 letter alleged violations of the Mayor’s “Sexual Harassment Policy” and did not indicate that criminal activity might have taken place which would have suggested that a referral to law enforcement was appropriate at that time.

Thus, the Mayor followed the legal advice she received to invoke the SHO process. We were not provided information that suggests that other investigatory processes were debated or even actively considered within the Mayor’s Office or MOLC as alternatives to the SHO process. Mr. Adams speculated in his interview with the Independent Counsel that there may have been consideration of referrals to the OIG or an independent consultant, but also opined that the allegations made by the Complainant #1 were likely outside the responsibility of the Inspector General and that an outside procurement contract process would take too much time given the pressure to start a process quickly. Irrespective of whether other investigative options were

²³¹ This has since changed in the new Mayor’s Order 2023-131.

considered, based on the evidence we reviewed and for the reasons noted above, we find the original decision to follow the SHO process reasonable under the circumstances.

2. Intervening Events That Should Have Caused Reconsideration of the Exclusive Use of the SHO Process

a. John Falcicchio's Resignation and Certain Public Disclosures

We find that once Mr. Falcicchio tendered his resignation on or about March 17, 2023, the decision to continue to use the SHO process should have been revisited. This is not to say that continued investigation of the allegations was inappropriate, to be certain. But at this juncture, several of the primary purposes of the SHO process – to stop continued sexual harassment, protect employees/victims, and provide some form of due process to alleged harassers – had been obviated by Mr. Falcicchio's departure. Thus, some consideration should have been given to whether aspects of the investigation would have been more appropriately or efficiently handled by other DC government entities or law enforcement.

Moreover, the increased public scrutiny that arose then, including sustained press and public interest, all led to a broader investigative mandate than any SHO would be equipped to handle. For example, on March 20, the Mayor announced that there was an investigation into Mr. Falcicchio:

The legal counsel's office is leading the investigation, following established policies and procedures. I have made it clear that my expectation is that all staff will cooperate fully with this investigation.²³²

Hours later, counsel for complainants issued a press release alleging "serious allegations of sexual harassment" against Falcicchio and stating that it was counsel's "understanding that this behavior is longstanding." As discussed above, counsel's press release then disclosed the name and email address of the MOLC SHO and invited "everyone affected" to contact the MOLC SHO.²³³ We discuss elsewhere in the Report the impact this disclosure by counsel had on the MOLC SHO personally and on the investigations in general. We make the limited observation here that the combined effect of counsel for complainants' press release and the Mayor's announcement was to create a public expectation that MOLC would be undertaking a much

²³² *Statement from Mayor Bowser on the Departure of John Falcicchio from DC Government*, Executive Office of the Mayor (Mar. 20, 2023), <https://mayor.dc.gov/release/statement-mayor-bowser-departure-john-falcicchio-dc-government>.

²³³ *Sexual Harassment Complaint Filed Against Mayor Bowser's Former Chief of Staff and Deputy Mayor John Falcicchio*, by complainants' counsel.

broader investigation into Mr. Falcicchio's activities than may have been expected or required by the Mayor's Order.

We conclude that, against this backdrop, and for the reasons set forth above, the decision to continue with the SHO process (and not to more carefully manage the scope of the SHO's responsibilities) should have been re-evaluated after Mr. Falcicchio resigned.

b. The Decision to Expand the Initial Investigation and Undertake a Second Investigation

We find that the MOLC SHO's decision to expand the investigations into the broad areas she later decided were outside the scope of the Mayor's Order was ill-advised. The SHO process was not designed or equipped to conduct full-scale workplace climate assessments or investigations into allegations of widespread employment or hiring discrimination practices. Once the MOLC SHO identified these areas, the conduct at issue might have been appropriately referred at that time to other components of the DC government or independent consultants for review.²³⁴ Unfortunately, that referral was delayed until the conclusion of the MOLC SHO's first investigation due to the screening off of the MOLC SHO, as discussed herein.

The MOLC's decision to assign MOLC SHO as the SHO for the second investigation, while reasonable and understandable given the significant overlap of issues and witnesses and MOLC SHO's intimate familiarity with the players and facts, created too much work for any one person to realistically undertake on their own in a timely fashion. Not surprisingly, this contributed to delays in completing the (now two) investigations within the 60-day time limit contemplated by the Mayor's Order. This second complaint should have provided the MOLC with an opportunity to bring in additional resources and/or refer components of the investigations outside of the SHO process. In addition, at least some of the allegations raised in the second complaint letter on March 29, explicitly suggested possible criminal behavior. At a minimum, this should have raised red flags for the MOLC and caused them to consider referring the allegations to law enforcement.²³⁵

²³⁴ Upon receipt of the MOLC's first Investigative Report, the Mayor sent a letter to the Inspector General requesting a review of allegations of rumored sexual or attraction-based hiring and promotion practices in DMPED and EOM, bullying of the Complainant #1 by DMPED senior staff, and retaliatory post-complaint treatment. June 27, 2023 Letter from Mayor Bowser to Inspector General Daniel Lucas.

²³⁵ See footnote 97, *supra*.

C. The Original Decision to Assign the MOLC SHO Led to Unintended Consequences

I. The Decision to Assign the MOLC SHO to Investigate Apparently Caused the MOLC to Assume Agency Responsibility for the Complaint

The appointment of an attorney within MOLC to conduct the investigation may have created unintended consequences, including leading some to suggest the appearance of a lack of impartiality in the findings and conclusions.²³⁶

As set forth in detail in the annotated chronology of events above, once the MOLC determined OCA had no SHO in place at the time (a separate, but significant issue that will be addressed more thoroughly in Section III of our Report), the MOLC set about attempting to find another SHO to conduct the investigation. After calling numerous DC government agencies to find a SHO, at the end of the day, MOLC leadership was in a tricky situation. By process of elimination, the MOLC Director and Deputy Director determined that the MOLC SHO was the best candidate amongst several imperfect options. The MOLC SHO did not request this duty nor was MOLC leadership particularly enthused to have a staff member take it on. They made the judgment that she was the most appropriate and feasible choice given the pressure to address the situation immediately and competently. On or about March 10, the MOLC Director advised the Mayor that the MOLC SHO was MOLC's nominee to conduct the investigation and the Mayor concurred with this recommendation. We further found that the MOLC Director, in contravention of the Mayor's Order, then assumed the responsibility as agency head to handle the complaint. We found no evidence that the MOLC Director advised the Mayor that another agency head, such as the City Administrator, could serve this function. Despite being in contravention of the Mayor's Order, we find these decisions were made in good faith.

First, the MOLC was independent of the Deputy Mayor. In the hierarchy of the DC government, Mr. Falcicchio, as the Mayor's Chief of Staff, the City Administrator, and the MOLC Director each reported directly to the Mayor. This meant that neither the MOLC Director nor the MOLC SHO reported to, or through, Mr. Falcicchio. To the extent that both the Mayor's Order and DCHR Issuance designating the OCA to investigate and adjudicate allegations against a Deputy Mayor was premised on this independence, the MOLC was an adequate substitute from a structural perspective.

Second, despite being called the Mayor's Office of Legal Counsel, the MOLC Director and his office do not serve as the General Counsel to the Mayor, or act as the personal lawyers of the

²³⁶ The separate but related decision to have her act independently of her superiors in the MOLC in making decisions and drafting the reports led to some problems but was also reasonable at the time.

Mayor or any other city official. The MOLC is “the legal arm of the executive branch of the District of Columbia government”²³⁷ that provides advice and counsel to general counsels and agency counsel within the DC government, including resolving interagency legal issues.

Third, the Mayor sought and accepted the MOLC Director’s advice to appoint the MOLC SHO to investigate the allegations. The present MOLC Director is a longtime DC government attorney who has previously served as Chief Deputy Attorney General and as Chief Judge of the Office of Administrative Hearings for the District of Columbia. According to the Mayor’s General Counsel, the Mayor respected and valued the experience and expertise of the MOLC Director and trusted him to oversee the conduct of an independent investigation. Further, there is no evidence that the Mayor’s Office or the MOLC contrived to have the MOLC conduct the investigation; in fact, quite the opposite was true.

Fourth, the MOLC Director acting as agency head for these purposes unnecessarily placed the MOLC in the position of having to balance several competing imperatives, including independently conducting these high-profile investigations; representing the interests of the District in claims made by counsel for the same complainants; and fulfilling government obligations of transparency and fairness for those involved. We found no evidence indicating that the MOLC considered other options, such as seconding the MOLC SHO to the City Administrator’s Office for this purpose or using the MOLC SHO as an adjacent or supplemental process to that of another investigative body either inside or outside the DC government. However, we did find that these the MOLC acted with integrity and in good faith.

The following subsections note several structural and scope issues that arose, though, following these decisions.

2. The MOLC SHO Did Not Have Adequate Resources or Supervision

We find that the MOLC leadership’s decision to delegate investigative decision-making to the MOLC SHO likely resulted in investigative issues discussed elsewhere in this Report. While we believe that the MOLC leadership acted in good faith, the decision almost certainly contributed to the MOLC SHO’s inability to obtain certain evidence or properly limit the scope of the investigations, and to delay in referring broader allegations to appropriate entities for investigation.

The MOLC leadership expressed grave concern that the graphic details of the allegations or identities of the complainants would be “leaked” within the DC government if others were involved or consulted during the MOLC SHO’s ongoing investigations. While this may be entirely

²³⁷ *Mission & Goals*, Mayor’s Office of the Legal Counsel, <https://molc.dc.gov/page/mission-goals>.

grounded in fact, the remedy of isolating the investigation had consequences. It deprived the MOLC SHO of the opportunity to seek important advice from others, including human resources officers, the Office of Attorney General, or even other SHOs, when faced with some of the vexing challenges she encountered during the investigations, including when complainants' counsel refused to make relevant evidence available for preservation and forensic review and when the type and scope of the allegations expanded.

The MOLC leadership's decision to assign the second investigation to the same person only exacerbated these issues. Regrettably, the MOLC SHO worked on her own, with limited resources, even making out-of-pocket outlays to obtain Artificial Intelligence software to help transcribe audio recorded interviews to transcripts. The MOLC SHO's independence led to isolation and delays in both reports, leaving the complainants to feel that they were in limbo during the process, feeding into suspicious press inquiries, and creating increased political pressure on the Mayor's Office. In her supervisors' defense, upon presentation of the Investigative Reports, both the MOLC Director and Deputy Director were surprised and expressed their amazement at the breadth and depth of work the MOLC SHO had completed in such a brief period of time.

Another reason to screen off the MOLC SHO was due to the MOLC leadership's active role in engaging counsel for the complainants during the pendency of the investigation to prevent the independent factfinder (the SHO) from being influenced by any desire or duty to settle or defend a claim.

3. Having MOLC Conduct the Investigations and Make the Agency Findings Caused the Perception of a Lack of Independence

While we find the MOLC SHO did in fact operate independently, including in hindsight perhaps too independently (as discussed elsewhere), in conducting the investigations into Mr. Falcicchio, we nonetheless conclude that the decision to assign a SHO from the "Mayor's" Office of Legal Counsel created for some the inexorable impression that the investigations lacked independence from the "Mayor's" Office. We further find that this misperception likely compromised the MOLC SHO's ability to obtain key evidence during the investigations. Finally, we observe that the later participation of a supervisory attorney from MOLC in press conferences about the investigations with the Mayor fed into this perception and may have diminished the public's confidence in the investigations and the findings.

This perceived lack of independence was created because these were the Mayor's lawyers and Mr. Falcicchio was a high-ranking official within the Mayor's Office. In point of fact, as discussed elsewhere in this Report, MOLC was engaged in the dual and simultaneous role of (i) investigator/fact finder while (ii) trying to settle claims brought by complainants. While the

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screening off of the MOLC SHO may have addressed conflicts of interest during the pendency of the investigations, there remained an appearance for some that the MOLC's ultimate purpose would be to minimize damage to the District rather than to uncover and report facts that might lead to or increase the District's liability.

This perception played out in real time during the investigations, as demonstrated by the MOLC SHO noting in her reports and in her interviews with our team, that some witnesses were either hesitant to be interviewed or did not appear to be entirely forthcoming during their interviews with her. Moreover, the complainants reported to us that people were afraid to come forward and tell their story to the "Mayor's lawyers."²³⁸ This apprehension is readily predictable in any internal investigation, and we find it to be particularly acute here not only because this was the Mayor's Office of Legal Counsel but also because of the MOLC's physical and structural proximity to the Mayor's Office.

In addition, given Mr. Falcicchio's prior close relationship with the Mayor, it is reasonable for witnesses to have concern that offering derogatory information, or any information, which could be used against Mr. Falcicchio could potentially put their careers at risk. With no apparent partition in place between the MOLC and the Mayor's Office, the MOLC SHO could be viewed as a direct pass-through of information to the Mayor, and to Mr. Falcicchio, as described to us by one of the complainants. The fact that the witness interviews took place in the MOLC's office in same building where everyone worked, including the Mayor, only exacerbated the appearance issue. As discussed below, the MOLC SHO did not adequately explain her independence or MOLC role to any of the witnesses, though for some or many witnesses we question if this kind of explanation would have made a difference.

We further find that the participation of an attorney from the MOLC leadership team alongside the Mayor during press conferences about the investigation further fueled the perception that the MOLC's actions were not independent. It is fair to state that the Mayor was an interested party in this matter. Even though there is no information that she influenced the conduct or conclusions of the investigations, she was responsible for Mr. Falcicchio's appointment to positions of power within the DC government. While her interest in the matter is undeniable, by every account the Mayor was genuinely "shocked" by the allegations and was committed to transparency. We understand that it was for this reason that the Mayor's Office and Mr. Adams made Ms. Natale, who had no prior ties to or relationship with the Mayor and would "tell it like it is," the reluctant public mouthpiece for the investigation.²³⁹

²³⁸ See MOLC SHO, Feb. 5, 2024 Interview; Report #1, at 19-20 (Investigation Chronology), Report #1 Exhibits, at 25 (Credibility Assessment).

²³⁹ Eugene Adams, Feb. 1, 2024 Interview; Eugene Adams, Feb. 9, 2024 Interview.

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This effort appears to have misfired, as the optics of having the MOLC attorney stand alongside the Mayor's Office at press conferences, and field questions on the Mayor's behalf about the investigation, only cemented the appearance that there was an alignment of purpose, and not independence. These well-intentioned efforts likely undermined public confidence, and certainly gave the impression to the complainants that the Mayor was being "protected" by the MOLC.²⁴⁰

D. The MOLC SHO Was Impartial and Independent, and Conducted Herself Professionally

Our review found that the MOLC attorney assigned as the SHO to investigate the complaints was impartial, and independent, and conducted herself professionally. While this Report addresses above how the threshold decision to have an attorney within MOLC conduct the investigations created for the complainants and some in the public the perception of partiality and lack of independence, this section of our report focuses solely on the MOLC SHO's qualifications as an investigator.

First, in addition to being a licensed attorney with more than ten years of legal experience, including in employment law and personnel matters, the MOLC SHO was also a trained and registered SHO pursuant to the Mayor's Order. She had undergone SHO training provided by DCHR in 2018, as well as additional training in 2019, including a presentation titled "Investigating Sexual Harassment Complaints: Critical Tools and Strategies for DC Government Sexual Harassment Officers." Part of her SHO training included how to interview witnesses who may have experienced traumatic events. MOLC SHO, on her own initiative, had attended outside continuing legal education courses on sexual harassment and investigations, including one taught by Complainants' counsel.

Second, the MOLC SHO conducted other sexual harassment investigations in the past five years in her role as SHO. And as an Associate Director in MOLC, she reviewed and assessed SHO investigations and findings issued by other agencies, consulted with other SHOs and agency general counsels about sexual harassment investigations, and assisted with MOLC's tracking and reporting on sexual harassment investigations.²⁴¹

²⁴⁰ Both Complainants expressed this view during their interviews with our team.

²⁴¹ This is *not* to say that the MOLC SHO had experience in high-profile or large-scale sexual harassment investigations taking place in a setting with tremendous and sustained press and public interest. She did not. And while we believe that the MOLC SHO did her best with the situation - including spending significant time reviewing and attempting to model her investigation and report on other publicly available high-profile investigations and reports issued by often large law firms - the fact that she was alone in this process, without the resources and experience of a law firm or support staff, was significant and led to several areas of concern that we discuss elsewhere in this Report.

Third, the MOLC SHO was impartial and independent. She did not know or work with Mr. Falcicchio. she had never met him before, she was not responsible for DMPED legal matters, and she did not know or work with the complainants. Moreover, the MOLC SHO was effectively screened off from MOLC leadership,²⁴² operated independently, and had no direct interactions with the Mayor or the Mayor's Office throughout the course of her investigations.

We note that the MOLC SHO was subjected to several forms of outside pressures that may have influenced some of her investigative decisions or actions. For example, her name was released to the press by complainants' counsel without her consent, and she was subsequently subjected to online ad hominem attacks and negative social media postings about her competence and partiality. She also faced pressure at various times by complainants' counsel, including being told details about the deleterious effects the investigation, or details of its release, might have on complainants. Finally, the MOLC SHO was aware of the time pressure to complete her investigations and reports within 60 days, including that the Mayor periodically asked MOLC leadership when the report(s) would be completed, and that the public and press were clamoring for updates and answers.²⁴³

Fourth, the MOLC SHO took steps to try to comply with internal guidance on how sexual harassment investigations should be handled. She reviewed and refamiliarized herself with the Mayor's Order and DCHR Issuance, sample investigation plans and other materials developed by DCHR, prior SHO reports, the DC Human Rights Law (including recent amendments to the law that updated the standards for sexual harassment), and relevant federal laws.²⁴⁴

The MOLC SHO also took steps to accept, review and investigate the complaints by gathering information, reviewing documentation, interviewing witnesses, making credibility determinations, taking seriously the need to protect confidentiality, and preparing and delivering comprehensive investigation reports to MOLC leadership. The extent and thoroughness of her investigations and reports, as well as concerns and shortcomings that we have mentioned above, are discussed below in more detail.

Fifth, the MOLC SHO conducted herself professionally. She took her role as SHO extremely seriously and diligently, devoted almost all of her time over a 5 month period to the investigations and reports (working evenings, weekends, and well beyond her typical daily and

²⁴² We discuss elsewhere in the Report how this screening also had unintended negative repercussions and implications.

²⁴³ We are certain that this message of urgency was communicated in some manner by Mr. Adams and Ms. Natale to the MOLC SHO, and as discussed elsewhere in this Report, may have contributed to the MOLC SHO's scoping decisions.

²⁴⁴ As discussed elsewhere, while the MOLC SHO's attention to the law was well-intentioned and thorough, it ultimately may have led to an overemphasis on narrow legal standards and issues rather than focusing only on the factual allegations and findings as was expected under the Mayor's Order.

weekly schedule), was appropriately empathetic and respectful towards and listened to the complainants and other witnesses, made an effort to analyze and comply with the Mayor's Order and DCHR Issuance, researched and studied examples of other independent investigations conducted by law firms to aid her in her own investigations and reports and diligently prepared for interviews.

E. The MOLC SHO's Investigations and Final Reports Were Extensive and Well-Intentioned, But They Could Have Been Improved and Did Not Always Comport With Best Practices

1. The Investigations

The MOLC SHO conducted extensive investigations given the resources that she had available to her as a SHO, and it is clear from our review that she was well-intentioned, thoughtful, and diligent. Our review determined that she took the steps and actions consistent with those mandated by the Mayor's Order and recommended by the DCHR Issuance.

Notwithstanding the extensive nature of the investigations and the effort reflected in elsewhere in this Report, our review identified several areas where the MOLC SHO's investigation could have been improved or did not fully comport with best practices. While we do not believe that any of these shortcomings substantially compromised the overall investigations or the MOLC SHO's findings, conclusions, and recommendations, we nevertheless believe they are each important to discuss.

First, the MOLC SHO made repeated requests to complainants' counsel related to the complaints and evidence and did not receive full cooperation. Specific roadblocks included counsel's refusal to provide copies of the physical/documentary evidence (despite early promises to the contrary), and failure to provide *all* relevant evidence (which the MOLC SHO only learned at the tail end and after the investigation had been completed). Although the MOLC SHO made repeated requests to complainants' counsel, she could have taken more concrete steps, such as exploring whether to issue a demand or more formal request for documents, *e.g.*, a formal letter from the MOLC Director or Mayor's Office, or otherwise forcefully pushing back against counsel's refusal to turn over materials that were germane to the investigations.

As the MOLC SHO acknowledged in her interview with Independent Counsel, once she learned that Complainant #1 had maintained relevant evidence not only on her personal devices (which arguably she may not have been required to turn over), but also on her *work* device, the MOLC SHO could have more aggressively pursued such evidence. In this respect and as discussed elsewhere in this Report, she did not seek the guidance of others which might have allowed her to explore other avenues for obtaining evidence outside of the SHO process.

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Second, the MOLC SHO could have made more of an effort to pursue Mr. Falcicchio's physical/documentary evidence. When Mr. Falcicchio was first placed on "administrative leave" on March 9, he was asked to turn in his work devices as well as his personal devices. The MOLC SHO was able to review Mr. Falcicchio's work e-mails but did not review his government-provided devices (which he turned in) or his personal devices (which he did not relinquish). Because Mr. Falcicchio conducted much of his communications through text messages, WhatsApp, and Snapchat on his personal devices and accounts, MOLC SHO was left without any of this relevant physical evidence. While we recognize that Mr. Falcicchio (through his counsel) would almost assuredly have refused to *voluntarily* turn over his personal devices or accounts, the MOLC SHO could have issued a formal written request and pursued all other avenues available to her and the MOLC. This could have included seeking assistance from other agencies or law enforcement and exploring the possibility of obtaining a subpoena. At the very least, she could have sent a preservation request for this evidence.

Third, as discussed elsewhere in this Report, the MOLC SHO could have considered referring issues outside the scope of her remit to others. She might have confined her investigation only to the specific allegations of acts of sexual harassment targeted to the complainants that were raised in the complaints. By continuing to expand the scope of the investigation to go beyond acts of sexual harassment (and by not having adequate resources, particularly staffing, at her disposal to successfully undertake broad inquiries), the MOLC SHO inadvertently created what could be considered an impossible situation for herself of taking on responsibilities in a sprawling investigation - and while she did extremely well under the circumstances for someone acting largely alone in a pressured and high profile investigation, this undoubtedly contributed to some of the overall issues identified elsewhere in this Report.

Fourth, the MOLC SHO was deferential in some ways to the complainants' sensitivities and while this was appropriate in many ways, it means that some investigatory angles or tough questions were not pursued that might have yielded important evidence. Importantly, we believe that the MOLC SHO made a conscious and calculated decision to treat the complainants with genuine empathy and to try to avoid retraumatizing them or being seen to unfairly question their narratives and allegations. This show of respect for the complainants was admirable, and consistent with many investigatory best practices. However, as a result, the MOLC SHO failed to pursue some lines of questioning that might have been uncomfortable for the complainant raised questions about some of their allegations.²⁴⁵

²⁴⁵ For example, certain text messages with Mr. Falcicchio could be interpreted as undercutting claims that Mr. Falcicchio's conduct was unwelcome or nonconsensual. While the MOLC SHO did ask questions about some of these

In addition, in at least one instance, the MOLC SHO failed to adequately question a potentially key witness from [REDACTED], who was reported by Complainant #1 to be able to provide corroboration for some of the broader allegations of widespread sexual harassment or inappropriate behavior by Mr. Falcicchio. While this witness appeared hesitant and possibly would have been unwilling to testify fully and completely, we found that the MOLC SHO's questions focused almost entirely on subjective inquiries, including whether the witness observed anything that made the witness feel "uncomfortable," as opposed to what he might have observed or heard from others.

Fifth, as part of her interviews of the complainants and other witnesses, while she did give some instructions in accordance with the DCHR Issuance, the MOLC SHO could have more effectively explained the investigation process, ground rules around confidentiality, her own independence, and other avenues for complaints/investigations. These issues were also highlighted to us by each of the two complainants. In addition, the MOLC SHO could have better explained all the different avenues for complaints available to each complainant, including seeking a review by local or federal law enforcement.

2. The Reports

The MOLC SHO's two investigation reports were comprehensive, well-drafted, carefully documented, made thought-out credibility and factual findings, and came to reasonable conclusions and recommendations based on the evidence.

The first investigation report was a total of 88 pages, and the second report was a total of 62 pages, both divided into the following sections: (i) executive summary, (ii) background, (iii) applicable policy and law, (iv) the investigation, (v) documents and physical evidence, (vi) allegations and findings, (vii) conclusions, and (viii) recommendations.

Included within each report was a list of each witness interviewed; a detailed chronology of all investigatory steps taken; a list of documents and physical evidence; an analysis of the allegations, findings, and conclusions; recommendations for improvements to the Mayor's Order,

messages, she could have done a better job with asking each Complainant to explain what they meant in certain communications, or to explain *why* they wrote or sent certain things to Mr. Falcicchio. However, despite the select communications that could have suggested consent or encouragement of Mr. Falcicchio's sexual-related behaviors, we agree with the MOLC SHO's final assessment that Mr. Falcicchio's behavior and communications amounted to sexual harassment and was unwelcome. Further, the MOLC SHO's credibility assessment of Complainant #1 did address certain inconsistencies in her accounts but found her statements to be credible overall. We also note that these communications were not made available to the MOLC SHO until after she had conducted her first interview with Complainant #1.

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DCHR Issuance, and training and approaches to sexual harassment prevention; and recommendations for further investigation of certain broader investigations of a “toxic” workplace and discriminatory hiring and promotions practice within DMPED. In addition, each report contained an appendix with the MOLC SHO’s specific credibility assessments of each witness, as well as a detailed binder of exhibits.

Given the length and breadth of each investigation report, it is not surprising that they each took considerable time and effort on the part of the MOLC SHO to draft, exacerbated by the fact that she had the burden of drafting (two other attorneys within MOLC assisted with proofreading). This undoubtedly contributed to the delay in finalizing each investigation. However, the reports themselves suffered from four flaws that also contributed to some of the issues detailed elsewhere in this Report.

First, the MOLC SHO included not just her factual findings, but also spent time analyzing the relevant legal standards and case law, including what constitutes an “adverse action” for purposes of determining retaliation. However, both the DCHR Issuance and typical investigation best practices do not warrant including a legal analysis of the claims in what is intended to be a purely *factual* investigation into whether certain conduct occurred and under what circumstances. While we largely agree with the MOLC SHO’s legal analysis, it ended up extending the amount of work performed by the MOLC SHO (and contributed to the delay in finalizing the reports) and put her in the position of a lawyer rather than factfinder, one of the very conflicts that the DCHR Issuance warns against.

Second, in connection with the first investigation report, the MOLC SHO organized her description of the allegations and her analysis and findings into eight distinct claims, breaking them down into two discrete allegations of sexual harassment, two broad allegations of agency-wide bullying and sexual favoritism, three distinct allegations of retaliation, and one allegation of threatening behavior. This decision, while well-intentioned, served to distract from the MOLC SHO’s important and fundamental findings of sexual harassment and inappropriate behavior by Mr. Falcicchio, created excess and unnecessary work for the MOLC SHO, and ultimately formed the backbone of the public findings (drafted by others within MOLC) that were themselves misleading.

Specifically, by narrowly dividing Complainant #1’s allegations into eight separate claims, each of which was analyzed on its own, (i) the MOLC SHO failed to adequately consider how some of the claims of retaliation might have fit more broadly into the rubric of sexual

harassment;²⁴⁶ (ii) the MOLC SHO spent considerable time analyzing and making findings on claims that should have been scoped out of the investigation in the first place; and (iii) the report and subsequent publicly-issued summary of findings made it seem as though only a small percentage of the claims made by Complainant #1 were “substantiated,” even though the two most significant claims of sexual harassment (unwanted physical sexual advances and unwanted and sexually-charged messages, including demands for sex and a graphic video) were fully substantiated.

We recognize that there is no single “correct” way to organize the results of this kind of investigation, and the MOLC SHO was faced with challenges both from the broad approach and expanding allegations by Complainant #1 and her counsel, as well as from Mr. Falcicchio’s decision not to cooperate. Nonetheless, after reviewing the reports prepared by the MOLC SHO and speaking with numerous people involved, we believe that a different approach to Complainant #1’s claims might have better served the interests of the complainants, the District’s decisionmakers, and the public.

For example, the MOLC SHO could have divided the analysis of claims into three broader categories: (i) sexual harassment/hostile work environment, which would have encompassed not only the claims of unwanted physical advances and communications, but also several of the claims of pre-complaint retaliation at the hands of Mr. Falcicchio;²⁴⁷ (ii) post-complaint retaliation, which was appropriately treated as outside the scope of the Mayor’s Order (the MOLC SHO urged Complainant #1 to file a complaint with an EEO Officer or DC OHR, which she did); and (iii) broad and systemic claims of workplace culture (using the office as a “dating pool”) and improper hiring and promotions practice within DMPED, which could have been addressed and which will be the subject of Section II of our Report.²⁴⁸

²⁴⁶ We note that the MOLC SHO also found that the Mayor’s Order did not expressly provide the SHO with clear authority to investigate claims of retaliation that predate the filing of a complaint or an investigation. Notwithstanding the lack of clarity, the MOLC SHO chose to investigate allegations of pre-complaint retaliation utilizing general guidance on retaliation from the EEOC and local and federal caselaw. We agree that the Mayor’s Order and DCHR guidance are not clear on this issue, which will be one of the issues we address in Section III of our work.

²⁴⁷ We agree with the MOLC SHO’s ultimate findings that there was insufficient evidence that Mr. Falcicchio or others within DMPED retaliated against Complainant #1 *because* she had opposed or complained about sexual harassment or at the direction of Mr. Falcicchio, or that Complainant #1 had suffered an adverse job action. But the MOLC SHO should not have been analyzing whether any of the alleged retaliation resulted in an “adverse action” within the meaning of the law (which formed the basis for some of her findings). Moreover, as noted above, we believe that at least some of the allegations of threatening behavior or mistreatment could be considered as part of the overall hostile work environment that Complainant #1 faced, likely as a result of her sexual relationship with and harassment by Mr. Falcicchio.

²⁴⁸ There probably were other ways to organize the allegations - our main point is that dividing the allegations into 8 parts and trying to respond to them all made the task less practical and achievable, not to mention that some of these allegations went beyond what is covered by the Mayor’s Order.

Third, with respect to her second investigation report, the MOLC SHO organized her description of Complainant #2's allegations and her analysis and findings into four different claims, breaking them down into two distinct claims of sexual harassment, one broad claim of retaliation (encompassing several different allegations), and one claim of mistreatment by another employee. Here, we also have concerns with how the MOLC SHO analyzed and treated what she categorized as retaliation.

Specifically, much of the MOLC SHO's analysis and basis for rejecting the claim of retaliation was because Complainant #2 never suffered an adverse action (she did not lose her job or suffer a demotion or loss of compensation).²⁴⁹ In her report, the MOLC SHO spent time analyzing case law to aid in her analysis and conclusions. While her legal analysis may have been accurate, it was also inappropriate, as she could have focused solely on the facts of what happened and left the ultimate *legal* conclusions to others.

And, like she did in the first investigation report, by cabining these allegations and analyzing them only under the rubric of "retaliation", the MOLC SHO may have properly concluded that there was no retaliation as a matter of law, but failed to more broadly consider whether the allegations might instead have contributed to an overall hostile work environment related to the sexual harassment perpetrated by Mr. Falcicchio.

Fourth, while the MOLC SHO's factual findings were detailed and extensive, she did not adequately address several pieces of evidence that might have undermined or called into question some of the claims of Complainant #1, as well as Complainant #1's explanations for the evidence. As discussed above, certain text messages with Mr. Falcicchio that were sexual in nature were initiated by Complainant #1 and not Mr. Falcicchio or could be interpreted as encouraging Mr. Falcicchio's sexual-related behaviors or undercutting allegations that the messages and conduct were unwelcome or nonconsensual. While we agree with the MOLC SHO's ultimate conclusion that Mr. Falcicchio's behavior was inappropriate and amounted to sexual harassment, the first investigation report should have weighed *all* of the relevant available evidence and done a better job of disclosing and addressing these communications, including Complainant #1's explanation.

F. The Public Release of Summary Findings Over a Holiday Weekend Resulted in a Series of Unintended Negative Consequences

Following the MOLC SHO's submission of her first investigation report to Mr. Adams and Ms. Natale for their review on Friday June 16, they asked another MOLC attorney to draft a Notice

²⁴⁹ The MOLC SHO also analyzed the fact that the alleged retaliatory acts took place more than 18 months after any protected activity by Complainant #2 opposing Mr. Falcicchio's sexual harassment.

of Findings, summarizing the key allegations and findings. District policy required that this Notice of Findings be sent to Complainant #1 and Mr. Falcicchio. They also provided a copy of the full investigation report to the Mayor for her review. In addition, at the request of the Mayor, Mr. Adams also prepared a lightly revised “Summary of Findings” (which eliminated several identifying details from the notice) for possible public release. The subsequent public posting of this “Summary of Findings” late on the evening of Saturday June 17 (a holiday weekend) suffered from three significant flaws, which contributed to widespread misperceptions about the investigation and report and led to questions about the motivations of the Mayor’s Office and the MOLC, all of which could have been avoided. These flaws were also understandably upsetting and demoralizing to Complainant #1.

1. The Timing and Public Nature of the Release of Summary of Findings

There is no question that the timing of the public release itself was problematic and led to concerns, as it came late on a Saturday evening, over a holiday weekend. While the press, the DC Council, and complainants all perceived the release as part of an attempt to “bury” the findings and minimize publicity, our investigation did not uncover evidence of bad faith.

First, the decision to publicly release the Summary of Findings was made by the Mayor’s Office and not by the MOLC (and the MOLC did not become aware of the public posting until after the fact). In public statements following the release, the Mayor made clear that she made the decision because it was not in the public interest to delay the release.²⁵⁰

Second, we found no evidence that the public release of the Summary of Findings was “timed” to coincide with a weekend or held back for an opportune moment. Rather, it was released within approximately 24 hours of the MOLC SHO’s completion of the investigation report on Friday June 16. A copy only of the Notice of Findings was provided to counsel for Complainant #1 and Mr. Falcicchio late in the afternoon on Saturday June 17, and a draft Summary of Findings was provided to the Mayor for her consideration that same afternoon.

²⁵⁰ Because it is beyond the scope of our Review, we take no position on the reasonableness of the Mayor’s Office decision to publicly post the findings. Our review is confined to the impact those acts had on public perceptions about the independence of the investigation and on both complainants. Although the benefits of transparency and public disclosure within government are self-evident, we also note that the Mayor’s Order and the DCHR Issuance required only a limited release of findings to the Complainant and respondent in any SHO investigation, and a public release of findings was not contemplated, nor had it been done previously in any SHO investigation of which we are aware. Counsel for Complainant #1 had also made clear in private conversations with MOLC that they did not want *any* public release of the findings in order to further protect the confidentiality and identity of Complainant #1. A summary of findings from the second investigation report was also posted publicly on the MOLC website on Monday July 31, 2023 (approximately 11 days after the second investigation report was finalized), based on a similar decision that the need for public disclosure and accounting outweighed any confidentiality concerns.

Finally, when Mr. Adams was informed by the CTO on the evening of Saturday June 17, that the Summary of Findings had been posted on the MOLC website, she told him that it had been posted because “the findings” that had been provided to complainant’s counsel earlier that day had been “leaked” to the press and therefore it was necessary to get ahead of any press inquiries.²⁵¹ While it is beyond the scope of this Review to determine who leaked what to the *Washington Post* or why it was leaked, this further explains the timing of the public release of the Summary of Findings.

2. The Failure to Provide Complainant #1 and Her Counsel with Meaningful Advance Notice

Complainant #1 and her counsel took great issue with the fact that they were not provided with advance notice that the Summary of Findings would be posted that evening. In addition, Complainant #1 felt strongly that version of the Summary of Findings that was posted to the MOLC website (and which had not been provided to counsel previously) contained overly personal and/or identifying details about her that were unnecessary and gratuitous, and that effectively “outed” her to her colleagues.

Regarding the failure to give advance notice, Mr. Adams and MOLC were likewise caught by surprise and did not have advance notice. We agree that certain details provided in the Summary (such as the fact that Complainant #1 had been transferred to a different position within DMPED) may have contributed to people guessing her identity. A more careful and deliberate drafting of the Summary of Findings - with an equal eye towards protecting Complainant #1, which Mr. Adams and Ms. Natale admittedly did not focus on at the time, should have happened.²⁵² As discussed above, this issue was largely corrected with the Summary of Findings that was posted for the second investigation.

3. The Problematic Content of the First Summary of Findings

Finally, we find that the content of what was publicly posted in the first Summary of Findings to be one of the most significant missteps in the entire process. As discussed previously in this Report, the MOLC SHO’s decision to organize the investigation report into eight distinct allegations, while made in good faith as the allegations increased, was in hindsight unnecessary. It also led to misleading and inaccurate statements in the Summary of Findings drafted by the MOLC

²⁵¹ As noted above, Ms. Natale had been called earlier that evening by a reporter with the *Washington Post*, who informed her that they had been sent a copy of the findings by an unknown email address.

²⁵² We note that by this time, Complainant #1 had already shared specific details with colleagues, many of whom knew or suspected that she was the original complainant. In addition, she had already sat for several interviews with the *Washington Post* in advance of what would be a major story later that week.

Director, which adopted the same structural framework. Unfortunately, this suggested to the public (and to Complainant #1 and Mr. Falcicchio) that Complainant #1 had brought forward eight separate claims and failed to establish most of them. This in turn further de-emphasized the overarching claims of sexual harassment and hostile work environment that are at the core of the Mayor's Order, by making them seem like they were just two of eight total claims.

More significantly, by announcing - **IN BOLD CAPITAL LETTERS** - whether each of the eight claims had been "**SUBSTANTIATED**" or "**UNSUBSTANTIATED**," the public Summary of Findings did a disservice to all concerned, including the public that only had access to the Summary but not to the details about the MOLC SHO's report and its analysis. This binary choice of "**SUBSTANTIATED**" or "**UNSUBSTANTIATED**" made it seem - very unfairly - that the majority (6 out of 8) of Complainant #1's claims had been unjustified and/or that she was not completely credible. In fact, the most significant claims of sexual harassment and hostile work environment (consisting of unwarranted sexual advances, pressure for sex, and inappropriate communications) were substantiated, and many of the other distinctly listed claims should have more aptly been included as examples of alleged conduct falling under this overall (substantiated) claim of harassment and hostile work environment, even if they themselves may not have been fully substantiated.

Equally problematic, some of the other allegations labeled as "**UNSUBSTANTIATED**" were systemic claims about broad workplace issues that went beyond the MOLC SHO's core responsibility to address the allegations of sexual harassment and hostile work environment and might have been more appropriately addressed by other DC government components or law enforcement, given the limited mandate and resources of the MOLC SHO. As the actual description of the findings makes clear, several of the claims were deemed to be outside the scope of the Mayor's Order (*i.e.*, no specific findings were made one way or another), or beyond the scope and capability of the MOLC SHO to investigate (*i.e.*, required additional staffing and time for investigation and were not suited for a SHO investigation). Thus, calling these claims "unsubstantiated" similarly was misleading and inaccurate.²⁵³

XI. CONCLUSION

In sum, despite good faith and best efforts, the decision to have MOLC investigate and adjudicate complaints of this significance against the dual-hatted DMPED and Chief of Staff to the Mayor, resulted in a series of predictable problems and led to public misperceptions about the independence of the investigations and the findings.

²⁵³ We found the Summary of Findings concerning Complainant #2 to be more appropriately framed and accurate.

May 10, 2024

OIG INDEPENDENT COUNSEL

SECTION II: THE INDEPENDENT COUNSEL'S INVESTIGATION



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SECTION II: THE INDEPENDENT COUNSEL'S INVESTIGATION

I. SCOPE

In the second phase of its work, the Independent Counsel was to investigate other findings and items outside of the scope of prior investigations of complaints of sexual harassment and violations of Mayor's Order 2017-313 by Mr. Falcicchio, including hiring and promotion practices, workplace culture, and allegations of retaliation against complainants.

We undertook an investigation of the following:

- Whether Mr. Falcicchio used his position of power as Deputy Mayor for Planning and Economic Development (DMPED) and Chief of Staff to the Mayor, to cause sexual attraction-based hiring decisions in the District of Columbia.
- Whether Mr. Falcicchio used his position of power as DMPED and Chief of Staff to the Mayor, to reward individuals with favorable personnel actions (*e.g.*, promotions) for engaging in sexual conduct with him or for staying silent about his sexual-related behavior.
- Whether Mr. Falcicchio used his position of power as DMPED and Chief of Staff to the Mayor, to cause retaliatory personnel actions (*e.g.*, demotions) against District employees who rebuffed his sexual advances; or
- Whether Mr. Falcicchio dated or attempted to date subordinates within the Executive Office of the Mayor or the Office of the Deputy Mayor for Planning and Economic Development.

The above four questions arose during the course of the MOLC SHO's investigations and, while the MOLC ultimately concluded they were beyond the scope of the Mayor's Order, the MOLC SHO nevertheless had generated a relevant and largely responsive factual record.²⁵⁴ Where

²⁵⁴ We note that the allegations were based primarily on the testimony and allegations of Complainant #1 to the MOLC SHO. The MOLC SHO took a number of steps to try and investigate these claims, including:

- Interviewed Complainant #1 on three separate occasions
- Interviewed Complainant #2 on two separate occasions
- Attempted to interview Mr. Falcicchio (who declined to be interviewed)

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appropriate, we credited and relied upon the existing record and concentrated our investigative resources on areas that had not been investigated - such as hiring and promotion practices - or issues that we judged required reopening or supplementation. In sum, our findings are based on facts we found to be credible and as well-developed as possible under the circumstances.²⁵⁵

Finally, we also reviewed and assessed the MOLC's decision not to investigate claims of inappropriate conduct by Mr. Falcicchio that were brought forward by a member of the public who was seeking to do business with the District, and MOLC's decision to strongly encourage Complainant #3 to file a complaint with the Board of Ethics and Government Accountability (BEGA) and/or the OIG and file a discrimination complaint with DC OHR.

II. METHODOLOGY

Pursuant to our mandate in the second phase, we sought and obtained access to the following witnesses, records, and subject matter expertise.

A. Witness Interviews and Re-Interviews

In addition to reviewing all relevant reports, transcripts and other evidence gathered from the MOLC's investigations, we sought to interview (or re-interview) numerous individuals who would have been in a position to have a role in or observe hiring and personnel decisions, as well as workplace dynamics, under Mr. Falcicchio.²⁵⁶ The individuals included current and former

-
- Interviewed 10 of the individuals believed by Complainant #1 to have engaged in sexual and/or romantic relationships with Mr. Falcicchio (including Complainants #1 and 2)
 - Attempted to interview the remaining 4 individuals rumored by Complainant #1 to have engaged in sexual and/or romantic relationships with Mr. Falcicchio (each of whom subsequently declined to be interviewed or failed to respond to requests for an interview)
 - Interviewed 21 current and former employees who might have first-hand knowledge or information relevant to the allegations
 - Attempted to interview 3 former employees who might have first-hand knowledge or information relevant to the allegations
 - Reviewed emails and other documents relevant to the allegation that Complainants #1 and #2 (and other employees) were punished or retaliated against for rebuffing Mr. Falcicchio's sexual advances

²⁵⁵ We did not undertake a wholesale workplace climate assessment or survey of DMPED and EOM, but conducted an inquiry into items that were specifically determined by the MOLC SHO as being "beyond the scope" of the MOLC SHO's findings.

²⁵⁶ Recognizing that certain individuals may have been reticent to come forward with information to the MOLC SHO due to a perceived lack of independence on the part of the MOLC SHO, as we discussed in Section I, we extended the following invitation by email and by phone where no email address was available:

May 10, 2024

EOM and DMPED employees who were involved in the hiring and personnel processes, and those who were identified by Complainants #1 and #2 as persons whose careers may have benefitted or suffered retaliation due to Mr. Falcicchio's sexual-related conduct. The latter category of witnesses included: (1) those who the MOLC SHO interviewed but we thought based on those interviews and our conversations with the MOLC SHO might be able to provide additional information relevant to the second phase; (2) former employees of DMPED and EOM who declined to meet with the MOLC SHO during her investigations or never responded to the MOLC SHO's request to meet; and (3) current and former employees of DMPED and EOM who the MOLC SHO did not seek to interview but who, based on the information we had gathered, we thought might provide information relevant to the four questions.

B. Records

We sought and reviewed a range of records, including statistical data and publicly available census reports, to enable us to view personnel decisions over time, to detect any anomalous or otherwise concerning activity during the time Mr. Falcicchio was in DMPED and Chief of Staff. We also reviewed the personnel records, including transfers and promotions, of specific individuals who were identified as having allegedly benefitted or suffered retaliation as a result of Mr. Falcicchio's sex-related conduct. We also obtained advertised position descriptions and applicant lists. Finally, we sought all formal and informal records of any complaints or allegations

"Dear [Witness],

The law firm of Arnold & Porter has been engaged by the District of Columbia Office of the Inspector General ("OIG"), pursuant to the D.C. Council's Sexual Harassment Investigation Review Act, to undertake an independent review of investigations into allegations of sexual harassment against the former Deputy Mayor for Planning and Economic Development/Chief of Staff, including other findings and matters that were deemed outside the scope of the prior investigations.

At this stage, we are focusing on allegations that the DM/COS fostered an environment where individuals were rewarded with favorable assignments, promotions, and jobs for engaging in sexual conduct with the DM/COS or for remaining silent about his sex-related behavior, and that the DM/COS used the office as a "dating pool." Please know that our review is being treated with the same level of confidentiality that the OIG applies to its own investigations, based on the IG's statutory mandate to maintain the confidentiality of complainants and witnesses as outlined in D.C. Code 1-301.115a(b-1).

[We understand that as part of last year's investigations, you met with [MOLC SHO], the Sexual Harassment Officer, and we have reviewed the transcript from that interview.] We are also interested in speaking to you as part of our review and would like to schedule an interview with you at our offices (or, if you are outside of the DC area, by videoconference). Please let us know if you are able and willing to meet with us at any point in the next two weeks, and feel free to email or call me with any questions or if you would like to discuss this further."

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by any person against Mr. Falcicchio, involving sexual conduct, including the dating of subordinates or co-workers.

The Appendix summarizes the documents we requested and obtained or did not obtain.

C. Consultations with OIG Contract Administrator

Throughout our investigation we sought advice from experts on the various District personnel hiring and promotion processes, as well as on the proper interpretation of certain personnel decisions reflected in the records we obtained.

III. BACKGROUND INFORMATION

The following sections provide background on the hiring processes in the DC government that are relevant to the above-described issues. As reflected below and confirmed by key witnesses, the processes are both transparent and complex in ways that make it unlikely that Mr. Falcicchio could personally influence hiring or other personnel decisions based on sex-based favoritism, nor did we see evidence that he tried to do so.

A. District of Columbia Government Hiring Practices

1. Relevant Offices

a. DMPED

All hiring for the Office of the Deputy Mayor for Planning and Economic Development (DMPED) occurs through either (i) DMPED's Director of Operations and the District of Columbia Department of Human Resources ("DCHR"), or (ii) the Mayor's Office of Talent and Appointments ("MOTA").

The DMPED Director of Operations primarily oversees the hiring, firing, promotions, and lateral moves within DMPED. Responsibilities are shared between the Director of Operations and the HR manager. For example, the Director of Operations calls an applicant to make an offer of employment and negotiate the salary, while the HR manager manages all other necessary steps, such as ensuring there is a background check, compiling the hiring packet to submit to DCHR, and inputting relevant information into "PeopleSoft," the human resources tool used by the DC Government.²⁵⁷

²⁵⁷ Witness 3, [REDACTED] Interview.

b. District of Columbia Department of Human Resources

DCHR “provides human resource management services that strengthen individual and organizational performance and enable the District government to attract, develop and retain a well-qualified, diverse workforce.”²⁵⁸ DCHR works in tandem with other agencies’ human resource departments and the Mayor’s Office of Talent and Appointments to oversee and manage DC government hiring.

c. Mayor’s Office of Talent and Appointments

The Mayor’s Office of Talent and Appointments (MOTA) was created by Mayor Bowser in 2015.²⁵⁹ MOTA “assists the Mayor by making recommendations for outstanding community leaders to serve as appointed leadership staff or members to boards and commissions.”²⁶⁰ MOTA oversees the appointment of approximately 1700+ board and commission members, 118 cabinet members, and 200 excepted service appointments, which range in position type from deputy director to staff assistant.²⁶¹

2. DMPED and EOM Hiring Processes

What follows is a high-level summary of the hiring processes used at DMPED and EOM, as described by the various witnesses and as relevant to this investigation. It is not intended to comprehensively describe the process or the various regulatory requirements that must also be adhered to in the hiring process.

Hiring in the DC government, including DMPED, occurs through processes that can be either competitive or noncompetitive.²⁶² Each of these hiring practices has certain guardrails that would prevent an individual official, even as senior as the Deputy Mayor/Chief of Staff, from systematically directing hiring decisions for sex-based reasons.

Most positions within DC government are filled through a competitive hiring process in which an open job position is posted, either internally at an agency or externally to the public (with internal applications also accepted).²⁶³ After applications are received, a DCHR process must be

²⁵⁸ <https://dchr.dc.gov/page/about-dchr>.

²⁵⁹ Witness 3, [REDACTED] Interview; Witness 5, [REDACTED] Mayor's Order 2015-063, Establishment - Mayor's Office of Talent and Appointments, February 2, 2015.

²⁶⁰ MOTA, <https://mota.do.gov/page/about-mota>; Witness 2, [REDACTED] Interview.

²⁶¹ Witness 5, [REDACTED] Interview.

²⁶² Witness 2, [REDACTED] Interview; Witness 5, [REDACTED] Interview.

²⁶³ Witness 2, [REDACTED] Interview; Witness 3, [REDACTED] Interview.

followed, which includes engaging in a scoring system and interview process.²⁶⁴ This scoring and interview process is handled through DCHR and others that do not take direction from the Deputy Mayor and the process is insulated from his or her direction. The entire competitive process can often take two to three months.²⁶⁵ An employee hired through the competitive hiring process could be hired on a permanent basis, or in some circumstances on a shorter “term” basis.

On the other hand, a “name select” process, which is often used at DMPED (and other agencies), is a noncompetitive process whereby a person is to be selected for a position without engaging in the competitive hiring process.²⁶⁶ This can occur for positions on the grade 12²⁶⁷ and under scale.²⁶⁸ The name select process is often used when a candidate is very qualified in order to bring them into the role quickly.²⁶⁹ If a person is name selected, they can be hired for a term position, which usually consists of a 13-month term.²⁷⁰ Each term has a probationary period,²⁷¹ after which a decision must be made by the Chief of Staff of the agency to renew, extend, or terminate the position.²⁷² A term can be renewed up to four times before a final decision whether to convert the employment into a permanent position, although a position may be converted to a permanent position earlier.²⁷³ Some positions are designated as term positions because of grants allocated for that position or the need for an employee for a temporary project.²⁷⁴

Both name select positions and competitive positions are considered “career service” employees and must go through a background check, and certain positions must also go through pre-employment suitability screenings or assessments to determine if a candidate has certain skillsets or qualifications for certain jobs, such as the clearance to access security sensitive information, ability to operate heavy machinery, or ability to work with vulnerable populations.²⁷⁵

Other hiring processes not within the scope of this investigation include Management Supervisory Services, and Legal Supervisory Services. None of the personnel records of the employees whose employment history was relevant to our investigation indicate that they were hired through these means.

²⁶⁴ Witness 3, [REDACTED] Interview.

²⁶⁵ Witness 5, [REDACTED] Interview.

²⁶⁶ Witness 2, [REDACTED] Interview.

²⁶⁷ Each type of employment has a designated grade and step scale which corresponds to salary.

²⁶⁸ Witness 2, [REDACTED] Interview; Witness 3, [REDACTED] Interview.

²⁶⁹ Witness 2, [REDACTED] Interview.

²⁷⁰ Witness 2, [REDACTED] Interview; Witness 3, [REDACTED] Interview.

²⁷¹ Witness 3, [REDACTED] Interview.

²⁷² Witness 3, [REDACTED] Interview.

²⁷³ Witness 2, [REDACTED] Interview.

²⁷⁴ Witness 5, [REDACTED] Interview.

²⁷⁵ See <https://edpm.dc.gov/issuances/positions-subject-enhanced-suitability/>.

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In addition, certain positions within DC government are appointed by and serve at the discretion of the Mayor. They include most employees within EOM, leadership positions at other agencies, and members of various boards and commissions. For employees, these positions are also called "excepted service" positions, and they are subject to a different grade scale than career service employees. There are a finite number of excepted service slots within DC government. Most of these slots are designated (by regulation) for specific agency leadership positions, with the remainder allotted to EOM.

MOTA is responsible for recruiting and making recommendations for all excepted service hires/appointments to the Mayor, and oversees the entire application, appointment and hiring process (with DCHR conducting certain standard background checks and screenings after offers have been made). Since its inception, MOTA has been overseen by the same Director, who therefore has significant institutional knowledge and awareness of all excepted service hires and appointments.

Excepted service hires generally go through a standardized application and hiring process. For hires who do not need to be confirmed through the legislative process (typically, staff hires into EOM as well as certain designated excepted service positions at each agency), MOTA will review a first round of resumes, then [MOTA's] Chief of Staff will be involved in a second or third round section process. A recommendation will be made to the Mayor, followed by interviews of the candidates.²⁷⁶ On relatively rare occasions, an agency will ask MOTA (through its Director) if it can temporarily borrow one of EOM's excepted service slots in order to bring in an employee on a special and expedited basis where there is not enough time to go through the competitive process. This is typically done where the employee will be filling a position that would be above a Grade 12 (career service) and therefore cannot go through the (expedited) name select process. The career service position is then posted, and assuming the employee applies and is qualified and selected, they are then transferred to the pay-equivalent career service grade and position and the excepted service "slot" is given back to EOM.

Even in these special cases, the candidate must still be submitted to and approved by MOTA. MOTA closely tracks these special cases (because EOM needs its excepted service slots) and ensures that agencies are not abusing the process.

²⁷⁶ Witness 5, [REDACTED] Interview.

IV. INVESTIGATIVE FINDINGS

A. There is Insufficient Evidence to Establish That Mr. Falcicchio Caused Sexual Attraction-Based Hiring Decisions

1. Mr. Falcicchio's Role in the DMPED and EOM Hiring Processes

When asked about the ability for Mr. Falcicchio to hire applicants for sex or sexual attraction-based reasons, each of the interviewees stated it would be extremely hard, if not impossible, for Mr. Falcicchio to do so without the complicity or detection by others in the agencies.²⁷⁷ Each interviewee also credibly stated they observed no unusual trends or inappropriate behavior in the hiring practices in those offices under Mr. Falcicchio. Witness 3, whose time as Director of Operations at DMPED spanned six different Deputy Mayors, testified that Mr. Falcicchio's role in hiring was both limited, *e.g.*, passing along resumes, and very similar to that of prior Deputy Mayors. Other witnesses with insight into and experience with hiring practices and decisions at DMPED agreed that Mr. Falcicchio was not particularly involved in hiring. And Witness 5, the Director of MOTA, testified that because nearly all employees hired into EOM are excepted service, he has insight into all hires and would have known if Mr. Falcicchio had been orchestrating sex or attraction-based hiring, which he neither observed nor believes happened.

We also analyzed whether Mr. Falcicchio might be able to use "term" appointments (and the threat of non-renewal) as a way of further manipulating or exercising control over female subordinates. However, we found no evidence that DMPED had a disproportionate number of "term" employees compared to other departments, no evidence that "term" employees increased after Mr. Falcicchio became Deputy Mayor, nor any evidence that more women than men were hired into "term" appointment roles in DMPED.²⁷⁸ This was also further corroborated by all of the relevant witnesses.

We note that at least one [REDACTED] employee who was interviewed by the MOLC SHO implied that the slang term "John hire" referred to an employee who was hired expressly by Mr. Falcicchio for sexual or attraction-based reasons.²⁷⁹ None of our interviewees understood the term "John hire" to mean such a thing or had heard such a term being used by other employees.

²⁷⁷ Witness 5, [REDACTED] Interview.

²⁷⁸ We reviewed quarterly Public Body Employee Information reports available online at the DCHR's Public Employee Salary Information web page, <https://dchr.dc.gov/public-employee-salary-information>. Such reports contain the office, appointment type, name, title, grade, annual rate, and start date of District employees from 2011 to 2022.

²⁷⁹ Witness 1 said that she only knew of one [REDACTED] employee that had used that term.

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We did find that Mr. Falcicchio's dual role as Chief of Staff and Deputy Mayor allowed Mr. Falcicchio to be "on both sides" of hiring decisions, effectively allowing an easier path than other Deputy Mayors to obtain approval for the temporary use of an excepted service position through MOTA.²⁸⁰ However, there was no evidence that he used this power to make or effect sexual or attraction-based excepted service hires.²⁸¹

2. No Evidence of Improper Hiring or Promotion of a [REDACTED] Employee

We undertook an in-depth investigation into the hiring and subsequent promotions of a [REDACTED], SHO Witness 2, who was alleged by Complainant #1 to have been engaged in a previous sexual relationship with Mr. Falcicchio and potentially hired and promoted by Mr. Falcicchio because of that sexual relationship. Despite SHO Witness 2's emphatic denial of any sexual relationship or encounter with Mr. Falcicchio (and no other witnesses or evidence to the contrary), we nonetheless evaluated the circumstances surrounding her hiring and promotions.

We find that the circumstances surrounding SHO Witness 2's hiring and subsequent promotions were consistent with SHO Witness 2's prior experience and were handled according to proper personnel policies and procedures, including postings of the positions. We further find that it was another [REDACTED], SHO Witness 3, and not Mr. Falcicchio, who advocated to hire SHO Witness 2, [REDACTED]. Further, according to DCHR records, only SHO Witness 2 applied for the position.

No interviewee involved in the hiring or promotion practice, when shown anonymized PeopleSoft records of SHO Witness 2's hiring and subsequent promotions, opined that SHO Witness 2's promotion trajectory appeared suspicious or unusual.

B. There is Insufficient Evidence to Establish That Mr. Falcicchio Caused Favorable Personnel Actions Based on Acceptance or Toleration of Sexual Advances. However, His Apparent Favoritism Contributed to Workplace Tensions

There is insufficient evidence to find that Mr. Falcicchio used his position of power as DMPED and Chief of Staff to the Mayor to reward individuals with promotions for engaging in sexual conduct with him or for staying silent about his behavior. There is, however, credible evidence that he paid particular attention to and favored certain employees, including some female

²⁸⁰ Witness 2, [REDACTED] Interview; Witness 3, [REDACTED] Interview.

²⁸¹ The Director of MOTA told us that DMPED did not request or attempt to use more excepted service hires than other agencies or in a way that raised any concerns.

May 10, 2024

employees that he may have been interested in sexually or romantically or found attractive, and that this favoritism, while it did not rise to the level of official personnel actions,²⁸² nonetheless contributed to workplace tensions and in-fighting between employees.²⁸³

While Mr. Falcicchio sought sexual activity from Complainant #1 and Complainant #2, neither received any promotions and neither testified that Mr. Falcicchio had offered or predicated promotions or benefits on engaging in sexual activity with him. While Complainant #2 [REDACTED], the evidence established that this was due to the relaxation of personnel rules during the early months of the COVID-19 pandemic, and not for any inappropriate or nefarious reason.²⁸⁴ Complainant #2 did not testify to any preferential treatment by Mr. Falcicchio.

Complainant #1 did testify that she believed that she received “preferential” treatment from Mr. Falcicchio, [REDACTED]. Both the special treatment and the tension was commented on by multiple witnesses.²⁸⁵ [REDACTED]

One [REDACTED] employee, Witness 1, also conceded that she had likely received “preferential” treatment from Mr. Falcicchio, including increased professional opportunities to

²⁸² We note here, as discussed herein, the Mr. Falcicchio was involved in an “on-again off-again” consensual, romantic relationship with a District employee during his tenure. That employee adamantly denied receiving any benefits or promotions due to that relationship, and we found evidence that Mr. Falcicchio remarked to others that he and the employee ended the relationship to avoid any such suggestion. Moreover, the employee received numerous promotions during her employment with the District, seemingly unrelated to Mr. Falcicchio. Further, we did not uncover any evidence that the employee’s promotions were undeserved or that she is unqualified. Her personnel records indicate that she had substantial experience prior to each promotion and on paper was qualified for each role held [REDACTED]. Nevertheless, the relationship led some employees to question whether the promotions were based on something other than merit, and likely contributed to the workplace tensions discussed herein.

²⁸³ We note that there is evidence Mr. Falcicchio played favorites with male employees as well as with female employees, and that he did not necessarily want or try to start a sexual or romantic relationship with every female subordinate that he appeared to favor.

²⁸⁴ See <https://edpm.dc.gov/issuances/human-resources-guidance-covid-19-emergency-superseded2/>.

²⁸⁵ We note that giving favorable treatment to someone with a hope or expectation that they will engage in sexual activity, as well as ceasing the favorable treatment when any sexual activity ends or does not occur, could constitute sexual harassment in violation of the Mayor’s Order. In this case, Complainant #1 did not testify that Mr. Falcicchio conditioned his preferential treatment on her submission to his sexual advances, nor did the record evidence indicate that he withheld or ceased preferential treatment only after or because she stopped submitting to his advances. Nevertheless, we recognize that there is a strong inference that this may have been the case, and Mr. Falcicchio’s conduct certainly contributed to and was a part of his overall sexual harassment of Complainant #1.

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interact with [REDACTED] staff in meetings and other work opportunities. However, she stated that was because of her shared professional background with Mr. Falcicchio and speculated that he may have found her attractive, but credibly denied that Mr. Falcicchio ever engaged in or even attempted to start a romantic or sexual relationship with her.²⁸⁶ This attention and favorable treatment also contributed to workplace tensions between Witness 1 and her (female) supervisor, as well as rumors that she may have been in a relationship with Mr. Falcicchio or that Mr. Falcicchio was trying to initiate a relationship with her.

Another [REDACTED] employee, SHO Witness 1, testified to the MOLC SHO that Mr. Falcicchio had told her he was interested in having a romantic relationship with her (which she rebuffed) and made comments and engaged in inappropriate conduct that led her to believe he thought he could still win her over romantically. While Mr. Falcicchio did not offer or condition favorable treatment or benefits on accepting or tolerating his advances, SHO Witness 1 felt that she received special treatment at work and that this caused tension with her colleagues and left her isolated within the department. The isolation, along with Mr. Falcicchio's continued and unwanted attention and conduct, led to her decision to leave.

We note that Complainant #1 alleged that a [REDACTED] Metropolitan Police (MPD) officer, had told Complainant #1 that Mr. Falcicchio had a pattern of targeting young women and giving them "better titles" and "more pay." However, when interviewed by the MOLC SHO, the MPD employee denied having made any such statements. Despite repeated attempts at outreach (and consultation with the Office of the Inspector General), other than a very short phone call in which he reiterated that he had already told the MOLC SHO everything he knew and had nothing more to add, the MPD employee would not sit for an interview. However, we found no evidence in the personnel records to support the allegations.

C. There is Insufficient Evidence to Establish That Mr. Falcicchio Caused Retaliatory Personnel Actions Based on Rejection of Sexual Advances

There is insufficient evidence to conclude that Mr. Falcicchio used his position of power as DMPED and Chief of Staff to the Mayor to cause retaliatory treatment of District employees who rebuffed his sexual advances.

With respect to Complainant #1, we have seen no evidence in the records that Mr. Falcicchio "orchestrated" any of the alleged mistreatment of Complainant #1 by her supervisor, no evidence that he directed anyone to treat Complainant #1 unprofessionally, no evidence that he

²⁸⁶ We note that Complainant #1 alleged that Witness 1 had told other employees that Mr. Falcicchio attempted to start a romantic or sexual relationship with her. In fact, those other employees (who were interviewed by the MOLC SHO) had merely heard rumors to this effect, and we credit Witness 1's denial and other credible testimony over hearsay and rumors.

was even aware of any possible issues involving Complainant #1 and her supervisor until well after any alleged bullying or mistreatment had begun, and no evidence that Complainant #1 was demoted or that Mr. Falcicchio orchestrated her transfer to another business unit.²⁸⁷ There is likewise no evidence that any of the alleged mistreatment of Complainant #2 by her DMPED supervisor was rooted in sexual harassment, let alone any knowledge of Mr. Falcicchio's sexual advances toward Complainant #2.²⁸⁸

As noted above, SHO Witness 1 rebuffed Mr. Falcicchio's advances, but testified that she did not feel that he treated her any differently afterwards (possibly because he felt he could still win her over). While SHO Witness 1 did not suffer any adverse job actions or retaliation, Mr. Falcicchio's actions nevertheless contributed to her decision to leave DC government.

D. Mr. Falcicchio Dated, or Made Sexual Overtures Toward, Two Subordinates in Addition to Complainants #1 and #2

We find that Mr. Falcicchio was involved in a long term "on-again off-again" consensual relationship with one subordinate employee during his tenure.²⁸⁹ We also find that he made unwanted sexual and/or romantic advances toward another subordinate employee (SHO Witness 1) who rejected those advances. SHO Witness 1 cited Mr. Falcicchio's unwanted advances and his behavior generally as the primary reason why she left the District government. In addition, it is undisputed that Mr. Falcicchio engaged in unwanted sexual advances toward and sexual encounters with Complainants #1 and #2 that ultimately led to their complaints.

These findings are consistent with the original findings of the MOLC SHO and amply demonstrate that Mr. Falcicchio engaged in sexual harassment that violated the Mayor's Order.²⁹⁰ Moreover, it is important to highlight that many of Mr. Falcicchio's actions towards Complainant #1, Complainant #2, and SHO Witness 1 fit a similar pattern or "modus operandi," carried out both

²⁸⁷ However, as noted above, while Mr. Falcicchio's actions may not have risen to the level of retaliation, his preferential treatment and withdrawal of preferential treatment contributed to his overall sexual harassment of Complainant #1 in violation of the Mayor's Order.

²⁸⁸ The MOLC SHO also found no evidence supporting these allegations by both Complainants. Complainant #2 did present evidence that she had been mistreated by Mr. Falcicchio at various points during her employment. We view these allegations as more closely fitting in with her overall (substantiated) claims of sexual harassment, as opposed to describing separate claims of retaliation.

²⁸⁹ DCHR informed us that there were no responsive records to our request for reports of consensual relationships between Mr. Falcicchio and another DC government employee. We are not aware that any formal mechanism or process had been established by DCHR for reporting consensual relationships prior to the issuance of the 2023 Mayor's Order. DCHR has since developed an "Existing Relationship Disclosure Form." https://dchr.dc.gov/sites/default/files/dc/sites/DCHR/page_content/attachments/2023Mayors%20Order%20SH%20R%20relationship%20Disclosure%20Form%20Clean.pdf.

²⁹⁰ We note that under Mayor's Order 2017-313, consensual relationships with subordinates were not strictly prohibited as they now are under the 2023 Mayor's Order.

pre- and post-pandemic, including flirtatious text messages, social media use, invitations to dinner, visits or invitations to his apartment, and increased attention at work. While the evidence does not support the allegations that Mr. Falcicchio specifically hired or promoted women, he found attractive or wanted to date, it does demonstrate that he opportunistically used the workplace as an open invitation for his romantic and sexual interests towards female subordinates on at least four occasions. Based on the available evidence, as well as the additional interviews that we conducted, we were unable to develop or uncover any new evidence that Mr. Falcicchio's actions extended beyond the four instances described above.

In particular, although Complainant #1 identified more than 14 different female employees who she believed had or may have engaged in a sexual or romantic relationship with Mr. Falcicchio as well as other individuals who might have corroborative information, with the exception of those discussed above, each of those individuals either credibly denied such claims or declined to speak to our team (or the MOLC SHO in her prior investigation). All other witnesses - including several interviewed by us but not by the MOLC SHO - uniformly denied knowing or even hearing rumors about any sexual or romantic relationships between Mr. Falcicchio and District employees.²⁹¹ In addition, despite months of highly visible press coverage and press releases from counsel for the Complainants, we are not aware of any other current or former District employees who have come forward to raise new allegations or evidence.

We also note that in our view, dating or attempting to date/engage in sexual activity with more than one subordinate substantiates the original claims made by Complainant #1 that Mr. Falcicchio used the office as a "dating pool" or "dating ground." While such activity, if completely consensual, would not have violated Mayor's Order 2017-313, it nevertheless was clearly irresponsible, inadvisable, and creates risk for the District.

E. The MOLC Directed a Third Complainant to BEGA and OIG

On April 26, a third person (hereinafter "Complainant #3") sent an email to a group of EOM employees, requesting that the Director of the Mayor's Office of Community Relations and Services "explain why John Falcicchio told him 'I'm the Mayor' and give the contracts to who I told you to... '[b]ecause they were both getting paid.'" Via reply email, an employee of the Office of Community Relations and Services referred Complainant #3 to the MOLC SHO; however, given the absence of any sexual harassment allegations at that time, it is unclear why it was not referred to BEGA or OIG (beyond the fact that the MOLC SHO was already investigating Mr. Falcicchio). The record indicates that Complainant #3 also consulted with, but did not retain, Complainants' Counsel.

²⁹¹ Witness 1 told us that she suspected Mr. Falcicchio may have had a relationship with one subordinate (who in fact was in a consensual relationship with him) but did not know for sure and was not aware of any rumors.

At some point after contacting other officials in the District, Complainant #3 expanded her allegations to include that Mr. Falcicchio had demanded sexual activity from her in 2021 during her interactions with him while she was seeking to do business with the District of Columbia as a government contractor.²⁹²

Although MOLC decided that the Mayor's Order did not expressly contemplate complaints coming from putative government contractors, given certain factual similarities between the new sexual harassment allegations and the two previous complaints, the MOLC SHO and Ms. Natale nonetheless decided to interview Complainant #3 on May 4 about her allegations.²⁹³ The MOLC SHO also reviewed documentary evidence provided by Complainant #3 that Complainant #3 alleged supported her claims. The MOLC SHO and Ms. Natale ultimately questioned the veracity of Complainant #3's sexual harassment allegations after observing Complainant #3's demeanor and statements throughout a 40-minute interview, as well as considering the nature and (lack of) strength of the documentary evidence to support her claim.²⁹⁴

The MOLC SHO ultimately determined that this complaint was beyond the scope of the Mayor's Order and conducted no further investigation. On June 22, Mr. Adams sent a letter to Complainant #3 informing her that MOLC did not have authority to investigate her claims, but that she could file a discrimination complaint with DC OHR if she believed she had been sexually harassed or discriminated against.²⁹⁵ In addition, Mr. Adams "strongly encouraged" Complainant #3 to file a complaint with either BEGA or the OIG, or both agencies, based on MOLC's opinion that they were the appropriate authorities to investigate allegations of unethical conduct and abuse of power.

We find that MOLC's decision to decline to further investigate and instead "strongly encourage" Complainant #3 to file complaints with BEGA and OIG was reasonable and appropriate under the circumstances. Setting aside both whether a non-employee's complaints of sexual harassment by a District employee could or should have been investigated under the Mayor's Order²⁹⁶ and the MOLC's initial impressions concerning the veracity of the allegations,

²⁹² April 26, 2023 Email from Complainant #3 to MOLC SHO and other District employees.

²⁹³ Ms. Natale attended the interview with the MOLC SHO based on concerns for the MOLC SHO's safety.

²⁹⁴ MOLC SHO, Feb. 5, 2024 Interview; Vanessa Natale, Feb. 1, 2024 Interview.

²⁹⁵ MOLC also concluded that the claims were outside of the statute of limitations for sexual harassment. This, combined with Mr. Falcicchio's prior resignation, were further reasons not to utilize the SHO process.

²⁹⁶ We agree with MOLC that, on its face, Mayor's Order 2017-313 did not encompass claims from putative government contractors that they were allegedly sexually harassed by a District employee. Section II (1) (Prohibitions) of the Mayor's Order prohibits workplace sexual harassment perpetrated by employees, officials and third parties doing business with or carrying out the goals and objectives of the District of Columbia government. And Section II

we agree with the MOLC that the thrust of the eventual allegations raised by Complainant #3 went to unethical conduct and abuse of discretion, along with potentially fraud, abuse, or corruption - a sexual "pay to play." These types of allegations fall more under the authority of BEGA or OIG, and not the SHO process. Indeed, because the original email from Complainant #3 to the Office of Community Relations and Services did not even reference sexual harassment or similar allegations, it should have been referred to BEGA or OIG in the first instance, and could have been separately referred by MOLC in the second instance.

In addition, the type of investigation necessary to effectively review and investigate these allegations would have involved a broader look at contracting practices generally and Mr. Falcicchio's role (if any) in contracts - something that was also beyond the ability and scope of a SHO who is supposed to be focusing on the specific personnel-related matters that were outlined in the Mayor's Order.²⁹⁷

V. CONCLUSION

During his tenure, Mr. Falcicchio committed acts of sexual harassment against Complainants #1 and #2; he dated one other subordinate, on and off, for an extended period of time; and he made unwanted sexual advances toward another subordinate. While he appeared to favor some female personnel over other subordinates, there is insufficient evidence that such favoritism rose to the level of hiring decisions or other official personnel actions such as promotions, that it was based purely on sexual attraction, or that it fit any particular pattern. Further, there is insufficient evidence to establish that Mr. Falcicchio caused or orchestrated retaliatory treatment of subordinates who did not tolerate or accept his sexual advances.

Nevertheless, in addition to violating the Mayor's Order with his acts of sexual harassment, Mr. Falcicchio's behavior and actions, including his efforts to date or engage in sexual relationships with subordinates and his favoritism, clearly created tensions, distrust and in-fighting

(2) (Protections) protects only employees, contractors, interns and others already engaged by the District of Columbia to provide permanent or temporary employment services, and applicants for employment, from being harassed. Thus, neither section explicitly prohibits the harassment of other third parties or provides third parties with protection or an avenue to complain about harassment under the Mayor's Order. On the other hand, a separate "Easy to Read Digest" of the Mayor's Order, published by DC OHR, which we understand was intended to be the DC OHR's interpretation and summary of the Mayor's Order, states that "Members of the public dealing with government employees are protected from being sexually harassed by government employees." It also states that "DC government employees cannot sexually harass members of the public with whom they interact." While such statements are reasonable and common-sense on their face, in our view they are not consistent with the actual text of the Mayor's Order and we do not take a position on DC OHR's ability to interpret or expand the Mayor's Order. As discussed in Section III, the new 2023 Mayor's Order fixes this inconsistency/ambiguity.

²⁹⁷ That Mr. Falcicchio was no longer employed by the District further militated against conducting this type of investigation under the SHO process.

CONFIDENTIAL

May 10, 2024

in the workplace, and contributed to the loss of at least one District employee. This type of toxic workplace environment is bad for morale, negatively impacts employee job performance, often leads to employee turnover, and is likely to lead to claims of harassment, discrimination, and retaliation.

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VI. APPENDIX

A. Records of Any Prior Allegations of Harassment Involving Mr. Falcicchio

1. We sought the below records from the General Counsels of DMPED and EOM and receive no responsive documents:

- Any and all records of prior complaints or allegations of harassment, hostile work environment, bullying, discrimination, or retaliation involving John Falcicchio during his employment with the District of Columbia in any capacity.
- Any and all records reflecting the reporting or existence of a consensual romantic or sexual relationship between John Falcicchio and any District of Columbia government employees.

2. We sought the below records from the Director of Operations at MOTA and received no responsive documents:

- Any and all records of prior complaints or allegations of sexual harassment, hostile work environment, bullying, or retaliation involving John Falcicchio during his employment with the District of Columbia in any capacity.
- The request expressly included internal records and informal or formal complaints (such as through the EEO process), as well as any reports or communications to the Executive Office of the Mayor or Office of the Deputy Mayor for Planning and Economic Development.

3. We sought the below records from the EEO Officers at DMPED and EOM:

- Any and all records of prior complaints or allegations of sexual harassment, hostile work environment, bullying, or retaliation involving John Falcicchio during his employment with the District of Columbia in any capacity.

CONFIDENTIAL

- The request expressly included internal records and informal or formal complaints (such as through the EEO process), as well as any reports or communications to the Executive Office of the Mayor or Office of the Deputy Mayor for Planning and Economic Development.

The EEO Officers confirmed that there were no records.

4. We sought the below records from DC OHR General Counsel:

- Any and all records of prior complaints or allegations of sexual harassment, hostile work environment, bullying, or retaliation involving John Falcicchio during his employment with the District of Columbia in any capacity.
- We noted that the request expressly included internal records and informal or formal complaints (such as through the DC OHR or EEO process), as well as any reports or communications to the Executive Office of the Mayor or Office of the Deputy Mayor for Planning and Economic Development.

The DC OHR General Counsel responded via email that OHR is not able to provide the information because “all discrimination and harassment complaints or charges filed with DC OHR are confidential pursuant to the D.C. Human Rights Act (“DCHRA”). See D.C. Code §§ 2-1402.52(c)(2); 2-1401.02(16)(C). The DCHRA mandates that complaints filed with DC OHR are to be confidential and only available to the parties after the investigation has closed and the reconsideration period has passed. D.C. Code §§ 2-1401.02(16)(C) & 2-1402.52(c)(2).” The DC OHR General Counsel also stated:

OHR has determined that disclosing the identity of either party in an OHR complaint would undermine the integrity of OHR’s investigations (D.C. Code § 2-1403.01(g)(2)(A)) as well as the provisions of OHR’s work-share relationships with federal agencies (D.C. Code § 2-1403.01(g)(2)(B)). See, e.g., 29 CFR 1601.22 (investigative information related to cases cross-filed with the Equal Employment Opportunity Commission are not to be disclosed to the

CONFIDENTIAL

public). Moreover, disclosure of information related to cases at the probable cause stage would also constitute an undue violation of privacy for the parties and interfere with OHR's ability to resolve complaints of discrimination through confidential mediations or otherwise substantially impair the ability of a particular Complainant or Respondent to receive an impartial probable cause determination. Thus, for these reasons, only parties to particular cases may request information related to those cases, after the closure of the case and the running of the reconsideration period.

5. We sought the below records from the Director of MOTA and the General Counsel of DC Department of Human Resources:
- Any and all personnel records (including any official personnel file) for John Falcicchio that are within the custody or control of the District of Columbia.
 - Any and all records reflecting the reporting or existence of a consensual romantic or sexual relationship between John Falcicchio and any District of Columbia government employees.

In response, we received Mr. Falcicchio's personnel file which included his resume, recommendations, his job offer, job promotions, etc. We concluded that there was nothing particularly relevant to our investigation in this file. No responsive documents were provided reflecting the reporting or existence of a consensual romantic or sexual relationship.

May 10, 2024

OIG INDEPENDENT COUNSEL

SECTION III: RECOMMENDATIONS



CONFIDENTIAL

SECTION III: RECOMMENDATIONS

I. SCOPE AND METHODOLOGY

In the third phase of its work, the Independent Counsel was to review and make recommendations on sexual harassment complaint and investigation procedures of the District government. We carefully considered the investigative shortfalls and public misperceptions that we identified in Section I, as well as the systemic concerns and issues identified in Section II. We also reviewed the new Mayor's Order 2023-131 released in October 2023, which addresses some, but not all, of the issues we identified. Finally, we took into consideration the sexual harassment complaint policies and procedures of several other major cities (Baltimore, Boston, Chicago, New Orleans, and Philadelphia) and spoke to officials in three of those cities to help us shape our observations and recommendations.

II. CONCLUSIONS AND RECOMMENDATIONS

A. General Observations

Since 2017, the District government, through successive Mayor's Orders, put into place detailed frameworks to address allegations of sexual harassment within the District of Columbia Government. Mayor's Order 2017-313 was in place at the time of the allegations made against Mr. Falcicchio and set the stage of the events discussed above in Sections I and II. On October 31, 2023, a new Mayor's Order 2023-131 was issued, which revised and advanced the earlier Order in several important ways.

Handling the two complaints involving Mr. Falcicchio presented challenges that went beyond what is likely to be the "typical" sexual harassment complaint contemplated by the Mayor's Order and the SHO process. There were several reasons why the investigations here became particularly complicated and/or unsuited for the SHO process. First, the accused was among the most senior officials in the entirety of D.C. government. He was dual hatted as a Deputy Mayor and Chief of Staff to the Mayor. Second, the allegations from one of the complainants were extremely broad, implicating not only sexual harassment by the senior official but going beyond, alleging retaliation, systemic favoritism for sex-based hiring and promotions decisions, and allegations that Mr. Falcicchio used the office as a "dating pool." Third, there was no designated Sexual Harassment Officer within the Office of the City Administrator (the designated agency for complainants against a Deputy Mayor) nor within DMPED and EOM, and the complaints were made directly to the Mayor and MOLC. Fourth, the complainants were represented by very prominent and assertive legal counsel who publicized the District's review, had ongoing press releases and communications with the news media, and provided the public with the name and

CONFIDENTIAL

contact information of the MOLC SHO without her consent. And finally, the sometimes-daily press coverage added time pressures and broad visibility to the allegations and the District's response.

Despite the unusual nature of the facts here, which contributed to a "perfect storm" of perhaps unique circumstances unlikely to be replicated, there are clearly important lessons learned that lead us to make both specific and general recommendations for improved ways to address and handle sexual harassment complaints and investigations. Our recommendations build on existing practices and procedures, the District's experiences of the last year, and our numerous conversations with DC government officials over the past four months.

B. The 2023 Mayor's Order

The 2023 Mayor's Order addresses many, but not all, of the concerns and issues identified in Sections I and II. Primary improvements include:

- Amending the definition of harassment to match the statutory definition in the Human Rights Act, as amended by the Human Rights Enhancement Amendment Act of 2022. This addresses the concerns raised by counsel for the Complainants and picked up in the press, that Mayor's Order 2017-313 was still relying on an outdated definition of sexual harassment that required conduct to be "severe or pervasive."
- Clarifying that sexual harassment is prohibited by and against all District government employees, including in interactions with members of the public. This addresses the ambiguity and inconsistency between Mayor's Order 2017-313 and the Easy-to-Read Digest published by DC OHR, as well as the question whether Mr. Falcicchio's alleged conduct towards Complainant #3, if established, would have been a violation of the Mayor's Order. Nevertheless, the 2023 Mayor's Order still does not adequately address *how* or *where* a member of the public should raise a complaint against a District employee.
- Specifying that complaints made against the Mayor's direct reports (including Chief of Staff and Deputy Mayors) must be referred to the Inspector General, and if credible, will then be referred for independent investigation by an outside entity, which shall in turn report to MOLC and the Inspector General. This addresses one of the key concerns and issues raised in Section I - that the SHO process is not suitable for significant complaints of sexual harassment against a high-ranking official and could lead to perceptions that the process is not independent. Nevertheless, we believe that some additional flexibility should be built into the process. Not every "credible" complaint made against a high-ranking official should necessitate an outside independent investigation. Rather, the Inspector

CONFIDENTIAL

General should have some additional discretion where a complaint, even if credible, is not appropriately suited for an outside investigation (for example, where it involves a relatively minor or isolated incident that can be quickly and reasonably resolved or does not require an extensive investigation).

- Expanding avenues for complaints, so that employees can report inappropriate conduct to any Sexual Harassment Officer (not just their own agency) or the agency's General Counsel (in addition to supervisors). In addition, the 2023 Mayor's Order places additional obligations on agencies to email the names of their primary and alternate SHOs to all employees and send annual reminders or updates, and post conspicuous notices in the workplace, and it requires DCHR and DC OHR to more closely check on each agency's SHOs. Given the original challenges that the Complainants had with finding a SHO, their discomfort with having to potentially share highly sensitive information about sexual harassment with a co-worker, the failure of several agencies to designate or have a SHO in place (including OCA, EOM, and DMPED), and the apparent lack of oversight by DCHR and DC OHR into the SHO process, these changes are particularly important.
- Removing the requirement that a victim of sexual harassment must confront her or his harasser or instruct them to stop the unwanted conduct. While employees should be encouraged to try and raise and resolve workplace concerns and problems with their co-workers before escalating the issue, they should not be required to do so, and this change appropriately eliminates what could have been a barrier to some employees coming forward with complaints of sexual harassment.
- Clarifying that the SHO's role is to investigate the factual basis for claims and determine whether the allegations are substantiated or not substantiated but is not to make legal conclusions. As discussed in Section I, one of the mistakes in the original MOLC SHO investigations was that she analyzed relevant legal standards and case law and made what amounted to legal conclusions. While we largely agreed with the MOLC SHO's legal analysis and conclusions, this ended up extending the amount of work performed, contributed to delays in finalizing the reports (beyond the 60-day period), and put her in a position of lawyer/decision-maker rather than pure factfinder. This clarification to the Order is a good step, but as discussed below, must be combined with more training and oversight of the SHOs.
- Providing that the 60-day deadline for completing investigations may be increased in unusual circumstances. While we would expect that the 60-day deadline is more than sufficient for most SHO investigations, this added flexibility is more realistic, and will help

CONFIDENTIAL

ease some of the pressure that a SHO might feel in a large investigation like the ones handled by the MOLC SHO. However, as discussed below, this flexibility must be combined with increased supervision and support for SHOs.

- More expansively addressing dating, romantic, and sexual relationships in the workplace, including banning all sexual and romantic relationships between supervisors and employees in their chain of command, and implementing a reporting process so that DCHR and MOLC are aware of and can effectively protect the District against these types of relationships. This change addresses the most significant problem identified in Section II (Mr. Falcicchio's use of the office to seek out sexual and romantic relationships with subordinates and the resulting workplace tensions and toxic environment caused by his behavior), brings the District's policies more in line with other cities and most private employers, and will help prevent future instances of sexual harassment.
- Requiring DCHR and DC OHR to verify annual training, update training materials, and establish qualification standards for SHOs. As discussed in greater detail below, these changes are a good start, but cannot be done in a vacuum. The existing training materials are insufficient and require significant updating and improvement. They also must be combined with meaningful training sessions and exercises. And establishing qualification standards (beyond willingness to volunteer) is merely the minimum that must be done; there must also be an oversight process, as well as a mechanism for selecting appropriate SHOs to manage more complex investigations.

C. Recommendations

1. Consider Creating a Centralized Sexual Harassment Oversight Function

Creating a centralized sexual harassment oversight function, such as a panel, within the DC government tasked with reviewing and managing complaints and investigations would enable the SHO process to be followed consistently and competently. This would also address several of the issues identified in phase one of our investigation, including the lack of adequate supervision over the SHO, challenges with scoping the investigations (including how to deal with allegations of retaliation, and how to deal with new allegations that may expand the scope beyond what is feasible for one person), difficulties with collecting evidence, better handling allegations of potentially unlawful criminal conduct, and avoiding conflicts of interest and the appearance of a lack of impartiality.

Given the existence of a Sexual Harassment Task Force under the new Mayor's Order, the Panel could consist of the senior representative from the Department of Human Resources, Office

CONFIDENTIAL

of Human Rights, Mayor's Office of Legal Counsel, Mayor's Office of General Counsel, and Office of the City Administrator that already serve on the Task Force. These senior representatives would be tasked with deciding which complaints to review, reviewing relevant complaints as they come to each SHO, determining whether an investigation should move forward internally and, if so, serve as a resource to SHOs as investigations progress. Most importantly, the Panel would be able to quickly evaluate a complaint to determine if an independent investigation is necessary and serve as a liaison to any outside investigators. Finally, the Panel could designate an HR professional investigator to guide the SHO during the course of an investigation.

The Panel could address the following critical areas:

- SHO Consultation with Others. While this is mentioned in SHO training,²⁹⁸ the Panel could immediately determine upon receipt of a complaint (1) whether it is appropriate for the specific SHO who received the complaint to investigate the allegations, (2) if a single SHO is adequate to investigate the allegations, or (3) if another District agency or independent investigator should investigate some or all of the allegations.
- Scoping. How to properly scope an investigation is imperative to adequate resolution of a claim. A SHO investigation is an administrative tool for sexual harassment complaints under the Mayor's Order. Once allegations arise that may need to go to other agencies, or law enforcement, or that are much broader in scope than a complaint stemming from an action of one person unto another, a SHO should look to their Panel supervisor to evaluate whether or how to continue the investigation.

The Mayor's Order governs allegations of inappropriate conduct of a sexual nature. Notably, the Mayor's Order does not delegate claims of retaliation to the SHO, and instead provides that a complaint of retaliation must first be filed with an EEO Counselor before subsequently filing a complaint with DC OHR. An investigator faced with a sexual harassment allegation needs to define the scope of the investigation within the confines of the Mayor's Order, including key issues relating to what issues are to be investigated, timelines, witness interviews, and document retention and production. Some issues might be well-suited to an administrative investigation and others perhaps should be referred to other government components, such as the Office of the Inspector General. While an investigation under the Mayor's Order should have the appropriate confines, the scope of an investigation should not determine if and when other complaints are ultimately investigated.

²⁹⁸ The SHO training referenced throughout is the official DCHR SHO training used as recently as March 2024.

- Clarify the SHO's Authority. The Panel could ensure SHOs and others in DC government understand a SHO's authority to interview District employees, to collect government-issued technology, to review emails and text messages, to deal with a party or witness who refuses to comply or is uncooperative, and to conduct an investigation where one or more parties or witnesses has legal (or union) representation. This would help address several of the obstacles that the MOLC SHO faced in her investigations.
- Approve an Investigation Plan. The MOLC SHO specifically noted that the DCHR Issuance and materials on developing an investigation plan were generally unhelpful and inadequate, and that she looked to publicly available outside samples of investigations for guidance. Moreover, her isolation from MOLC leadership meant that she had no one she could consult with for guidance, both in formulating the original investigation plan and dealing with changes to that plan once the investigation expanded. The Panel could ensure that SHOs have the tools and supervision they need to adequately prepare and update an investigation plan. This would include working closely with DCHR to provide detailed and improved templates, and a process by which a SHO's investigation plan can be reviewed (by the Panel), including the need to reevaluate an investigation plan when a new facet of a complaint is uncovered which may change the nature or scope of the investigation.
- Identify Possible Criminal Activity. As we discuss in Section I, the Mayor's Order primarily places the responsibility for reporting potential criminal activity on the victim. Both the complainants and the MOLC SHO indicated that they would have appreciated more guidance and information on when and whether to report something to law enforcement. And we believe that the allegations raised by Complainant #2 should have triggered, at a minimum, greater consideration of involving law enforcement at an early stage. The Panel supervisor could provide ongoing guidance to a SHO to assist in the identification of potential criminal activity and signal when a consult with agency general counsel or law enforcement is appropriate.
- Apportion Adequate Investigative Resources. The two MOLC SHO investigations suffered from a lack of overall resources, resulting in a single SHO spending an inordinate amount of time and effort (and even spending her own money at times) on the investigations. The Panel supervisor could continually assess whether additional (or fewer) investigative resources are necessary in specific investigations.
- Collect and Preserve Relevant Evidence. As noted in Section I, the MOLC SHO failed to collect work devices from Complainant #1 that likely contained highly relevant text messages and pictures and struggled with how to handle refusals from the complainants'

CONFIDENTIAL

counsel to turn over relevant evidence in general. The Panel supervisor could assist the SHOs in seeking all relevant evidence and in obtaining consultation with relevant agency general counsel to determine if an evidence preservation request should be sent to relevant parties. Possible avenues to preserve evidence, if witnesses, complainants, or the accused do not comply on the first request, include issuing a demand letter or formal request for documents from MOLC or the Mayor's Office. This can be done in conjunction with agency general counsel, or the Panel (if the District elects to create one). In addition, if the scenario is appropriate, the Panel supervisor could seek assistance from other agencies or law enforcement, including via the issuance of a subpoena.

- **Be Attuned to and Guard Against the Appearance of Conflicts of Interest.** The potential for public misperception was exacerbated here not only by the fact that a MOLC attorney conducted the investigations, but by the presence of a MOLC supervisor in press conferences and the MOLC's role in crafting public statements, with the unfortunate consequence of an appearance of the Mayor or her senior team being involved. While this particular fact pattern isn't likely to be replicated, the multidisciplinary Panel could take all reasonable steps at the outset to ensure not only independence, but also the appearance of independence.

2. Consider Changes to the Existing SHO Process

The SHO process under the Mayor's Order is largely decentralized, with SHOs having only limited training and expertise expected to operate in each DC agency. In addition, acting as a SHO is effectively an "extra duty" or volunteer role, in addition to the employee's full-time job. While this may make sense for smaller, contained investigations, it may not be feasible where the investigation is more complex or larger in scope and requires significant time and effort, like the MOLC SHO's two investigations. In considering these practices and discussing them with DC government officials, and also reviewing policies from other cities, in addition to creating a centralized Panel, we think the District could consider the following nonexclusive options:

a. Enhanced Training of SHOs

The MOLC SHO, as well as other individuals that we interviewed and consulted with in the course of our investigations (including others who serve or have served as SHOs), uniformly expressed the need for enhanced training. Thus, one option for the District's SHOs is to continue the status quo of having SHOs in each agency, with highly enhanced training, as follows:

- **Collection of Relevant Evidence.** SHOs should be trained on the types of evidence they can and should ask for, in addition to how to obtain such evidence. This includes, for

CONFIDENTIAL

example, collecting emails, photos, text messages, security footage, recordings, teams messages, and any written notes or communications. SHOs should be trained on how and when to collect evidence from non-District employees, how to preserve interviews the SHO conducts via recording, transcripts, and notes, as well as all documentation pertaining to the investigation. This would help avoid the issue, identified in Section I and discussed above, where some of the evidence was not adequately collected or preserved.

- **Standard of Proof.** More training is needed as to the “preponderance of the evidence” standard and finding an allegation is substantiated or unsubstantiated. There must be clearer training as to how a determination of substantiated or unsubstantiated relates only to the facts presented but does not draw a legal conclusion, and why it is imperative for SHOs, as impartial fact finders, to not draw legal conclusions. This concern is of course less heightened where the SHO is not an attorney. In the instant case, while the MOLC SHO’s legal conclusions were not incorrect, they took away from her factual findings and resulted in excess time spent on researching and analyzing caselaw.
- **Nuances of Sexual Harassment Allegations.** Training is needed as to the range of sexual harassment allegations that can be brought to a SHO, and allegations that should immediately be referred outside of the SHO process such as serious criminal activity. While the current SHO training discusses various examples of sexual harassment, it should go into more detail as to how consent can play into sexual harassment and sexual assault. For example, consensual intimate activity can constitute harassment, particularly where it involves a subordinate and a supervisor. And it can also become unlawful if at any point the intimate activity becomes nonconsensual. Training on the nuances of sexual harassment is imperative so that SHOs are able to adequately investigate, receive complaints, and interact with complainants. In addition, sexual harassment allegations differ when they are brought against a manager or supervisor versus a peer. The ability for a SHO to spot nuances in potentially sexually harassing activity will lead to better investigations, better reports, and better findings. And where activity might involve sexual assault, it will also avoid many of the shortcomings identified with respect to Complainant #2’s allegations, where the MOLC and the MOLC SHO did not adequately consider the need to consult with or refer the matter to law enforcement.
- **Scoping.** As discussed above, it is critical that SHO training better address how to properly scope an investigation, including how to craft an effective investigation plan, how to adjust an investigation plan based on new allegations (including referring allegations elsewhere when appropriate), and how to handle allegations that might straddle the line between sexual harassment and retaliation or where retaliatory and abusive behavior contributes to

CONFIDENTIAL

the ongoing sexual harassment (*e.g.*, allegations that a supervisor retaliated against an employee for rebuffing their advances through abusive behavior at work, but where no specific adverse job action has been alleged). This was one of the areas that the MOLC SHO understandably struggled with. While we found that the MOLC SHO came to the correct *legal* conclusions that there had not been pre-complaint retaliation (something she should not have done as a fact-finder), we also found that some of the conduct she analyzed could have been substantiated as a matter of *fact* and analyzed under the rubric of sexual harassment instead.

b. A Central SHO Office

Instead of having SHOs spread among various agencies, the District could create a centralized office or component - with dedicated employee SHOs - that conducts investigations into sexual harassment or similar investigations. This ensures that SHOs are subject matter experts and can dedicate all of their time and efforts to the SHO process, rather than volunteering their time in addition to their regular duties. It also addresses the legitimate concerns raised by the two complainants that they were uncomfortable sharing their stories and coming forward to someone who worked within their agency and with whom they might have been familiar.

For the District, this could be a stand-alone SHO office or a component of DCHR, for example. One city we consulted with had a centralized office of investigators that handled not just sexual harassment matters, but also claims of discrimination based on race, sexual orientation, disability, and other protected categories, as well as claims of retaliation stemming from sexual harassment and discrimination complaints. In this other city, complainants are encouraged to go to any agency liaison. Liaisons must report complaints to the centralized office, as well as assist the complainant in doing so. Once a complaint is made to the centralized office, it is assigned to an investigator who then meets with the complainant and determines the scope of the investigation. The liaison serves as a go-between with the centralized office and the complainant, assists in logistical issues such as scheduling interviews and collecting evidence, but does not participate in the investigation itself. This process allows investigators to be properly trained as “professional” investigators, have the resources to conduct investigations, specifically the time to do so, as well as colleagues to collaborate with, and know what agencies to reach out to when issues fall outside of the scope of the broader discrimination and sexual harassment policy.

c. A Hybrid “Super SHO” System

Another possibility is designating or hiring employees or a component that might be considered “super SHOs” who can handle investigations that might be especially complex or sensitive and could provide oversight and guidance to SHOs in individual D.C. government

CONFIDENTIAL

components. These employees could also assist with training of SHOs, as well as serve as a guide or resource throughout an investigation.

While there may be other options and models that could work well with the District's structure, the bottom line is for the District to find a model that will work well for those who feel they need to initiate the process, be effective and efficient, and preserve the rights of both complainants and accused.

3. Consider Enhanced Mandatory Training for Supervisors and EEO Counselors

The revised Mayor's Order now mandates annual sexual harassment training for all employees. This training could be enhanced for supervisors and EEO Counselors, cover both the relevant legal standards as well as the Mayor's Order and SHO process, include interactive role-playing exercises, be regularly reviewed to ensure the training is adequate and remains relevant, and be updated based on new materials and resources as such become available and as best practices evolve.

4. Provide Complainants with Additional Information on Their Options

When a complainant within the D.C. government first brings a sexual harassment complaint to the attention of responsible parties, a high priority could be to ensure that the complainant knows all of the concurrent and alternative options that are available to address their concerns, including administrative options under the Mayor's Order, as well as the ability to bring complaints to:

- The Office of Human Rights, both for complaints of sexual harassment, as well as for complaints related to other forms of harassment, discrimination, and retaliation;
- An EEO Counselor, for claims of retaliation (as a prerequisite to filing a complaint with DC OHR);
- The U.S. Equal Employment Opportunity Commission;
- The Office of Inspector General, if the matter involves a senior official as specified by the Mayor's Order, or if the complaint includes allegations of waste, fraud, or abuse;
- The Board of Ethics and Government Accountability if the complaint involves ethics issues;
- Appropriate avenues for filing a negotiated grievance or obtaining remedies under a collective bargaining agreement;
- The Crime Victim Hotline, as specified in the Mayor's Order;

CONFIDENTIAL

- Law Enforcement, if the complaint involves potentially criminal activity; and
- Courts of law, both federal, state and local.

Each path has its own potential advantages and disadvantages in particular cases and complainants may not be in a good position to understand them. In an attempt to streamline this process, the complainant could not only be informed of possible avenues for redress and relevant contact information, but any applicable time frames, and how a complaint to an aforementioned body might impact confidentiality. Counseling is likely especially important in these circumstances; the SHO (or supervisor) could make clear they are providing the complainant with all options possible, and that they do not represent the complainant as their attorney or otherwise. Even though both of the complainants in this matter were represented by experienced and able legal counsel, they both indicated that they would have appreciated more information and guidance from the SHO as to their various options, as well as a better understanding of confidentiality.

Given that circumstances can change over time, the information might need to be provided more than once, such as when the issue of sexual harassment first arises, during the intake process, during the investigation, and/or once findings are developed and issued. It is important for complainants to feel comfortable throughout the process and that all necessary resources have been made available.

We further recommend that DCHR and DC OHR develop a “fact sheet” that summarizes the various avenues for a complaint, and that can be provided to complainants at the time of the initial complaint or first meeting with the SHO. This would ensure that the messaging and information provided by each SHO is consistent.

5. Consider an Anonymous Hotline

Throughout the MOLC SHO’s investigation, and during the Independent Counsel’s investigation, witnesses indicated they did not always feel comfortable going to their own agency’s SHO. Witnesses cited close relationships with peers and colleagues, as well as close physical proximity within District office buildings. While the revised Mayor’s Order does take this into account by expanding the ability of District employees to go to any SHO at any agency, instead of only SHOs within their agency, an anonymous complaint hotline or email box would provide another safe avenue for making a complaint. Appreciating the limitations of anonymous complaints, such allegations could go through the Panel to determine who is best suited to evaluate such a complaint. We note that the new Mayor’s Order references the existence of the DC Crime Victim Hotline, where employees can be connected with free resources, including an advocate, to help navigate the repercussions of crime and help them decide whether to pursue a matter through

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the criminal justice process. This hotline could be expanded, or a similar harassment and discrimination hotline could be established.

6. Consider Naming a Law Enforcement Liaison

The line between sexual harassment and potentially criminal conduct (including sexual assault) is often blurry. Indeed, at least some of the allegations brought forward by Complainant #2 fall squarely within this gray area. The Mayor's Order places the decision to refer possible criminal misconduct to a law enforcement agency entirely at the choice of the complainant, except where there is evidence of ongoing crimes.²⁹⁹ In light of this clear demarcation, we believe it is important that someone in the intake and investigation process - most likely the SHO - should not only provide overall information on the various avenues for complaint as described in recommendation 4 above, but should have a separate conversation with each complainant about the potential for referral to a law enforcement agency. Moreover, we think it would be valuable to have a designated resource from law enforcement who could meet with or speak to any complainant who wishes to learn more about the law enforcement process and what that might entail. Alternatively, advocates through the DC Crime Victim Hotline could be better integrated into the SHO process where a reference or resource is needed.

7. Ensure Cooperation Across the District Government

Regardless of the way an investigation is structured (such as one investigator, a centralized SHO organization with a group of investigators, or a "super SHO" senior official with SHOs in each agency), the District could ensure that all D.C. government components are responsive to the needs of the investigation. This would include DC Department of Human Resources, the Office of the Chief Technology Officer, the Office of the Inspector General, MOLC and agency general counsels, and others. While confidentiality of a complainant can be imperative to an investigation, and to a complainant's well-being, the investigator should be wary of maintaining such confidentiality to the detriment of an accurate, well resourced, and, when necessary, cross-agency investigation.

8. Consider a Mechanism for Expedited Contracting

To avoid delay in investigating future high-profile sexual harassment complaints, and because the SHO process is intended to be an internal personnel/administrative process with the goal of providing fast and effective relief to victims of sexual harassment, the District could

²⁹⁹ Whether or not to empower (or require) a government employee or investigator to make a criminal referral on behalf of a victim - without that victim's consent - is a complicated moral, legal and ethical question without any "right" answer.

consider establishing a streamlined and expedited process to contract with and establish a budget for independent investigators in matters where, at the discretion of the Panel or the Mayor (or as set forth under the new Mayor's Order), an independent investigation is deemed appropriate. We note that one of the reasons the MOLC Director elected to proceed with an internal investigation under the SHO process was because of concerns with how long it would take to engage and contract with an independent outside investigator.

9. Consider Issuing Guidelines for Public Release of Investigative Findings

One of the criticisms of last year's MOLC investigative findings was that they were both too confidential and not confidential enough. Faced with the competing interests of transparency and confidentiality of the public and the complainants and other witnesses, the Mayor's Office and MOLC ended up issuing public summaries of the investigatory findings. Nothing in the Mayor's Order contemplated or authorized (nor prohibited) public disclosures, and this was not something that either of the Complainants contemplated at the time of their original complaints. The District should establish clear guidelines on when and under what circumstances a sexual harassment investigation's findings may be publicly disclosed, as well as the contours and limits of any such disclosures, so that all parties (SHOs, complainants, witnesses, and employees/harassers) are well-aware of this possibility.

D. Conclusion

Mr. Falcicchio's acts of sexual harassment impacted not only his immediate victims, but fostered an environment where salacious rumors spread, and distrust and suspicion amongst employees developed into interoffice conflicts and grievances. While the District's reaction to these allegations was swift and well-intentioned, in retrospect, for the reasons set forth herein, the investigations should not have been conducted internally by the Mayor's Office of Legal Counsel because there would be an inescapable appearance of a lack of independence. Some of the missteps that took place along the way only intensified that appearance, and also raised genuine public concerns about the District's handling of sexual harassment complaints and investigations in general, particularly those involving senior officials.

Since Mr. Falcicchio's acts took place, the District has redoubled its efforts to improve its processes for handling sexual harassment complaints and investigations, including by launching a task force and revising the Mayor's Order. Put simply, many of the issues we identified in this Report would have been avoided or averted if today's processes had been in place and heeded.

But more work can always be done. Our recommendations are intended to be proactive and provide ways to improve the overall processes even if some of them target problems that did not

CONFIDENTIAL

May 10, 2024

specifically manifest in the incidents depicted in this Report. Overall, we were extremely impressed by the caliber and dedication of those employees with whom we interacted during the course of our work. It is our hope that this Report will assist the District in becoming a role model jurisdiction for the handling of complaints and investigations of this kind.

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