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To: Hon. Chair and Members, Pima County Board of Supervisors

From: Andrew L. Flagg, Chief Civil Deputy County Attorney 

Date: August 28, 2017

Subject: Supervisor Miller's August 18 Email; Non-Interference

At the August 21, 2017 meeting, our office was directed to prepare this memorandum, which addresses whether Supervisor Miller's August 18 email to me and Information Technology Department Director Jesse Rodriguez constituted an impermissible direction to County staff (a copy of the email is attached). I conclude that Supervisor Miller's email—assuming it is subject to the County's non-interference requirements—did not violate those requirements.

Section 2.12.090 of the Pima County Code¹ provides that it is a class 1 misdemeanor for a Member

¹The provision reads in full:

A. No individual member of the board of supervisors nor any member of the supervisor's personal staff shall give orders, instruct or interfere, publicly or privately, with any officer or employee under the supervision of the county administrator except through the county administrator or the county administrator's designee.

B. No individual member of the board nor any member of the supervisor's personal staff shall direct or request the county administrator or any subordinate to appoint or remove any person or in any manner other than official board action take part in the appointment or removal of officers and employees under the supervision of the county administrator.

of the Board to interfere with staff in violation of that section. Impermissible interference includes giving orders to, instructing, or interfering with anyone under the County Administrator's supervision (subsection (A)), and directing the appointment or removal of officers or employees (subsection (B)). But subsection (C) expressly allows a Member of the Board to "seek[] information." It further contemplates a County Administrator procedure governing responding to requests for information from Members of the Board or the Board as a whole. The only procedure I could locate, however (Admin. Proc. 3-7), deals with requests that come at a Board meeting, as opposed to email requests.

The Board also has two Policies, C 2.3 and C 2.4, that address non-interference. Policy C 2.4 provides that, "[e]xcept for the purposes of inquiry and information, neither the Board of Supervisors nor any member thereof shall deal with any administrative officer or employee appointed by or under the County [Administrator] except through the County [Administrator], and neither the Board of Supervisors nor any member thereof shall give orders to the subordinates of the County [Administrator] either publicly or privately." Policy C 2.3 prohibits employees from taking action on orders that violate Policy C 2.4.

Supervisor Miller stated that her request should be treated as a "public records request." Even assuming a public-records request would be subject to the County's non-interference rules, Supervisor Miller's request did not violate those rules. While one might argue a public-records request mandates a response, and is therefore a direction, in my view the better answer is that it is a means of "seek[ing] information" that does not violate the non-interference rules. Supervisor

C. This section shall not limit an individual member of the board of supervisors or a member of a supervisor's personal staff from seeking information. The county administrator shall establish, subject to board approval, a procedure for responding to requests for information from individual members of the board of supervisors or their personal staff. Nothing in this section shall be construed as prohibiting the board members or their personal staff from fully and freely discussing with or suggesting to the county administrator anything pertaining to county affairs or the interests of the county.

D. No county employee or appointed officer shall take any action based on an order, instruction or request for action by an individual member of the board of supervisors or any member of the supervisor's personal staff which violates this section. A county employee or appointed officer shall immediately report in writing to the county administrator any such order, instruction, request for action or interference that may constitute a violation of this section. The making of such a report shall not be grounds for disciplinary action or removal of an employee or appointed official.

E. Any person who violates subsection A, B or D of this section is guilty of a Class 1 misdemeanor.

Pima County Code § 2.12.090.

Miller's request did not specifically order Mr. Rodriguez to make any operational or personnel decision related to the IT Department, nor did it attempt to interfere with his management of the Department. Instead, it was a request for records that can be fulfilled by the County as a whole.²

In my opinion Supervisor Miller did not violate the Pima County Code or applicable policies and procedures in sending her August 18 email.

cc: C.H. Huckelberry, County Administrator

²Of course, the County has established an email address for public-records requests, PublicRecords@pima.gov. This email address, however, is established as a "convenience." *See* Admin. Proc. 4-4, at 2-3.

Andrew Flagg

From: Ally Miller <Ally.Miller@pima.gov>
Sent: Friday, August 18, 2017 5:22 AM
To: Andrew Flagg; Jesse Rodriguez
Cc: JoAnn di Filippo
Subject: Public records request: regarding your Recent opinion re my comments on facebook

Dear Mr. Flagg and Mr. Rodriguez,
I would like to request any and all copies of verbal and written communications, including but not limited to emails, social media accounts, phone calls and letters from anyone; including members of the public, all county employees, County administrator, any and all elected officials, communications department employees, County attorney office employees, as well as each and every one of the Board of supervisors members related to the request for the opinion you just issued regarding my comments on a facebook post.
Please consider this a public records request from July 1, 2017 to present date.

Thank you for your assistance in this matter.

Regards,

Supervisor Ally Miller

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All messages created in this system should be considered a public record subject to disclosure under Arizona public records law (ARS 39-121) with no expectation of privacy related to the use of this technology.