Leaders Under the Microscope

Liani Reeves & Heather Van Meter
Miller Nash LLP

Handling Complaints Against Elected Officials and Executives
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Speakers

Liani Reeves

Partner
Miller Nash LLP



Heather Van Meter

Partner
Miller Nash LLP



What's In Our Microscope Today

- Framing the Issue(s) for Investigation
- Properly Receiving a Complaint
- Identifying the Decisionmaker(s)
- Choosing an *Independent* Investigator
- Due Process for the Accused
- Decision-making – What is being decided?
- Protecting Confidentiality for Persons and Process
- Common Missteps and Best Practices

Context and Framing the Issues

Overarching Principles



A public body has obligations to protect employees (ORS Chapter 659A, etc.) and the public (civil rights laws) from harassment and discrimination



A public body can be held liable, including money damages, for the actions of its elected officials



A public body must take prompt, remedial action to stop wrongful behavior (think weeks not months!)

Why This Gets Harder at the Top



- Complaints against City leaders such as a mayor, councilor, city manager, or department director carry additional risks and challenges
- Leaders carry higher “expectations” of their conduct – and create higher profile and potentially more costly situations
- The subject may supervise, appoint, or evaluate the people who would normally process or investigate a complaint
- Opportunities for remedial measures can be limited (paid admin leave??)
- Media inquiries and public records requests often arrive before the investigation is complete (or even before started!)
- Early missteps hard to overcome with officials, media, and public watching

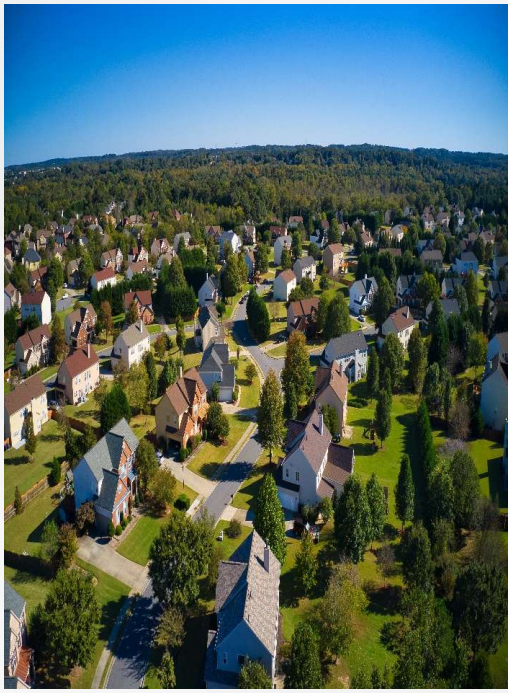
Why It's Even Harder When it Involves an Elected Official



- There is often no personnel file, no binding employee handbook, no progressive discipline policy that clearly governs behavior by elected officials.
- In most cases, a governing body cannot unilaterally remove a duly elected member, temporarily or otherwise. Remedies are limited.
- Due process protections — and, for speech-based allegations, First Amendment considerations — apply.

Example: Mayor Taylor Kelce

- Mayor Taylor Kelce was elected in a landslide election in November 2025 (Taylor Kelce has a very big fan base!)
- Mayor Kelce took office as Mayor of Anytown, Oregon in January 2026
- Mayor Kelce is not an "employee" – there is no personnel file, there is no employee handbook to sign when taking office
- Anytown, Oregon has *not adopted general policies for the conduct of elected officials*
- Mayor Taylor Kelce is very popular – anything about the Mayor automatically goes viral on social media!



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Receiving and Reviewing a Complaint

Complaint against Mayor Taylor Kelce

- Mayor Taylor Kelce was at her second meeting as Mayor
- Mayor Kelce was seen talking quietly with a member of the general public and the City Manager just before the meeting started
- After the meeting, a social media post by another Anytown resident who was at the meeting claims that Mayor Kelce used a derogatory gender-based phrase when talking with the City Manager and the member of the general public
- A different Anytown resident forwards the social media post to the City Manager and labels the email a “Complaint”

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Getting Complaint Intake Right

- The first step is to ensure that you have a policy and procedure that addresses complaints against City leaders before a complaint ever arrives
  - Don’t make up a policy or process mid-crisis
- Document the date, method, and a summary of what was reported
- Acknowledge receipt in writing, promptly, even if the substantive response will take longer (e.g. “thank you for your message…”)
- Never promise a specific outcome, timeline, or discipline at intake
- Route complaints about a high-level leader away from that leader as well as anyone that leader supervises or evaluates

Reviewing the Complaint

Review and triage.

Not every complaint requires a formal investigation; assess severity, credibility, and public/media interest first.

Distinguish the track.

A policy or rules violation, an ethics violation, and a potential crime each follow a different process and a different decisionmaker.

Interim Measures.

Consider whether there are measures necessary to protect complaint or respondent or certain witnesses. Inform known potential witnesses not to discuss the matter (but they can discuss other terms/conditions of employment!)

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Other Statutory Duties

- Some complaints may trigger specific employer obligations even when the respondent is an elected official:
  - Oregon Workplace Fairness Act: requires a process for reporting harassment/discrimination and assault, requires written harassment/discrimination policy, prohibits retaliation (other requirements as well!)
  - ORS 181A.681: Requires report of misconduct or violation of minimum standards for law enforcement

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Other Considerations at Intake

- **Resist the rush to judgment.** Public and political pressure to conclude quickly is not a reason to skip process. Skipping process may itself create liability!
- **Consider whether independent counsel should be involved.** Do not rely on the public body's general counsel if a conflict may exist. Avoid a “fox guarding the henhouse” problem!
- **Check mandatory reporting duties.** Some allegations (e.g., suspected criminal conduct, DPSST) may trigger independent reporting obligations.
- **Coordinate public comment.** Try to align a public message. A single member should comment on the merits before facts are gathered.
- **Consider whether to issue a litigation hold.** If a claim is likely, obligation to preserve emails, texts, calendars, and records before anything is deleted or overwritten.

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Identifying the Decision Maker

Who Can Actually Act?

Employees and appointed executives

- Hired and fired by the governing body or the manager, per the charter
- Council or manager can direct, discipline, or terminate
- A clear employer-employee relationship

Elected officials

- Accountable to voters, not to fellow council members, in the same way
- Council can typically censure, reprimand, or limit committee assignments, not remove
- Removal usually requires recall, resignation, or a charter-specific process

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Other Potential Referrals

- **OGEC.** Investigates ethics violations and can impose civil penalties — it does not remove anyone from office.
- **Criminal referral.** The District Attorney or Attorney General handles prosecution, not the governing body.
- **DPSST.** Under mandatory reporting obligations of law enforcement.
- **Recall.** Belongs to the voters, not the board — a separate statutory process under ORS Chapters 248–249.

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Complaint against Mayor Taylor Kelce: Who Could Investigate and Take Action?

- Mayor Taylor Kelce is the target of the investigation – she cannot credibly lead any investigation or “self-discipline”.
- The City Manager is a witness, therefore cannot be involved in the investigation process except to provide a witness statement.
- A member of the general public is the other witness, but has already posted on social media about the “complaint”!

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Choosing an Independent Investigator

Choosing an Independent Investigator

- Default to an outside investigator when the respondent is senior leadership, has influence over HR, or the complaint will draw public attention
  - Mitigate perceptions of bias
  - No reporting, social, or institutional tie to the subject or the complainant
- Avoid dual roles: the investigator should not also be serving as counsel or making disciplinary decisions
- Define scope in an engagement letter: who is being investigated, what allegations are being reviewed, the standard of proof, confidentiality expectations
  - Is investigation “fact-finding” only or also assessing policy/legal violations?
- Decide up front whether the investigation is privileged and directed by counsel, and who receives the final report
- Keep a pre-vetted list of investigators ready—and if possible, have contracts executed to have investigators ready and able to engage
  - Investigator licensure requirements

Complaint against Mayor Taylor Kelce: Who Could Investigate?

- Mayor Taylor Kelce is the target of the investigation – she cannot credibly lead any investigation or "self-discipline"
- The City Manager is a witness, therefore cannot be involved in the investigation process except to provide a witness statement
- A member of the general public is the other witness, but has already posted on social media about the "complaint"!

Answer: probably good situation for an outside investigator

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Due Process for the Accused

Provide the accused with due process

- Provide notice of the allegations and a real opportunity to respond before any adverse action is proposed or taken (investigation can be quick, but not rushed!)
- Preserve right to have counsel present; avoid one-sided or predetermined findings
- Colleagues and employees should not prejudge the outcome publicly:
  - Statements assuming guilt before the process concludes undermine the process and create liability
  - Apply the same standard of proof and procedure you would expect applied to any other employee or to yourself
- Does *Garrity* apply?
- Do employees have First Amendment rights to comment on social media?

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Decision-Making Process and Decisionmakers

Find an Appropriate Decisionmaker

- Adopt a reporting structure before a complaint exists; don't improvise a chain of command mid-investigation
- The person who engages an investigator or decides discipline should never be the person the complaint is about, or that person's direct report
- Findings should go to a decision-making person or body independent of the subject
- Document why each person in the chain has no conflict—don't just assume it

Complaint against Mayor Taylor Kelce: Who Is Decisionmaker?

- Mayor Taylor Kelce is the target of the investigation – she cannot credibly lead any investigation or make any discipline decision
- The City Manager is a witness, therefore cannot be involved in the investigation process or any discipline decision

Answer: Council members were not involved and were not witnesses (unless certain Council member names came up during investigation?) so Council could consider the investigator's report and any discipline.

- But what if 3 of the 5 Council members were named as witnesses???

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Options for Responding if There Is Evidence to Support Finding of Wrongdoing

- Addressing the elected official directly (privately and publicly?)
- Allowing elected or employed high-level official to make statement?
- Addressing the complainant – without defamation
- Addressing the public – media release and social media engagement?

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Options for Responding if There Isn't Evidence to Support Finding of Wrongdoing

- Mediation with complainant?
- Offer private meeting to complainant?
- Offer "listening session" with the public official?
- Training for all public officials at a future date (and whether to announce this is being conducted or not?)

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Protecting Confidentiality

Protecting Confidentiality During and After Investigation

- Adopt policies and protocols for confidential information, especially around inadvertent waiver of attorney-client privilege
- Where appropriate, conduct an attorney-client privileged investigation
- Where appropriate, use executive session after proper notice
- Limit circulation of investigation reports to those with a genuine need to know, and track who holds copies
- Consider having an “executive summary” that omits witness names that can be released to the public/media
- Address leaks immediately and visibly

Complaint against Mayor Taylor Kelce: Draft Investigation Report is Leaked to Media!!!

- The investigation report is not finalized, but some words in it were leaked, presumably by a member of the City staff
- The draft investigation report states the findings are "inconclusive but unlikely to have occurred" because the Mayor denies making the statement, the City Manager denies hearing the statement, but a member of the public says the statement was overheard (and investigator does not want to call the member of the public a liar!)
- Social media then local newspaper says claims against the Mayor are "inconclusive" without any context!

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Oregon’s Public Meetings Law

Executive Sessions Under ORS 192.660

- ORS 192.660 is narrow: executive session is permitted only for enumerated purposes, such as considering discipline of or complaints against a public officer or employee if that person doesn't request an open hearing
  - Written notice must go to that person at least twenty-four hours before the session, explaining the right to request an open hearing instead
- Executive session is not a confidentiality shield
  - Executive session may not be used for a general performance evaluation of agency goals or operations—it must tie to the specific personnel matter
  - Members may not use executive session to discuss unrelated topics, even ones that feel related
  - Notice requirements
- Misuse has consequences: the Oregon Government Ethics Commission can investigate alleged violations and impose civil penalties up to $1,000

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Oregon’s Public Records Law

Disclosure Is the Default—Exemptions Are the Exception and Limited

- Oregon's Public Records Law is a disclosure law, not a confidentiality law: every record is public unless a specific exemption applies
- Possible exemptions
  - ORS 192.345(1) Records pertaining to litigation + balancing
  - ORS 192.345(12) Personnel discipline action + balancing
  - ORS 192.355(1) Internal advisory communications + balancing
  - ORS 192.355(2) Personal privacy
  - ORS 192.355(4) Information submitted in confidence + balancing
  - ORS 192.355(8) and (9) Confidential or privileged under state or federal law

Real-World Example: “Confidential” Reports That Became Public Anyway

- Sammamish, WA: an outside investigator’s report on a deputy mayor was withheld from the public until a change in council majority, after which it was released, and the deputy mayor sought $10 million to settle the resulting records dispute
- Denney v. City of Richland, WA: the city withheld HR-consultant and outside-counsel investigation reports as attorney work product, testing how far that protection extends

Takeaway: An investigation report doesn’t stay confidential forever—plan for eventual release

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Common Missteps and Best Practices

Common Missteps

- Letting a complaint sit unacknowledged
- Dragging out an investigation for weeks or months (note just getting an investigator hired can take several weeks!)
- Letting the subject's own office control intake, investigator selection, scope of investigation, or the investigation findings
- Skipping the independent investigator to save time or money
- Talking about the allegations outside of a public meeting
- Using an executive session as a shield for improper purposes
- Skipping the statutory public meeting notice because the meeting felt informal
- Withholding a record because it's embarrassing, not because it's exempt

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A Working Checklist of Best Practices

- ✓ Written intake protocol naming who receives complaints about senior leaders, adopted before you need it
- ✓ Pre-vetted roster of independent investigators with no institutional ties with contracts in place
- ✓ Confidentiality acknowledgment for board or council members handling personnel matters
- ✓ Standing legal review before every executive session and every records response involving a leadership complaint
- ✓ A reporting line the respondent of the complaint cannot influence
- ✓ A plan for what becomes public, and when, decided before the complaint, not during it

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Complaint against Mayor Taylor Kelce: Happy Ending???!!!

- The complete investigation report is finalized and provided to the City Council and media and public, but with witness names and contact information redacted to protect personal privacy (but media speculate who they are!)
- The report findings of "inconclusive but unlikely to have occurred" are well-supported by the well-written investigation report.
- Social media and local newspaper barely mention the investigation report basically exonerating Mayor Taylor Kelce at all – because it will not get them "clicks," and they've moved on to next scandal: City Manager Travis Swift was seen talking to a female employee at a local bar!
- Mayor Taylor Kelce is re-elected the next year in another landslide!

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Thank You

Liani Reeves

Miller Nash LLP

Liani.Reeves@millernash.com | 503.205.2575



Heather Van Meter

Miller Nash LLP

heather.vanmeter@millernash.com | 360.619.7038

