MARR JONES & WANG

A LIMITED LIABILITY LAW PARTNERSHIP

Labor and Employment Law

August 15, 2016

CONFIDENTIAL - FINAL REPORT

Via E-mail (enomura@honolulu.gov)

Ernest H. Nomura, Esq.
Deputy Corporation Counsel
Department of the Corporation Counsel
City and County of Honolulu
530 South King Street, Room 110
Honolulu, Hawaii 96813

Re: Final Report of Fact-Finding Investigation

Dear Mr. Nomura:

Thank you for engaging Marr Jones & Wang LLP to conduct a confidential fact-finding investigation to address the allegations raised by and collectively, the "Complainants") against Daniel Grabauskas. Below is a the Final Report of this Investigator's investigation.

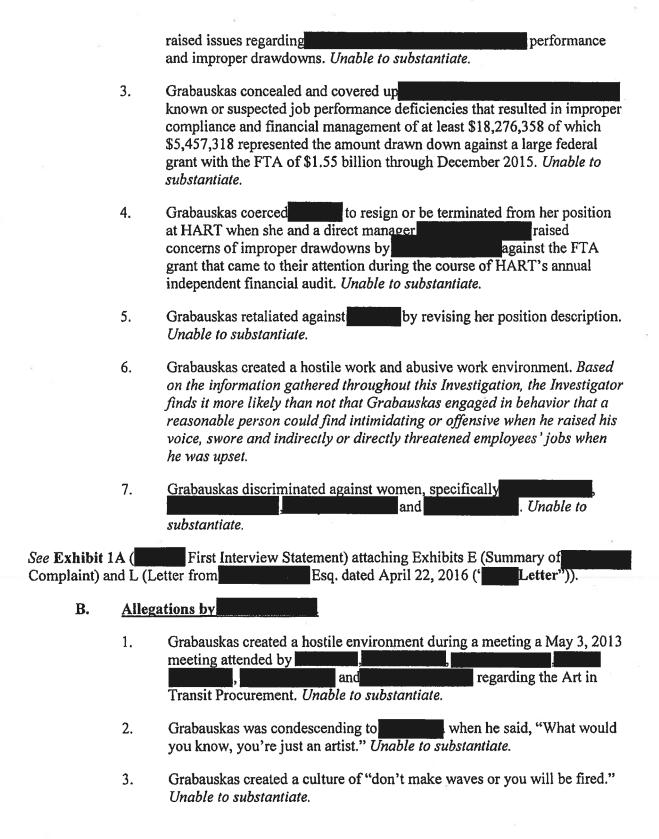
I. EXECUTIVE SUMMARY

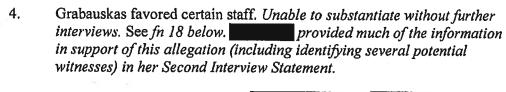
This Investigator was unable to substantiate many of the allegations made by the Complainants against Grabauskas. Below are the Complainants' allegations followed by the Investigator's determination:

A. Allegations By

- 1. Grabauskas violated the City and County of Honolulu's (the "City") Workplace Violence Policy by intimidating her into withholding information from the HART Board and by threatening her employment. Unable to substantiate.
- 2. Grabauskas prevented from performing the duties of her position as HART by having her withhold information from the HART Board and by retaliating against her when she

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- 5. Because Grabauskas eliminated job. is forced to the job of an architect even though she is not an architect. Unable to substantiate.
- 6. When stood up to Grabauskas, he marginalized stopped inviting him to meetings even though he had the most expertise. Unable to substantiate.
- 7. Grabauskas is vindictive and tried to get silenced, punished or terminated for speaking to a reporter after he left. Unable to substantiate.

See Exhibit 2A First Statement), Exhibit C (Summary of

II. **PURPOSE AND SCOPE**

This Investigator was retained on April 28, 2016 to serve as an independent factfinding Investigator with respect to complaints raised by the Complainants. Thus, the purpose of this investigation was to gather the facts necessary for a decision maker to determine whether there is merit to the allegations raised by the Complainants. The Investigator is not acting as a legal advisor or a decision maker on whether any policies were violated or what action, if any, should be taken as a result of the complaints and this Investigator's findings.

Specifically, this Investigator was retained by the City on behalf of the HART Board, Human Resources Committee to conduct an independent investigation for a decision maker to determine whether there is merit to the allegations by the Complainants described in in Section I (Executive Summary) above.

APPLICABLE POLICIES/LAWS1 III.

This Investigator reviewed the following policies which may be relevant to this investigation, excerpts of which are quoted below:

A. HART's Equal Employment Opportunity Program

1. EEO Program

Section A: Purpose

Although attorney attached the City's Sexual Harassment Policy to his letter, both Complainants confirmed that they are not alleging sexual harassment; therefore, this Investigator did not consider the Sexual Harassment Policy in drafting the Report. Exhibit 1B, ¶ 108; Exhibit 2B, ¶ 43.

General: No person in the United States shall, on the grounds of race, color, creed, national origin, sex, disability, or age, be excluded from participation in, or denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part through federal assistance under Section 19 of the 1964 Urban Mass Transportation Act (UMTA).

Compliance: The HART Executive Director shall ensure compliance with the general purpose of this program. HART affirms its commitment to treat all applicants for employment and all employees without regard to race, religion, creed, color, national origin, *sex*, age, disability, veterans, marital status, or any other class protected by local, state or federal law.

Equal Employment Opportunity Program

Policy Statement

- 1. The Honolulu Authority for Rapid Transportation (HART) is an Equal Employment Opportunity (EEO) employer. HART affirms its commitment to treat all applicants for employment and employees without regard to race, religion, creed, color, national origin, sex, age, disability, veteran status, marital status or any other class protected by local, state, or federal law. HART and its employees are prohibited to discriminate against an applicant for employment or employee on the basis of race, color, religion, creed, sex, age, national origin, or any other basis protected by local, state, or federal law, or to be excluded from participation in, or denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part through federal financial assistance.
- 2. This policy extends to all areas of employment including recruitment, selection and placement compensation, promotion, transfer, discipline, demotion, lay-off, *termination*, training, *daily working conditions*, benefits and all other terms and conditions of employment.

Exhibit 3 at 4, 6, 19 (emphases added).

B. The City's Workplace Violence Prevention Policy

I. POLICY

To maintain and promote safe work environment for all employees, free from acts or threats of violence. A safe work environment is the joint responsibility of management and employees. Acts or threats of physical violence, including harassment, *intimidation and other disruptive behavior* in the workplace will not be condoned or tolerated. All reported incidents of workplace violence shall be taken seriously and shall be dealt with appropriately.

II. APPLICABILITY

The City and County of Honolulu's prohibition against acts or threats of violence shall apply to all employees including managers, supervisors, contract and temporary workers and volunteers. . . .

III. PROHIBITED BEHAVIORS

A. "Acts or threats of violence" include conduct against persons or property sufficiently severe, offensive, or intimidating to alter employment conditions or to create a hostile, abusive, or intimidating work environment for any City employee or group of City employees. Such behavior can include oral or written statements, gestures, or expressions that communicate a direct or indirect threat of physical harm.

Examples of conduct that may be considered "acts of threats of violence" prohibited under this policy include, but are not limited to, the following:

- 5. Use of foul language directed at another person in a threatening or hostile manner.
- 6. Intimidating or attempting to coerce an employee to do wrongful acts.

IV. RESPONSIBILITIES

A. Employee

It is the responsibility of all employees to be aware of how their behavior, physical and verbal, affects other people. Employees shall eliminate behavior (including teasing and joking) that a reasonable person would find intimidating, hostile or offensive.

Do not ignore violent, threatening, harassing, intimidating or other disruptive behavior. If an employee observes or experiences such behavior, it should be reported promptly to the appropriate supervisor or manager for preventive or corrective action. In the event of imminent danger, immediately call "911" for police assistance.

B. Supervisor

Do not tolerate offensive behaviors and act immediately and consistently to correct such behavior. Promptly take corrective action whenever an employee reports an act or threat of violence. Work with departmental personnel officer on taking appropriate action to report the act or threat of violence to the appointing authority. . . .

V. NON-RETALIATION

There shall be no retaliation or discrimination by any person against an employee who in good faith has complained of acts or threats of violence, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint. Retaliatory conduct should be reported by the individual to his/her supervisor and dealt with promptly and seriously by management.

Exhibit 4 (emphases added).

C. Hawaii Revised Statutes § 378-62 (Whistleblowers' Protection Act)

Discharge of, threats to, or discrimination against employee for reporting violations of law. An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:

(1) The employee, or a person acting on behalf of the employee, reports or is about to report to the employer, or reports or is about

to report to a public body, verbally or in writing, a violation or a suspected violation of:

- (A) A law, rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States; or
- (B) A contract executed by the State, a political subdivision of the State, or the United States,

unless the employee knows that the report is false

Haw. Rev. Stat. § 378-62.

IV. BACKGROUND

A. Background of Grabauskas's Employment

Grabauskas has been the Executive Director and Chief Executive Officer of HART since April 9, 2012. Exhibit 5 (Grabauskas Statement), ¶ 2. Reporting directly to Grabauskas are Chief Financial Officer his Private Secretary, Board Administrator his Private Secretary, Project Director Director his Director of Administrative Services his Director of Government Relations his Director of Operations and Maintenance, the Director of Quality Assurance and Quality Control, and the Chief Safety and Security Officer. See Exh. 1A, Exhibit A (December 2015 Organization Chart).
Up until 2014, Grabauskas's areas of oversight included several additional positions. Exh. 5, ¶¶ 70-71. In 2014, the FTA informed HART, because of the size of the project, that it needed to identify a Project Director whose job would be to oversee the direct delivery of the project. <i>Id.</i> When Project Manager was hired, several areas that had reported to Grabauskas began reporting to administrative and supportive functions, including the area overseen by Budget and Finance. <i>Id.</i>
B. Background of Employment
Grabauskas hired as the June 2012. Exh. 1A, ¶ 2. Reporting directly to are her secretary, and the Senior Advisor and Risk Manager. Exh. 1A, ¶ 6 and Exhibit A.

² The Investigator interviewed the individuals whose positions and names are in **bold**.
³ This Investigator understands that the position of the position of the position of the position.

Like Grabauskas, after was hired, several areas had been overseeing were moved under Compare Exhibits U and V, attached to Exh. 5.
resigned as HART's in January 2016, but later rescinded her resignation. See Exh. 1A, Exhibit L. It is unclear whether the rescission was formally accepted, but the Investigator understands that personal services contract has since been submitted for renewal for another year.
C. Background of Employment
has been HART's since February 16, 2012. Exh. 2A, ¶ 2. Reporting to is the reports directly to Deputy Director of who reports to Director of , who reports to
January 2016, when his position was eliminated. Exh. 2A, ¶ 4.
D. The Structure of HART
The individuals who work at HART are made up of a handful of civil service employees (including and
V. RESOURCES

A. Witness Interviews

During the course of the investigation, the undersigned interviewed thirty-four individuals, including Grabauskas and the Complainants. The Interviewees are listed below alphabetically by last name. The in-person interviews took place at the offices of Marr Jones & Wang throughout May and June 2016.

"\delta" denotes Interviewees with Exhibits attached to their Interview Statement.

"" denotes Interviewees whose Interview Statements are unsigned.

Name of Interviewee	Mode of Interview	Date(s) of Interview
Accused		
Daniel Grabauskas♦	In Person	May 20, 2016

[&]quot;*" denotes additional e-mails exchanged after the witnesses' interviews. The e-mails are attached to the end of the witnesses' statements.

Name of Interviewee	Mode of Interview	Date(s) of Interview
Complainants		
*	In Person	May 3, 2016
	In Person	June 17, 2016
*	In Person	May 9, 2016
	In Person	June 20, 2016
Witnesses	ы.	
*	In Person	May 18, 2016
♦	By Telephone	May 16, 2016
	In Person	May 27, 2016
*	In Person	May 13, 2016
*	By Telephone	May 25, 2016
	In Person	May 6, 2016
	In Person	May 16, 2016
* *	In Person	May 12, 2016
٥	In Person	May 17, 2016
	Via E-mail	July 5, 2016 (response date)
•	By Telephone	May 24, 2016
	In Person	May 25, 2016
	By Telephone	May 16, 2016
	In Person	May 13, 2016
o	In Person	May 10, 2016
	In Person	May 9, 2016
*	In Person	May 11, 2016
	By Telephone	June 20, 2016
	In Person	May 19, 2016
3	In Person	May 6, 2016
	By Telephone	May 17, 2016
*	In Person	May 11, 2016
	By Telephone	May 27, 2016
*	In Person	May 11, 2016

Name of Interviewee	Mode of Interview	Date(s) of Interview
* *	In Person	May 6, 2016
	By Telephone	May 11, 2016
	By Telephone	May 17, 2016
	In Person	May 12, 2016
*	In Person	May 5, 2016
*	By Telephone	May 16, 2016
♦ *	In Person	May 31, 2016
	In Person	May 24, 2016
*	In Person	May 16, 2016
	In Person	June 2, 2016
	In Person	May 11, 2016

Each witness who was interviewed in person reviewed and signed a disclosure statement that outlined the purpose and parameters of the interview, prior to the witness' first interview. The disclosures note, among other things, that the interview is voluntary, the importance of providing honest and accurate information to the best of the witness' knowledge and recollection, and HART and the City's prohibition on retaliation.

This Investigator took notes of each interview on a laptop during the interview. Although not verbatim, the Investigator endeavored to capture the witness' actual words whenever possible. After the interview, the interviewees were asked to review their statement and revise them as the interviewees felt necessary. Each interviewee was then asked to sign at the end of the notes, as revised, and return the notes to the Investigator. The statements are attached hereto as Exhibit 6 (in alphabetical order).

Certain individuals who were identified during the investigation as potential witnesses were contacted, but this Investigator was unable to interview them. These individuals were and a second of the contact of the co

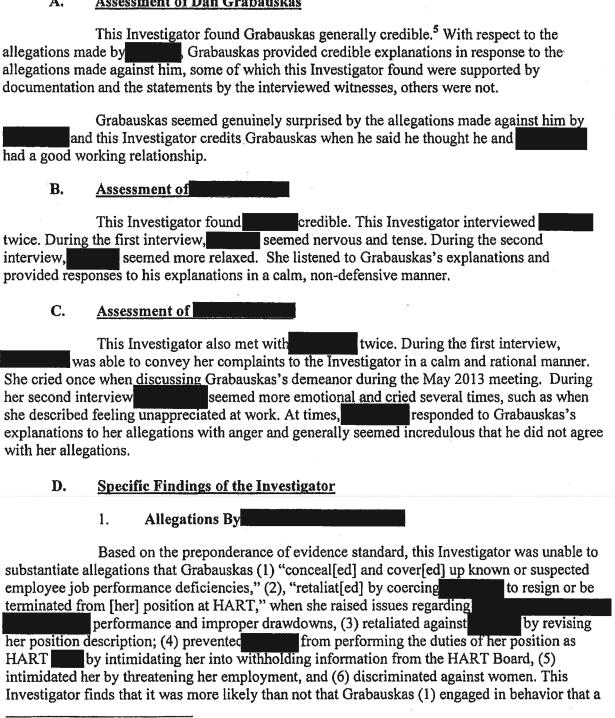
B. Other Documents Reviewed

- 1. October 29, 2014 Employment Agreement between Grabauskas and HART and its attachment. Exhibit 7.
- 2. Statement of Duties and Responsibilities for Exhibit 8.
- 3. April 22, 2016 letter from to Grabauskas. Exhibit 9.

⁴ This Investigator spoke with who declined to be interviewed. indicated that he was concerned about repercussions from his employer if he became involved with the Investigation.

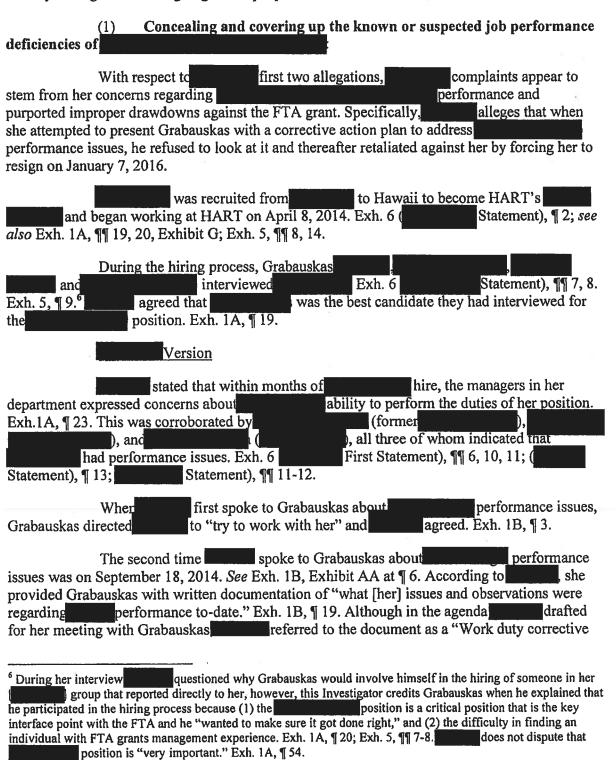
VI. **INVESTIGATOR'S FINDINGS & EVIDENCE**

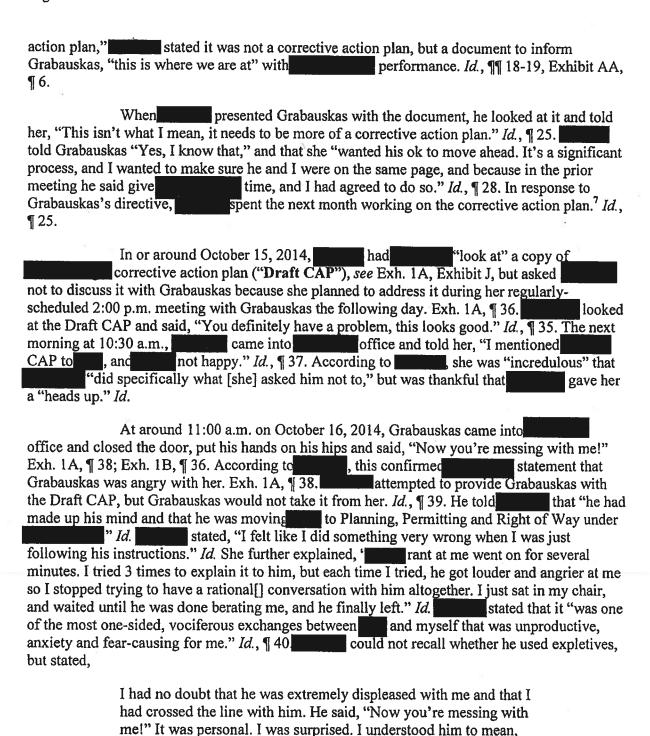
A. Assessment of Dan Grabauskas



⁵ Grabauskas's counsel, Louise Ing of the firm Alston Hunt Floyd & Ing, was present during his interview, but Grabauskas answered all of the Investigator's questions without interruption or assistance from Ing.

reasonable person could find intimidating or offensive and (2) used words either suggesting or directly stating that he was going to fire people.



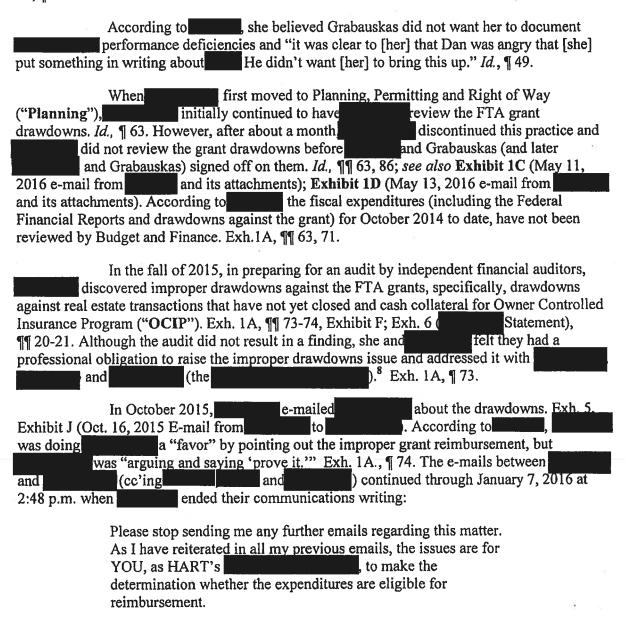


approached approached approached approached approached action plan, but told her there was no process and "didn't provide [her] with anything that [she] could follow or use" so she drafted the corrective action plan based on her experience. Id., ¶ 26.

"you have done something that has violated me personally."

> therefore I don't want to hear what you have to say. So I will move and have her abilities independently assessed by someone else."

Id., ¶ 42.



left HART in October 2015. Id., ¶ 2. At that time, began reporting to directly to rather than the new experience working with the FTA. Id., ¶ 15.

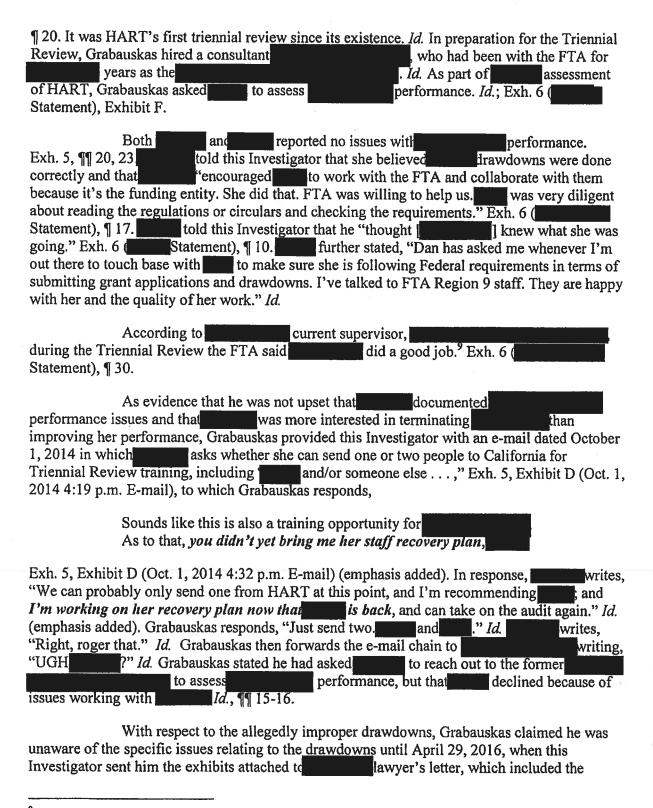
Arguing with me will not resolve the matter, because this is not my area.

I will say it again, THIS IS YOUR AREA OF RESPONSIBILITY AND YOU MUST MAKE THE DETERMINATIONS AS TO THE ELIGIBILITY OF THOSE EXPENDITURES

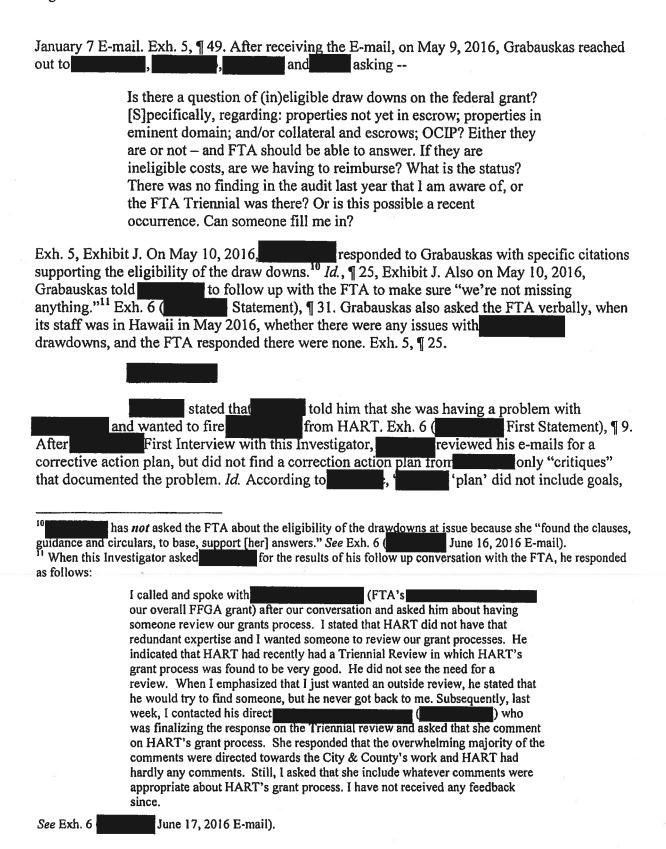
THE ELIGIBILITY OF THOSE EXPENDITURES.
("January 7 E-mail"); Id., ¶ 74, Exhibit L (caps in original.)
That same day (January 7, 2016) Grabauskas called into his office and told her "he wanted to look for another and move in a different direction." <i>Id.</i> , ¶ 75. Although never spoke directly with Grabauskas about the improper drawdowns believes was keeping Grabauskas informed about the drawdown issue and, as a result, Grabauskas asked her to resign in retaliation for doing her job as Id., ¶¶ 76-77.
Grabauskas's Response
Grabauskas stated that his assessment of the concerns raised by "regarding "was that at least there was a personality issue between and and also and also ; they were not getting along with her." Exh. 5, ¶ 13. Grabauskas stated that he had concerns because seemed to want to immediately fire Id., ¶ 14; Exhibit B, ¶ 6. However, Grabauskas did not think it was fair to fire a couple of months after she had relocated Hawaii. Id., ¶ 15. Grabauskas asked to develop a corrective action plan to help because the person described to him was different from the person they had hired—someone with excellent references, including high marks from the FTA-after a long process of looking. Id., ¶ 14. According to Grabauskas, never drafted a corrective action plan, but instead provided him with reasons to terminate Id., ¶¶ 14. 28, 35, 42.
With respect to the conversation on October 16, 2014, Grabauskas denied it occurred. First, he stated that on October 15, 2014 he was in Washington D.C. and was flying back to Hawaii on October 16, 2014. <i>Id.</i> , ¶ 33. He stated he met with on October 8 and October 29, 2014. <i>Id.</i> , ¶ 34. Although Grabauskas admitted to being "irritated" with because he had asked her four times to draft a corrective action plan and she had not done it, he denied saying to her, "Now you're messing with me," or that she tried to hand him the Draft CAP. <i>Id.</i> , ¶¶ 28, 35, 36. In fact, Grabauskas had never seen the Draft CAP before the Investigato showed it to him during his Interview. <i>See id.</i> , ¶ 36. Grabauskas claimed that if had given him the Draft CAP, he would have read it. <i>Id.</i> , ¶ 42.

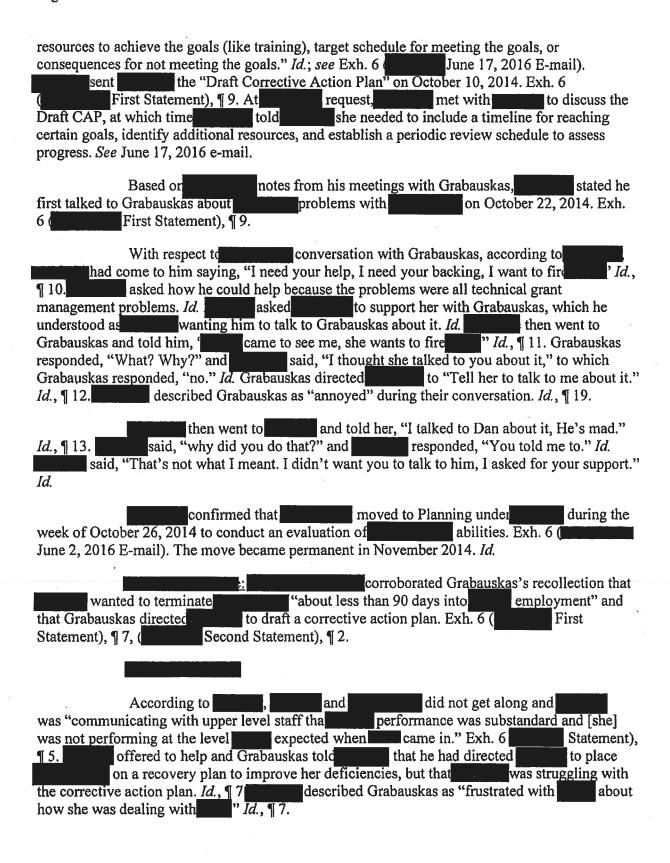
According to Grabauskas, after months of not providing a CAP, he decided to move under under who was the could evaluate performance. Id., ¶ 28.

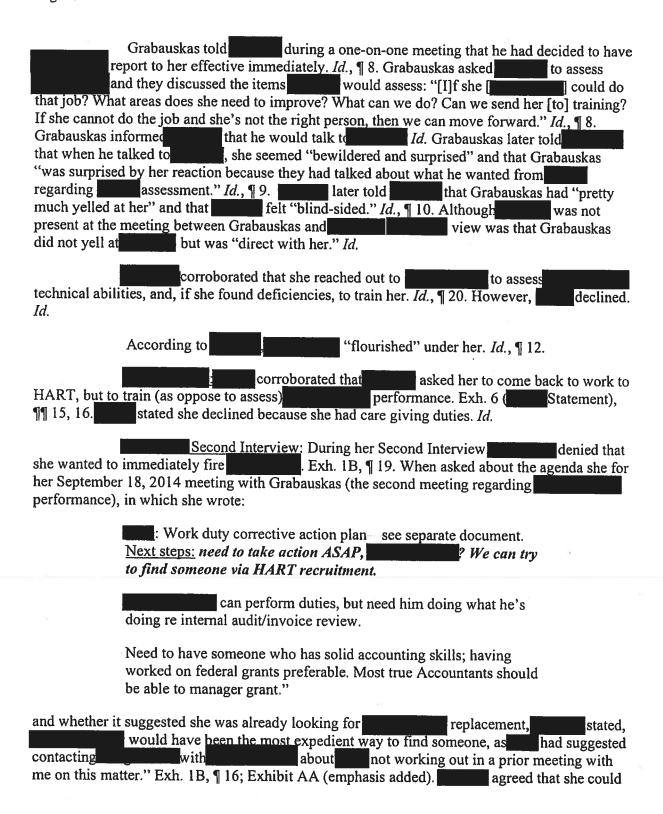
Around this same time, (early 2015), HART was preparing for the FTA's Triennial Review, which is a "top to bottom" audit, every three years of transit agencies. Exh. 5,

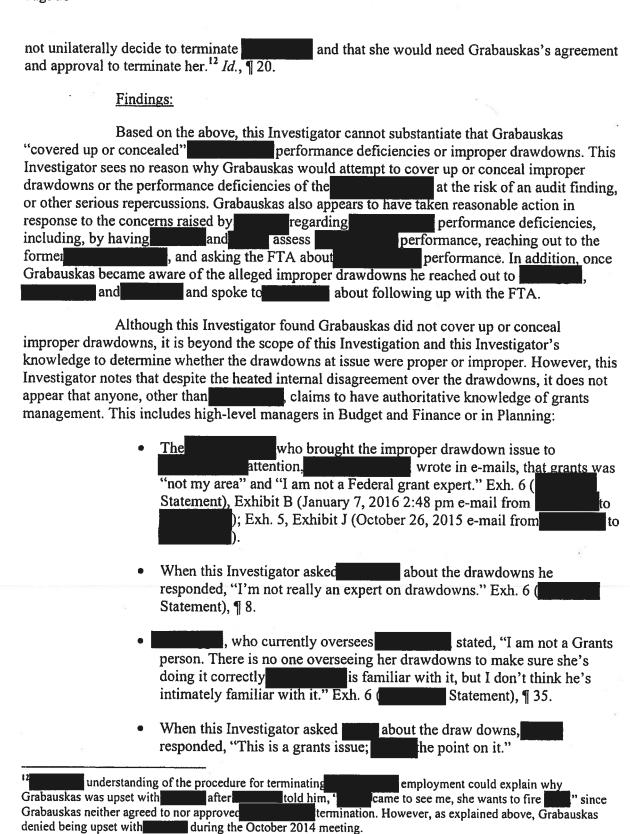


⁹ The Triennial Review did not result in any findings regarding inappropriate drawdowns at HART. Exh. 5, ¶21.









told me it was an internal that she "wasn't aware of any

was moved to Planning. As far as

Moreover, Grabauskas's understanding of how drawdowns occur seems to be at odds with understanding. Grabauskas explained: Drawdowns are prepared and submitted as a request for funds for reimbursement. The FTA reviews the request on their side and there's back and forth. Once FTA approves the request, they drawdown funds from our account and reimburse HART. I can't put a document in file and take money like an ATM. They physically have to approve it. This what doesn't understand. The documentation has to go in, it has to be reviewed by the FTA and the region. We don't have money, but for the FTA approving it. . . . The FTA reviews our requests. There's a counterpart at the FTA Regional Office. If they approve our request then they send us money. Exh. 5, ¶¶ 46-47. explanation of drawdowns differed: "Usually, unless you're under some type of restriction, you can just go in and drawdown the Federal money automatically without anyone at the FTA checking it. But I know that I've always said to and she's been good about this, if you've got any question in your mind about something just give the FTA a call. I think she's done that many times." Exh. 6 Statement), ¶ 13. explanation corroborates concern that no one at HART is reviewing drawdowns from the FTA grant. See Exh. 1A, ¶¶ 63-64. to resign or be terminated from her Retaliation by coercing position at HART for raising issues regarding performance and improper drawdowns. Version version at Allegation (1) above regarding concerns with performance and allegedly improper drawdowns. alleges Grabauskas terminated her employment on January 7, 2016 as a January 7 E-mail (relating to allegedly improper drawdowns), result of which she believes Grabauskas was informed about by Exh. 1A, ¶ 78. According to during the January 7 meeting, Grabauskas "put . . . the reason he wanted to get another . He never said 'I.' He said 'the Board.' I was stunned and thought I was on on Id., ¶81. then called who "laughed" and said "Is good terms with

then told

responded by telling

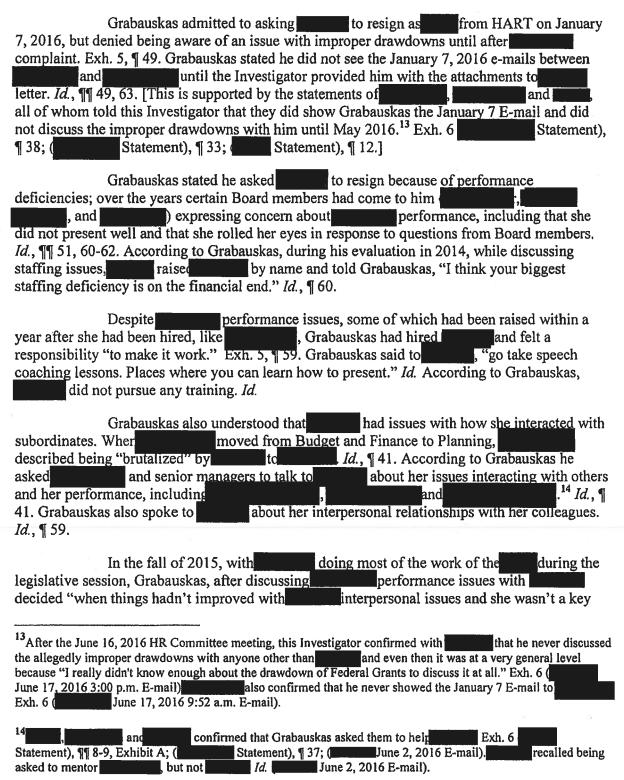
that what he told you?" Id., ¶ 82.

internal staffing issues. It had been well over a year since

I knew, my staff did not have any issues with me." Id.

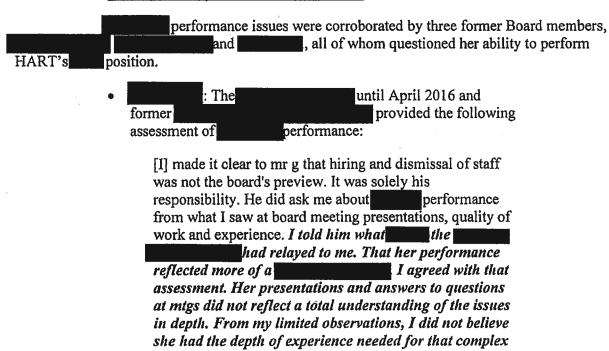
operational staffing issue."

Grabauskas's Response



player in budget stuff that it became clear a change was needed." Id., ¶¶ 51, 59. Grabauskas denied that had anything to do with his decision to terminate My asking for resignation had nothing to do with had been moved and was no longer an issue. We had gone through a difficult financial storm in 2015 and wasn't the person that could stand up at the hearings. We anticipated further problems would likely arise and we needed a strong through them. We need someone who has the facility with the numbers, and understands how financing works. tended to parrot well what other people said, but she had difficulty testifying before Council and defending our budget and answering questions. Id., ¶ 55. Although Grabauskas decided to terminate her employment in 2015, he waited until the new year because of a death in family and the holidays. *Id.*, ¶¶ 51, 58. During "this is never an easy conversation to have with the January 7, 2016 meeting, he told someone. I made the determination that we need a different person as " *Id.*, ¶ 50. In allegation that he cited feedback from as the reason for her response to termination, Grabauskas said that he "mentioned and she knew that I had heard concerns about her from Board members. I don't remember if I identified the Board members." 15 Id., ¶ 54. confirmed that he and Grabauskas discussed performance "a number of times" over the course of two years. Exh. 6 (Statement), ¶¶ 16-17. stated of termination, "I don't think it was a wrong decision." Id., ¶ 16. : When moved from Budget and Finance to Planning, described being bullied by to Exh. 6 (was concerned that could assert a hostile work Statement), ¶ 14. environment claim against and reported it to Grabauskas. Id.

Corroboration by Former Board Members



However, I did react with total surprise at her comment dan told her the board and I were the reason for her departure. I was frankly very surprised by that comment. I made it clear the board does not and did not make that decision and to my knowledge has never had a meeting to discuss her performance nor taken any action. I told her dan does routinely asks for feedback from stakeholders that she comes in contact with. But it was his decision.

In the past, dan did inform me and other board members individually that had personnel management issues but I had no details. Basically overall he was not satisfied with her performance. This was before the end of 2015.

In our brief conversation, asked me to be a reference for her, to keep my eye out for other positions in town and also wanted to meet at some point. I agreed to be a reference and tell her of any opportunities that I may come across that may be a better fit. We never scheduled a time to meet. That was the only conversation.

Id. (July 5, 2016 E-mail Statement) (emphases added).

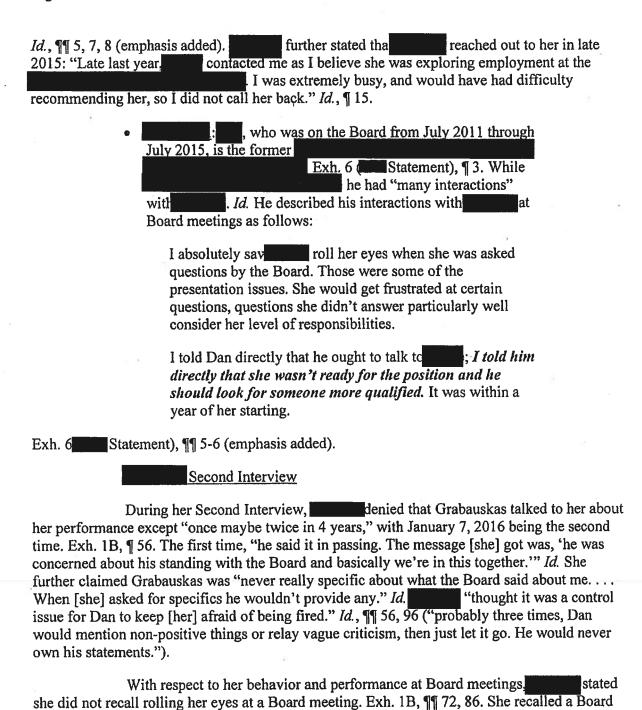
job.

My general sense is that, without unduly disrespecting her, I lacked the confidence in her ability to answer questions both in person and in Board meeting, but especially at Board meetings when you hope that the would be prepared and have answers. Her abilities in that regard were disappointing, although she generally appeared to be helpful and wanting to help. I don't recall ever having that conversation with to tell her that directly. I do recall talking to Dan about that gap in her perceived abilities more than once, at least twice. For me to say something that harsh to Dan at the Board meeting, I would have said something earlier.

Yes, rolled her eyes at that Board meeting, in response to questions from Board members. The former

would always ask very detailed questions. There was a concern whether she could answer his questions to his satisfaction. Everyone asked good questions, but he asked detailed questions assuming she had a basic understanding of finances.

I had a general sense from him that there was room for improvement when it came to was not quite at the level we were expecting of a sin answering questions in a very high profile, high stress situation; I was never sure if that was stemming from a lack of comprehension or a lack of confidence in public speaking. Whether the questioning was at the Legislature, the City Council, or at HART Board meetings, it felt like we had to disproportionately rely on ability to answer questions and provide facts, as opposed to



There was one time in a Board meeting when there was a snafu regarding budget documents. Budget documents I had sent to the to be included in the Board Member's binders were inadvertently left out. I didn't notice

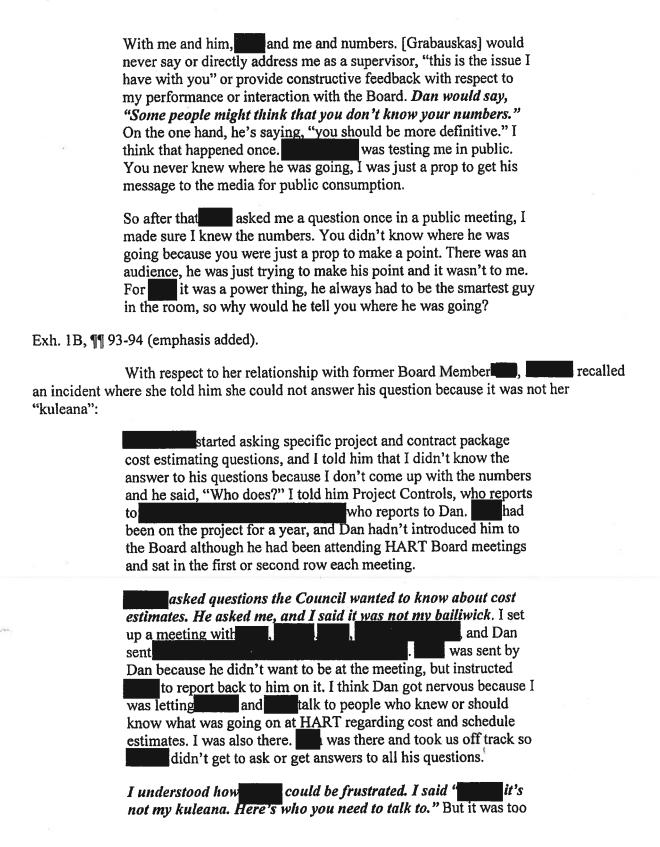
meeting where there was a "snafu regarding budget documents." Id., ¶81.

that they were missing from the Board Member's binders since I had my set of documents until just before the item was going to be discussed by the Board. didn't have a copy of the budget, and said that HART needed to be transparent about adopting the budget, and he was right about having the relevant budget information available to HART Board members and the public prior to them adopting a budget for the upcoming fiscal year. Some Board Members may have been confused about what and I were discussing in the public meeting. I think Dan and some board members were confused about what the problem was. I understood what was saying, that we need to have the budget detail documents that had been inadvertently omitted from Board Member's meeting binders and perhaps not made available to the public on HART's website and physically at the meeting before the Board could vote to adopt the new fiscal year budget. This was a transparency and public discussion process issue. Given that coordinating the budget process was my responsibility, I quickly left the meeting room after a short recess had been called I found a City office at Kapolei Hale, and made copies for the Board and public. I don't think everyone else completely understood what and I were talking about until after I returned and distributed the needed budget detail information. was happy, I was relieved to have been able to resolve the issue quickly as the Board needed to adopt a budget at that meeting or it would have been a problem. It was after this meeting, later in the afternoon in the office that Dan stopped by my office to touch in on what happened earlier at the Board meeting in Kapolei Hale. I recall he said wondered or said something to him about me seeming upset or irritating at the meeting. I told Dan I was planning on calling and would to touch in with him and apologize for the snafu at the meeting. I called shortly after talking with Dan, and said "not a problem, I should apologize to you." We ended our phone conversation on a good note. I stopped by Dan's office before heading out for the day, and told him

Exh. 1B, ¶¶ 81-85 (emphasis added).

With respect to former assessment of her, stated:

and I had talked and he and I were good. Dan said great.



E-mail dated July 11, 2016).

late for him. He was not going to be re-appointed regardless of what he found out from HART staff (which was very little).

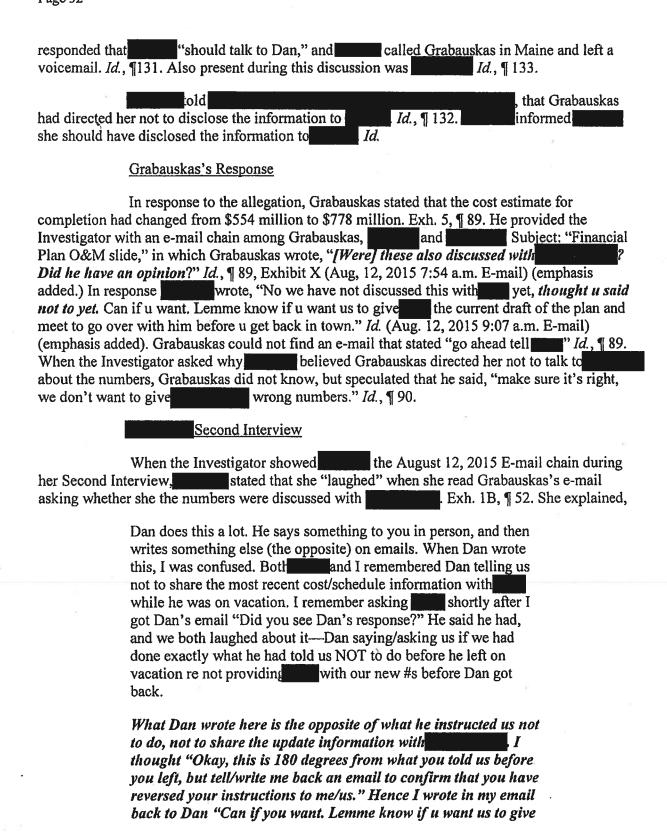
Exh. 1B, ¶¶ 77-79 (emphases added). left the Board, recalled Grabauskas informing her that After not "completely pleased" with her performance, but did not provide her with specifics. I remember Dan saying something about not being completely pleased with me after left the HART Board. I don't know what Dan and had discussed because Dan did not choose to share this with me after I asked Dan to be more specific about what said to him about me or my job performance was not re-appointed to the HART Board by the City Council in June 2015. Exh. 1B, ¶ 80. Findings: Based on the above, this Investigator cannot substantiate the allegation that to resign in retaliation for raising issues regarding Grabauskas coerced performance and the improper drawdowns. This Investigator finds that it is more likely than not that Grabauskas asked to resign because of her performance issues. Although beyond the scope of this Investigation to determine whether Grabauskas effectively addressed performance issues with her before January 7, 2016, this Investigator notes that two former employees expressed frustration with the manner in which Grabauskas handled what they viewed as "bullying" and "hostile" behavior: (1) stated that she found it "demoralizing" that even though she reported the bullying of to Grabauskas, there were no consequences for to behaving in such a poor manner, and (2) former stated she "found working with be a hostile work environment. . . . Dan was responsible for perpetuating a hostile work environment because he didn't do anything to relieve us of the hostile work environment under "¹⁶ Exh. 6 Statement), ¶ 40; Statement), ¶ 24. Retaliation by Revising **Position Description** (3) Version further complained that Grabauskas retaliated against her in the summer update her position description and remove grants management of 2015 when he had from her areas of responsibility. Exh. 1A, ¶ 85, Exhibits B, D stated that after her ¹⁶ After the HR Committee meeting this Investigator also received unsolicited emails regarding complaints of

E-mail dated June 28, 2016),

demeanor. Exh. 6

management be Retaliate again duties and Grand allege	January 2016, when HART posted her position, Grabauskas moved grants back under the Id., ¶ 84, Exhibits C, E at 5 ("Other Potential Attempts to east me by Mr. Grabauskas"). Based on the removal of grants management from her abauskas's reinsertion of grants management in the recent job posting, es "Dan is pushing me out, and covering it up, and he plans on putting grants back in Finance after I leave HART." Id., ¶ 87.
	Mr. Grabauskas knew that the financial management of the FTA (federal) grant best belonged in the Budget and Finance section of HART, and not the Planning area. I also believe Mr. Grabauskas did not want to openly address or admit his functional organizational change while I was the as it would be admitting that he had erred in removing Budget and Finance (my) supervision in October 2014 to the Director of Planning.
Id., Exhibit E	at 5.
	Grabauskas's Response
contracts that He further exp Department of	
	With respect to the posting for the position after resignation, enied that grants management was moved back under the Id., ¶ 67. He stated
that the postin Grabauskas:	g "simply lists as a skill 'knowledge of grant reporting." Id. According to
	I have no intention of moving. Even if was the I wouldn't move. Even if was role is bigger now anyway. She is not just the but the but the but the later than the but the later than the but the monthly basis when PMOC comes in, she has taken on as her responsibility preparation for the two-day day meetings and for the quarterly meetings. She has taken on that responsibility. She reports to the Project Director, now our lead FTA liaison is our number 2 person in contact with the FTA. That is working out very well was previously our FTA lead liaison person. When left, it became After left moved

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the current draft of the plan and meet to go over with him before u get back in town." Dan never responded to my email. hence I didn't seek out to tell him. It was after this August 12 e-mail that I spoke to in-person, and said "talk to Dan." I wouldn't have two parallel conversations with my boss and my boss's boss unless I had a reason to, and I didn't. I believe that Dan wanted things to play out that way having everyone not knowing what each other knew. Exh. 1B, ¶¶ 52-54 (emphasis added). denied that Grabauskas directed him and to withhold information from the Board: Dan couldn't possibly withhold information from [the Board]. It's absurd to say he was withholding the information when he sent it to the FTA. What Dan was telling is that was the was Committee. Technically it should would take all the numbers and run with it. go through The rest of the Board and especially would get upset at being left in the dark. So Dan was concerned about getting information before other Board members, not that we should withhold information from the Board. Additionally, you can tell from the e-mail there's a lot of detail. Dan wanted to go over the information himself to make sure he understands the numbers before giving it to a Board member. The allegation that he withholds information from the Board, it's absolutely ludicrous. Exh. 6 Second Statement), ¶¶ 5-6. With respect to the August 12, 2015 E-mails, stated that Grabauskas did not want the information to be released piecemeal so that certain individuals were provided information before others: The e-mail proves Dan didn't say withhold information to the Board because the email asks about if had comments. I don't know if Dan's email was addressing a portion of draft

financial report or the entire report, but clearly he's was not hiding it. The report was even sent to a Council Member, so it was not

hidden from review.

We had met before Dan went on vacation and a lot of it is he wanted to look at it first. A couple of Board Members complained to him that he would give information to would run with numbers and run with it to the would get far in advance, or misunderstand the assumptions in a number and it would get in the press before other Board Members had reviewed the information. Dan said he want[ed] release of the financial information to be coordinated and not go out piecemeal.

I don't know if he forgot his directive to and I or he was referring to a portion of the financial plan. The whole plan, it has to do with the capital, how much ridership, and cost of operation, there are many parts. He may have been talking about parts as opposed to the whole plan.

Dan never said to keep information from the Board.

Id., ¶¶ 8-11.

With respect to allegation that Grabauskas contradicts his verbal directives in e-mails, stated:

I don't think Dan says one thing and e-mails us to do another.

and I would meet with Dan and we would get out of the meeting and wouldn't remember what Dan told us what to do. It was who didn't concentrate and frequently forgot what Dan said to do in the meetings. I felt like I needed to be in meetings with Dan and when financial issues were discussed to clearly understand Dan's direction.

at 7:54 a.m. e-mail came into my office and we both laughed about it. I don't know if we were laughing. Dan had said we should all be in sync. What I take from this e-mail is that it proves he did not say, "Hey keep this withheld." He's clearly was not saying withhold the information from the Board, since he asked what were comments. This email is regarding the update of the financial plan going to the FTA. There's a lot of financial information and assumptions that has to be synced. The plan also includes operating costs once the rail up and running. Not many talked about operating costs, not many know the operating cost assumptions. Again, Dan is not saying withhold information. Dan

wants to be certain in the assumptions in the financial plan and coordinate the release.

Id., ¶¶ 7, 14.

Finally. stated he was not uncomfortable responding to questions when he was at the HART office on the day in question: The meeting with and . I wasn't uncomfortable talking to had trouble with a lot of numbers. She wasn't a person who got into any level of detail. She was very high level. Detailed questions she couldn't answer. A lot of times and other Board Members or staff would come to me to asked must have told detailed question. So that Board Members should be directed to her. said he had to stop by immediately went to get I don't think uncomfortable, but she wanted to be there even though couldn't answer questions.

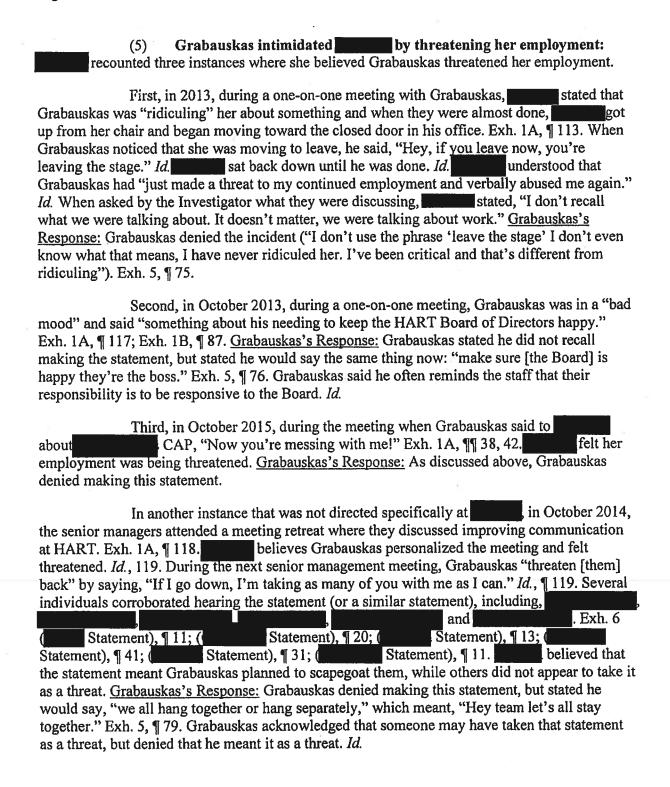
I was able to answer questions. I think that was about GET global assumptions. He stopped in a couple of times. That was a small portion of the financial plan.

Id., ¶¶ 12-13.

confirmed that she was present during a meeting with Statement), ¶ 9. After the meeting said to with more specifics about HART's internal discussion on the project financials, especially since is meeting with councilmembers about this." Io stated that responded that Grabauskas specifically told her not to discuss the financials with Board members. Id. assumed it was because the discussions were still preliminary and ongoing analysis was pending. Id.

Findings:

Although it seems that genuinely believed she was directed not to inform about certain financial information, based on the e-mail where Grabauskas asked whether solicited opinion and understanding of Grabauskas's directive to them before he left for his vacation, the Investigator finds that it was more likely than not that there was a misunderstanding between and Grabauskas on whether information could be shared with and therefore cannot substantiate the allegation that Grabauskas prevented her from performing her functions as HART by intimidating her into withholding information from the Board.



Findings:

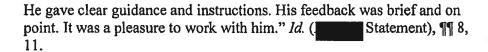
With respect to the allegation that he threatened employment, because of the passage of time and the lack of context and witnesses, especially with respect to the two purported statements made in 2013, it is difficult to substantiate the allegation that Grabauskas job during the three, one-on-one meetings. Even if they occurred as threatened described by , it is not clear to the Investigator that the statements were threats to employment, especially the statement about the need to "keep the HART Board of Directors happy." This Investigator also recognizes that it is possible that the "threats" to employment were Grabauskas's attempts to address performance issues (albeit ineffectively) and that she misinterpreted discussions to improve her performance as "threats" to her employment. With respect to the allegation that Grabauskas said, "If I go down, I'm taking as many of you with me as I can," This investigator finds that Grabauskas more likely than not made the statement. (6) Other threats to employment not alleged by stated that in 2015 Grabauskas told Engineers, "If you don't get this done by a certain date, I'm just going to fire all of you guys." Exh. 6 (corroborated hearing Grabauskas make that statement Statement), ¶ 23 and at least once. Exh. 6 (Statement), ¶ 20; Statement), ¶ 32. heard him say it "various groups." Id. Grabauskas's Response: Grabauskas denied making this statement, but recalled stating, "hey guys we need to get this done or we're all going to get fired." Exh. 5, ¶ 86. stated that Grabauskas made her cry in the spring/summer of 2014 when he told her "he should fire people, including [her]." Exh. 6 Statement), ¶ stated it happened again in the spring of 2015. Id., ¶ 23. Grabauskas thought was being "too easy" on her staff and said he wanted to fire several of them. Id. Grabauskas told that if she "couldn't or wouldn't fire them, then he would do it for [her], and if he did that that he wouldn't need [her]" effectively threatening her job. Id. stated Grabauskas's treatment of her "factored in" to her decision to leave. Id., ¶ 25. Grabauskas's Response: was one of the individuals he promoted while he has been with Grabauskas stated HART and that she was a consummate professional. Exh. 5, ¶ 101. He further stated, "If someone needs to be let go, I would not be in a position to tell her that." Id. Findings: This Investigator credits the statements of and and finds Grabauskas more likely than not used words either suggesting or directly stating that he was going to fire people.

However, denied that Grabauskas threatened his job (an allegation made by Statement), ¶ 23.

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(7) Grabauskas created a hostile and abusive work environment

a. Grabauskas raises his voice and uses foul language in a threatening or hostile manner — Both current and former employees stated Grabauskas swears in the office, including using the "F" word. Exh. 6 Statement), ¶ 8; Statement), ¶ 8; Statement), ¶ 9; Statement), ¶ 12; Statement), ¶ 14; Statement), ¶ 36; Statement), ¶ 9; Statement), ¶ 22; (Statement), ¶ 14; Statement), ¶ 36; Statement), ¶ 34; Statement), ¶ 23; (Statement), ¶ 8. None of the witnesses stated that the use of the "F" word was targeted at anyone, but that he used it when he was frustrated or angry and that he raised his voice. Grabauskas generally seemed to only swear in front of higher-level managers, however, his stated that she has heard him swear and was "very offended" by it. Exh. 6 Statement), ¶ 8. Stated that she was intimidated when he yells and that the yelling should stop. Id. (Statement), ¶ 26-27. With the exception of and the former was another former who witnessed Grabauskas's swearing stated they were not intimidated by Grabauskas. Id. (Statement), ¶ 13; Statement), ¶ 20 Statement), ¶ 15; (Statement), ¶ 18 (Statement), ¶ 16; Statement), ¶ 17; Statement), ¶ 18 (Statement), ¶ 18; Statement), ¶ 19; Statement	
Several lower-level employees who do not report directly to Grabauskas stated that they did not witness Grabauskas swear or raise his voice and did not believe he created a hostile work environment.	
•	stated: "I can be very clear on this. I've worked in transit for 22 years and I have worked in a lot of environments all over the world. In my opinion, no, Dan has not created a hostile work environment." Exh. 6 Statement), ¶ 16.
•	stated: "I don't agree that Dan created a hostile work environment. I was sad when I saw the news that they wanted to get rid of Dan Dan's very, very nice. In the hallway Dan always smiles, Dan thanks me for everything I've done. I've never seen Dan angry or anything at anybody I've never heard him swear I've never heard Dan swear, never ever." Id. (Statement), ¶¶ 10, 13.
•	Assistant): "In my interactions with Dan, he has never used swear words or raised his voice with me. I have not seen him swear or raise his voice with others I was surprised by the allegations I have not experienced a hostile work environment by Dan." Id. (Statement), ¶¶ 10, 20.
•): "Dan has never raised his voice to me or to anyone in my presence He was a consummate professional.



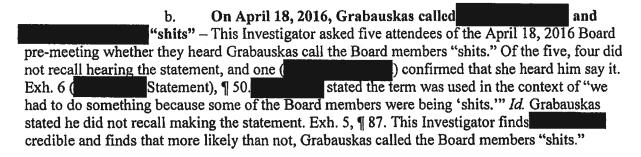
- bis voice during meetings. I have not heard him swear in meetings. . . . I think he's done a spectacular job of being respectful of everyone in the group. . . . Overall he's a fair man. He's a mentor. He's interested in your on a one-on-one basis. He doesn't treat you like [a] subordinate or pull rank on you. He always wanted to make sure that I had his support and that I should feel comfortable talking to him about my observations without having any reservations." Id. (Statement), ¶¶ 9, 12.
- Assistant): "I've never heard Dan swear. It's a confident no to the question whether I heard Dan swear. I've never heard Dan raise his voice in anger. . . . As a professional, I think Dan has been great." Id. Statement), ¶¶ 11, 16.

Grabauskas's Response: Grabauskas admitted, "I swear on occasion when I'm angry about something. Not every time.... When I'm angry do I drop an occasional 'F bomb'? I'm not the only one...." Exh. 5, ¶ 104, 106. Grabauskas further explained:

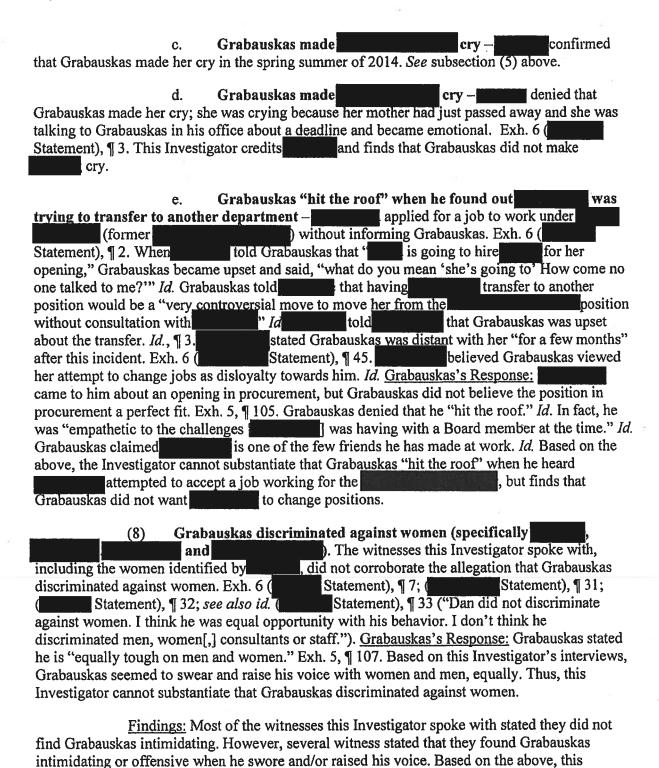
I think anytime a boss raises their voice or says they're displeased, it gets people intimidated. If a Board member says to me "I'm not happy with what you're doing," I'm intimidated. There are days when you do good things and bad days. Part of the job of management is not to intimidate, but it is to make clear when something is not up to snuff or when someone is not getting us where we need to go.

Id., ¶ 107.

Based on the number of corroborating witnesses, this Investigator finds that Grabauskas more likely than not raised his voice and used the "F" word in anger.

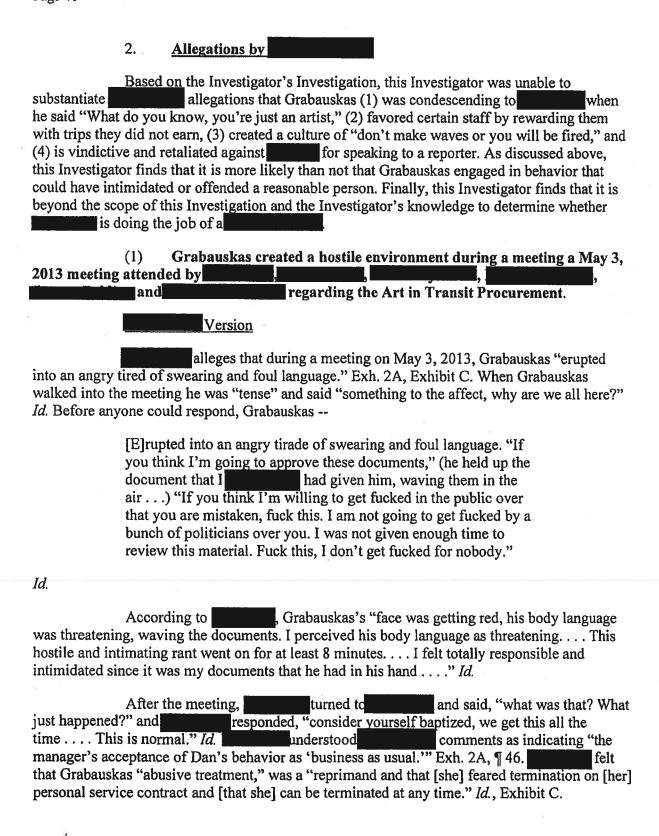


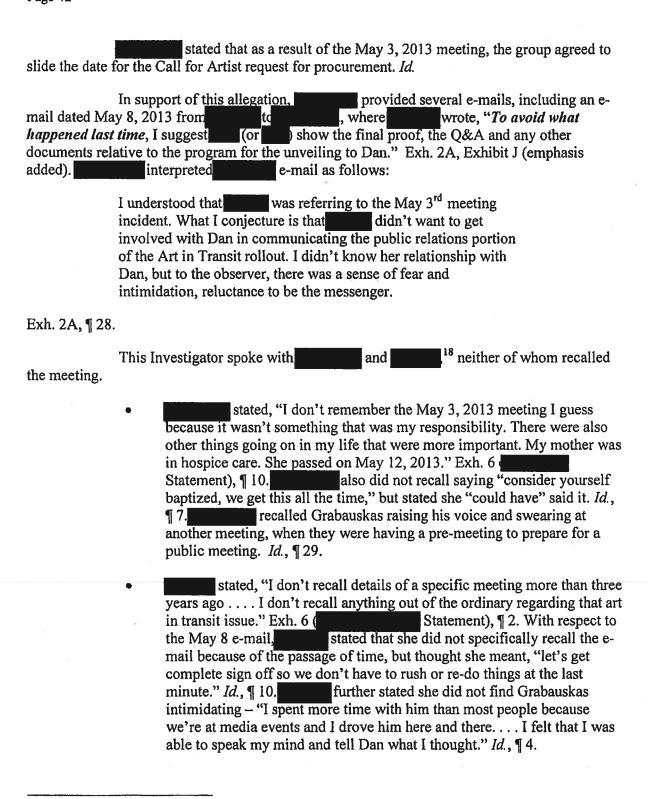
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Investigator finds that more likely than not Grabauskas engaged in behavior that could have

intimidated or offended a reasonable person.





contact information.

did not respond to this Investigator's request for an Interview, and

declined to be interviewed.

this Investigator was unable to obtain

further stated that as a result of the May 3, 2013 meeting with Grabauskas, she "tried to keep her contact with Dan to a minimum, to slip in and out and run." Exh. 2A, ¶ 47. Grabauskas's Response Grabauskas stated he was surprised by complaint because he believed they always had a good rapport and thought her work was outstanding. Exh. 5, ¶¶ 116, 117. When this Investigator read account of the meeting to Grabauskas, Grabauskas stated that he did not specifically recall the meeting and described the use of "F' bombs" as "excessive. Id., ¶ 112. However, he admitted to using the "F" word at meetings and further stated he could have been upset that he was not given enough time to review the procurement documents before they were scheduled to be released. Id. Grabauskas provided e-mails regarding the request for procurement, including a June 28, 2013 e-mail where Grabauskas, "Thank you for your support!" in response to information that 542 people downloaded the Call for Artists from the City's website and 404 applications were submitted. Id., Exhibit DD. statement that she avoided Grabauskas after the May 3, In response to 2013 meeting, Grabauskas provided the Investigator with an e-mail dated January 10, 2014 wrote to Grabauskas, "Thank you Dan! I appreciate your support," in response to Grabauskas directing and to approve Art-In-Transit meetings that would occur on holidays (which would incur overtime costs). Id., Exhibit EE. Grabauskas also provided an e-mail dated June 5, 2014 e-mail where saked to meet with Grabauskas for five to ten minutes before he left the office. Id., Exhibit II. Grabauskas stated that he worked with frequently when they were giving public presentations together on station designs, but those meetings ended and because she is several layers down in the organization, he has not talked to since July 2015. *Id.*, ¶¶ 117-18. Second Interview In response to Grabauskas's reaction to her complaint, stated "It does not surprise me that Dan was surprised by my allegations. I have only been professional with him at the highest level in what I produced and what I put out for the project, well beyond my job description and reason for my hire." Exh. 2B, ¶ 3. She stated she wrote, "Thank you Dan! I appreciate your support!" (Exh. 5, Exhibit EE) because she was being professional and because she was "happy" about the final numbers coming in as projected. Exh. 2B, ¶¶ 6, 7. further stated that when she did the community presentations with Grabauskas, at first she was uncomfortable, but she "understood the nature of [her] role and why presenting the culture and art information was important to the community. Being around Dan is tense because of that May 2013 meeting and because [she] know[s] what he's done to other people. [She's] always on guard." Exh. 2B, ¶ 10.

man behind the façade" after Grabauskas sent her flowers while she was on sick leave for six week. He hugged her and saw "the start of tears." Exh. 2B, ¶ 4.

Findings:

Because of the passage of time and the lack of corroboration, it is difficult for this Investigator to determine whether the May 3, 2013 meeting occurred as described by and therefore cannot substantiate the allegation as described. However, as discussed above, this Investigator finds more likely than not that Grabauskas engaged in behavior that could have intimidated or offended a reasonable person.

(2) Grabauskas was condescending to when he said, "What would you know, you're just an artist."

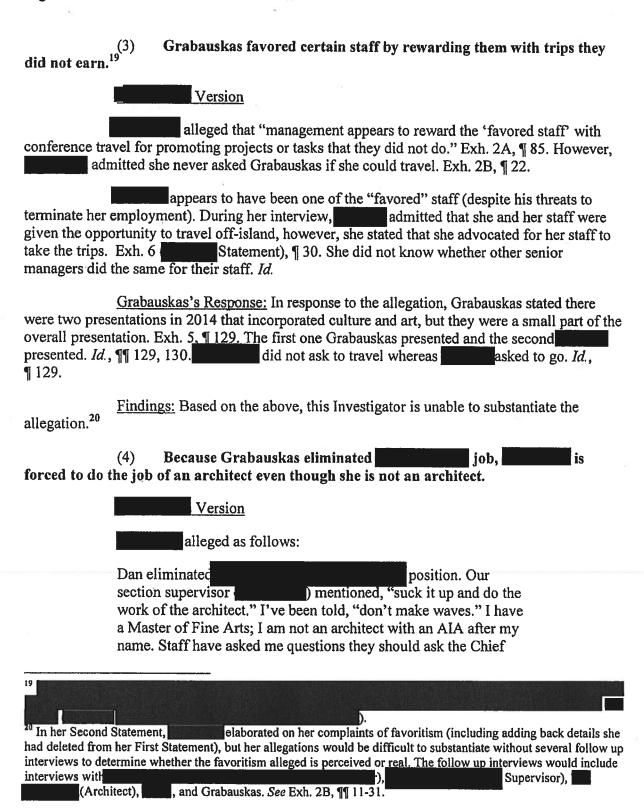
Version alleged as follows:

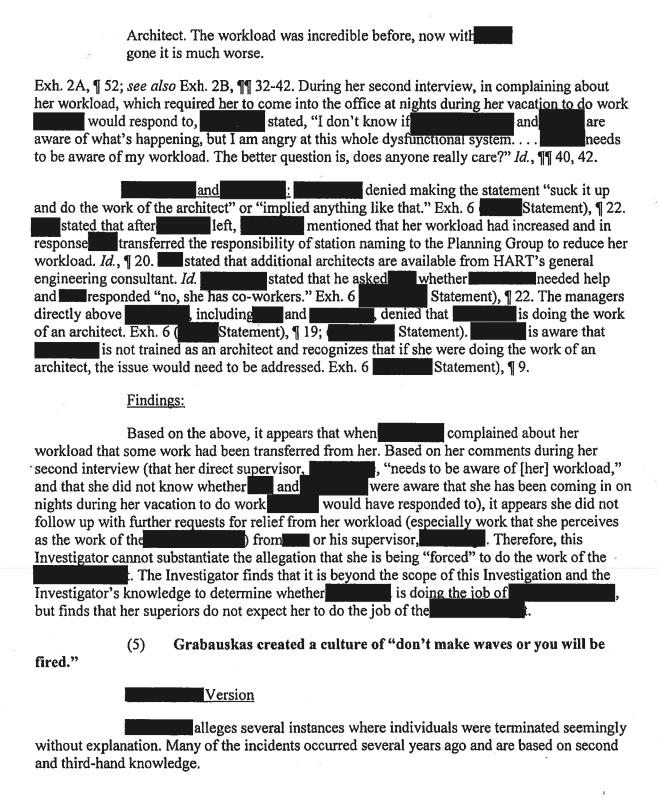
and I were meeting with Dan about the need to launch a system-wide strategic branding and marketing effort. We were attempting to relay the need for advance planning to create and maintain consistent graphics for an effective identity (logos, branding symbols, colors, font type, station names, and system name). Timely decisions on these elements would affect the station signage package during construction and wayfinding signage throughout the system and even roadway signage. If these issues were not dealt with in a timely fashion, it would constitute a change order and increase project costs. Dan was sitting behind his desk and we were sitting across in his guest chairs. Dan pointed and waved his finger at us and he was saying "What would you know, you're just an artist, what would you know, you're just an architect." In my mind, I thought, like calm down Dan, oh no, he's going to go at it again. It was in the spring or early summer of 2013.

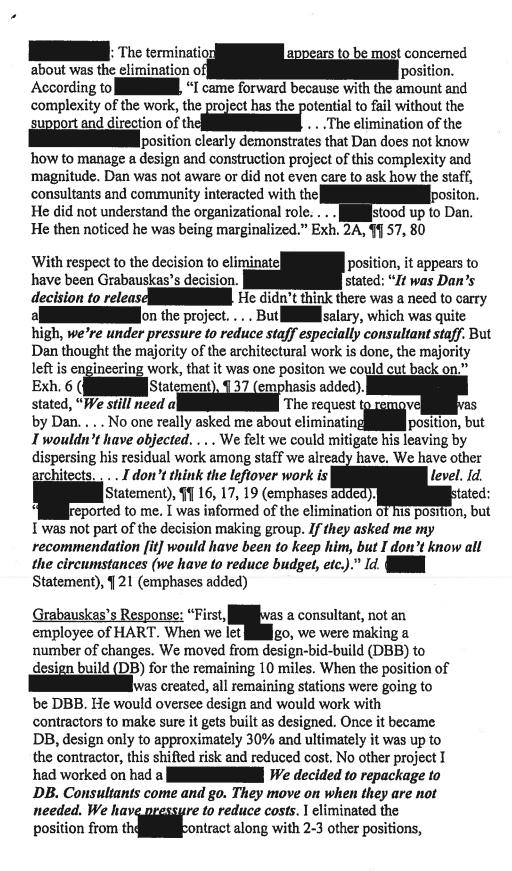
Exh. 2A, ¶ 15.

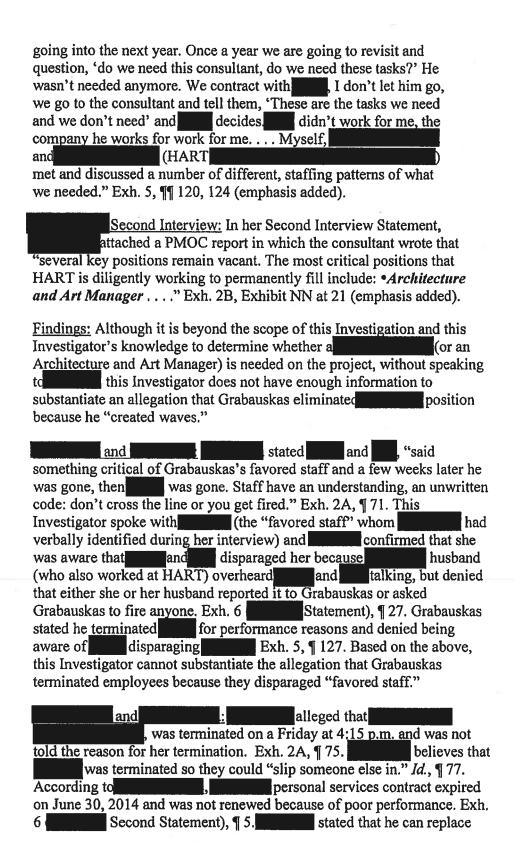
Grabauskas's Response: Grabauskas denied the allegation and stated he was "an art enthusiast" and "would never denigrate an artist." Exh. 5, ¶ 125.

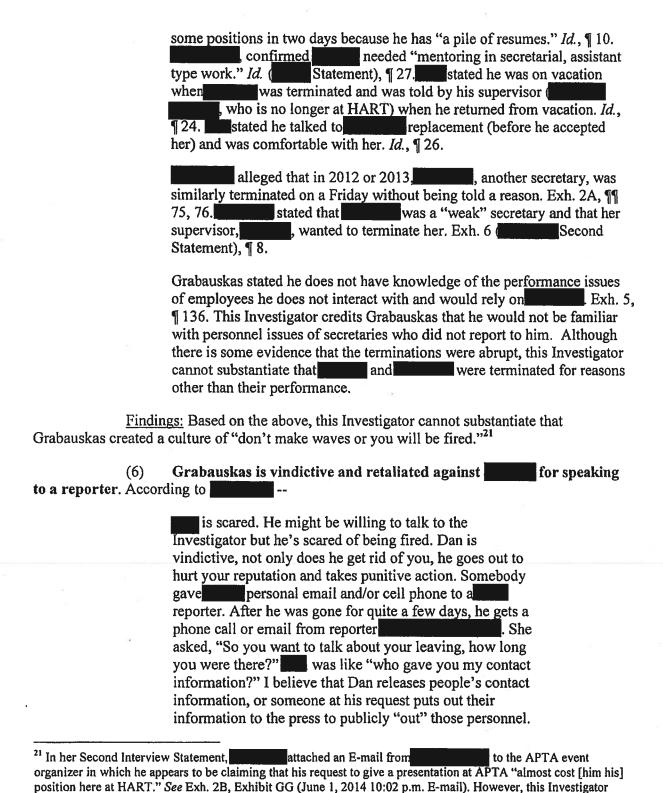
Findings: Based on the passage of time and lack of corroborating witnesses, this Investigator is unable to substantiate the allegation.







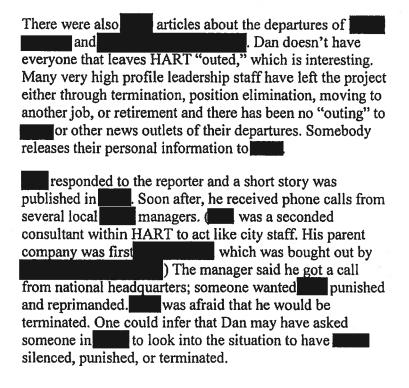




and others who were involved with the incident before determining whether the

would need to interview

claim can be substantiated.

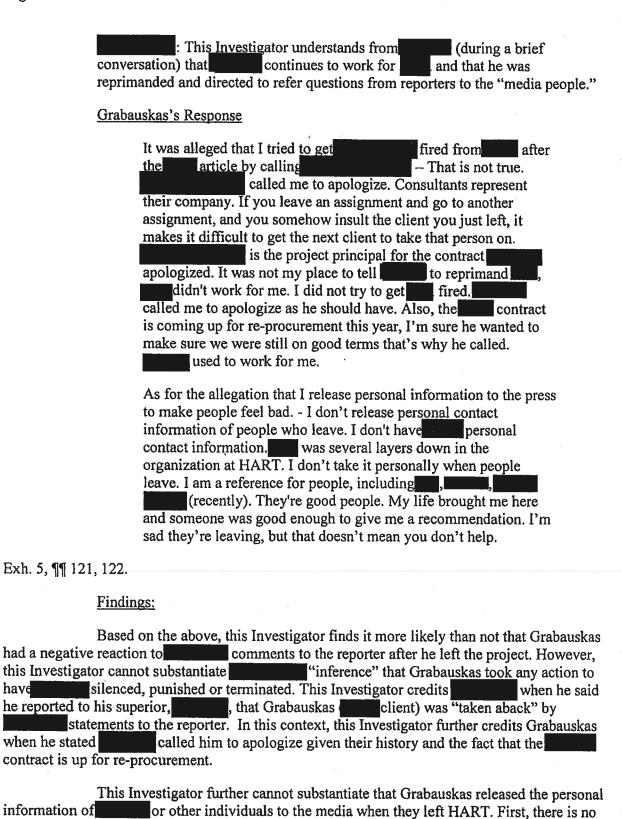


Exh. 2A, ¶¶ 38-39.

on the project stated,

Dan was concerned someone would leave the project and be quoted. The technical staff defers to the Executive Team (Dan and Brennon) or the PI (public information) people to communicate with the media. Staff usually doesn't communicate with the media. Dan was a little taken aback that a staff member would communicate through the media. . . . Dan may have contacted someone higher up at after the article came out. When the article appeared. Dan did comment to me and I spoke to the person you might be referring to and said "Dan has a concern over this." I did not follow up anymore. So when I said I "think" Dan may have spoken to this person, I don't know if he did. It , the most was in charge of Projects at

Exh. 6 (Statement), ¶ 38, 39, 40.



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evidence supporting this allegation, and second, it would not make sense for Grabauskas to		
release	contact information to the press when he did not want speaking to the	
press.		

VII. <u>CONCLUSION</u>

I hope this Report provides you with the facts you need to exercise your best business judgment in determining whether any City/HART policies have been violated and, if so, to determine appropriate actions to take.

If you believe there is additional information I should consider with respect to the issues addressed in this Report, or additional issues that you would like me to address, please let me know and I will supplement my Investigation and/or this Report as necessary or appropriate.

Very truly yours,

Megumi Sakae

MS:tvf Enclosures