

1 **Ethics Review Commission Transcript, April 29, 2014: Item 4B**

2 **Austin Kaplan:** Next agenda item, next order of business is, I want to move to 4B again with your  
3 permission skipping over a few of the other things, this is the city auditors integrity to investigation  
4 reform generally –

5 **Donna Beth McCormick:** Could you take the baby out, please?

6 **Austin Kaplan:** – including report on allegations involving a zero waste commissioner possible actions  
7 by any Commissioner to file a complaint on its own initiative.

8 **Cynthia Tom:** And they are mentioned all in your packets, after the financial statement

9 **Austin Kaplan:** Unless it's really bothering anybody I think we are okay, we'll be okay with the baby as  
10 long as...

11 **D. Ochoa-Gonzalez:** It's ok.

12 **Donna Beth McCormick:** Well it's bothering, it's a bit distraction, I'm sorry.

13 **Mitchell Harrison:** I imagine you are talking about him?

14 **Donna Beth McCormick:** Uh-huh, yeah, because it's a big distraction with the noise for me, I'm sorry.

15 **Mitchell Harrison:** Ok, what was your request?

16 **Donna Beth McCormick:** You could just wait outside or have somebody take the baby I think.

17 [Mumbling]

18 **Austin Kaplan:** I'm sorry. I apologize.

19 **Cynthia Tom:** Did he want to...was he signed up for speaking?

20 **Austin Kaplan:** Yes, he is signed up to speak.

21 **Donna Beth McCormick:** Ok well then maybe we can do something, but it is a big distraction.

22 **Cynthia Tom:** Daniela is saying that she thinks that, that's your husband right? That he was planning to  
23 donate his three minutes to her.

24 **Donna Beth McCormick:** Oh, ok.

25 **Austin Kaplan:** Ok, and that's fine.

26 **Cynthia Tom:** Is that alright with you?

27 **D. Ochoa-Gonzales:** Do you have a copy of the email I sent? If not I'll have to share it.

28 **Cynthia Tom:** Yeah, it should be in your packets.

29 **Austin Kaplan:** I think Commissioners all have copies, just before we roll into it so this is 4B and it is also  
30 item...oh never mind.

31 **Several Commissioners:** It's just 4B.

32 **Austin Kaplan:** Okay and you have the backup information in your packets.

33 **Cynthia Tom:** And what you have in your packets, I think, the second thing it's what she is discussing in  
34 her email and concise response to the report and allegations of involving the Zero Waste Advisory  
35 Commissioner dated April 28, 2014 at the top? Does everybody see it?

36 **Commissioners:** Yes.

37 **Cynthia Tom:** And there is some other materials related to this item also in your packet, confirmation  
38 should be in there at least one, maybe more than one. And a copy of the audit report in which all of you  
39 received by email directly from the auditor last week or the week before. Everybody have everything?  
40 Great, let me see...

41 [Mumbling]

42 **Donna Beth McCormick:** April 18<sup>th</sup>?

43 **Cynthia Tom:** Yeah, that's the date of the auditor's report investigation that ya'll were emailed.

44 **Commissioner Austin Kaplan:** Everyone have all the forms? Thank you so much for coming to speak  
45 with us. I am going to put the timer on. I think you got six minutes - no nine minutes total, yeah.

46 **D. Ochoa-Gonzales:** Thank you, Commissioners, good evening, and again thank you for this opportunity.  
47 As you serve here voluntarily, I was also serving voluntarily at the Zero Waste Advisory Commission.  
48 This was my first tenure in such a role. I have a true passion and life commitment to contribute to the  
49 public good and environmental topics especially the ones that pertain to the ZWAC Commission. I gladly  
50 dedicated much volunteer time for the city without any expectation of gain and without any improper  
51 motive. I highlight that I do not believe that I have violated the conflict of interest rules, the reports and  
52 actions of the city auditor's integrity unit were deeply flawed for various reasons but I want to highlight  
53 the main five here today. The report ambiguously condemned me for violating conflicts of interest  
54 without adequately examining two factors that require to determine the existence to the conflict of  
55 interest: substantial interest and likelihood of causing direct economic consequence on the interested  
56 party. Glaringly, the report did not even discuss if or how my participation in the commission meeting  
57 had likely direct effects on Texas Disposal Systems. Oh that was number one, so I'll try to be clear. The  
58 number two is that the only matter brought to the commission which had a direct economic effect on  
59 TDS, which is the abbreviation for Texas Disposal Systems, in this matter I abstain from voting and even  
60 though the report determined that I violated the conflict of interest. Number three; is that the City  
61 Auditors Integrity Unit completely ignored the process expressly established in the City code for conflict

62 of interest, and recusal complaints. And number four would be, that in addition to these irregularities in  
63 the report the Auditors Integrity Unit then widely, and in my belief prematurely, disseminated the  
64 report and make it very, you know, public, to many people that, you know, they share the report with,  
65 disregarding the harm that this will cast on me.

66  
67 Number five is the way that this was handled, you know, the entire process from the Auditor's Integrity  
68 Unit, has seriously tramped, just tramped my basic due process rights. And now I have been effectively  
69 kind of tarred and feathered by these improper actions which have resulted irreparably in harm to my  
70 reputation. I have provided you a document with further information on these matters. Certainly, while  
71 it is important to ensure transparency and ethics in the policy making process, the City Auditor's  
72 Integrity Unit must be held to a basic and minimal responsibility to ensure accuracy on its reports prior  
73 to irreparably injuring a person's reputation.

74  
75 You know, the act of public participation in the government's process is one of Austin's strengths and  
76 contributes to the vitality of our city. It's an honor to be part of one of the boards, especially for  
77 someone like me that comes from central Mexico, where there is not a democratic process that has  
78 such a participatory community, so I really appreciate the opportunity to be on one of those boards. And  
79 I consider it a great class, you know, better than going to grad school.

80  
81 The City, and all of us, have a duty to ensure that citizens will volunteer their time and that the City treat  
82 them fairly and respectfully, and that they are provided adequate support.

83  
84 So, in conclusion, I respectfully request that, first, the inaccurate, incomplete, improper disseminated  
85 report of the CAIU Unit be publicly withdrawn. Second, that my name be cleared of wrongdoing; and  
86 third, that the City spends more time providing volunteers adequate ongoing support on the Conflicts of  
87 Interest rules. That they conduct - instead of conducting one-sided persecutions. Thank you.

88  
89 **Austin Kaplan:** So this is brought to our attention, and if it's okay with you, I just wanted to have you  
90 here, and we can kind of discuss this in a group, perhaps. This was brought to our attention when we  
91 were all emailed this report from CAIU on late Friday. We were given it individually, all of us  
92 commissioners, as was Council, and some other folks, was the first time that I was aware of it, and I  
93 think that any of us were aware of it. When we saw it, obviously because of the nature of the  
94 allegations in the report I felt compelled to put it on the agenda to at least discuss here in the  
95 Commission, and the reason for that is usually we'll get complaints from individuals about other  
96 individuals; in this case it became, we became aware of a conflict of interest, a potential conflict of  
97 interest situation through other means, and we actually have the ability as a commission, to file our own  
98 complaint kind of sua sponte, and to have our own investigation. And so that's why we had to put it on  
99 the agenda. But I do want to talk about kind of where we are in the process and where you are in the  
100 process and see what we want to do as a commission given all of that. I do want to kind of address the  
101 three things that you, the three actions that you requested. And I know we have a written statement  
102 from you on the same thing. One is that this report is that the city auditor's integrity unit report be  
103 publicly withdrawn unless there is something I don't know we as the commission don't have any ability

104 to do anything about that. There is no action that we can really take on that. The second piece that your  
105 name be cleared - because of the allegations here, and I'll defer to my fellow commissioners who may  
106 see it differently, but I don't think that we really have the ability to do that either. We can hear  
107 complaints about conflicts of interest and violations of city policies and we can issue a result that there  
108 is no violation but we can't kind of issue the all-clear, I don't know a good way to put it but we can't do  
109 that for you, we can't clear someone's name all we can do if we go through a process is to find that  
110 there is no violation but of course if we do go through a process we can also find that there was a  
111 violation. The third piece is something that we can do and hopefully we are doing an ok job of it but  
112 maybe it's something we can do better on and that is to make sure that all boards and commissioners  
113 are well aware of conflicts of interest rules and aware of that they are enforced or hopefully are  
114 enforced pretty vigorously and you know there is a training packet that HR and the clerk worked really  
115 hard on, there is training that every board commissioner goes to when they are brought on to the board  
116 there is also reoccurring training that happens but maybe it's something that we can look into and even  
117 kind of beef up or emphasize in the conflicts of interest sessions on these trainings just so that the rules  
118 are, the rules of the roads, are really clear for everybody.

119 So one thing, so those are the three sort of action items that you had in mind but the, I guess what's  
120 important to us is...so what's your current status with respect to Zero Waste Advisory Commission?

121 **D. Ochoa Gonzalez:** Well this report also came to the attention of the City Manager, Mike Martinez,  
122 Chief of Staff, and you know it's such a big statement that immediately after receiving the report he  
123 asked for my resigning and so I did because I believe that you know we are all here willing to represent  
124 someone in a good relationship. So if he didn't want me there the most appropriate thing was to resign  
125 so in that email that I sent you I resigned.

126 **Austin Kaplan:** Ok- so I think that is important for us is that we are trying to decide what we want to do.  
127 I think that in terms of our - the sanctions that we can impose at the end of a process the most serious  
128 sanctions essentially in this situation, unless I am missing something would be recommendation for  
129 removal from position so...

130 **Dennis Speight:** Which is moot at this point.

131 **Austin Kaplan:** Which is moot at this point. And so you know, we can, of course, we are not, I don't  
132 think there is anything stopping us from going through our process, but if we were going through our  
133 process and have a negative finding we would end up right where we already are today. So I think it is  
134 something to keep in mind. Any other thoughts about any of what we kind of just been discussing from  
135 other commissioners?

136 **Velva Price:** Well, I just wanted to ask you, when you were going through with your email and your  
137 response, is it your position that you were never contacted by the auditors to be able to give, I guess, a  
138 response to the fact that they are investigating? You weren't aware of it until and I think your email  
139 says until you got a call from somebody in Councilmember Martinez's office?

140 **D. Ochoa Gonzalez:** Yes, so I was first called to be interviewed and, I did interview for them.

141 **Velva Price:** So the auditor did interview you?

142 **D. Ochoa Gonzalez:** Yes, but in that interview they didn't give me – oh, I am sorry I didn't mean to  
143 interrupt.

144 **Velva Price:** Oh I interrupted first, so you first.

145 **D. Ochoa Gonzalez:** Thank you. They didn't give me any chance to provide any evidence so I could  
146 have brought the copy of my bank statements or provide some financial information and I wasn't given  
147 that choice or just to provide my evidence. That was back in like early January or late December and so  
148 once they came to this conclusion they never contact me back to try to, you know say we are going to  
149 grab this ad do you have anything to add to these and the reports itself doesn't say you know how if I  
150 do, you know I get influenced by TDS now. To the best of my ability I read that training three times and  
151 those ethicals you know back in the first training time that I have to be ready to be a ZWAC member and  
152 then once the situation arose and I, English is my third language, but I am very clear especially as I am  
153 reviewing it now so specifically that I have not violated the conflict of interest because of the various  
154 specific, you know, details that it says there whether it's a substantial interest or not. So I started my  
155 work with TDS at the same time and I was very remotely related to the company itself as I was the third  
156 party between those independent school districts, which are also an independent entity and TDS as a  
157 provider of a service to the school district. So it was the arrangement between them that they wanted a  
158 neutral part to come and visit the schools and make an assessment of the operation to also provide  
159 feedback of service improvement needs from this company TDS. And that is what I did. I was never  
160 presented physically at that office or involving in any of the decisions that that office, you know, would  
161 pertain.

162 **Velva Price:** But two things, one is, so you were told by the City Auditors office that they were  
163 investigating a complaint. So you were aware of that and you had a chance to interview with them. I  
164 just was worried that basically they did the investigation without getting your own input I guess that  
165 what I am hearing is they did get some input but you're thinking that maybe they should have come  
166 back and got additional information from you.

167 **D. Ochoa-Gonzalez:** I was very willing to participate in the investigation because I was very troubled  
168 myself, you know, and at that time I attended that interview but I didn't believe that that was going to  
169 be it. I openly shared all my responses with them. They didn't ask all the questions though. And at that  
170 time I asked the City Manager, I mean the City Council Manager, Andrew, back in January, if he wanted  
171 me to resign at that time, and, you know, this situation has been brought to their attention, and he said  
172 that the regular procedure on these cases was that that was going to come to this Commission and  
173 there might be even public hearings, but I as clear then as I am now, I don't believe that I have a conflict  
174 so that I should have, you know, more likely if I was going to come out clear, then I actually should have  
175 continued attending those meetings. Unfortunately, the result of the report wasn't there.

176

177 **James Sassin:** I have a question, Chairman Kaplan; do you have any notion why it didn't come to us  
178 before it went to the Auditor?

179 **Austin Kaplan:** That's a fair question, and I do not. My understanding is that...

180

181 **James Sassin:** I mean, what triggered this? Does anybody know?

182

183 **Austin Kaplan:** Is there anyone from the Auditor's office here?

184

185 **Cynthia Tom:** I don't believe anyone from the Auditor's office was able to attend. I did speak with a  
186 couple of folks from the Auditor's office; one person today, and one person a couple of weeks ago when  
187 y'all first got the report. My understanding, although the Auditor is willing to send a representative to  
188 your next meeting, if you would like, to kind of give y'all an overview of what the Integrity Unit does,  
189 how they receive complaints, sort of their investigative process, so you all are more aware of it. I only  
190 know a little bit about it, but my understanding is that the City has an anonymous kind of complaint line,  
191 and there's a phone number, and I think maybe there's also a way to submit complaint online  
192 anonymously. Those complaints, I understand, go to the Auditor's office, specifically to the Integrity  
193 Unit, which is the one that produced the report. The Auditor's jurisdiction should be that, would be  
194 totally separate from the Ethics Review jurisdiction, so, for example, if someone wanted to make a  
195 complaint, generally the Auditor, sometimes in the law department people will call us... the Ethics and  
196 Compliance team's function is to give training, and to give perspective advise. So if someone calls and  
197 says, "Hey, I don't know if I can do this. Can you help me work it out?" under City Code, the law  
198 department will help with that. If somebody called the law department and said, "Somebody did  
199 something and I think it was wrong." The law department doesn't investigate that. The law department  
200 will forward those complaints, or reports, to either the Auditor's office for the Integrity Unit to  
201 investigate, or the Human Resources/Employee Relations office to investigate - sometimes to both. So if  
202 someone wanted to make an anonymous complaint, they can't really do that with Ethics Review  
203 Commission. The way your procedures are set out, the complainant has to come here, they have to put  
204 their name on the form, they have to swear to it, they have to come and make a presentation in front of  
205 a hearing...

206

207 **Dennis Speight:** And that's the way this one came in, it was an anonymous complaint?

208

209 **Cynthia Tom:** This one, I don't know if it was anonymous, but I know that the Auditor's has a complaint  
210 line which is anonymous, so it is possible.

211

212 **Dennis Speight:** But they can also self-start an investigation... I don't know how they would know to do  
213 it.

214

215 **Cynthia Tom:** I don't know if the Auditor would start these types of investigations without some sort of  
216 outside information; but definitely, if you guys would like, a representative of the Auditor's Integrity  
217 Unit to come to our next meeting –

218

219 **Velva Price:** We definitely would.

220 **Cynthia Tom:** – they said they would be able to come and give you a better idea than I can of how these  
221 types of investigations get started. But they’re jurisdiction is totally separate from yours. So they have  
222 the authority to do reports, to hear complaints. You don’t necessarily see it. This time they chose to  
223 share it with you. They may do investigative reports involving conflicts of interest or other ethics  
224 violations that y’all have never seen. If you want to see those, a representative of the Auditor’s office  
225 told me they might be willing to share more, but in some instances, you know, there might not be a  
226 need for both the Auditor to investigate and for y’all to have a hearing. It’s kind of parallel tracks.

227  
228 **Peter Einhorn:** I would like them to come next time. And you can express to them that Commissioner  
229 Einhorn is frustrated they are not here tonight. Because this is pretty ridiculous that they brought this  
230 ...this is the one they bring to us and then they don’t even show up? That’s annoying to me.

231 **Cynthia Tom:** I don’t know that the Auditor... I’m not interpreting this report from the Auditor as the  
232 Auditor filing a complaint... I think they send it to you, sort of, as an FYI.

233 **Peter Einhorn:** I’d also like to see what other reports like this they’ve done, that are...

234 **Donna Beth McCormick:** Is there something that raises a red flag... that...

235 **Peter Einhorn:** Yeah, why this one?

236 **Dennis Speight:** I understand they provided this to us as courtesy, but I assume they also knew we put it  
237 on our agenda.

238  
239 **Cynthia Tom:** I let the Auditor’s office know that it was going to be on the agenda. I double checked  
240 with him that they considered the report to be public information, and it was okay to post it as backup  
241 online. And they said, “Yes.” He is out of town right now, which may be why he’s not here. But I did  
242 speak with someone else from the Auditor’s office today, and I said... and he said, “Do you need more  
243 information from us tonight, do you need us to come?” And I said, “You’re welcome to come if you’re  
244 able. If you’re not, then I understand.” But at that time I didn’t have a request from anyone for the  
245 Auditor to come, so... if I had, and I told him “Yes”, the Chair, or the Vice Chair, or one of the  
246 Commissioners has asked that you be here,” then they might...

247  
248 **Peter Einhorn:** I didn’t know I needed to ask. I would have thought it would have been in their interest  
249 to come.

250  
251 **Donna Beth McCormick:** Common courtesy.

252  
253 **Cynthia Tom:** I can’t speak for the Auditor. They are willing to...

254  
255 **Peter Einhorn:** I understand, but *the* Auditor may be out of town, but he’s got to ... he has a substantial  
256 staff.

257

258 **Dennis Speight:** ... the one who signed this...

259

260 **Austin Kaplan:** We'll get an overview process of the complaint process, we'll see where we're on  
261 parallel tracks, make sure we're not duplicating work, and also find out about other conflicts of interest,  
262 investigations of those, especially reports on commission members that we're not aware of just so that  
263 we can kind of roll that into our potential review of maybe beefing up our conflict of interest training  
264 and heading off any potential issues at the pass. I think we all sort of agree that people have the right  
265 intentions, but aren't real clear on the rules. That's the worst scenario that we could have to deal with.  
266 We want everybody to be real clear up front and know the rules of the road as they're serving.

267

268 **Cynthia Tom:** I will convey to my contacts in the Auditor's office that you would like them to attend the  
269 next meeting.

270

271 **Austin Kaplan:** We have one more citizen speaker on Item 4B and I'd like to do that before we circle up  
272 and finish it. Oh, I apologize...

273

274 **D. Ochoa-Gonzalez:** I only spoke five minutes, so would you just, may I just say a couple more things?

275

276 **Austin Kaplan:** Sure.

277

278 **D. Ochoa-Gonzalez:** I would like to know why the City Auditor's office didn't let, you know when they  
279 disseminated this report, they didn't send me a copy. They sent it to everyone else listed in the report  
280 but they didn't send me a copy. And when it was posted in this agenda, as an Agenda Item here, they  
281 didn't notify me either, or this Board didn't notify me that it was here. It was by mere accident that I  
282 figured out the item was there. When I emailed [cannot understand name] asking, again because English  
283 is not such a great... I think that the understanding she had of my email was that I wanted to file a  
284 complaint and so she actually sent me a form, because my email was not properly speaking. So it was by  
285 merely accident that I found out about it. And I understand that you mentioned that there is not much  
286 you can do about my request, but I believe in Boards, that's why I was part of one, and so I believe that  
287 if you, as a Board, consider that if this matter would have been properly brought to your bureau that  
288 you would have had a decision different than, you know, than forcing me to submit a resignation. I  
289 would encourage you to express that to the City Councils because even if you don't think that that will  
290 clear my name, in my conscience that will tell me that there is, you know, people that voted to be on an  
291 ethics board that will, you know, provide their opinion, if that is different from the Commissioner's  
292 report, that's pretty much all I need.

293

294 **Peter Einhorn:** To be clear, you said that you have admitted that you were a contractor of Texas  
295 Disposal Systems. Is that correct?

296

297 **D. Ochoa-Gonzalez:** That I...?

298

299 **Peter Einhorn:** That you were a contract employee of, or a contractor, or you did work that you were  
300 paid for...

301  
302 **D. Ochoa-Gonzalez:** Yes, I openly disclosed that to the City Auditors, and I also disclosed it to the City  
303 Council representatives and in that meeting that they mentioned on February 8<sup>th</sup>, I openly disclosed it to  
304 the Director of Austin Resource Recovery and the Deputy Director. I didn't mention the word TDS, but I  
305 mentioned that I was under a contract, for a hauler, doing educational work that was very limited to  
306 waste assessments, and recycling and composting. And I was very surprised that that wasn't in the  
307 report, because even before the meeting on February 13, I doubly, double checked, even if I haven't  
308 received one penny from Texas Disposal Systems, I double checked with the Director, and I expressed to  
309 him that, you know, that I was again, a contractor, doing educational work for a private entity. And he  
310 said that he was very clear that the City code 2-7-63, in Provisions for Conflict of Interest says, that  
311 "where there is an interest of a city official or an employee in the subject matter of a vote or decision,  
312 that is remote or incidental, the city official or employee may participate in the vote or decision and  
313 need not to disclose the interest." He didn't quote it exactly like that, but he said, "As long as you're  
314 absolutely sure that your job is nowhere related, you know, and you're only doing education, you're  
315 fine." And so I was probably misled. That was my mistake to not disclosed, by not understanding  
316 perhaps that this was a substantial interest when in my best of perception, until today, I don't see there  
317 is.

318  
319 **Peter Einhorn:** (Posing question to Cynthia Tom) Cindy, what is the definition of remote? Or incidental?  
320 In 2-7-63?

321  
322 **Cynthia Tom:** "A remote interest means an interest of a person or entity, including a city official or  
323 employee, who would be affected in the same way as the general public." So, somebody who happens  
324 to be a council member, and happens to live in Austin, is going to be affected by the property tax rate, if  
325 they own property... like every single other...

326  
327 **Peter Einhorn:** So it sounds like you got bad advice on the definition of remote or incidental.  
328

329 **Cynthia Tom:** Incidental interests would kind of be like an opposite, almost, of substantial interest and  
330 it would be "an interest in a person, entity or property, which is not a substantial interest and which has  
331 insignificant value de minimis", and it doesn't establish dollar limits or de minimis but it's kind of like  
332 regular interpretation. Substantial interest, on the other hand, would be an interest in another person  
333 or entity if you've got voting stock, if you received funds from that entity or person, during the prior 12  
334 months, or prior calendar year that equals or exceeds either \$5,000 in salary, bonuses, commissions, or  
335 professional fees; if it's 10% of your gross income during that prior calendar year, or prior 12 months  
336 that would also be a substantial interest, or if it's \$20,000 in payment for goods, products, or  
337 professional services. So if you meet, if the income that was received from TDS, met any of those  
338 thresholds in the calendar year. So, it depends on what year we're looking at. If we're looking at 2013, it  
339 would be that calendar year. If we're looking at 12 months back from today, you know, we would go... or  
340 12 months back from the votes, or the discussion, it could meet any of those thresholds; the \$5,000 in

341 salary, the 10% of gross income, or the \$20,000 in payment for goods or services. So that would be a  
342 substantial interest, versus incidental, de minimis, very small. It would definitely be smaller than any of  
343 those thresholds.

344  
345 **Peter Einhorn:** Does the Zero Waste Advisory Commission have an attorney advising them like you  
346 advise us? Or a staff?

347  
348 **Cynthia Tom:** I'm not aware. They may. I'm sure they have a staff liaison. You are unique in that your  
349 staff liaison is provided from the law department and is an attorney as well. Most other Boards and  
350 Commissions have a regular staff liaison who is not an attorney.

351  
352 **Peter Einhorn:** But those staff liaisons are going to be trained on the conflict of interest rules, right?

353  
354 **Cynthia Tom:** They should. Every staff liaison is supposed to go through the same training that all the  
355 Boards and Commission members do, and I personally, just to let you know, in my role as an attorney on  
356 the Ethics and Compliance team, have frequently received questions, either directly from City Boards  
357 and Commissions members, asking about conflicts of interest, or from staff liaisons asking me to help a  
358 board or commission member. So if there was a legal question and a staff liaison was not sure, or a  
359 Board or Commission member was not sure, if they had a conflict and if they needed to recuse, they  
360 could contact the Ethics and Compliance team and the law department and we would provide them  
361 legal advice to help them figure that out. That may not have been clear...

362  
363 **Velva Price:** I was thinking that we need to look to see what's on the video, for training,

364  
365 **Peter Einhorn:** (speaking to Daniela) I'm sorry, just to repeat again, you said that you had spoken with  
366 the Director of the Austin Resource Recovery department when this issue first came up for you?

367  
368 **D. Ochoa-Gonzalez:** Yes, and just to be clear, I never mentioned the word Texas Disposal Systems. But I  
369 mentioned the word, "I'm doing contracting work, you know, I'm doing business as doing educational  
370 work for a hauler."

371  
372 **Peter Einhorn:** And the director never asked the name of the hauler.

373  
374 **D. Ochoa-Gonzalez:** [Shakes her head no]

375  
376 **James Sassin:** Did you work for any other... what portion of that work is with TDS?

377  
378 **D. Ochoa-Gonzalez:** So, it didn't reach that \$5,000 threshold on the first two dates are mentioned on  
379 the report. It does reach that threshold because I only received basically one check. It's also in that  
380 comment I sent you. I had received my first check from them of \$3000 on February 28<sup>th</sup> and so the first  
381 one, you know, I had received nothing and then on the second one I had not received more than that

382 amount and so after the April 10<sup>th</sup> meeting that is mentioned there I received another check so it does  
383 reach the \$5000 dollar threshold. However I did not vote in that matter.

384 **Peter Einhorn:** But at the August 14<sup>th</sup> meeting you had reached the \$5000 threshold?

385 **D. Ochoa-Gonzalez:** Yes, but I did not vote

386 **Dennis Speight:** It says you voted.

387 **D. Ochoa-Gonzalez:** I'm sorry, I'm sorry, yeah, you're right.

388 **Dennis Speight:** It says "discussed and voted."

389 **Cynthia Tom:** And code provisions say that if you have a conflict you should not participate in a decision  
390 or vote and a decision is defined in Chapter 2-7 at the beginning to include discussions or deliberations  
391 which may lead to a vote so generally if someone were to ask the law department a hypothetical, "hey, I  
392 might have a conflict, what do I need to do?", we would have recommended they abstain from  
393 discussion and from voting.

394 **Austin Kaplan:** And that's why when we pass around, and all the Courts and Commissions do this, pass  
395 around their recusal sheet beforehand, you know, to peruse each item you can recuse like that. What I  
396 don't want to do is go through and have a final hearing right now because I don't think that's necessarily  
397 within the scope of our abilities. You know, what we can do is take possible action on 4B and I think  
398 that's what we're still considering and we're just about out of time. Is there anything else you want to  
399 offer?

400 **D. Ochoa-Gonzalez:** No, I just made a mistake actually. I was referring to April 10<sup>th</sup> so I did not vote in  
401 April 10<sup>th</sup> but I did vote in August, but the votes were not benefitting or affecting TDS in any way that I  
402 could perceive you know to be connected to my work to them anyhow.

403 **Velva Price:** We have to hear from one more person, right?

404 **Austin Kaplan:** We do have one more person on this agenda item before we can move on so Michael  
405 Whellan is going to speak for three minutes.

406 **Michael Whellan:** Michael Whellan on behalf of Texas Disposal Systems. Our client first heard, my  
407 client first heard about this by a reporter who called. We were given no notification, nothing from the  
408 auditors. We still haven't had contact with the auditor's office. I met Ms. Gonzalez for the first time  
409 today. I'd never met her and she indicated she had no discussion with anybody at TDS about any of  
410 these matters while she on the Zero Waste Advisory Commission. I ask you today to vote not to  
411 proceed further especially since she's resigned, but I wanted to clarify some things and I forgot your  
412 name, Commissioner, I apologize.

413 **Peter Einhorn:** Peter. Peter Einhorn.

414 **Michael Whellan:** I hadn't planned on speaking that I think are important. First, we know it's an  
415 anonymous complaint. You should know this is an incredibly competitive industry. I can't even - I've  
416 never seen anything like it. As soon as I got involved in hauling and garbage -

417 **Velva Price:** You're an attorney.

418 [Laughter]

419 **Michael Whellan:** It is unbelievable. I've never seen anything like it. So think for a moment. You've got  
420 an anonymous complaint in a highly competitive industry. Also, we know that in the auditor's report  
421 and, Mr. Einhorn, I think this is what's misleading. It keeps referring to them as TDS agenda items. Well,  
422 pull up the items and you'll see the items we're talking about, the ones she abstained from is a Republic  
423 Waste contract on April 10<sup>th</sup>. Of course we were there. We didn't think it should be awarded. We  
424 thought there should be further discussion. I think, in fact, I might have made a presentation there. The  
425 ones she did vote on though, Commissioners, February 13<sup>th</sup> and August 14<sup>th</sup> have nothing to do with  
426 TDS. TDS is a stakeholder and makes appearance regularly. In fact, we have reps at every single ZWAC  
427 meeting because it has a significant impact on this business. Generally, the one that they're referring to  
428 is Universal Recycling and there was an issue about the definition of composting. We wanted to provide  
429 feedback and then the two that I do recall because I'm involved in both of them actually - Special Events  
430 Ordinance. The Special Events Ordinance and what the recycling provision would be and the other one  
431 was data collection and reporting contract. It was a data collection and reporting contract from Emerge  
432 and I made a presentation, I think at ZWAC, I know I made one at Council for sure. We had concern  
433 about the confidentiality provisions in the data collection contract. That was our - TDS's - interest in  
434 that. So I think you've already identified this is moot. Ms. Gonzalez has already identified she had  
435 nothing to do with this. She never discussed any of these matters with anybody relating to and why  
436 would she think that Universal Recycling, Special Events ordinance or data collection and reporting  
437 would have anything to do with TDS. And with regard to the Republic Waste contract, again, no  
438 conversation, she abstained; she did obviously participate in the discussion, but no vote there so. And  
439 by the way, the Republic Waste contract was approved ultimately by City Council. So, I'm a little  
440 disturbed by the way the auditor, I'm glad you're going to ask the auditor to come and outline a little bit  
441 better what their process and procedures are. I'm a little disturbed that they didn't get any input. I just  
442 got the transcripts today and had a chance to look at them so I'm more than a little disturbed by that  
443 and especially the fact that they didn't let the defendant, if you will, show up or tell the defendant about  
444 this or even let her see this and start widely distributing it as a public document to people without giving  
445 her a chance to really be heard. I hope you'll vote not to proceed further and make that a final vote  
446 especially since it is moot, I forgot who mentioned that, I think one of the Commissioner's down here  
447 mentioned that, and give her some peace of mind with family so that she can go on her way now that  
448 she's resigned, but also keep in mind the precedent that is being set here by the auditor. Everybody  
449 who has expertise -

450 **Cynthia Tom:** We've got just a few minutes...

451 **Michael Whellan:** Can I just finish this one statement? This last statement. I just realized when I was  
452 coming over here that everybody, all of y'all, so many of you are lawyers, because you have expertise,  
453 you're involved in the issues at hand. People that are on ZWAC are involved in hauling; people who are  
454 on the Music Commission are involved in music. If we are to extend this the way this anonymous tipper  
455 has done it or has thought it should be extended, we really put a lot of people on these boards and  
456 commissions at extraordinary risk in terms of what we're talking about. I think there's been a bit of  
457 overreaching here frankly by somebody, I don't know who, but I hope that at least given the facts as  
458 you've heard them today you'll allow Ms. Gonzalez to move on with her life with some peace of mind.  
459 Thank y'all very much.

460 **Mitchell Harrison:** I had signed up to speak, but if she used the time that's fine with me, but I'm not  
461 sure of...

462 **Austin Kaplan:** She did, but we can give you just a minute. I apologize for that.

463 **Cynthia Tom:** Just for the record can you state your name.

464 **Mitchell Harrison:** Mitchell Harrison. And out of clarity she's my wife.

465 **Velva Price:** She? For the record...

466 **Mitchell Harrison:** Daniela Ochoa Gonzalez - has not changed her name if she wanted to or...the  
467 address is the same on the form; our names are not, so it's not a clear link between us, except for our  
468 child and one thing I want to say, first off, I apologize for the noise. I really didn't intend that. Secondly,  
469 I want to say a Commission of this nature deserves a better environment. If something in this City is  
470 going to be so substantial you need to be able to be in a more substantial space.

471 **Austin Kaplan:** Duly noted.

472 [Laughter]

473 **Mitchell Harrison:** I know I am surprised to see both rooms were empty, but it sounds like I mentioned  
474 you're creating precedence especially as boards and commissions are being reviewed to consolidate and  
475 10-1 has a lot of opportunity for change. Take note of the voluntary time and contributions of the  
476 private citizens, their expertise for which qualifies them to work in this commissions and the ability to  
477 train them or provide an attorney because my wife had no intent to do anything wrong as I have heard  
478 since the day she was first informed, and she would like whatever is in your power to clear her name.

479 **Austin Kaplan:** Alright, thank you so much.

480 **Austin Kaplan:** I think, unless there is a burning desire to discuss this more I think what I would like to do  
481 is propose possible action have a vote on it and decide what we want to do. Our possible action is to  
482 continue to respond to as the ethics commission file our own complaint and move ahead with our  
483 process and so to add a motion to consider whether we want to do that.

484 **Velva Price:** But if we don't have a motion – if nobody makes a motion on this then it's just dies?

485 **Austin Kaplan:** Then I don't have a motion and it just dies.

486 **Velva Price:** Okay.

487 **Donna Beth McCormick:** But we have asked for the auditor to come, does that continue?

488 **Austin Kaplan:** That is happening

489 **Peter Einhorn:** Do we have to file our own complaint to further investigate the background of this  
490 process?

491 **Austin Kaplan:** I don't believe so.

492 **Peter Einhorn:** I mean can we table the possibility of filing.

493 **Dennis Speight:** I think tabling is the right thing to do.

494 **Austin Kaplan:** I would make a motion to table

495 **Cynthia Tom:** As long as, just so you know there are time limits, but its two years so if you want to keep  
496 open the possibility of filing a complaint on your own initiative related to the events that are discussed  
497 in the auditor's report you would just need to make sure that you did it within two years of when the  
498 events are alleged to happened and I think these events happened the last calendar year

499 **Peter Einhorn:** That last one was August 2013, right?

500 **Cynthia Tom:** And your next meeting is in July 2014.

501 [Mumbling]

502 **Austin Kaplan:** Well, what we can do...

503 **Cynthia Tom:** I think if there were events if they happened in 2012 we would be getting close to that  
504 but if they all happened in 2013 we could table and keep that possibility alive if we want to. That  
505 conversation with the auditor you could file

506 **Austin Kaplan:** So it looks like we have a couple of options. We can table it and re-discuss this agenda  
507 item in our next meeting, we can have a motion to have a vote there is a motion, or we can just have no  
508 motion, no action and move on and not reassign this for the future agenda item.

509 **Cynthia Tom:** But the auditor will be...

510 **Austin Kaplan:** Yeah, the auditor is coming regardless.

511 **Cynthia Tom:** I wouldn't say the auditor himself, but a representative from the auditor's office I will ask  
512 to come to the next meeting and if you want them to discuss generally their process, if you want them  
513 to discuss this report specifically. What's the –

514 **Austin Kaplan:** Can we talk to them next time? Can we talk to them, I love this to be part of the  
515 contacts for that part of conversation because I think that they kind of threw a lot of stuff out there and  
516 then they didn't show up to substantiate any of it. I got some questions about who is on the distribution  
517 list. You know the fact that nobody, you know the staff liaison for the ZWAC is not on the distribution  
518 list, who gets these? Why? Is it a public document?

519 **Dennis Speight:** A lot of it came public without the actual people knowing about it.

520 **Cynthia Tom:** I can ask the Auditor's representative if they would be willing to discuss both their general  
521 processes and investigation and items related to this specific report.

522 **Austin Kaplan:** I mean it seems to me...

523 **Cynthia Tom:** Some of their information, they might consider it confidential related to their  
524 investigation - some of their working papers - I am not sure, but I will ask if that's what the  
525 Commissioners wants me to do.

526 **Austin Kaplan:** It sounds like we want to get as much information as we can. It sounds like there was  
527 some information that Mr. Whellan has that we don't yet have from the auditor, basically interviews  
528 that we might already transcripts that we might be able to get even though it's not public maybe we can  
529 review them, meaning. I am still inclined since we have a Board and Commission member who has  
530 resigned that that's the ultimate thing that we can do in terms of sanctioning to have a vote on this now  
531 and resolve it and then have this discussion with the auditors separately.

532 **Velva Price:** I agree.

533 **Austin Kaplan:** But I'll defer to ya'll if that motion exists.

534 **Peter Einhorn:** It seems to me like there is a possibility of a conflict of interest, but it is also doesn't  
535 seem that there's a whole heck of a lot of malice behind it; seems like bad advice was given and I think  
536 we ought to take a closer look at how we make sure that our boards and commission members are  
537 getting (A) the right training up front and (B) the right advice going through this process so.

538 **Cynthia Tom:** Yup.

539 **Austin Kaplan:** Alright so, we may have come full circle. Do I have a motion to a possible action on 4B?

540 **Peter Einhorn:** I'll make a motion for no action.

541 **Velva Price:** And I will second that.

542 **Donna Beth McCormick:** I don't think we need to do that. We don't have a motion. I don't understand.

543 **Cynthia Tom:** Is that a motion not to file?

544 **Peter Einhorn:** Not to file

545 **Cynthia Tom:** A complaint on the commission?

546 **Peter Einhorn:** Yeah, otherwise we are going to be leaving it out there.

547 **Velva Price:** And I will second that motion because...

548 **Austin Kaplan:** Ok, she is concerned about the language

549 **Cynthia Tom:** Yeah, and a motion to not make a motion...the motion is specifically for the commission  
550 not to file or to complain.

551 **Dennis Speight:** Take no action or is it to not file? So that's no action and not file?

552 **Donna Beth McCormick:** What?

553 **Dennis Speight:** Are we making a decision not to file our own?

554 **Cynthia Tom:** If no one makes a motion to file a complaint then we can't have a vote on it, right?  
555 Someone could make a motion...

556 **Peter Einhorn:** Well, we can make a motion to reconsider at any time if more information on that  
557 comes up later.

558 **Cynthia Tom:** You don't have to make a motion on this, other than maybe a motion to postpone as a  
559 future item...

560 **Velva Price:** I'm not going to do that either.

561 **Peter Einhorn:** I will drop my motion; I am ready to take no action.

562 **Velva Price:** Ok so, and then I withdraw my second to whatever he...

563 **Austin Kaplan:** Alright hearing no motion, no second, take no action hearing further discussion on 4B  
564 and there is none and the commission will move on to the rest of its business. Thank you all for coming.