

INVESTIGATION REPORT

To : Effie Secretary of the Senate, Colorado General Assembly

Subject: Workplace Investigation - Complaint

Conducted by: ██████████ Workplace Investigator, Employers Council, Inc.

Date of Report: January 18, 2018

Investigation

Active: December 4, 2017 - January 18, 2017

Procedure: Effie Ameen, Secretary of the Senate of the Colorado General Assembly, contacted ██████████ of Employers Council, Inc. ("EC") to perform a workplace investigation. ██████████ explained the investigation process to Ms. Ameen and clarified the investigator's role and the necessary expectations in this process as communicated to all participants and referenced below. The undersigned, ██████████, assumed the role of investigator in this matter. I prepared written summary statements for each witness. I communicated similar introductory remarks to each witness. These remarks addressed the purpose of the investigation and my role as a neutral fact finder, confidentiality expectations of supervisory employees, Colorado General Assembly's prohibition against retaliation for participation in the investigation and/or making complaints under the equal employment opportunity policy, and the expectation to be truthful. Each witness reviewed his or her statement with me. I encouraged each witness to make any additions, deletions, or other modifications necessary to accurately reflect his or her beliefs. Each witness was asked to review his or her statement to ensure completeness and accuracy and attest thereto by signing the summary statement.

Unless otherwise noted, all interviews took place at Employers Council's Denver offices, located at 1799 Pennsylvania St., Denver, CO, 80203.

On December 22, 2017, I interviewed ██████████, former ██████████ Senator Morgan Carrol.

On January 8, 2018, I interviewed ██████████. 1

¹ Mr. ██████████ brought his attorney, ██████████, to the interview. Mr. ██████████ did not interfere with the interview.

On January 9, 2018, I interviewed
Democrats,

for the Senate

Also on January 9, 2018, I interviewed
Consultant, via telephone,

, Lawyer and Public Policy

On January 10, 2018, I interviewed
, via telephone.

, Lobbyist, for

Summary Statement

Ms. written complaint to Ms. Ameen

- 1.
- 2.
- 4.

Summary Statement

Summary Statement²

a. Email from this investigator to

Summary Statement

a. Emails between this investigator and

5, Summary Statement

6, News articles this investigator found before interviewing Mr.

Background and Summary of Issues

Every year the Colorado General Assembly holds regular session from around the beginning of January, for the following 120 days. represents District , which encompasses multiple counties in northwest and north central Colorado. This investigator understands during the 2016 legislative session. Ms alleges that during the 2016 legislative session, Mr grabbed and slapped her "behind" four times.

Each of the pertinent allegations will be addressed individually.

Investigator Findings

This section identifies the pertinent allegations, followed by identification of specific sources of supporting or refuting information. Investigator commentary follows to develop specific areas of concern, address credibility assessment, or provide other subjective comment. *For a comprehensive understanding of the issues presented here it is recommended that each summary*

² This Summary Statement is unsigned because the interview was conducted via telephone. Mr did not respond to this investigator's request for his edits (see Attachment 3a).

³ This Summary Statement is unsigned because the interview was conducted via telephone. Ms responded to an email that she did not need to make any changes (see Attachment 4a),

statement be reviewed individually Unless otherwise noted, all information quoted below comes from the summary statements,

Allegation #1: [REDACTED] alleges that in late February to early March of 2016, [REDACTED] grabbed her "rear,"

Supporting Information

[REDACTED], former Staff to Senator Morgan Carroll, states: "This happened during the 2016 session, Senator [REDACTED] was running for Congress in the 6th District, and so I was basically running the office for her, There is a big hallway that went from the Senate minority office to the chamber where people are voting, When Senate was in session from 9 am to about 1:30, I would bring Sen. [REDACTED] documents, or be researching things, or bring things to her, This would happen either right before session when I was getting her coffee, or right after session, But in that corridor, there is the Senate Majority office, which at the time was headed by [REDACTED], [REDACTED] had an office there, He used to hang out there, right outside the Senate majority offices, This happened about three or four times, I think, mostly before session, He would just grab my rear!"

Ms, [REDACTED] continues: "The first time I remembered it happening it was late February to early March, In early February the AFP, Americans for Progress, stormed our offices, It was very odd, They came in and threw T-shirts and decals everywhere, They are somewhat like the Colorado branch of the Koch brothers, It was around mid-February, around Valentine's day'ish, The first time didn't happen until two or three weeks later, I remember Senator Ulibarri made a comment about the AFP storming online!"

Ms, [REDACTED] further states: "This first time he did it, he was behind me, I looked behind me and thought, 'Who the hell is that?' I didn't see him coming towards me, He always stood right outside those offices, The first time it was a grab, It wasn't hard, I don't know what he is thinking, I can't lie, so I don't remember which cheek it was he grabbed, It was a while ago, But these things, when you are under a ton of pressure to get things done, I just decided to take a different route in the end, I didn't want to take this on, I have no idea what he was wearing, I had a rotation of things I would wear, He stepped towards me to grab me, It was not a brush past He was definitely stepping towards me, I have no idea if anyone else saw, I don't remember anyone else who may have been around, It is all kind of a blur now!"

Ms, [REDACTED] further states: "But in the Capital, there is a lot of this, That's why I think people don't notice anymore, I think maybe people think it is something they are doing between themselves, or don't know what the heck is going on, For example, you go up to the lobby area where the lobbyists are waiting for the

Senators to get out, and there is tons of this going on. The lobbyists are the worst. They are perpetrators I would say. But, they also get preyed on by some of the Senators. I thought it was all normal."

Ms. continues: "He probably has no idea who I am. Or, when I filed the report he had no idea who I was. He probably has an idea who I am now?"
Ms. Further states "I told — the time. He didn't know what to do. He knew about a lot of things that were going on that I had no idea. He was like 'We have to do something. He shouldn't be allowed to grab someone just in the hallway. That is not normal. He didn't know what to do about it. He was definitely not complacent. I think knew more about what was going on. He was better connected with the gossip. He is now a lobbyist. I think he works for . I think she has her own lobbyist group. has been around a long time."

Lawyer and Public Policy Consultant, states: "I would say that nearly everyone lull about in that hallway before chamber would start. It is where people would catch you to talk about bills, or set a meeting later in the day. I do recall that. But people would catch each other there. I would definitely say I saw Randy out there as much as anyone. He was out there the same as everyone. It is chaos for everyone for 120 days. It would be hard to say because there is literally a crowd out front everyday. So you are weaving your way sometimes, or even putting your hand on someone to ask to get by. It is hard to answer if a butt grab as an accident would be possible at that time. If the allegation is that it was a grab, that is hard to say it was an accident. If he was walking fast through the hallway and he bumped his hand, I would think how many times I was running through and my purse or something bumped someone. If it was a gratuitous grab, rather than a brushing, that is a different story. I have seen someone help someone by the shoulder if they were tripping on their shoe or something. I did see [REDACTED] hug someone on occasion."

Ms. continues: "I will say I never saw something like that happen and I was in that hallway a lot. I did not babysit [REDACTED], but I would have said something to him. We are good enough friends and known each other long enough that if I would have seen him grope someone, I would have said something. But, 24 hours in a day, I was not watching him, in particular. I spent a lot of time with him in committee buses, or field tours as a group. I never saw him do something like that. But, again, after we were done with our field tour, I would either go back to my room or the hotel bar with people from my group. Would I laugh at every one of his jokes, no, but that is true of my husband too. I would not hesitate to correct him, if something was out of bounds, including something like this. But maybe he minded his manners around me. But, it is a little odd for me for as much time as we spent together, I did not observe him do something like you describe. But, it could have been away from when I was

around. I do remember one time a staffer talking about some of the men in the caucus being kind of old school in the things they say and do. Whether someone was trying to express more than that, I am not sure. I probably responded, 'I know what you mean,' but I did not express it in a personal sense, but, more in a sense that these guys are not new age, sensitive guys. But I was taken aback when I saw in the media as much as I did. I was not necessarily surprised when [REDACTED] name was thrown in there. He is both from that era, and geographically a different area."

**Refuting
Information:**

[REDACTED], Colorado State Senator, states: "My offices are located in the Capitol. I was on the 2nd floor a couple of years ago. The chamber is on the second floor. The same floor as the House of Representatives. I was in the leadership offices in #266 during the 2016 legislative session. It encompasses three offices and a number of staff. We all stand outside of our offices, in the hallway. There are 100 people that stand out there. There are lobbyists that stand out there in that hallway, all the time. The hallway is about 10 feet wide. Anyone can be in that hallway. It would be common that the other Senators would stand in the hallway. [REDACTED] and [REDACTED] shared that office space during the 2016 session. [REDACTED] is no longer there. [REDACTED] is still there."

Mr. [REDACTED] continues: "I have no idea who is making this complaint. I couldn't tell you the name of woman that has come out to a newspaper, not to my knowledge. All I can tell you is what I read in the newspaper. We are here to talk about the complaint that was filed. Newspapers can print whatever they like. If a complaint has not come forward, then there is not a complaint. I have done nothing at that Capitol that I need to defend. There was not a second allegation in the newspaper. There was only the one with the woman whom was named. I have read nothing in the newspapers, other than the allegation where the woman was named."

Mr. [REDACTED] further states: "No, I do not recall anything like that, because it never happened. I did not touch anyone's buttocks during the 2016 legislative session in that hallway, or any other time that I have served in the Senate. I have not touched male or female buttocks. It is not a locker room. I have done nothing at the Capitol that I need to apologize for. I am very respectful of my colleagues and co-workers that are around. It is hard to remember something that never happened."

[REDACTED], Lobbyist, states: "I worked with [REDACTED] during the 2016 session. She sat two desks away from me. We talked pretty often. I would say that we were friends. We are still friends now. We keep in touch. I don't remember telling me something during the 2016 legislative session what happened to her that would possibly be considered sexual harassment, not

Off the top of my head. I do not remember her telling me something about something between her and [REDACTED]."

Mr [REDACTED] further states: "I remember there was an incident where she had

come back from the office and she was distraught about something. She was more quiet than normal. I didn't ask. I was busy and working. It's not unusual for there to be some sort of commotion happening. There was some commotion or something. I didn't think anything of the commotion at the time. The commotion was something about her coming in and talking to her boss, Senator [REDACTED], and they left again. Again, I didn't think about it at the time because we were all busy and people leave out the office. [REDACTED] told me something later, but not that week. It was more recently. [REDACTED] told me that she did have an incident with [REDACTED] and she was considering talking about it. I asked it her when it happened and she reminded me of that day. She hadn't told me anything that day. But she reminded me of that day. I said, 'Oh, that was what was happening?' And she responded, 'Yes.' She did not tell me during the 2016 legislative session about anything that was going on with [REDACTED]. And if she did, I don't recall."

Comment: Generally, these are difficult allegations because it is only a "he said, she said" situation. Therefore, credibility plays an important role.

Mr. [REDACTED] response to this investigator's questions about the layout of the Capitol seemed condescending. Mr. [REDACTED] appeared somewhat patronizing in realizing this investigator had not been inside of the Capitol. This sense of superiority hinders Mr. [REDACTED] credibility.

At one point in the interview, Mr. [REDACTED] appeared quick-tempered. This investigator was attempting to find out if Mr. [REDACTED] realized the allegations contained herein were different than the allegations in the news wherein the complainant's name was known. Mr. [REDACTED] attitude seemingly changed quickly to one wherein he was upset and defensive. He cut off this investigator multiple times during these few minutes. Mr. [REDACTED] face also appeared to become red during this time. This investigator is unsure why Mr. [REDACTED] would respond in such a manner to this line of questioning. This apparent quick temper also hinders Mr. [REDACTED] credibility.

When this investigator was asking Mr. [REDACTED] about his knowledge of the allegations against him, he appeared to pretend to know less than someone in his situation would reasonably know. His answers conveyed the sense that he did not fully understand he was being accused of inappropriately grabbing or slapping someone's rear end. However, it was apparent from multiple news sources (see Attachment 6) that this was the allegation. Therefore, it is unclear why Mr. [REDACTED] would not know, or clearly state to this investigator, what

he knew about the allegation against him. This makes him appear either evasive of the allegation or ignorant of the news. Either way, this hinders Mr. [REDACTED] credibility.

Mr. [REDACTED] initial response when this investigator asked if he ever touched or grabbed anyone's rear end during the 2016 legislative session, was vague. Mr. [REDACTED] did not seem to understand that this investigator needed a firm response to such an allegation. He then initially responded that he did not "recall" anything like that. Yet, not recalling whether he grabbed someone's rear end does not appear as an appropriate response. It would be reasonable for someone to not remember something as innocuous as what you ate for a meal 3 weeks ago. It does not seem, to this investigator, to be a reasonable response to "not recall" when asked if you touched a private part of another person's body. This type of response hinders his credibility.

Finally, considering Mr. [REDACTED] statement, he admits he was regularly in the hallway [REDACTED] claims these allegations took place in. This, at least, puts him in the space for the opportunity for allegation to be plausible.

[REDACTED] claims she told two people, at the time, of what allegedly happened with Mr. [REDACTED]. [REDACTED] states he does not remember her telling him this. It would seem something a person would remember being told. Mr. [REDACTED] remembers some "commotion" happening one day with Ms. [REDACTED] and then claims he later connected why there was the "commotion." Yet, he repeats that he does not remember Ms. [REDACTED] telling him anything about Mr. [REDACTED], at the time.

Ms. [REDACTED] also claims she told Mr. [REDACTED] at the time (see Allegation 2). Mr. [REDACTED] also does not remember Ms. [REDACTED] stating any incident with Mr. [REDACTED]. However, Mr. [REDACTED] does remember something about Ms. [REDACTED] being uncomfortable, and not wanting to go to the chamber for some reason, but he doesn't remember why. This would make it seem more likely Ms. [REDACTED] may have told him something that he has now forgotten, but does remember details of the 2016 session wherein it was more likely Ms. [REDACTED] was experiencing something out of the ordinary. Further, Ms. [REDACTED] stated that Mr. [REDACTED] response to her telling him what happened, at the time, was he said Mr. [REDACTED] is "known to do that." Mr. [REDACTED] had a similar response to this investigator when asked about Mr. [REDACTED]. This makes it again more likely that Ms. [REDACTED] did tell Mr. [REDACTED], but he has since forgotten, assuming this may not have been shocking news to Mr. [REDACTED].

Ms. [REDACTED] appears to give Mr. [REDACTED] the benefit of the doubt that his actions were not malicious. This bolsters Ms. [REDACTED] credibility.

Ms. [REDACTED] does not appear to have a motive to fabricate these allegations. She remained anonymous in the press, which makes it more likely she is not looking for fame out of this complaint. Further, she specifically desired to keep "politics" out of the issue of the complaint. She appeared to believe that because she worked for a left leaning Democrat, and this allegation is against a Republican that it would seem a political move. This is somewhat corroborated by Mr. [REDACTED] belief that it was possible this allegation was stemming from a political opportunity. However [REDACTED] motivations, in this sense, appeared genuine

Ms. [REDACTED] appeared quite hesitant to speak with this investigator. She was outwardly shy, somewhat meek, and quiet spoken. These traits make it seem less plausible that she would fabricate a somewhat sensational story such as these allegations.

[REDACTED] provides perspective from a colleague of Mr. [REDACTED]. She corroborates that he was typically in that hallway where these complaints stem from. Further, Ms. [REDACTED] stated she was not "surprised" when she heard Mr. [REDACTED] name in the news. While she states clearly she never saw anything like these allegations, she also states she was not watching him all the time. These seemingly small statements by Ms. [REDACTED] actually appear large when given the totality of the statements given to this investigator.

These allegations were difficult for this investigator to resolve. The two important points on either side seem to be that Mr. [REDACTED] does not remember Ms. [REDACTED] telling him about this. This decreases the plausibility the allegation may have occurred. However, Mr. [REDACTED] response of not "recalling" the incident seems too great to overcome. Further, without any apparent motive by Ms. [REDACTED] to fabricate this, as well as her appearance of genuineness, this investigator is persuaded.

Therefore, based on all the information provided, this investigator finds it more likely than not that in late February to early March of 2016, [REDACTED] grabbed [REDACTED] "rear."

Allegation #2: [REDACTED] alleges that later the same week in late February or early March 2016, [REDACTED] grabbed her "behind" for the second time.

Supporting Information: [REDACTED] states: "I was purely shocked the first time. It began to be somewhat of a game. It must have been sometime during the same week that he did it a second time. He thought it was funny. I don't think he is all there, he does not seem to have a full deck of cards. I don't know what his intentions are with him grabbing my behind, but I just do not think he is all there. I don't think he is

being malicious, I just don't think he is all there. I think he thinks it's a game. I could be totally wrong on that. This second time it was another grab with his hand. Because of the positions of the bills we were on, like the first or second readings, we were on the third readings of a lot of the bills the second time he did it. It was the same area the second time as the first time. He sort of just hung out there. I think this second time it happened right before chamber time because Morgan would go in to read the bills and I would go grab her coffee, so it was not as crazy as right during chamber time, but it was getting to the point where people were hustling, but weren't super busy. It was around 9. He would always grab me from the back. So the first time I would think, who was that? And I turned around and he giggled. This second time I turned around, and you could see he was laughing. I thought this guy was a real jackass. I was really embarrassed the first time. The second time I was really angry. I didn't catch him in the act. There were people around this second time, but it is not like I was looking for witnesses. I knew it was weird, but I didn't think to do that. I saw this happen all the time, so, I was just thinking of telling him to "shove off." But I didn't."

Ms. [REDACTED] continues: "I think I talked to [REDACTED] the second time. I was pretty pissed off. A lot of people in the office like me, but they say they don't like me when I'm pissed off. I guess people can tell in the office when I am really upset. I didn't know that. I think [REDACTED]'s response was, 'Yeah, he's known to do that.' His response was not that [REDACTED] was a jackass of some sort, but that he was known to do that [REDACTED] is 20 years old than me. I depended upon [REDACTED] a lot for his discretion and advice. He was right a lot. Every time I brought something by him, he did right by me. There were several people at the Capital, when I worked there, that you would depend on their knowledge and their discretion. [REDACTED] was one of them."

[REDACTED], Senior Policy Director for the Senate Democrats, states: "I have been at the Capitol for about four years now. [REDACTED] was [Senator Morgan Carroll's] aide during the 2015 and 2016 legislative session. [REDACTED] may have told me something, but I just don't remember. I know that she was uncomfortable. But I do not remember having a conversation about it. I know that she was uncomfortable around someone. But I don't remember who or what or why, I just remember she was apprehensive around a few of them. I remember I had to go up one time because she didn't want to, but I can't remember who or why it was. I do not remember [REDACTED] telling me that [REDACTED] touched her behind."

Mr. [REDACTED] continues: "I have not seen [REDACTED] grab the rear ends or touch anyone. He has made comments to me like, 'She's hot' or not as clean as that. There was one time we were in his office, and someone walked by. I remember feeling awkward and uncomfortable about what he said, like he said something that should not be said to a human being. It was something like 'You look

extremely sexy today," I don't remember if the person who walked by heard it. I don't remember seeing a reaction or anything like that. But, I have also seen him be a perfect gentleman too."

Mr. [REDACTED] further states: "There are certain things the staff has come to know. Like, don't be caught at night if you are girl, in certain places with certain legislators. One is [REDACTED]. It's kind of known if you are girl to stay away at night. His office is kind of in a long dark hallway, with only a few doors. There is no exit or safety there."

Refuting

Information: Mr. [REDACTED] states: "No, I do not recall anything like that, because it never happened. I did not touch anyone's buttocks during the 2016 legislative session in that hallway, or any other time that I have served in the Senate. I have not touched male or female buttocks. It is not a locker room. I have done nothing at the Capitol that I need to apologize for. I am very respectful of my colleagues and co-workers that are around, It is hard to remember something that never happened."

Comment: Mr. [REDACTED] denial is all-encompassing. Therefore, this allegation's analysis is identical to the first (see Allegation I).

As a result, this investigator finds it more likely than not that later the same week in late February or early March 2016, [REDACTED] grabbed [REDACTED] "behind" for the second time.

Allegation #3: [REDACTED] alleges that in March of 2016, [REDACTED] slapped her butt cheek two times.

Supporting

Information: Ms. [REDACTED] states: "The third and fourth time it was just a slap, I think the third and fourth time was in the following weeks in March. It didn't happen past March. I do think there was a third and fourth time with the slap. I knew who it was when it happened. I just walked away, both times. I didn't look back. I didn't want to look back because I knew I would get a response. And I didn't want to think about it. By the fourth time, I was thinking I would just avoid him. I don't remember on the third and fourth time if he slapped one cheek or two. I have an idea, but I'm not 100% sure. My idea was that it was one cheek. He again stepped towards me when it happened. There was no way he could reach that far. He is a tall guy and he had to step. Because I would try and avoid him anyway. It was not as if I was trying to go over to his office and drop by. I didn't know anyone in that office, I can't tell you for 100% when the slaps happened, if they were before or after session. But it was during that same time,

either before or after session. After that, I avoided taking that route. He definitely thought this was some sort of back and forth game, like a kid."

Refuting

Information:

██████████ states: "No, I do not recall anything like that, because it never happened. I did not touch anyone's buttocks during the 2016 legislative session in that hallway or any or any other time that I have served in the Senate. I have not touched male or female buttock. It is not a locker room. I have done nothing at the Capitol that I need to apologize for. I am very respectful of my colleagues and co-workers that are around. It is hard to remember something that never happened."

Comment: The analysis here is almost identical to Allegations 1 & 2.

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Additionally, Ms. ██████ again gives details that make her appear genuine. Further, she admits she cannot remember which "cheek" of her "behind" he grabbed. This lack of desire to exaggerate or state what she does not remember bolsters her credibility.

As a result, this investigator finds it more likely than not that in March of 2016, ██████ slapped ██████ butt cheek two times.

Conclusion

As stated previously, these allegations were difficult to resolve. In a situation of "he said, she said" type allegations, credibility plays an important role. Taking all statements to this investigator into consideration, it appears more likely than not that ██████ grabbed and slapped the rear end of ██████ during the 2016 legislative session of the Colorado General Assembly on several occasions.

Summary of Findings

1. This investigator finds it more likely than not that in late February to early March of 2016, [REDACTED] grabbed [REDACTED] "rear."
2. This investigator finds it more likely than not that later the same week in late February or early March 2016, [REDACTED] grabbed [REDACTED] "behind" for the second time.
3. This investigator finds it more likely than not that in March of 2016, [REDACTED] slapped [REDACTED] butt cheek two times.

Analysis

Decision-makers for Office of Legislative Legal Services are responsible for assessing whether the facts of this matter support the allegations presented here or otherwise establish unacceptable conduct. This investigation report is intended to be the tool for making that analysis by identifying the relevant allegations and addressing sources of supporting and refuting information. This investigator's commentary is also shared, but it is important to understand that another person, such as a judge or a juror, might reach different conclusions based on the same or additional information.

END REPORT

Respectfully submitted,

EMPLOYERS COUNCIL, INC.

[REDACTED]

[REDACTED], J.D.

Workplace Investigator

AET/bb

Attachments