

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Sean Bertsch

Respondent.

No. 2021-048

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Sean Bertsch and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD through KATE REYNOLDS, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation. This stipulation is based on the following:

**A. STIPULATED FACTS**

1. On November 2, 2021, the Executive Ethics Board (Board) received a referral from the Department of Corrections (DOC) alleging that Sean Bertsch (Mr. Bertsch), a former Corrections & Custody Officer 2 (CO2) with the Washington Corrections Center for Women (WCCW), may have violated the Ethics in Public Service Act by using state resources for private benefit or gain and accessing confidential information for non-work related purposes.

2. According to DOC, Mr. Bertsch was originally hired by DOC on July 1, 2016 as a CO2. He was temporarily promoted to Correction Sergeant on July 22, 2020. On August 7, 2020 he returned to the position of CO2, which is the position he held at the time of the allegations.

3. According to Jennifer Cotton (Ms. Cotton), the Superintendent of WCCW, on or about October 15, 2021, it was brought to her attention via an Incident Report that Mr. Bertsch, may have sent an email containing COVID-19 testing and other related information from his work email address to his personal email address. At the time, Mr. Bertsch was assigned to the WCCW COVID-19 response testing and mapping group managing tracking of staff serial COVID-19 testing, their results and their personal contact information.

4. According to Ms. Cotton, she reached out to DOC's Cyber Security Unit who was able to do a data pull for emails from Mr. Bertsch's work email address to his personal email address. Initial searches did not appear to indicate he had sent information to his home email that would violate HIPAA regulations. Ms. Cotton said as a result, she did not pull him from his testing and mapping post.

5. Ms. Cotton said Mr. Bertsch formally separated from state service on October 18, 2021.

6. According to Ms. Cotton, on October 22, 2021, she was notified by DOC Chief of Staff Julie Martin (Ms. Martin) that Denise Vaughan (Ms. Vaughn), DOC's Information Governance Director, had notified her that on October 16, 2021 and October 17, 2021, Mr. Bertsch sent over 30 emails containing well over 500+ attachments to his personal email address from his work email address. Many of those records contained private information regarding others, including both staff and incarcerated individuals, as well as security concerns.

7. According to Ms. Cotton, Mr. Bertsch sent hundreds of infraction and incident reports he had written which sometimes contained sensitive information, to include mental health referrals and diagnoses. In addition, he sent himself restricted policy related training materials for specialty teams including documents that were marked confidential and/or restricted. This was

over a two-day period. Ms. Cotton also said Mr. Bertsch sent emails to his personal address as far back as April 2021. It appears he may have also been using his work email to access Etsy<sup>1</sup> for personal gain.

8. Ms. Cotton provided Board staff with 82 pages of assorted documents Mr. Bertsch attached to his work email and sent to his personal email address. Those documents included:

- Completed Request for Mental Health Assessments for inmates.
- Completed General Infraction Report for inmates.
- Completed Initial Serious Infraction Reports for inmates.
- Completed Use of Force Reports.
- Completed Incident Reports for inmates.
- Completed WCCW Compliment Forms for Mr. Bertsch.
- DOC Crisis Negotiations Team (CNT) Manual.
- DOC Special Emergency Response Team (ERT) Manual.
- DOC Special Emergency Response Team (SERT) Manual.
- DOC Use of Force PowerPoint presentation.

9. Board staff requested a copy of Mr. Bertsch's email history from DOC and were provided with the emails in a PST format.<sup>2</sup>

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<sup>1</sup> According to their website, Etsy, Inc. is an American e-commerce company focused on handmade or vintage items and craft supplies.

<sup>2</sup> Board staff processed the PST file on a Forensic Recovery of Evidence Device (FRED) using the Magnet Axiom Digital Investigation Platform to acquire and analyze the PST file.

10. A review of Mr. Bertsch's email history revealed that between April 9, 2021 and October 17, 2021, Mr. Bertsch sent approximately 133 emails from his work email address to his personal email address. Forty of those emails included attachments.

11. The 40 emails with attachments sent by Mr. Bertsch from his work email address to his personal email address contained approximately 507 attachments.

12. Approximately 455 of those attachments were sent in emails on October 16, 2021, two days after Mr. Bertsch was notified by the DOC that he was being dismissed for failing to provide proof of a COVID-19 vaccination. The 455 attachments included the following documents:<sup>3</sup>

- Pictures of a female inmate with injuries sustained in an altercation.
- Completed General Infraction Reports with inmate's names.
- Completed Requests for Mental Health Assessment for inmates.
- Evidence Documents with photos of evidence. (Evidence varied from drugs, drug paraphernalia, injuries to inmates and damaged property.)
- Completed Incident Reports with inmate names.
- Emergency Preparedness and Fire Drill Reports for COVID-19 Drills.
- Radio Call Sign List for WCCW Staff.
- Quick Reference Phone Numbers for WCCW staff.
- ERT, SERT and CNT manuals.
- Quizzes for Pat Down Searches, Prison Key Control and Formal/Informal Counts of inmates.
- Copies of leave requests made by Mr. Bertsch.

13. A copy of the dismissal letter issued to Mr. Bertsch was attached to an email sent from Mr. Bertsch's work email address to his personal email address on October 15, 2021. The dismissal letter was dated October 14, 2021 and the dismissal was effective October 18, 2021.

14. Board staff found one email sent from Mr. Bertsch's work email address to his personal email address with reference to Etsy. It appears that Mr. Bertsch sent information to

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<sup>3</sup> Documents found included the documents provided in the referral from the DOC.

himself about miscellaneous furniture items. There is no evidence he was using state resources to purchase or sell items.

## B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from disclosing confidential information. RCW 42.52.050, states in pertinent parts, the following:

.....

(2) No state officer or state employee may make a disclosure of confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the state officer's or state employee's agency and (b) the person or persons who have authority to waive the confidentiality of the information.

(3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

RCW 42.52.050(5) defines "confidential information" as:

(a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

2. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from Use of persons, money or property for private gain. RCW 42.52.160 states:

No state officer or state employee may employ or use any person, money, or property under the officers or employees official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee or another.

WAC 292-110-010 Use of state resources states, in part:

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(3) **Permitted personal use of state resources.** This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis only if each of the following conditions are met:

- (i) There is little or no cost to the state;
- (ii) Any use is brief;
- (iii) Any use occurs infrequently;
- (iv) The use does not interfere with the performance of any state officer's or employee's official duties;

- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

3. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

### **C. AGGRAVATING AND MITIGATING FACTORS**

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor these types of violations significantly reduce the public respect and confidence in state government employees and they were continuous in nature. In the matter at hand, there are no mitigating factors.

### **D. STIPULATION AND AGREED ORDER**

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Sean Bertsch and over the subject matter of this complaint.
2. Under RCW 34.05.060, the Board can establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.
3. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.
4. Sean Bertsch agrees that if any or all of the alleged violations were proven at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b)

of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

5. Sean Bertsch further agrees that the evidence available to the Board is such that the Board may conclude they violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order.

6. Sean Bertsch waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or their acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2).

7. If the Board accepts this stipulation, the Board agrees to release and discharge from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the stipulation. Sean Bertsch in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between Sean Bertsch and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. No other claims of alleged violations are pending against Sean Bertsch at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if Sean Bertsch does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Sean Bertsch understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. Sean Bertsch agrees to pay a civil penalty in the amount of six-thousand-five-hundred dollars (\$6,500) associated with violations of RCW 42.52.

12. The civil penalty in the amount of six-thousand-five-hundred dollars (\$6,500) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.





**II. ORDER**

Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

- ACCEPTED in its entirety;
- REJECTED in its entirety;
- MODIFIED. This stipulation will become the order of the Board if the Respondent approves\* the following modification(s):

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DATED this 13th day of May 2022.

*Approved via Zoom*  
\_\_\_\_\_  
Shirley Battan, Chair

*Approved via Zoom*  
\_\_\_\_\_  
Jan Jutte, Vice Chair

*Abst*  
\_\_\_\_\_  
Gerri Davis, Member

*Approved via Zoom*  
\_\_\_\_\_  
Earl Key, Member

\* I, Sean Bertsch, accept/do not accept (circle one) the proposed modification(s).

\_\_\_\_\_  
Sean Bertsch, Respondent                      Date