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**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

IN THE MATTER OF:

LINDA BANG,

RESPONDENT.

OAH NO. 05-5055-AGO-0050
EEB NO. 2021-050

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER ON CROSS MOTIONS
FOR SUMMARY JUDGMENT,
AND ORDER DENYING
RESPONDENT’S MOTION TO
SUPPRESS

I. PROCEDURAL HISTORY

1.1 On November 2, 2021, the Board initiated a complaint after receiving information that Respondent, Linda Bang, a former Labor and Industries Department Revenue Agent, may have violated the Ethics in Public Service Act by accessing confidential information in order to file a complaint against another LNI employee. Declaration of Bobby Frye, ¶ 3 (Frye Decl.).

1.2 On March 11, 2022, the Executive Ethics Board (the Board) found reasonable cause to believe that a violation of Chapter 42.52 RCW was committed.

1.3 On July 13, 2022, Respondent filed a first motion to dismiss.

1.4 On August 25, 2022, Board Staff filed a response to Respondent’s motion.

1.4 On August 29, 2022, Respondent filed an “Attachment,” apparently to her motion of July 13, providing additional information.

1 1.5 On September 2, 2022, Respondent filed a reply to Board Staff's response.

2 1.6 On September 5, 2022, Respondent filed a second motion to dismiss based on
3 Respondent's belief that some of the meetings from which evidence of ethics violations charged
4 may have been recorded illegally.

5 1.7 On September 9, 2022, the Board conducted a hearing on Respondent's First and
6 Second Motions to Dismiss.

7 1.8 On October 13, 2022, the Board issued an order denying Respondent's first and
8 second motions noting, among other things, that Board staff had proffered a series of factual
9 findings that, if proven, could establish a violation of chapter 42.52 RCW.

10 1.9 On October 25, 2022, Respondent filed a Motion to Suppress Evidence.

11 1.10 On December 13, 2022, Respondent filed a Motion for Summary Judgment.

12 1.11 On December 16, 2022, Board Staff, through counsel, filed a Cross-Motion for
13 Summary Judgment (Board Staff Motion) and Response to Respondent's Motion to Suppress
14 Evidence, requesting that the Board find that Respondent violated the Ethics in Public Service
15 Act (Ethics Act), Chapter 42.52 RCW, impose sanctions, and deny Respondent's Motion to
16 Suppress. The Motion was brought pursuant to WAC 10-08-135.

17 1.12 On December 30, 2022, Respondent filed a response to Board Staff's
18 Cross Motion for Summary Judgment, to which Board Staff replied on January 06, 2023.

19 1.13 On December 30, 2022, Board Staff, through counsel, filed a response
20 to Respondent's Motion for Summary Judgment, to which Respondent replied on January 06,
21 2023.

22 1.14 After due and proper notice, a hearing was held on the cross-motions for
23 summary judgment, and Respondent's Motion to Suppress. The hearing was held via Video
24 Conference convening on January 13, 2023. Administrative Law Judge T.J. Martin, from the
25 Office of Administrative Hearings conducted the proceedings, then Board Chair Shirley Battan,
26

1 and Board Members Jan Jutte and Kelli Hooke were present. Also present was Assistant
2 Attorney General, Leo V. Roinila, legal advisor to the Board.

3 1.15 Julia Eisentrout, Assistant Attorney General for Board Staff, was present.

4 1.16 Respondent, who appeared virtually, was present.

5 1.17 Respondent filed the following documents:

- 6 • Motion to Suppress Evidence;
- 7 • Motion for Summary Judgment, with Attachments 1-2;
- 8 • Respondent's Response to Board Staff's Motion for Summary Judgment,
9 with Exhibits 1-4;
- Respondent's Reply to Board Staff's Response to Board Staff's Motion
for Summary Judgment.

10 1.18 Board Staff filed the following documents:

- 11 • Motion for Summary Judgment, and Response to Respondent's Motion
12 to Suppress Evidence;
- Declaration of Bobby Frye in Support of Board Staff's Motion for
Summary Judgment, with Exhibits 1-11;
- 13 • Board Staff's Response to Respondent's Motion for Summary Judgment;
- 14 • Board Staff's Reply to Respondent's Response to Board Staff's Motion
for Summary Judgment.

15 1.19 The proceedings were recorded and open to the public.

16 1.20 The hearing was adjourned on January 13, 2023.

17 1.21 On January 19, 2023, Board Staff filed a 'Motion to Substitute Redacted
18 Exhibits.

19 1.22 Respondent objected and, on March 8, 2023, a telephonic hearing was held.

20 1.23 Following this hearing, Administrative Law Judge T.J. Martin Board granted
21 Board Staff's motion.

22 Based on the documents filed and evidence presented, the Board enters the following
23 Findings of Fact, Conclusions of Law, and Order on Cross-Motions for Summary Judgment and
24 Respondent's Motion to Suppress:
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1 **II. FINDINGS OF FACT**

2 2.1 Respondent was hired as a LNI Revenue Officer 1 in 1999. Frye Decl, ¶ 5, Ex. 1.
3 She was promoted several times, until, in 2007, LNI reclassified her position as Revenue Agent
4 3. *Id.* Following an internal investigation involving conduct similar to that at issue in this matter,
5 LNI demoted Respondent to Revenue Agent 2 in August 2020. *Id.*

6 2.2 Pursuant to its authority under RCW 42.52.360, the Board, on November 2, 2021,
7 initiated a complaint against Respondent after receiving certain information indicating that
8 Respondent may have violated the Ethics in Public Service Act, Chapter 42.52 RCW, by
9 accessing confidential information to enable Respondent to file a complaint against another LNI
10 employee. Investigative Report and Board Determination of Reasonable Cause, p. 1, ¶ A.. Frye
11 Decl., ¶ 3.

12 2.3 The information upon which the Board relied in issuing this complaint included
13 the results of an internal LNI investigation and supporting documentation, which resulted in
14 Respondent’s demotion for misuse of her state owned, LNI issued work computer and the LINIIS
15 system. Staff also reviewed Ms. Bang’s written response. More specifically, LNI determined
16 through the course of its investigation that Respondent used these state owned resources to
17 access confidential employer account and personal information regarding Respondent’s
18 supervisor, Keith Johnson, and another LNI employee, Dixie Shaw. Report and Determination,
19 p. 16, ¶ 85. LNI also referred the matter to the Executive Ethics Board.

20 2.4 During its investigation, LNI reviewed records in its worker claim management
21 and tracking computer system, LINIIS. Frye Decl., ¶ 10, Exs. 4 - 6. This system includes
22 confidential business information related to worker compensation claims. Frye Decl., Exs. 1, 2.
23 Under established LNI policy, information in LINIIS is deemed confidential and use of the
24 LINIIS system is strictly restricted to “appropriate agency business.” *Id.* The LINIIS system
25 records user access information and Respondent’s searches were recorded and logged. Frye
26 Decl., ¶ 10, Exs. 4 – 6 Ex. 1; *see also* ¶ 9, Exs. 1, 2.

1 2.5 Based on review of the LINIIS records, and by her own admission, Respondent
2 accessed LINIIS records concerning the outside businesses of Keith Johnson, to whom
3 Respondent ultimately reported, on numerous occasions. Frye Decl., ¶¶ 10, 17, Exs. 4 - 6.

4 2.6 Respondent also used her access to LNI's ORION system, which, in addition to
5 acting as a document management system, also manages worker compensation claim
6 information, to review further records associated with Mr. Johnson. Frye Decl., ¶ 19, Exs. 7, 8.
7 LNI likewise considers information in ORION confidential, and access is restricted for agency
8 business only. Frye Decl., Exs. 1,

9 2.6 In interviews conducted during LNI's investigation, Respondent was provided
10 the opportunity to state an agency business reason for accessing records related to Keith Johnson
11 and Dixie Shaw, but could not do so. Frye Decl., ¶¶ 16 – 18; see Exs. 1, 2. Though Respondent
12 claimed a business relationship existed between Mr. Johnson and Ms. Shaw, Respondent could
13 not point to anything specific in LINIIS that demonstrated such a relationship. *Id.* at ¶ 18, Ex. 2.

14 2.7 During the relevant time period, Respondent was not assigned accounts for either
15 Mr. Johnson or Ms. Shaw. Frye Decl., ¶ 22, Exs. 1 - 3.

16 2.8 Both Debbie Rogers, Respondent's direct supervisor, and Keith Johnson,
17 confirmed Respondent had not requested to use her work computer, or her access to any LNI
18 programs, for personal use, or to look up any business or individual for any reason not associated
19 with her official LNI duties. Frye Decl., ¶¶ 11 – 13, Ex. 2.

20 2.9 Respondent acknowledged she was aware of and had reviewed the LNI policy
21 addressing conflicts of interest but maintained that she was exempt. *Id.* at ¶ 20, Ex. 9.
22 Respondent, however, could not point to a specific exemption in the policy and, although she
23 told investigators she would provide a relevant exemption, no such information ever proved
24 forthcoming.

25 2.10 As a result of LNI's investigation, Respondent was demoted from a 54 step M
26 monthly salary of \$5913 to a 50 step M monthly salary of \$5361, plus an additional 5% monthly

1 King County Premium Pay, leaving Repondent with a total monthly salary of 5629.06 after
2 demotion. Frye Decl, ¶ 22, Ex. 1.

3 2.11 Board staff prepared its own investigative report, which the Board also reviewed
4 before reaching its conclusion that reasonable cause exists to believe Respondent may have
5 violated the Ethics in Public Service Act, Chapter 42.52 RCW. *See* Investigative Report and
6 Board Determination of Reasonable Cause.

7 2.12 Respondent appears to concede that she did, indeed, access the data described
8 above but argues in her motion for summary judgment that “[t]his information was data that
9 Linda [Bang] is privy to as part of her job, as a Lead Revenue Agent doing tax discovery.” Resp.
10 Motion for Summary Judgment.

11 2.13 In her Motion to Suppress, Respondent claimed that she conducted an
12 investigation and, pursuant to this investigation, learned that a certain interview conducted
13 during the LNI investigation had been recorded without her consent and requested that the entire
14 LNI Investigative Report to be suppressed as a result.

15 2.14 Respondent further claims that that at least three witnesses have confirmed that
16 the human resources department at LNI records interviews.

17 2.15 In support of her position, Respondent cites Chapter 9.73 RCW and *State v.*
18 *Barron*, 139 Wn. App. 266, 273, 160 P. 3d 1077 (2007).

19
20 **III. CONCLUSIONS OF LAW**

21 3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),
22 which authorizes the Board to enforce the Ethics Act with respect to employees in the
23 executive branch of state government. The Board has jurisdiction over Linda Bang, whose
24 actions occurred while she was a state employee. The complaint was filed in accordance with
25 RCW 42.52.410, the Board found reasonable cause pursuant to RCW 42.52.420, and an
26

1 adjudicative proceeding was conducted pursuant to RCW 42.52.430, .500. All the required
2 procedural notices have been provided.

3 **A. Respondent’s Motion to Suppress.**

4 3.2 Despite Respondent’s claims to have been surreptitiously recorded during at
5 least one interview during internal LNI investigation, Respondent has produced no evidence to
6 support these claims. In addition, while Respondent further claims that at least three witnesses
7 confirmed to her that the LNI human resources department “recorded” meetings, Respondent
8 has provided no affidavits or signed witness statements attesting that such is the case.

9 Moreover the purported witness statements Respondent does reference discuss the recordation
10 of meetings, in general, not the specific meeting Respondent claims, without proof, was
11 recorded here. Finally, the only evidence in the record tending to establish that the interview in
12 question was recorded was provided by a union representative, who stated that he left the
13 interview upon learning that the Respondent was unlawfully recording. Frye Decl., ¶ 15, Exs.
14 1, 2. Simply put, there is no evidence even remotely tending to support Respondent’s
15 allegations. Nor are these allegations supported by any facts beyond Respondent’s own
16 statements.

17 3.3. Even did such evidence exist, however, Respondent failed to identify any legal
18 basis suggesting that the proper remedy in the case of any illegal recording would be the
19 exclusion of the entire LNI investigative report. In fact, this report contains significant
20 evidence entirely unrelated to the interview of Respondent, including records of the searches
21 she conducted in LINIIS and ORION, interviews coworkers, and emails, such that exclusion of
22 the entire report would not be warranted. This conclusion is further buttressed by that fact that
23 all of that evidence was gathered *prior to* the interview Respondent alleges was unlawfully
24 recorded, and thus there would be no basis to exclude any of it if even had Respondent proven
25 her allegations.
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1 3.4 Accordingly, for the above reasons, the Board denies Respondents Motion to
2 Suppress.

3 **B. Cross Motions for Summary Judgment**

4 3.5 WAC 10-08-135¹ provides that a motion for summary judgment may be granted
5 and an order issued if the written record establishes there is no genuine issue as to any material
6 fact and that the moving party is entitled to judgment as a matter of law. The object and
7 function of a summary judgment is to avoid a useless trial. *Hudesman v. Foley*, 73 Wn.2d 880,
8 886, 441 P.2d 532 (1968). Summary judgment is proper if (1) there is no genuine issue of
9 material fact, (2) reasonable persons could reach but one conclusion, and (3) the moving party
10 is entitled to judgment as a matter of law. *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d
11 1065 (2000); CR 56(c). The facts of this matter are not in dispute, rendering summary
12 judgment appropriate. There is no factual dispute that Ms. Bang accessed state systems that
13 store confidential information for her own personal benefit or gain. **As discussed below,**
14 **summary judgment is granted in favor of Board Staff based on Respondent’s violations**
15 **of the Ethics Act.**

16 3.6 The Ethics Act governs the conduct of state officers and employees. Under
17 RCW 42.52.430(5), a violation must be established by a preponderance of the evidence.

18 3.7 The Ethics Act prohibits state employees from disclosing confidential
19 information. More specifically, RCW 42.52.050, in pertinent part, states the following:

20 (2) No state officer or state employee may make a disclosure of confidential
21 information gained by reason of the officer's or employee's official position or otherwise
22 use the information for his or her personal gain or benefit or the gain or benefit of another,
23

1 unless the disclosure has been authorized by statute or by the terms of a contract
2 involving (a) the state officer's or state employee's agency and (b) the person or persons
3 who have authority to waive the confidentiality of the information.

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

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

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

9 3.8 Based on the Findings of Fact, the Board concludes that Respondent, by a
10 preponderance of the evidence, violated RCW 42.52.050(2) by accessing two LNI systems and
11 programs that store confidential information for her own personal benefit or gain. On December
12 12, 2017, First, Respondent searched the LINIIS system for accounts related to Mr. Johnson, and
13 a prior business of Mr Johnson. Frye Decl., ¶ 10, Ex. 4. On December 15, 2017, Respondent
14 again used LINIIS to search for accounts related to Mr. Johnson and another of his businesses.
15 *Id.* at Ex. 5. In addition, on December 15, 2017, Respondent used LINIIS to search for records
16 related to Mr. Johnson and Ms. Shaw. *Id.* at Ex. 6. These records contain confidential and
17 personal business information, as noted in LNI policy. Frye Decl., Ex. 1. Respondent was not
18 assigned any accounts for either Mr. Johnson or Mr. Shaw. Frye Decl., ¶ 9, Ex. 3.

19 3.9 The Board further concludes that Respondent likewise violated RCW
20 42.52.050(2) by accessing documents on LNI's ORION system, a program that manages
21 documents and workers compensation claim information. Frye Decl., ¶ 19, Exs. 7, 8. Some of
22 the documents accessed by Respondent included Mr. Johnson's social security number and date
23 of birth, while other documents contained personal and confidential business and financial
24 information. *Id.* at Ex. 7. Again, Respondent was not assigned an account for Mr. Johnson at the
25 time these searches were conducted. Frye Decl., ¶ 9, Ex. 3. Accordingly, Respondent did not
26 have permission to use her work computer, or her access to LNI systems, for *any* personal
reasons. Frye Decl., ¶¶ 11 – 13, Ex. 2 (emphasis added).

1 3.10 Based on a preponderance of the evidence, the Board concludes that Respondent
2 was aware of LNI’s Conflict of Interest policy, and, despite claiming to be exempt from that
3 policy, failed to provide any documentation establishing the applicability of any such exemption
4 from that policy to her. *Id.* at ¶ 20, Exs. 9 – 11. Further, Mr. Johnson was in Respondent’s direct
5 line of supervision, Respondent was not assigned any of Mr. Johnson’s accounts during the
6 relevant time period, and Respondent admitted to having conducted repeated searches of his
7 accounts beginning in 2008. Frye Decl, ¶¶ 9, 17, Ex. 3. Because any search of Mr. Johnson’s
8 records would have represented a conflict of interest once he was in her direct line of supervision,
9 and Respondent was not assigned any accounts related to either Ms. Shaw or Mr. Johnson,
10 Respondent’s use of her work computer, and access to those databases, was not in furtherance
11 of any LNI business purpose, but rather for Respondent’s own personal benefit or gain.
12 Additionally, Respondent did not have any permission to use either her work computer or her
13 access to those databases for any personal reasons or reasons not related to agency business.

14 3.11 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000 per
15 violation, or three times the economic value of anything received or sought in violation of the
16 Ethics Act, whichever is greater. In this case, the Board concludes that a penalty of \$3,750
17 penalty is appropriate.

18 3.12 In determining the appropriate sanction, the Board reviewed the nature of the
19 violation, as well as the aggravating circumstances and mitigating factors set forth in
20 WAC 292-120-030. Ms. Bang’s violations tend to reduce public respect for, or confidence in,
21 state government or state government officers or employees. In addition, evidence exists
22 suggesting that Ms. Bang may have been untruthful or uncooperative in interacting with Board
23 Staff. WAC 292-120-030(3)(c). Lastly, it is a mitigating factor that LNI took prior corrective
24 action against Ms. Bang. WAC 292-120-030(4)(a).

1 **IV. FINAL ORDER**

2 Based upon the foregoing Findings of Fact and Conclusions of Law, the Board
3 determines as follows:

4 4.1 Respondent’s Motion to Suppress Evidence is DENIED.

5 4.2 Respondent’s Motion for Summary Judgment is DENIED.

6 4.3 Board Staff’s Motion for Summary Judgment is GRANTED.

7 4.4. It is hereby further ordered that Linda Bang is assessed a total monetary civil
8 penalty of \$3,750 based on her violations of RCW 42.52.160(1).

9 4.5 The total amount of \$3,750 is payable in full within 90 days of the effective date
10 of this order.

11 **V. ORDER**

12 DATED this 13th day of April, 2023 at Olympia, Washington.

13
14 WASHINGTON STATE EXECUTIVE ETHICS BOARD

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18 Jan Jutte, Chair

1 **APPEAL RIGHTS**

2 **RECONSIDERATION OF FINAL ORDER – BOARD**

3 Any party may ask the Executive Ethics Board to reconsider a Final Order. The request
4 must be in writing and must include the specific grounds or reasons for the request. The request
5 must be delivered to Board office within 10 days after the postmark date of this order.

6 The Board is deemed to have denied the request for reconsideration if, within 20 days
7 from the date the request is filed, the Board does not either dispose of the petition or serve the
8 parties with written notice specifying the date by which it will act on the petition.
9 RCW 34.05.470.

10 The Respondent is not required to ask the Board to reconsider the Final Order before
11 seeking judicial review by a superior court. RCW 34.05.470.

12 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

13 A Final Order issued by the Executive Ethics Board is subject to judicial review under
14 the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures
15 are provided in RCW 34.05.510 - .598.

16 The petition for judicial review must be filed with the superior court and served on the
17 Board and any other parties within 30 days of the date that the Board serves this Final Order on
18 the parties. RCW 34.05.542(2). Service is defined in RCW 34.05.542(4) as the date of mailing
19 or personal service.

20 A petition for review must set forth:

- 21 (1) The name and mailing address of the petitioner;
- 22 (2) The name and mailing address of the petitioner’s attorney, if any;
- 23 (3) The name and mailing address of the agency whose action is at issue;
- 24 (4) Identification of the agency action at issue, together with a duplicate copy, summary,
25 or brief description of the agency action;

1 (5) Identification of persons who were parties in any adjudicative proceedings that led to
2 the agency action;

3 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

4 (7) The petitioner's reasons for believing that relief should be granted; and

5 (8) A request for relief, specifying the type and extent of relief requested.
6 RCW 34.05.546.

7 **ENFORCEMENT OF FINAL ORDERS**

8 If there is no timely request for reconsideration, this is the Final Order of the Board. The
9 Respondent is legally obligated to pay any penalty assessed.

10 The Board will seek to enforce a Final Order in superior court and recover legal costs
11 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been
12 timely filed under chapter 34.05 RCW. This action will be taken without further order by the
13 Board.