[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-11399
Non-Argument Calendar

D.C. Docket No. 2:17-cv-14107-KAM

BRADLEY BATZ,

Plaintiff-Appellant,

versus

CITY OF SEBRING,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(December 12, 2019)

Before ROSENBAUM, BLACK and MARCUS, Circuit Judges.

PER CURIAM:

Bradley Batz appeals the district court's order granting summary judgment in favor of the City of Sebring (the City) in Batz's civil action alleging causes of action under the First and Fourteenth Amendments of the U.S. Constitution, and the Florida Whistle-blower's Act, Fla. Stat. § 112.3187. Batz, who served as the City's Fire Chief from May 2006 to December 2016, alleged the City illegally retaliated against him when it discharged him following his complaints about attempts by various City officials to undermine his efforts to enforce fire safety rules at the Kenilworth Lodge (the Lodge), a historic building owned by certain persons with connections to the City Council and City Administration. Following his discharge, Batz initiated a civil suit against the City in Florida state court, and the City removed the action to federal court.

On appeal, Batz argues the district court erred in granting summary judgment to the City on his federal constitutional claims on the ground that the speech for which he was allegedly discharged was made in his capacity as a city employee and not as a private citizen. As for his claims under the Florida Whistle-blower's Act, Batz argues the district court erroneously concluded that: (1) the City's asserted reason for his discharge was not pretext for illegal retaliation; and (2) an email he sent to the City Administrator concerning the condemnation of the Lodge did not qualify as a "written and signed complaint" under the Act.

After review, we affirm.

I. FACTUAL BACKGROUND

Because our analysis requires placing Batz's actions and the actions of various City officials in a broader context, we provide an in-depth review of the underlying facts. As we are reviewing a grant of summary judgment, the following facts are taken from the evidence and read in the light most favorable to Batz, who is the nonmoving party. *See Hornsby-Culpepper v. Ware*, 906 F.3d 1302, 1311 (11th Cir. 2018).

A. The Fire at the Lodge

Batz began his employment with the City in March of 1990, when he became a firefighter/EMT. He was appointed to the position of Chief of the Sebring Fire Department in May 2006. Because the City did not employ a fire inspector at any time relevant to the instant case, Batz, in addition to his duties as Fire Chief, performed the required periodic inspections of buildings within the City.

On May 10, 2016, a fire broke out at the Kenilworth Lodge. The Lodge is a hotel located in the City, the main building of which is a 100-year-old four-story wood-frame structure. The Lodge is co-owned by City council member Mark Stewart, and two other men not directly connected to the City government, Monir Rahal and Robert Mueller. Stewart and his wife are 49% owners, with Rahal and Mueller collectively controlling the majority interest. According to Stewart, he is

not involved in the day-to-day operations or management of the Lodge, as he is not on good terms with the majority ownership.

When the fire broke out in May 2016, Batz, Assistant Chief Robert Border, and other firefighters responded and put out the fire. Batz determined the cause of the fire was two mattresses that had been pushed against an air conditioning unit in a mechanical room. Batz informed the Lodge's "maintenance man" that it violated the Florida Fire Prevention Code (the Safety Code) to use an electrical room for storage.

B. Follow-Up Inspections

On May 12, 2016, two days after the fire, Batz and Assistant Chief Border returned to the Lodge to conduct a follow-up inspection, during which Batz and Border documented several additional violations of the Safety Code, chief among them issues with the Lodge's sprinkler system.[1] After this follow-up inspection, Batz and Border met with Mueller and members of the Lodge's maintenance crew to discuss the various code violations, which were documented in a report provided to Mueller.

According to Batz, Mueller's response to the report was that Councilman Stewart—a part-owner of the Lodge—"knew what was wrong and needed to fix

[1] Batz also identified exposed wiring, malfunctioning emergency lights, exit doors that would not open, excessive extension cords, issues with breaker boxes, multiple penetrations in walls, and improper storage.

this stuff and never did do it." Mueller also told Batz that Stewart was "not going to pay for it." Mueller then "stood up, went nose-to-nose with [Batz], and told him that [Batz] might as well shut him down right now, because . . . he wasn't doing a damn thing." However, when Batz subsequently contacted Stewart, Stewart claimed he did not "have anything to do with that building." Batz told Mueller that Batz would need to return to conduct additional inspections and suggested that Mueller and the other owners look into third-party contractors to address the identified issues.

On May 23, 2016, Batz and Border returned to the Lodge for another follow-up inspection specifically concerning the status of sprinkler repairs. Mueller advised he was having trouble obtaining quotes from outside contractors for the repairs. Batz told Mueller the repairs needed to begin as soon as possible and that Batz and Border would be back on May 27 to check on the status of the repairs.

During this time, the Lodge contacted at least three different contractors to perform the necessary repairs. The record shows that Mueller, acting on behalf of the Lodge, contracted with Critical Systems Solutions, LLC (Critical Systems) on May 24, 2016, for repair of the sprinkler system. When Batz was informed of the contract, he immediately contacted Critical Systems to ask that the repairs be completed as soon as possible. However, on May 26, the owner of Critical Systems informed Batz that the Lodge had canceled the contract, opting instead to

use a different contractor, CT Fire Protection, Inc. The Lodge received a proposal from a third company, Central Fire & Safety Equipment, Inc., though the Lodge never actually entered into any contract with the company.

On June 8, 2016, Batz informed the Lodge via email that he would conduct another follow-up inspection on June 16, 2016. Meanwhile, Batz was in contact with CT Fire Protection concerning the status of the necessary repairs. CT Fire's representative informed Batz in a June 13 email that CT Fire was in the process of bringing the Lodge's sprinkler system up to code, and she anticipated that, in the event of a fire, the system would "activate as designed" by June 16, though the company would need additional time to complete all of the required repairs.

Andrew Treusch, counsel for the Lodge, contacted City Attorney Robert Swaine on June 15 to formally request an extension to complete the repairs. Given CT Fire's assurance that the sprinkler system would "activate as designed," Treusch hoped that the Lodge could remain open while the remaining repairs were completed. Treusch explained that the Lodge wished to host a local sporting event (the Heartland Triathlon), which would give the Lodge an opportunity to increase its revenue. Batz testified that the mayor (John Shoop) and City Attorney Swaine pressured him to allow the Lodge to remain open, encouraging him to do "absolutely anything [he] could do to keep [the Lodge] open, as long as they could do that event." Based in part on assurances from CT Fire, Batz agreed to a 30-day

extension to allow the Lodge "to work diligently to finish all required . . . Safety Code[] issues." Batz granted the extension with the expectation that the revenue from the Triathlon would help pay for some of the required repairs.

On July 28, 2016, well after the expiration of the 30-day extension, Batz and Border conducted yet another follow-up inspection and found there were still many unremedied Safety Code violations. Around the same time, Batz learned from CT Fire's representative that CT Fire was "not providing any more information or services to Kenilworth Lodge until the terms of our contract are met." She explained that the Lodge had not paid CT Fire for its work, and it therefore was withholding its inspection reports for the sprinkler system.

Throughout this time, Batz regularly attended meetings with City Administrator Scott Noethlich (Batz's direct supervisor), Mayor Shoop, City Attorney Swaine, and one or more members of the City council concerning the Lodge's ongoing Safety Code issues.

C. The Decision to Condemn the Lodge

In early August 2016, Batz concluded the Lodge was not making a sincere effort to comply with the Safety Code. He came to this conclusion in part because, as described above, the Lodge had exhibited a pattern of hiring contractors and then canceling or otherwise reneging on the contract.

With these concerns in mind, Batz conducted a final inspection on August 3, 2016, during which Batz discovered numerous unremedied violations. Batz was accompanied on this inspection by Fire Protection Specialist Richard Witmer of the State Fire Marshal's office. On August 5, following that final inspection, Batz met with various city officials—including Mayor Shoop, City Administrator Noethlich, and City Councilman Stewart. During this meeting, those present reached a consensus that the Lodge would be condemned unless it hired a contractor to repair the sprinkler system within seven days. They agreed to call one of the Lodge's owners, Monir Rahal, that day to inform him of the decision, which would be formalized in a letter. City Administrator Noethlich provided the group with Rahal's phone number.

That same day, Batz drafted the letter, which specified the Lodge owners had seven days to hire a fire sprinkler contractor or fire protection engineer to determine the status of the sprinkler system, or face condemnation of the building. A draft of the letter was circulated to Mayor Shoop, City Attorney Swaine, City Council member and fire department liaison Charles Lowrance, and City Administrator Noethlich, among others. Batz testified that both Mayor Shoop and Councilman Lowrance contacted him via email and expressed approval of the letter and support of the decision to condemn the Lodge if it did not timely bring itself into compliance with the Safety Code.

D. City Administrator Noethlich's Communications with the Lodge's Owners

When Batz learned, at the August 5, 2016, meeting, that City Administrator Noethlich had one of the Lodge owners' personal phone numbers, he decided to "start inquiring" about the nature and frequency of Noethlich's communications with the owners of the Lodge. Batz asked Noethlich at the August 5 meeting what, if anything, he had been discussing with Rahal, and Noethlich responded that they had discussed "possible solutions or options" for the Lodge.

For his part, Noethlich testified that Rahal reached out to him to express frustration that the Lodge's compliance efforts never seemed to satisfy Batz. Noethlich acknowledged that he looked into the possibility that the Lodge might be exempt from portions of the Safety Code as a historic building. When Noethlich broached the topic with Batz, he rejected the idea as inconsistent with the relevant code provisions, which merely allow historic buildings to comply with the Safety Code through certain "equivalencies," not outright exemptions.

Batz came to believe that Noethlich had been telling the Lodge's owners that they did not have to comply with Batz's directives because the Lodge qualified as a historic building. Batz believed this explained the Lodge's pattern of hiring and dropping contractors. He inferred that, after hiring a contractor in response to Batz's instructions, the Lodge owners would be told they did not have to comply and then cancel the contract. Mayor Shoop confirmed that Batz had complained

about Noethlich going behind Batz's back and speaking to the Lodge's management.

E. The Condemnation

On or around August 12, 2016, Batz, Mayor Shoop, Councilman Lowrance, Noethlich, and City Attorney Swaine met and agreed that if the Lodge failed to meet the deadline set out in the August 5 letter, the City would proceed with condemnation.

Sometime after that meeting, Noethlich reported to Swaine that someone at the Lodge had said something like, "if you-all close us down, we'll have to file for bankruptcy." Swaine then consulted a bankruptcy attorney who indicated that a condemnation might violate an automatic stay in an *ongoing* bankruptcy proceeding, though Swaine claimed he never expressed any concern about proceeding with the condemnation in the absence of such an ongoing proceeding. Noethlich, on the other hand, testified that Swaine advised him to hold off on the condemnation due to the possibility that the Lodge might file for bankruptcy, a concern he then communicated to Batz on August 15, 2016, the last day allotted for the Lodge to comply with the demands in the August 5 letter.

That same day, following his conversation with Noethlich, Batz sent the following email to Noethlich, with copies to Councilman Lowrance, Mayor Shoop, and Assistant Chief Border:

> As per our phone conversation today I am formally requesting clarification in writing as to the actions to be taken with the Kenilworth Lodge.
>
> To re-cap, Friday August 5, 2016 a meeting was held at Mr. Swaine[']s office to discuss the current issues with the Kenilworth Lodge. A letter was written (by Mr. Swaine and I) stating that as of Monday August 8th they would have 7 days to hire a fire sprinkler contractor or engineer and provide us a letter stating that the fire protection system was operable or non-operable. This was discussed and agreed by everyone in the meeting. This was discussed with one of the owners in the meeting and one of the owners on speaker phone that Mr. Noethlich contacted.
>
> Friday August 12, 2016 another meeting was held at Mr. Swaine's office and it was discussed that the fire protection contractor stated in an email that they would not come to the property until August 16th and what we would or would not do regarding the Kenilworth Lodge if they did not meet the deadline of August 15, 2016 set forth in the August 5th letter. In this meeting everyone agreed that if the deadline was not meet [sic], that we would condemn the building for occupancy until a contractor or engineer would confirm that the fire protection system was or was not operable.
>
> As per our phone conversation I am confused now. I am of the understanding from you, that City Administration and City Legal have had conversations regarding this issue that I have not been part of and that we are not following through with what we discussed and agreed upon.
>
> With that, I am formally requesting that the City of Sebring advise me in writing as to the step by step procedures that it wishes for me to follow now to mitigate this issue.
>
> If the deadline is not meet [sic] as per the August 5th letter by August 15th, as per the letter, what actions should I take?

Noethlich responded that he believed he had been "quite clear" and that "nothing has changed." He indicated that Batz should "proceed forth in

condemning the building for occupancy" and contact Swaine "should the property owner broach the topic of bankruptcy."

Batz stated in a declaration that, notwithstanding this reassurance, Noethlich "came to the fire house and asked [Batz] if there was anything [Batz could] do to avoid closing the [Lodge]," stressing that "he felt they should have exemptions as a historic building." Batz explained that the building had "serious issues" and that "people would die if a fire were to get going in the building."

As of close of business on August 15, the Lodge had not submitted any documentation regarding the status of the fire sprinkler system. The Lodge was formally condemned for occupancy on August 16, 2016 by Batz and Assistant Chief Border by serving appropriate notice and posting notices on the building. The Lodge remains closed.

F. Subsequent Meetings with City Administration

Following the condemnation, Batz had several additional interactions and meetings with City Officials regarding the condemnation of the Lodge and what Batz believed to be inappropriate interference with that process by Noethlich and others.

The first such meeting occurred on August 23, 2016, when Noethlich called Batz into a meeting with Assistant Chief Border, City Attorney Swaine, and

Councilman Stewart.[2] During this meeting, Stewart "was very agitated with [Batz]" and "went off on [him]," insisting the condemnation was Batz's fault and claiming that the property had not been cited for 20 years and suddenly his property was being condemned. Batz explained that the repairs were being required now because the dangerous conditions had been discovered following the May 2016 fire.

Shortly thereafter, Batz attended the Sebring Thunder car show, where he had a heated discussion with City Councilman Lenard Carlisle. During the course of this conversation, Batz communicated to Councilman Carlisle his concern that Noethlich and other members of the City Administration had been undermining his efforts to enforce the Safety Code as to the Lodge. Batz expressed frustration that he did not seem to have Councilman Carlisle's "support on this."

On September 22, 2016, Noethlich summoned Batz to another meeting, this time with Mayor Shoop, City Attorney Swaine, Councilman Carlisle, and Assistant Chief Border. The meeting concerned Batz's statements to Carlisle that the City Administration was not supporting him in his efforts to enforce the Safety Code against the Lodge. Batz reiterated his concerns that Noethlich and others were going to the Lodge owners behind his back, and he accused those assembled of not

[2] At his deposition, Batz testified that this meeting occurred on August 16, 2016, the morning of the condemnation. However, Batz clarified in a subsequent declaration, after consulting his notes, that the meeting actually occurred later, on August 23, 2016.

"supporting [him]." At that point, Mayor Shoop "raise[d] his voice and said, when are you going to start supporting us with the city." When Batz asked why everyone was so angry with him, Mayor Shoop responded that "nobody thought you would really do it," presumably referring to the condemnation of the Lodge. According to Mayor Shoop, "[t]he incident with Lenard Carlisle was the final indication . . . that the City should not continue to tolerate Batz's attitude and treatment towards others."

G. Batz's Termination

Unrelated to the condemnation of the Lodge, the City had, over time, received complaints and concerns from six owners and operators of properties subject to Batz's fire inspections who had been required to take actions to bring their properties into compliance with the Safety Code. Specifically, various business owners complained about Batz's demeanor, rudeness, and overall attitude during fire inspections. There were no written reports or other records documenting any of these complaints.

On November 7, 2016, Batz attended a meeting with Mayor Shoop, Noethlich, and Councilman Lowrance, during which he was told he needed to resign or retire because "people are complaining about you and the fire codes." When he refused, he was placed on administrative leave with the City.

At a City Council meeting held on December 6, 2016, Mayor Shoop read a statement recommending Batz's termination.[3] Mayor Shoop's statement asserted his recommendation "stem[med] from [Batz's] poor job performance as it relates to his handling of interactions within the department, with the general public and with the City Council and Administration." Mayor Shoop identified Batz's "relations with the City Council and administration"—particularly the "[n]umerous times he verbally proclaimed his distrust of council and administration and that they did not have his back"—as the "[m]ost important[]" reason for his recommendation. He clarified the recommendation "in no way stem[med] from [Batz's] knowledge or process he took in enforcing the fire codes in the City."

Present from the City Council were Scott Stanley, Charlie Lowrance, Lenard Carlisle, and Bud Whitlock. The City Council discussed the issue, and each councilmember present voted to terminate Batz. Councilman Stewart did not attend the meeting, nor did he vote on the decision to discharge Batz.

Of the four councilmen who ultimately voted to discharge Batz, three submitted affidavits in the instant case explaining their decisions. Councilman Lowrance, the Fire Department Liaison, explained that he did not think Batz was

[3] Pursuant to the Charter for the City of Sebring, department heads, such as the Fire Chief, can only be discharged by a majority vote of the City Council. While the Mayor can make recommendations to the Council concerning such discharges, he does not vote on the issues brought before the City Council, including the discharge or appointment of department heads.

an effective Chief, and he denied his decision had anything to do with the Lodge. He further explained that "Batz was rude to members of the community and a bully to his own firefighters and it was causing problems for the Department." Councilman Lowrance also attributed what he viewed as the "excessively high" turnover rate in the Fire Department to Batz's leadership.

The other two voting councilmembers, Councilmen Carlisle and Stanley also claimed to have noticed problems with Batz's leadership of the department. Specifically, Councilman Carlisle noted Batz's "poor attitude toward the City firefighters and those in the community." He also referenced his confrontation with Batz at the Sebring Thunder Event, noting that they had "argued over [Batz's] management style" and that Batz had "shouted at [him] and spoke in a very disrespectful tone." For his part, Councilman Stanley—who claimed he had been "vocal" on his dislike for Batz— explained he voted to discharge Batz because he "thought the City deserved a better Fire Chief." He also noted that Batz was "too abrupt when dealing with people" and "constantly complained about the City's financial support."

II. DISCUSSION

We review *de novo* a district court's grant of summary judgment, viewing "the evidence and all reasonable inferences drawn from it in the light most favorable to the nonmoving party." *Battle v. Bd. of Regents for the State of Ga.*,

468 F.3d 755, 759 (11th Cir. 2006). Summary judgment is proper if the evidence shows "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

A. First Amendment Retaliation

"Speech by citizens on matters of public concern lies at the heart of the First Amendment, ... [and] [t]his remains true when speech concerns information related to or learned through public employment." *Lane v. Franks*, 573 U.S. 228, 235–36 (2014). As such, it is well established that "public employees do not surrender all their First Amendment rights by reason of their employment," and a public employer generally may not retaliate against a public employee for speech that is protected by the First Amendment. *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006). However, the Court also recognized the need to strike "a balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Id.* (quotation marks omitted) (quoting *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 568 (1968)).

With these principles in mind, the Supreme Court has identified two inquires that "guide interpretation of the constitutional protections accorded to public employee speech." *Id.* at 418. A court should first determine whether the

employee spoke "as a citizen on a matter of public concern." *Id.* (citing *Pickering*, 391 U.S. at 568). If the answer to that first inquiry is yes, "the possibility of a First Amendment claim arises," and "[t]he question becomes whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public." *Id.*

Here, the district court granted the City's motion for summary judgment as to Batz's First Amendment claim because it concluded he did not speak "as a citizen" because the speech at issue "owes its existence to [Batz's] professional responsibilities to enforce the Fire Safety Code." We agree.

As we have noted, the Supreme Court in *Garcetti* "declined to provide a 'comprehensive framework' for deciding" whether a public employee has spoken "as a citizen." *Moss v. City of Pembroke Pines*, 782 F.3d 613, 618 (11th Cir. 2015) (quoting *Garcetti*, 547 U.S. at 424). This was because the plaintiff employee in that case admitted he spoke pursuant to his official duties. *Id.* Nonetheless, "*Garcetti* instructed that '[t]he proper inquiry is a practical one'" that should focus on "whether the employee's speech at issue 'owes its existence' to the employee's professional responsibilities." *Id.* (alteration in original) (quoting *Garcetti*, 547 U.S. at 421, 424). Among the factors courts may consider are the employee's job description, whether the speech occurred at the workplace, and whether the speech

concerns the subject matter of the employee's job, though none of these factors is dispositive. *Id.*

In his response to the City's motion for summary judgment, Batz asserted his protected speech consisted of the following:

> (1) his "repeated oral objections" to Swaine, Noethlich, and others concerning attempts to undermine and delay his efforts to enforce the Safety Code, "thereby creating risk of injury or death";
>
> (2) his August 15, 2016, email "objecti[ng] to [the City's] attempts to avoid and delay the condemnation," which attempts "put[] members of the public at risk of injury or death"; and
>
> (3) his "comments to the same effect" made at meetings called by the City Administration on August 23 and September 22, 2016, to review his concerns that the City did not support him in the Lodge matter.

In assessing whether Batz spoke "as a citizen" in these instances, our recent decision in *King v. Board of County Commissioners*, 916 F.3d 1339 (11th Cir. 2019), is instructive.

That case concerned speech made by Dr. Nancy King, who worked as the occupational health director for Polk County, Florida. *King*, 916 F.3d at 1341. One of King's most important responsibilities in that position was to determine whether persons who applied to be firefighters were medically fit for duty. *Id.* The county had a "diversity initiative," pursuant to which certain candidates from "socially-disadvantaged backgrounds" were provided financial assistance and training. *Id.* at 1341–42. One such candidate, "J," applied through the initiative,

and one of King's physician assistants performed J's preemployment screening exam and discovered several medical problems related to J's lungs. *Id.* at 1342. The physician assistant recommended that J have his personal physician look at these issues, which J took to mean he could begin work as soon as his personal physician cleared him. *Id.* J began classroom instruction and was placed on the county payroll, despite the fact neither the physician assistant nor King had signed off on his fitness. *Id.* Sometime later, King was asked to review J's medical records and render an official medical opinion regarding J's fitness for duty, and she concluded that he likely was unfit as a result of his pulmonary condition. *Id.* at 1342–43.

Throughout this process, King became frustrated at the degree to which the county's equal-employment administrator—who oversaw the diversity initiative—continued to be "unusually (and unnecessarily) involved in J's case." *Id.* at 1343. The administrator maintained that clearance from J's personal physician was sufficient to clear him for duty, and that it was inappropriate for King to continue to inquire into his fitness. *Id.* at 1342. King expressed her frustrations to the County Manager on multiple occasions, expressing concern about the public safety risks she felt J represented as a firefighter working without a medical clearance, as well as concern that the county could face exposure for possible "reverse

discrimination" lawsuits from other medically unqualified applicants who were not part of the diversity initiative. *Id.* at 1343–44.

Eventually, the County Manager placed J in a non-firefighter EMT position. *Id.* at 1344. Shortly thereafter, the County decided not to renew King's contract, and she brought suit alleging First Amendment retaliation for her complaints to the County Manager. *Id.* at 1344–45.

We concluded that King's speech was not protected by the First Amendment because she spoke in her role as an employee when she expressed concerns about J's hiring. *Id.* at 1345. Specifically, we noted that "King spoke pursuant to her official job duties, the purpose of her speech was work-related, and she never spoke publicly." *Id.* While we acknowledged that none of these factors was dispositive, we concluded that, "[w]hen viewed together, these factors paint a clear picture of a person speaking as an employee and not as a private citizen." *Id.* at 1345–49. Although King's speech "may have implicated matters the public might care about"—i.e., concerns about public safety and liability for reverse discrimination—we concluded "[t]he main thrust of [her] speech was frustration related to interference with her job duties." *Id.* at 1347–49.

We are presented with similar circumstances here. Batz spoke "pursuant to [his] official job duties" and "the purpose of [his] speech was work related." *See id.* at 1345. Like the speech in *King*, Batz's speech concerning the Lodge's Safety

Code violations and the perceived attempts to undermine enforcement of the Safety Code "owes its existence to . . . [his] professional responsibilities." *Id.* at 1346 (quotation marks omitted) (quoting *Garcetti*, 547 U.S. at 421). Indeed, each of the three instances of purportedly protected speech Batz has identified was made in furtherance of his attempt to fulfill his professional duty to ensure compliance with the Safety Code.[4] The fact that "the starting point" of Batz's speech was his "official duties" suggests he was not speaking as a private citizen. *Id.*

We acknowledge that an employee's speech may deserve First Amendment protection even if it concerns his area of employment, and that *Garcetti* has been limited to "speech that an employee made in accordance with or in furtherance of the ordinary responsibilities of [his] employment, not merely speech that *concerns* the ordinary responsibilities of [his] employment." *Id.* (emphasis added) (quotation marks omitted) (quoting *Alves v. Bd. of Regents of the Univ. Sys. of Ga.*, 804 F.3d 1149, 1162 (11th Cir. 2015)). But, as discussed above, Batz's speech falls squarely within the former category. His repeated expressions of concern and frustration regarding what he considered to be a concerted effort to undermine and

[4] Although performing fire safety inspections and ensuring compliance with the Safety Code may not have ordinarily been within the duties of the Fire Chief, it is undisputed that Batz, in his capacity as chief, was responsible for fulfilling these duties because the City did not employ a fire inspector during the relevant period.

delay enforcement of the Safety Code were made "in furtherance of" his responsibility to ensure such enforcement.

We are not persuaded by Batz's attempts to distinguish his case from *King*. He insists that, unlike King's speech—which merely touched on matters of public concern—the "main thrust" of his speech was the danger to the public created by the efforts of various City officials to undermine and delay Batz's efforts to enforce the Safety Code. However, we find this case strikingly similar to *King* in this respect. As in *King*, Batz's complaints all expressed "frustration related to interference with [his] job duties." *Id.* at 1347. Both Batz and King expressed frustration that third parties were unusually and inappropriately interfering with their abilities to do their respective jobs.

Batz is correct to point out that, due to the nature of his job, such interference would have a potentially profound impact on public safety. But this is because the very purpose of the Safety Code—and, by extension, of Batz's efforts to enforce it—is ensuring public safety. In other words, one of Batz's core responsibilities as the City employee responsible for enforcing the Safety Code was ensuring public safety. Thus, his continued assertion that his speech was motivated by a concern for public safety does not remove it from the realm of employment-related speech.

If there is any difference to be found between this case and *King*, it is that the nature of Batz's job implicates public safety concerns to an even greater degree than King's. *See id.* at 1348 ("Of course the medical clearance process for any firefighter implicates public safety concerns."). In this way, the "sheen of civic-minded purpose" we attributed to King's speech is even more prominent here. But it cannot be the case that this effectively transforms any of Batz's speech concerning interference with his enforcement-related job duties into a First Amendment-protected complaint. *See id.* at 1347.

We further note that, like King, Batz never appears to have engaged in speech outside of his work. *Id.* at 1349. At the very least, he made no effort to communicate his safety concerns to the public or otherwise communicate with anyone outside other government officials. *See id.* ("King did nothing to communicate with the public. In fact, she did nothing to communicate with anyone outside of those who would ordinarily be involved with this process."). Of course, this factor is not dispositive, but, when considered alongside the aspects of his speech discussed above, "it reinforces that [Batz] was an employee discussing employment-related matters, not a private citizen engaged in protected speech." *Id.*

Accordingly, we conclude Batz spoke in his role as a City employee when he expressed concerns about efforts to undermine and delay his enforcement

efforts against the Lodge. His speech therefore was not protected by the First Amendment.

B. Florida Whistle-blower's Act

The Florida Whistle-blower's Act (FWA) prohibits state and local agencies from retaliating against an employee for disclosing "[a]ny act or suspected act of gross . . . malfeasance[] [or] misfeasance . . . committed by an employee or agent of an agency." Fla. Stat. § 112.3187(5)(b).

In assessing a claim for retaliatory discharge under the Florida Whistle-blower's Act, we apply the summary judgment analysis for a Title VII retaliation claim. *See Sierminkski v. Transouth Fin. Corp.*, 216 F.3d 945, 950–51 (11th Cir. 2000); *see also Rustowicz v. N. Broward Hosp. Dist.*, 174 So. 3d 414, 419 (Fla. 4th DCA 2015) (stating "Florida applies the Title VII analysis to retaliatory discharge under the Whistleblower Act"). Applying our Title VII analysis here means we analyze Batz's claims using the burden-shifting framework set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Under this framework, Batz bears the initial burden of presenting sufficient evidence to allow a reasonable jury to determine that he has satisfied the elements of a *prima facie* case for retaliatory discharge under the FWA. 411 U.S. at 802. If he establishes a *prima facie* case, the burden shifts to the City to articulate a legitimate, non-retaliatory reason for

Batz's discharge. *Id.* If articulated, Batz must then show that the City's reason was pretextual. *Id.* at 804.

To establish a *prima facie* case of retaliatory discharge under the FWA, Batz must show that: (1) he engaged in statutorily protected expression; (2) he suffered a materially adverse action of a type that would dissuade a reasonable employee from engaging in statutorily protected activity; and (3) there was some causal relation between the events. *Pennington v. City of Huntsville*, 261 F.3d 1262, 1266 (11th Cir. 2001) (laying out the elements for retaliatory discharge under Title VII); *see also Fla. Dep't of Children and Families v. Shapiro*, 68 So. 3d 298, 305–06 (Fla. 4th DCA 2011) (laying out the same elements for retaliation under the FWA).

As to statutorily protected expression, the FWA only protects employees who "disclose information" in certain specified ways or under certain specified circumstances. Fla. Stat. § 112.3187(7). As relevant here, the FWA protects employees who (1) "disclose information on their own initiative in a written and signed complaint"; or (2) "are requested to participate in an investigation, hearing, or other inquiry conducted by any agency or federal government entity." *Id.*

In his complaint, Batz alleged he disclosed suspected malfeasance or misfeasance on the part of City Administrator Noethlich and other City officials, who he believed were improperly undermining and interfering with his efforts to enforce the Safety Code against the Lodge. Batz claimed he made such disclosures

in a written and signed complaint—referring to the August 15, 2016 email he sent to Noethlich seeking clarification concerning the condemnation of the Lodge—and orally at two meetings, on August 23 and September 22, 2016, which he characterized in his response to the City's summary judgment motion as "inquiries conducted by the City regarding his complaints" concerning what he considered to be interference with his efforts to enforce the Safety Code against the Lodge.[5]

The district court concluded that Batz's claims arising out of his August 15 email failed because that email does not constitute "a written and signed complaint" within the meaning of the FWA. As for Batz's claims arising out of his oral complaints, the district court concluded Batz had established a *prima facie* case of retaliation, but he failed to offer evidence sufficient to show the City's proffered legitimate, non-retaliatory reasons for his discharge were pretextual. We first address whether Batz's email can qualify as "a written and signed complaint," before moving on to his claims based on his oral complaints.

[5] Batz's complaint also alleged violations of § 112.3187(5)(a) of the FWA, which prohibits retaliation against an employee for disclosing "[a]ny violation or suspected violation of any federal, state, or local law . . . committed by an employee or agent . . . which creates and presents a substantial and specific danger to the public's health, safety, or welfare." As with his alleged disclosures of malfeasance and misfeasance, Batz claimed he disclosed such violations in writing via his August 15 email and orally during the above-referenced meetings. However, as Batz has acknowledged, he has not addressed these claims in his briefs on appeal, and he has therefore abandoned them. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014).

1. Batz's Email

On its face, Batz's August 15 email to Noethlich, which is reproduced in full above, "request[ed] clarification in writing as to the actions to be taken with the Kenilworth Lodge." The email followed a conversation between Batz and Noethlich during which Noethlich communicated concerns from City Attorney Swaine regarding the legal implications of condemning the Lodge in light of the possibility that the Lodge owners might soon file for bankruptcy.

"The purpose of the statutory requirement of a signed writing is to document what the employee disclosed, and to whom the employee disclosed it, thus avoiding problems of proof for purposes of the Whistle-blower's Act." *Walker v. Fla. Dep't of Veterans' Affairs*, 925 So. 2d 1149, 1150 (Fla. 4th DCA 2006) (quotation marks omitted). Batz's email makes no explicit reference to any misconduct on Noethlich's part, and it therefore fails to "document what [he] disclosed" in any meaningful sense. *Id.* at 1150 (finding a pair of invoices did not qualify as "a written and signed complaint" in part because they failed to "document the nature of [the employee's] protected disclosure"). True, Batz's email obliquely references "conversations . . . that [Batz had] not been part of," but these statements are a far cry from an accusation or disclosure of any malfeasance or misconduct on the part of the officials taking part in those conversations.

Noethlich's response to Batz's inquiry confirms the primary purpose of the exchange was to clarify what steps Batz was to take in condemning the Lodge, given the potential legal issues that had been identified. Noethlich clarified that Batz was to "proceed . . . in condemning the [Lodge] for occupancy" and contact City Attorney Swaine "should the property owner broach the topic of bankruptcy."

Batz contends the district court failed to place his email in the proper context. He insists such context would make clear that his references to "conversations regarding this issue that I have not been part of" were in fact disclosures of malfeasance or misfeasance on the part of Noethlich and other members of the City Administration. But while we recognize the Florida Supreme Court has instructed the FWA be liberally construed, *see Irven v. Dep't of Health and Rehab. Servs.*, 790 So. 2d 403, 405 (Fla. 2001), no amount of context can convert a relatively innocuous workplace email seeking clarification on a phone conversation into a disclosure of official malfeasance or misfeasance. Batz has pointed to no authority from the Florida courts, and we are not aware of any, indicating that an email communication like his—that is, one that makes no explicit reference to any wrongdoing—may constitute "a written and signed complaint" disclosing malfeasance or misfeasance within the meaning of the FWA.

Because Batz's August 2015 email did not constitute "a written and signed complaint" under the FWA, it was not statutorily protected expression, and he

cannot establish a *prima facie* case for retaliation under the FWA as to any statements made in that email. *See McDonnell Douglas*, 411 U.S. at 802.

2. Batz's Complaints at Meetings

Moving on to Batz's oral complaints lodged at the August 23 and September 22, 2016, meetings, we assume the district court correctly concluded Batz has established a *prima facie* case for retaliation under the FWA, as there were triable issues of fact concerning whether Batz's complaints about City officials undermining his efforts to enforce the Safety Code amounted to protected activity under the FWA.[6] This shifts the burden to the City to articulate some legitimate, non-retaliatory reason for Batz's discharge. *See McDonnell Douglas*, 411 U.S. at 802. Batz does not dispute the City has done so through the affidavits of Councilmen Lowrance, Carlisle, and Stanley, as well as the deposition and affidavit of Mayor Shoop, who testified as the City's designee under Fed. R. Civ. P. 30(b)(6). Those documents establish that the persons responsible for making the decision to discharge Batz—the councilmembers—found Batz's demeanor, attitude, treatment of others, and leadership of the fire department to be unacceptable.

[6] The City does not challenge this aspect of the district court's ruling on appeal, opting instead to argue only that the district court properly concluded that Batz failed to show that the City's proffered non-retaliatory reasons for his discharge were pretextual.

The burden thus shifts back to Batz to show that those reasons were pretextual. *Id.* at 804. Like the district court, we conclude Batz has failed to carry this burden. To demonstrate pretext, Batz must produce significantly probative evidence showing both that the City's proffered non-retaliatory reasons are false, and that illegal retaliation was the real reason for his discharge. *Brooks v. Cty. Comm'n of Jefferson Cty., Ala.*, 446 F.3d 1160, 1163 (11th Cir. 2006).

As an initial matter, we note that the relevant decisionmakers here are the four voting members of the City Council, who ultimately bore responsibility for the decision to discharge Batz.[7] As noted above, three of those members have explained that their decisions were in fact based on their perceptions of Batz's demeanor, attitude, treatment of others, and leadership skills and not on Batz's

[7] To the extent Batz points to evidence of improper motive on the part of Mayor Shoop, City Administrator Noethlich, or any other city officials tangentially involved in the dispute over the Lodge, these individuals did not have any decision-making authority with respect to Batz's discharge. We recognize that Mayor Shoop recommended to the City Council that Batz be discharged, which may implicate our caselaw concerning the so-called "cat's paw" doctrine (though Batz has not made any explicit argument based on this doctrine). *See Stimpson v. City of Tuscaloosa*, 186 F.3d 1328, 1332 (11th Cir. 1999) (explaining that the cat's paw doctrine allows a plaintiff to establish but-for causation if he shows the unbiased decisionmaker followed a "biased recommendation without independently investigating the complaint against the employee"). The record here shows, however, that Councilmen Lowrance, Carlisle, and Stanley each articulated individualized reasons for the decision to discharge Batz based on each councilmember's individual interactions and experiences with Batz. They therefore cannot be said to have merely "rubber stamp[ed]" Mayor Shoop's recommendation. *Id.*

statements concerning attempts to undermine his efforts to enforce the Safety Code against the Lodge.[8]

Batz points to several pieces of evidence he claims establish the reasons provided by the decisionmakers were pretext for illegal retaliation, none of which we find persuasive. First, Batz points to various statements and admissions in which he claims the City, or its representatives acknowledge that the decision to discharge him was motivated by his complaints about the efforts to undermine his enforcement of the Safety Code. Specifically, he points to Mayor Shoop's testimony in his capacity as the City's Rule 30(b)(6) designee, Mayor Shoop's written statement recommending Batz's discharge, the City's response to interrogatories, and Councilman Carlisle's affidavit.

Batz correctly notes that these documents reference Batz's complaints about the City Administration and City Council not having his back and, in particular, his confrontation with Councilman Carlisle during which he expressed concern about Noethlich and others undermining him. But these documents do not, as Batz

[8] Batz has repeatedly asserted that the councilmen's affidavits appear to base these assessments, at least in part, on hearsay—that is, complaints from community members or firefighters, the contents of which are not in evidence. But we need not concern ourselves with the specific content of these complaints or, indeed, their veracity. Rather, we are concerned only with how those complaints affected the councilmen's decision to discharge Batz, something we have direct evidence of in the form of the councilmen's affidavits. This is because our inquiry into pretext centers on the relevant decisionmakers' beliefs, not "reality as it exists outside of the decision maker's head." *Alvarez v. Royal Atl. Developers, Inc.*, 610 F.3d 1253, 1266 (11th Cir. 2010).

asserts, contradict the City's proffered non-retaliatory reasons for Batz's discharge, as they only reference Batz's comments and his interaction with Councilman Carlisle as examples of Batz's objectionable demeanor, attitude, and treatment of others. In other words, the identified documents merely indicate issues with the manner in which Batz communicated his concerns, not the fact he was communicating them at all. In this way, these documents are wholly consistent with the reasons for discharge articulated by the City.

Batz also points to differences in his treatment by members of the Administration and City Council before and after he raised concerns about Noethlich and others, as well as his prior positive performance reviews. He also notes that the City had similarly received numerous complaints about the head of the City's Water Department, but no adverse employment action has been taken against that department head. These arguments fail to "meet [the City's proffered reason] head on and rebut it," as the *McDonnell Douglas* burden-shifting framework requires. *Holland v. Gee*, 677 F.3d 1047, 1055 (11th Cir. 2012). It is not our job to judge whether the City's decision was "prudent or fair." *Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1361 (11th Cir. 1999). Our sole concern is whether the voting councilmembers were motivated by an improper motive, and Batz has failed to come forward with evidence that successfully rebuts any of the individual councilmembers' asserted non-retaliatory bases for his vote.

Accordingly, Batz has failed to meet his burden under *McDonnell Douglas*, and he cannot sustain his claim for unlawful retaliation under the FWA.

III. CONCLUSION

For the reasons discussed above, we affirm the district court's grant of summary judgment in favor of the City as to Batz's claims under the First Amendment and the FWA.

AFFIRMED.