



City Administration
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October 26, 2015

Attention: Evangeline Rentz – Intake Manager
Office of the Inspector General
Palm Beach County
P. O. Box 16568
West Palm Beach, FL 33416-6568

Dear Ms. Rentz:

Issue 1

What process does the City of West Palm Beach use to ensure that confidential and exempt information is not released to the public in response to a public records request?

The City follows the dictates of Florida Statute Chapter 119 when providing access to public records. The City of West Palm Beach has adopted a comprehensive Public Records Policy, Policy 1-2, and the West Palm Beach Police Department has adopted Standard Operating Procedure II-17. Both policies require that exempt and confidential information be redacted prior to producing records in response to a public record request. A copy of each policy is attached for your record.

Did Mr. Cohen cause the City to release confidential and exempt information relating to the West Palm Beach Police Department and other local and federal agencies? If so, what has been done to correct any deficiencies in your process to ensure that the release of confidential and exempt information does not occur again?

The City Clerk is the custodian of all official City documents and each department head or his/her designee is a Custodian of Public Records. See Policy 1-2, Definitions. Any City employee who receives a public records request should comply as soon as practicable by either referring the request to a department supervisor or providing review and/or a copy of the information requested. See Policy 1-2(B)(5). Records which are exempt shall not be produced or copied in response to a public records request. See Policy 1-2(D)(2).

Requests from media organizations, e.g. newspapers, television stations, and radio stations shall be coordinated with the City's Public Information Officer. See Policy 1-2(A)(4). In practice, once the department has compiled the records responsive to a public records request and redacted exempt or confidential information, the responding department would provide the records to Elliot Cohen who would disseminate the records to the media. In the request that gave rise to

this inquiry, the media requested e-mail communications directly from Elliot Cohen. Once the I.T. department completed compiling the e-mails, it provided the records to Elliot Cohen without review for redaction by the police department. Elliot Cohen was not required to review, and did not review the records, but believed that the documents were public records that were reviewed and redacted by the departments as required by the City's public records policy.

The release of exempt and confidential information was due to a break down in application of the City of West Palm Beach Public Records policy. Elliot Cohen requested documents responsive to a media records request, received documents, and released the documents supplied. Of the over 2000 e-mails produced, some contained confidential information that should have been reviewed and redacted prior to release.

Based on the City's existing policies, all e-mails are to be considered public records and should not be regarded as private communications and any documents containing confidential and exempt information are required to be redacted prior to being released. In this case, the protected information was included in public e-mails and was not redacted prior to release. To address the break down in the City's process, the City made the following changes:

1. Media records requests will be processed directly through the City Clerk's office;
2. All e-mails compiled by the City's Information Technology Department will be sent to the primary department responding to the public records request. The primary responding department will review the records and will be responsible for redacting any confidential and exempt information;
3. The Police Department will be the primary department in any search that deals with any police matters;
4. Police e-mails will be stored on a server not connected with the City of West Palm Beach's main server; and
5. The City will continue to review its public records policy to see if any additional changes can be made to further protect exempt and confidential information.

Issue 2

Is Mr. Cohen operating a private business during his City work hours?

Based on the information reviewed, there has been no evidence found to support the allegation that Elliot Cohen is operating a private business during "his City work hours." Mr. Cohen is an exempt employee of the City of West Palm Beach. The regular work schedule for employees in business offices open to the public is Monday through Friday from 8:00 a.m. to 5:00 p.m. However, Elliot Cohen does not work a regular work schedule but rather works a flexible work schedule with the approval of the Mayor and City Administrator.

As an exempt employee, Elliot Cohen is required to be available whenever needed. His day could start well before 8:00 a.m. or stretch well beyond 5:00 p.m. For example in December of 2014, Elliot Cohen was on vacation from December 22nd through December 29th. However,

during that time Elliot Cohen was available to administration and responded to inquires including requests from Deputy City Administrator Dorritt Miller and Mayor Muoio. He also works on Holidays, weekends, and while taking sick and vacation time. Additionally, Elliot Cohen's phone records reveal work related calls made as early as 6:45 a.m. and as late as 10:45p.m. Similarly, his e-mails reflect correspondence as early as 6:37a.m. and as late as 10:33 p.m. He places and receives e-mail and phone calls on the weekend, holidays, and while taking vacation and sick days.

What process and procedures are in place to ensure that Mr. Cohen is not performing work for his private business during his City work hours?

The City has implemented policies to limit use of City phone and e-mail use for personal reasons. City's computer policy allows for limited personal use of e-mail and internet access provided that the use concurs with an employee's personal time, that is lunch breaks, before or after work, or on weekends, and in accordance with individual departmental rules, if any. See Policy 1-28(a)(10). However, no personal commercial activity is permitted. The City's telephone policy states that City telephones are to be used primarily for business purposes. See Policy 1-42(B). The City's Cellular Device and Stipend Policy states that City rules prohibit excessive use of City time for personal business. See Policy 1-44 (I)(A). It further specifies that City issued cellular devices are to be used solely for City business. Personal phone calls are not allowed except in emergencies. See Policy 1-44(IV)(C).

In addition to written standards, the City has many checks and balances to assure that employees do not work for private business during City work hours. The City's information technology managers review electronic communications activity and analyze usage patterns. The City also investigates allegations of misuse of time when the allegations are made or misuse is suspected. Additionally, all City employees who engage in outside employment are required to complete the Commission on Ethics Employee Conflict of Interest Waiver where the employee declares under oath that the outside employment will not interfere or otherwise impair the employee's independent judgment or the full and faithful performance of his public duties.

Finally, Mayor Muoio reviews Elliot Cohen's work. Mayor Muoio is satisfied with the work performance of Elliot Cohen and stated that he is available when needed and completes all tasks given in a timely manner.

What actions has the City taken to investigate whether Mr. Cohen is operating his private business during his City work hours, such as: reviewing his e-mails, cell phone records, work activities, etc.?

To date, the City has performed interviews and reviewed records summarized as follows:

- 1) Interviews were conducted with Ren Nardoni , Elliot Cohen, Jeff Green, and Mayor Muoio.

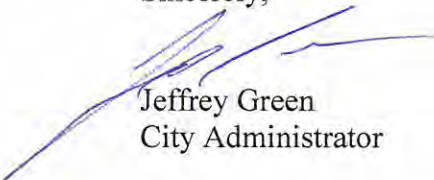
- 2) Reviews of Elliot Cohen's City e-mails from January 2015 to September 2015, including the specific dates listed in the Miami Lakes billing records; City phone and time records going back approximately one year; Commission on Ethics Employee Conflict of Interest Waiver; and Town of Miami Lakes invoices were conducted.

Any other information you believe would assist in our review of these allegations.

After reviewing the Miami Lakes billing records it appears that Elliot Cohen billed 26 hours for work that was performed Monday through Friday from January through April 2015. Three of those entries were for meetings with the client that likely occurred between the hours of 8:00 a.m. and 5:00 p.m. The client meetings occurred on January 12, 2015; January 21, 2015 and March 11, 2015. Even if one were to assume that all 26 hours were between 8:00 a.m. and 5:00 p.m. (hereinafter referred to as "regular work hours"), Elliot Cohen performed at least 43 hours of work for the City outside the regular work hours for January through April 2015. The 43 hours only accounts for actual calls made and for attendance at Commission Meetings. It does not take into consideration work that was done before or after regular work hours, such as work on the State of the City Address done by Elliot Cohen on January 19, 2015, Martin Luther King's Birthday.

The City is currently considering changes in policy that would prohibit exempt employees who are director or above from performing any work for an outside employer during regular work hours.

Sincerely,



Jeffrey Green
City Administrator