

EXECUTIVE SUMMARY

To: Alan S. Johnson, Executive Director
From: Mark E. Bannon, Investigator
Re: C12-001 – WPB Commissioner Kimberly Mitchell

- **Background**

This matter came to the attention of the Commission on Ethics' (COE) staff on December 8, 2011 via a compact disk (CD) provided by an anonymous source. The CD contained seven (7) recordings of telephone calls made to the City of West Palm Beach (the City) through their Central Operations Center, located within the Customer Service Section of the Public Utilities Department. The CD appears to be a copy of several calls received by dispatchers at Central Operations on Friday, November 25, 2011, during the Thanksgiving holiday period. Most City workers were off work on both Thursday, November 24, 2011 (Thanksgiving Day) and on Friday, November 25, 2011, including City Administration personnel. Two (2) of these telephone calls were from City Administrator Edward Mitchell to Central Operations, one (1) was from City Commissioner Kimberly Mitchell to Central Operations, and two (2) others from Central Operations to Commissioner Mitchell. The other two (2) telephone calls were from Central Operations to Comcast Cable Company.

- **Investigative information**

Respondent made an initial telephone call to City Administrator Edward Mitchell, who was off-duty for the holiday, and on the west coast of Florida visiting friends, in an attempt to find a local direct number for Comcast Cable Company. Mr. Mitchell attempted to locate this information by dealing with the WPB Central Operations Center (Central Operations). Respondent then called Central Operations in order to provide them with her home telephone number attached to her account. Respondent was contacted two other times by Central Operations on her cellular telephone. During the last two telephone communications between Central Operations Dispatcher Joanne Civale and the Respondent, Respondent was aware that this City employee was spending a significant amount of on-duty time attempting to resolve a problem with Respondent's residential Comcast service. While Respondent did not specifically ask for this to be done, she did encourage the actions by advising the employee that the initial scheduled repair service was unsatisfactory because it was on the day after she was scheduled to have guests at her home to watch a football game. When the employee advised she would try and re-schedule the repair appointment, Respondent encouraged this behavior and use of City resources by stating to the employee, "That would be awesome, if they can just do it sooner."

- **Conclusion**

Staff believes there are reasonably trustworthy facts and circumstances for the Commission on Ethics to conclude that the Respondent, Kimberly Mitchell, a City of West Palm Beach Commissioner, violated Section 2-443(a) (1-2), *Misuse of public office or employment*, by using resources of an on-duty City employee and City Central Operations resources to resolve an issue concerning her personal, residential Comcast service, providing herself and/or her spouse or household members a financial benefit not available to the general public. Further, staff believes there is sufficient evidence to find that Respondent, Kimberly Mitchell, violated Section 2-443(b), *Corrupt Misuse of official position*, of the Palm Beach County Code of Ethics, because the improper use of these City resources was done with wrongful intent and for the purpose of obtaining a benefit in a manner that was inconsistent with the proper performance of her public duties.

PALM BEACH COUNTY COMMISSION ON ETHICS
MEMORANDUM OF INQUIRY

To: Alan Johnson, Executive Director
From: Mark E. Bannon, Investigator
Date: December 27, 2011
Re: AN 11-026 – Kimberly Mitchell



• **Background**

This matter came to the attention of the Commission on Ethics' (COE) staff on December 8, 2011 via a compact disk (CD) provided by an anonymous source and given to COE Executive Director, Alan Johnson by the West Palm Beach Ethics Officer. An initial inquiry was begun after listening to the information contained on this CD.

The CD contained seven (7) recordings of telephone calls made to the City of West Palm Beach (the City) through their Central Operations Center, located within the Customer Service Section of the Public Utilities Department. The CD was found to contain seven (7) audio tracks, labeled Commissioner Mitchell Comcast Call #1, 2, 3, 4, 5, 6, & 7. Call # 1 was dated 11/30/2011. All other calls were dated 11/29/2011. This is apparently the dates on which they were copied to the CD.

The Central Operations Center is located at the City water treatment facility, 1009 Banyan Blvd., and according to the City website (www.wpb.org) Central Operations "provides 24 hour emergency response services to Public Utilities, Public Works, Parks, etc. It dispatches to all [City] departments with the exception of police and fire. It is also the operation location of the Mayor's Hotline. This hotline is designed to allow residents of the City of West Palm Beach and surrounding areas to voice their concerns, suggestions, and compliments regarding happenings in and around the City." Telephone calls to Central Operations are recorded, and the CD appears to be a copy of several calls received by dispatchers at this Central Operations on Friday, November 25, 2011, during the Thanksgiving holiday period. Most City workers were off work on both Thursday, November 24, 2011 (Thanksgiving Day) and on Friday, November 25, 2011, including City Administration personnel.

The contents of the CD were reviewed with staff and Director Johnson. The first two (2) tracks were recordings of telephone calls received at Central Operations from West Palm Beach City Administrator Ed Mitchell. The last five (5) tracks are a combination of telephone calls made from Central Operations to Comcast Cable Company, and between Central Operations and City Commissioner Kimberly Mitchell.

A written transcript of the relevant telephone calls to and from Central Operations on Friday, November 15, 2011, and identified as tracks 1, 2, 4, 5, 6, & 7, is included in the case file. Track #3 is not transcribed, as it contained a telephone call from Central Operations to Comcast Cable, but it contains only a Comcast recording of general information, and projected wait time to speak to a Comcast employee as described below.

A general synopsis of the information ascertained through relevant telephone recordings at Central Operations on Friday, November 25, 2011 is as follows:

1. **Track #1:** Initial telephone call from City Administrator Ed Mitchell to Central Operations Center. Mr. Mitchell speaks with dayshift Dispatcher and Acting Supervisor Brenda Hubbard, and advises her that a City Commissioner had called him to report that her cable TV had been out for several days. Mr. Mitchell then requests a telephone number for Comcast Cable, and is given 478-8300. He comments that is the main number. He is then given an "emergency number" of 227-4112 by Ms. Hubbard. Mr. Mitchell then asks her to try and connect him with the emergency number. Ms. Hubbard patches him through to this number, and disconnects when a recording states, "You have reached Comcast, Palm Beach County Dispatch. All of our dispatchers are currently busy..." There is no further conversation recorded on this track.

2. Track #2: Second telephone call from City Administrator Ed Mitchell to Central Operations Center. Mr. Mitchell speaks to Dispatcher Joanne Civale, who has assumed the dispatch role from Brenda Hubbard for the afternoon/evening shift. At this point, Mr. Mitchell identifies himself to Ms. Civale as the City Administrator, and advises her that Kimberly Mitchell (who he also identifies as Commissioner Mitchell) is having problems with her cable TV service. He goes on to advise that he has "struck out" trying to contact Comcast. He states that Commissioner Mitchell has no cable and no internet, and asks if Ms. Civale could try to make contact with Comcast to find out the status of repairs, and give him a call back and give Commissioner Mitchell a "timeline." Dispatcher Civale states, "I guess.....do we do this here at dispatch? I just came in at three o'clock." Mr. Mitchell replies, "yes", to which Ms. Civale replies, "okay," and asks for the address of the Commissioner. Mr. Mitchell then states that the whole neighborhood must be out, because Comcast originally told the Commissioner that repairs would be made sometime Wednesday, then told her sometime Thursday and are now telling her sometime on Sunday. Ms. Civale asks again for the caller's name, and he states, "My name is Ed Mitchell, and I'm the City Administrator." Ms. Civale then asks for a telephone number or account number, to which Mr. Mitchell replies, "I don't have it." Mr. Mitchell then states I just want to see if that area's out, or the whole City is out, and when it's coming back. Ms. Civale states that she will try and see what she can do. He thanks her and the call ends at this point.
3. Track #3: This appears to be a recording of a call placed from Central Operations to Comcast Cable, and has general recorded information from Comcast concerning their service. The call then enters a "menu" where the caller is asked to press various telephone keys to route the call properly. Several "keys" are heard being pressed by the caller. The recorded voice for Comcast then states that the waiting time is more than ten minutes, and to either call back or stay on the line for a customer service representative. There is no conversation on this track, and no further recorded messages.
4. Track #4: Dispatcher Civale answers the telephone in Central Operations as "Jo Anne." The caller identifies herself as "Kimberly Mitchell," and states "I just talked to Ed, who said he had just gotten off the phone with you about seeing if we could find somebody at Comcast." Dispatcher Civale replies, "yes, actually I'm on the other line on hold." Commissioner Mitchell states, do you want the home phone number that it's attached to?" She then gives Ms. Civale her home telephone number. Commissioner Mitchell then asks Dispatcher Civale if she wants her cell phone number to let her know when she hears something, and gives her the number. Commissioner Mitchell thanks Dispatcher Civale, who states, "hopefully I can get through." At this point the call is disconnected. This track also has a call from a water customer reporting a water leakage, and a call from a boater reporting use of a public dock space. There is no other conversation recorded on this track.
5. Track #5: The initial recording on this track is Dispatcher Civale calling her supervisor, Brenda Hubbard. Her first comment to Ms. Hubbard is that Commissioner Mitchell and Ed Mitchell are calling her wanting her to call Comcast, and that she has been on hold with them for fifteen minutes and her phones have been "ringing off the hook." She then discusses a problem with a customer's water service being shut off who is very irate. She checks with Ms. Hubbard as to the proper procedure, and states that she will call the customer back. The next conversation is between Ms. Civale and a Comcast representative. Ms. Civale states that she has been on hold for the longest time, and that she is calling for Commissioner Mitchell in West Palm Beach who has had no cable for a few days, and asks if there is still an outage at 330 Pilgrim Rd., and gives Commissioner Mitchell's telephone number for the Comcast account to the representative, and verifies the name as Kimberly Mitchell. The representative states that there are three outages affecting the Internet, cable TV and telephone at that location. The representative then says her records only show that it is still out. Dispatcher Civale then says, "you know this is the Commissioner, she called the City, and we're making this phone call for her." Ms. Civale then asks the name of the representative, and verifies that she has no information on when the problem will be fixed. Dispatcher Civale then calls commissioner Mitchell. Ms. Civale tells Commissioner Mitchell that she was on hold for thirty-two minutes, but she got through and that Comcast says there is an outage in the Commissioner's area, and that they do not have an ETA on when it will be repaired. Commissioner Mitchell tells Ms. Civale that they have been saying that since Tuesday. She then thanks Ms. Civale for trying, and the call is disconnected. There is no further conversation on this track.

6. Track #6: Dispatcher Civale calls the Comcast Dispatch Center and speaks to a dispatcher who identifies herself as "Cathy." Ms. Civale advises she is calling from the City of West Palm Beach Central Operations. Ms. Civale then states that Commissioner Mitchell's cable has been out since Tuesday, and "she's calling here to Central Operations to see what the status is on repairs." Cathy asks for the address, and is given one that is incorrect (she was given 330 Pilgrim Rd., but the correct address is 332 Pilgrim Rd.). Cathy then requests the phone number and is given the Commissioner's home telephone number and name. Ms. Civale then asks to place Cathy on hold and answers another telephone line, which she immediately puts on hold. When she returns to the Comcast call, she is told there is an appointment set for Sunday for that account. Ms. Civale asks if the whole area is out, but is told, "not that I'm aware of, it depends on when she called in." Ms. Civale states that she called earlier and waited over thirty-five minutes. She then verified the date and time of the repair appointment with Cathy, at which time the call was terminated. She then takes the call she had placed on hold, where the caller asked whether the City parking meters were being enforced today. Dispatcher Civale then calls Commissioner Mitchell and advises her that there is a repair appointment scheduled for Sunday. Commissioner Mitchell states she is aware of that appointment, but that her cable has been out since Tuesday, so she was trying to get someone to come out before Sunday, because she is supposed to have guests to watch the Florida-Florida State football game tomorrow (Saturday). Dispatcher Civale then states to Commissioner Mitchell, "I'll call back and see if I can get anything sooner for you," to which Commissioner Mitchell replies, "okay, that would be awesome if they could come out sooner." She then thanks Dispatcher Civale and the call is terminated. Dispatcher Civale then calls Comcast back and again speaks to "Cathy." Ms. Civale asks if Commissioner Mitchell can get an appointment sooner than Sunday. This track ends at this point, where apparently Cathy had to place Ms. Civale on hold. However, that same telephone call is continued on track #7.
7. Track #7: This track initially continues with the call to Comcast from Dispatcher Civale begun on Track #6. Cathy advises Ms. Civale that she can change the repair appointment to Saturday, between 1:00 PM and 3:00 PM. Dispatcher Civale then calls Commissioner Mitchell to advise her of the new repair appointment. Commissioner Mitchell is very pleased with this result, stating, "awesome....how awesome are you Jo Anne....you are so awesome, thank-you, thank-you, thank-you." The call is terminated shortly thereafter. There are no further recordings provided.

After reviewing the information on the CD, I determined that I would need to conduct interviews with several personnel from the City of West Palm Beach regarding this incident.

- **Witness Interviews**

The following persons from the City of West Palm Beach were interviewed during this inquiry:

1. Charlene Whitley, Director of Community Relations
2. Chris Darryl, Central Operations Supervisor
3. Brenda Hubbard, Acting Supervisor/Dispatcher, Central Operations
4. Joanne Civale, Dispatcher, Central Operations
5. Edward Mitchell, City Administrator
6. Kimberly Mitchell, City Commissioner

I made contact with Charlene Whitley, Director of Community Relations for the WPB Utilities Department to set an appointment, because Central Operations falls within her supervision and responsibility. I set an appointment to talk with her on December 8, 2011 at 3:00 PM at her office.

- **Interview: Charlene Whitley, Director of Community Relations**

This interview was conducted on December 13, 2011 at Ms. Whitley's office, 1009 Banyan Blvd. The interview was conducted under oath and was not recorded as Ms. Whitley had no actual first-hand knowledge of the telephone

calls made to Central Operations on November 25th. However, she was placed under oath prior to my speaking with her.

Ms. Whitley became aware of the issue of her personnel becoming involved with Commissioner Mitchell's Comcast cable problems when it was brought to her attention by the Central Operations Supervisor, Chris Darryl. Ms. Whitley was out of town during the Thanksgiving holiday. She was currently assigned to a special project, and Mr. Darryl had been filling in for her as Director for several weeks leading up to the holiday period.

Upon her return to work, Mr. Darryl advised her that he had been contacted by WPB Assistant City Administrator Neil Melik the week after Thanksgiving. Mr. Melik advised that he was following up on an issue for City Administrator Ed Mitchell involving Commissioner Kimberly Mitchell and Central Operations, stating that there had been no follow-up at their office on this issue and Mr. Mitchell wanted to know if it had been resolved. Mr. Darryl checked on the issue, determined that it involved his staff assisting the Commissioner regarding her cable television service, and reported it to her. She then contacted her Boss, David Haynes. A CD recording of the telephone calls during the incident was also forwarded to him so that he would have them for his review. She also advised that the two Central Operations employees on the recordings were, Brenda Hubbard, who took the original telephone call from City Administrator Ed Mitchell, and Joanne Civalé, who works the afternoon/evening shift, and who had direct telephone contact with Ed Mitchell, Commissioner Kimberly Mitchell, and Comcast Cable Company that day.

Ms. Whitley advised that Supervisor Darryl would not be back to work until Tuesday, December 13, 2011. She had no further involvement in this incident, and after advising her that I would be interviewing her staff over the next few days, the interview was terminated. Ms. Whitley also advised me that she had saved the recording in a "wav" file on her computer, and I requested that she send them to my email address. She agreed to do so, but the email I received later that day did not have the files attached, possibly due to their size. I was unable to reach her prior to the weekend.

- Interview: Chris Darryl, Supervisor, Central Operations

On Tuesday, December 13, 2011 at 10:00 AM, I interviewed Chris Darryl. This interview was conducted at the Director of Community Relations' Office, 1009 Banyan Blvd, as Mr. Darryl was filling in for Charlene Whitley who was working off-site on a special project. This interview was not tape recorded, as Mr. Darryl had no direct knowledge of the specific incident, but was taken under oath.

Mr. Darryl stated that he was off work during the Thanksgiving holiday, and returned on Monday, November 28th. He was contacted that day by Assistant City Administrator Neil Melnik, who advised that he was following up for Ed Mitchell on an issue involving City Commissioner Kimberly Mitchell during the holiday weekend. Mr. Mitchell wanted to know if the issue had been handled, and why he was not informed of the outcome. Mr. Darryl advised he would look into it and report back.

After determining that the issue involved assisting Commissioner Mitchell with repairs to her home cable television service, he advised Mr. Melnik that the issue had been handled for the Commissioner. He then made copies of the telephone calls surrounding the incident on a CD, and gave them to his department director, Charlene Whitley. He is not sure what happened to them after that, but wanted to make sure his boss was advised of the incident.

I asked Mr. Darryl if it would be unusual for someone to call Central Operations about a cable television problem that did not involve the City or its utilities. He stated that they receive calls for many reasons, and would have provided anyone with the Comcast telephone number to assist them. However, he stated that for one of his dispatchers to make several telephone calls and set up repair appointments for any customer was unusual and somewhat outside of their scope of responsibility, although they do try and help as much as possible.

Since Mr. Darryl had no direct knowledge of the incident, I advised him that I would need to interview both Brenda Hubbard and Joanne Civalé. We decided that in order to lessen any disruption in Central Operations service, and to avoid any overtime problems, I would interview Ms. Hubbard at 2:00 PM this same day, and interview Ms.

Civale when she arrived for work at 2:30 PM. I also asked Mr. Darryl to send me via email the recordings that Ms. Whitley had agreed to send via email. He did so later that day.

- Interview: Brenda Hubbard, Acting Supervisor/Dispatcher, Central Operations

This interview was conducted on December 13, 2011 at WPB Central Operations Center, 1009 Banyan Blvd. The interview was conducted under oath and was recorded.

Interview start: 2:07 PM

Brenda Hubbard identified herself for the record and was placed under oath.

She stated that she has been employed at WPB Central Operations since October 2007 as a Dispatcher. Her job includes acting as a public utilities dispatcher, a member of the Mayor's Response Team for residents and customers, and providing public service. Central Operations also acts as the Emergency Operations Center (EOC) for the City when needed in emergency situations such as hurricanes. Ms. Hubbard is a dispatcher, but is also an acting supervisor for Central Operations.

Ms. Hubbard stated that she was working the dayshift on Friday, November 25th at Central Operations. Near the end of her shift (which ended at 3:00 PM), she received a telephone call from City Administrator Ed Mitchell. She recalls Mr. Mitchell telling her that a city commissioner was having problems with Comcast Cable television, and Mr. Mitchell asked her if she had a number for Comcast. She did not specifically remember which city commissioner was mentioned. She provided Mr. Mitchell with the emergency telephone number for Comcast. She did not remember whether he only took the number or if she patched him to the number for Comcast. This was the only call she received from Mr. Mitchell during her shift. Ms. Hubbard advised that she has received calls from citizens asking for telephone contact numbers, and that is not unusual at Central Operations, as they man the Mayor's "hotline" to handle issues within the City, which includes providing such contact numbers where requested.

I next discussed with Ms. Hubbard the possibility that if I was a resident and called into Central Operations about a cable TV problem, would she call the number for me? She advised that she might dial the number to patch me through to Comcast, but she would not make the call itself on my behalf. I then asked her, "if I told you I had been trying to get through for a half-hour" and asked that she make the call for me and call me back when she got through, would that be an unusual request, she stated that would be unusual, and she has never had anyone make such a request of her.

When her shift was ending, she did give a brief summation of the day's calls to her relief (Joanne Civale), including that Mr. Mitchell had called requesting Comcast's telephone number. This is standard procedure when relieved, so that the oncoming dispatcher will be aware of any issue that may resurface. Later, Ms. Civale told her that she had to make several phone calls regarding the cable TV issue, but that she did not remember the specific details. This discussion occurred when Ms. Civale called her later that same evening about a problem regarding another customer. That call was placed to her by Ms. Civale because Ms. Hubbard is the acting supervisor, while Mr. Darryl fills in for Ms. Whitley. She did agree that the dispatchers' responsibility ends at giving the telephone number to the customer when the issue is not City related.

- Interview: Joanne Civale, Dispatcher, Central Operations

This interview was conducted on December 13, 2011 at WPB Central Operations Center, 1009 Banyan Blvd. The interview was conducted under oath and was recorded.

Interview start: 2:35 PM

Interview end: 2:51 PM

Joanne Civale identified herself for the record and was placed under oath.

She stated she has been employed as a dispatcher with WPB Central Operations since August 2010. She was working on Friday, November 25, 2011. Upon arriving at work on that Friday, she was updated by Brenda Hubbard as to the day's events, including the telephone call from Ed Mitchell.

She received a telephone call from City Administrator Ed Mitchell sometime during her shift. Mr. Mitchell told her that Commissioner Kimberly's cable television service was down at her home. He asked her to call Comcast to see whether it was an outage in the area, and how long it was going to be before it was repaired. She asked Mr. Mitchell for the Commissioner's address and telephone number because she knew Comcast would need that information. He did not have that information. About ten minutes later, Commissioner Mitchell called her directly and gave her the address and telephone information. She was busy that day with several telephone calls into Central Operations, and remembered it was a long waiting period for Comcast that day. The Comcast call was placed on hold while she answered a series of unrelated telephone calls. As she finished a call, she went back to the call on hold, and a woman from Comcast was just picking up the line. The woman told her there was an outage in the area, and the cable TV service would probably not be back up until Tuesday.

Ms. Civale then called Commissioner Mitchell to relay this information. Commissioner Mitchell told her that she was having guests this weekend. Ms. Civale then told Commissioner Mitchell that if she had time, she would call Comcast back. Ms. Civale found a number directly to the Comcast dispatch center, and called Comcast again. She advised the person at Comcast that she was calling for the Commissioner, and asked if there was an outage in the area. She was told no. Ms. Civale was told that there was a repair scheduled for Sunday for that account. She called Commissioner Mitchell back and informed her that the repair was scheduled for Sunday. Commissioner Mitchell then asked if they could come sooner because she was expecting company. Ms. Civale stated that she offered to call back and see if she could have the appointment moved up. When she got a break in between telephone calls coming into Central Operations (it was busy that day), she called Comcast dispatch back and got Comcast to come the next day, which was Saturday. Ms. Civale called Commissioner Mitchell back, who she described as thrilled.

Ms. Civale went on to state that she was not sure that this was something that she should be doing as a dispatcher. She stated that she remembered Brenda telling her about a phone call dealing with this issue that Brenda had handled, and she had asked Administrator Ed Mitchell if it was something they were supposed to be doing, but wasn't sure of his response. She did tell me that in the year and one-half that she has been at Central Operations, neither the City Administrator nor any City commissioner has ever called her that she can remember, other than to report a stop sign down or similar issue. I specifically asked her if she was being contacted to get a phone number, or if she was supposed to make the call. She stated, "No, they were calling to have me make the call."

I asked her if she received any further calls about this issue. She stated no, but that a few days later her boss (Chris Darryl) called her and asked about the incident, saying that Mr. Melik was asking for follow-up. Mr. Darryl gave her Mr. Melik's telephone number, and she called him to advise what had been done. Mr. Melik asked her if the situation was rectified, and she replied that she merely set everything up, and did not know if the repairs were ever made.

I then asked Ms. Civale if I were a resident of West Palm Beach and called her at Central Operations asking her to call the cable TV office for me, would she consider that a part of her regular function, to which she replied "no." I asked her if both Ed Mitchell and Kimberly Mitchell were aware she was scheduling a repair for the commissioner, to which she replied, "yes." I asked her if there were any conversations with either Ed Mitchell or Kimberly Mitchell on any unrecorded telephone lines, to which she said, "no." I then asked if either of them ever told her that this was not part of her job, and she replied, "no." I then stated, "but you know that to be true for private citizens?" She replied, "yes," but clarified this statement saying that if an elderly person calls that cannot easily make such calls, she will assist them more than a normal citizen, even by going on line to find a certain phone number for them. But when asked again if she would set up a repair appointment for a private person, she stated she would not, but she would direct them where to call. During the conversation, as we were going over the incident, Ms. Civale said that since she knew Brenda [Hubbard] had spoken with Mr. Mitchell earlier, she thought

maybe this was a service they were to give to the Commissioners. There was some further discussion as to her call with Ms. Hubbard, and some of the busy day she had that day on the phones.

She also stated that this past Saturday she got to meet Commissioner Mitchell who was with a news crew at the Water Plant. Administrator Ed Mitchell had called and asked her to make sure the gate was open for the Commissioner to enter the water plant, and she called the water plant. But, Ms. Civate only spoke to the Commissioner from the 2nd floor balcony, as she was alone in dispatch and could not go downstairs. When she introduced herself to the Commissioner as "Joanne," the Commissioner responded, "Oh, my hero," and thanked her again for helping her.

Interview end: 2:19 PM

After completing my interviews and reviewing the information gathered, I made contact with City Administrator Edward Mitchell to schedule an interview with him. The interview was scheduled for Thursday, December 15th at 7:30 AM at WPB City Hall.

- Interview: Edward Mitchell, City Administrator, City of West Palm Beach

This interview was conducted on December 15, 2011 at the WPB City Center, 401 Clematis St. The interview was conducted under oath and was recorded.

Interview start: 7:32 AM

Edward Mitchell identified himself for the record and was placed under oath.

He stated that he has been the City Administrator of West Palm Beach since September 1999. Previously, he was the Assistant City Manager for a few months beginning in 1993 until the City adopted a "strong mayor" form of government, at which time he became the Assistant City Administrator.

Mr. Mitchell was in Seminole Florida near Tampa for the Thanksgiving holiday. Commissioner Mitchell called him on his cell phone on Friday, November 25th and told him that her cable went out Tuesday night, and that the whole neighborhood's cable was out. She had relatives coming for Thanksgiving and Comcast had promised her it would be fixed by Wednesday, but it was still out. Commissioner Mitchell told him that she had guests coming to her home for a football game on Saturday. She asked him to see if he could find out what was going on because she was not getting return telephone calls.

I told him that I understood that as the City Administrator he was the point person City officials would contact to solve most problems, but asked why the Commissioner would call him about a cable TV problem in her home. I also asked him if Comcast had a contract with the City. He replied that they did. He believed the Commissioner thought she could get quicker service by dealing with Mr. Mitchell, and his understanding was that cable was out in the neighborhood, not just her individual cable. Commissioner Mitchell told him that she had gotten no response at the "local level" and asked if he knew anyone at Comcast who might be able to resolve the issue. Mr. Mitchell then called the City's "hotline" number [561-822-2222 - staffed through Central Operations] and asked if they could find out when repairs would be made and get back to Commissioner Mitchell. I advised him that based upon the recorded information, in the initial call to the hotline, he had merely asked for the Comcast number. He said he was unable to get through on that line, so he called back looking for a different number.

I asked him again why Commissioner Mitchell called him for a problem not related to the City, and he replied that he believes she called him because the whole neighborhood's cable was out, and she was probably getting calls from other customers in her neighborhood. I asked him if the Commissioner had told him directly that she had been getting calls from neighbors about the outage and he replied that he did not think she told him that, but she did say that service was out in the neighborhood.

I advised him that I was aware from the recoded telephone calls that he called twice. The first time he asked for a number to Comcast, and was unable to get through on the number they provided. The second time he remembers asking "Joanne" (Dispatcher Joanne Civale) to call Commissioner Mitchell when she had some information. I asked Mr. Mitchell if he remembered Joanne asking him if they were supposed to do that, and he replied, "yes, I think she did." I asked if he remembered his response to that question, and he did not remember his answer. I then asked him if he would like to hear the recording of the telephone conversations to refresh his memory. He indicated that he would.

(At this point I played a recording of the two telephone calls he had made to Central Operations on Friday, November 25, 2011)

After playing the recorded telephone conversations, I asked Mr. Mitchell if it was unusual for city commissioners to call him with problems that are not related to the City. He replied that he has received calls concerning FPL issues, including traffic light outages before. Mr. Mitchell went on to say that even though the traffic lights are run by Palm Beach County, he would sometimes get those calls. I asked if normally he would leave a deputy in charge when out of town, and he replied that in this day and age of cell phones, he can be reached almost anywhere. He advised that he has received calls from commissioners about noise downtown at 10:00 or 11:00 o'clock on a Saturday night because residents are calling them. It is not unusual to get calls all hours of the night and day about some City issue or service. He also has received these types of calls from residents who may have his number concerning a service problem. He reiterated that his understanding was that the neighborhood cable service was out. After his telephone calls with Central Operations, he called Commissioner Mitchell to have her give the dispatcher her telephone number that Comcast would need to find the Commissioner's account. He told the Commissioner that he had made contact, Joanne was going to help her, and she should call Joanne to give her additional information. Administrator Mitchell and I then discussed the fact that the Central Operations Dispatcher made several calls to Comcast on behalf of the Commissioner upon being told that the scheduled Sunday repair was not going to resolve the issue of not having cable for the football game on Saturday. Mr. Mitchell was not aware that the dispatcher had changed the repair appointment for Commissioner Mitchell.

I then discussed the follow-up telephone call from Mr. Mitchell's assistant, Neil Melnik. He stated that was a normal Monday morning check to see if the issue had been resolved, but he also wanted the after hour numbers for Comcast from Central Operations. He likes to keep after hour emergency numbers, such as FPL, in his phone in case he needs them to avoid having to call dispatch for them. I asked him if he had ever received a telephone call for a City official about their personal cable being out. He replied he would expect to receive such calls if an entire area was out, but he could not recall a specific incident. In such a case, he would call Comcast and try and find out when repairs were expected to be completed. Mr. Mitchell also advised that the other purpose of a follow-up with Central operations was to make sure they have the after-hours telephone numbers so that they would be available in case a resident needed them in the future.

Mr. Mitchell also advised that the idea of the "hotline" call center was not for someone with a problem to be able to make one telephone call to solve it. He advised that they train their dispatchers to 'own the problem,' rather than to say you'll have to call the cable company, or FPL or the county. The hotline was designed to take a complaint and solve the problem. They would expect the same response for any resident or customer.

Interview end: 7:55 AM

After returning to the COE office, I left a message with Commissioner Mitchell's office asking her to call me. I received a call from her within an hour, and requested an appointment to speak with her. She advised that she was going out of town the next day, but would be back on Saturday. We set an appointment for her to come to the COE office on Monday, December 19th at 2:00 PM. However, Ms. Mitchell called on December 19th asking that the appointment be moved to 1:00 PM.

Interview: Kimberly Mitchell, City Commissioner, City of West Palm Beach

This interview was conducted on December 19, 2011 at the COE Office. The interview was conducted under oath and was recorded.

Interview start: 1:17 PM

Commissioner Mitchell identified herself for the record and was placed under oath.

Commissioner Mitchell is a current West Palm Beach City Commissioner, and was first elected to that office in 2002. She was re-elected in 2004, 2006, 2008, and in 2010 to the current two-year term, which runs until 2012. I advised Commissioner Mitchell that this was an inquiry, not a formal investigation. She was also advised that her interview with me was voluntary.

Commissioner Mitchell stated that on Monday or Tuesday (of Thanksgiving week), her cable TV, internet and home telephone service went out. She called the Comcast main number and was told that there was not a problem in the area, but that they believed her modem was the problem. She went to the Comcast office on 45th Street, and was given a new modem. She hooked the new modem up, but that did not solve the problem. When she called back, she was "routed" to different Comcast representatives, none of which were local. But she was unable to contact the local office. When she called back again, she was advised by a recording that there was an outage reported in her area. She waited to talk to a person, and was told that there was a problem in her area, and that they believed it would be back on by 7:00 o'clock. That time came and went, and the repairs were not made. She states that she had guests coming for Thanksgiving, and they traditionally watch football with their guests on Thanksgiving. She called several more times asking when the problem would be fixed, and if it was not going to be fixed, she needed to know so she could make other arrangements as she had guests coming. She was aware she was not talking to local representatives, and spoke to one person she believed was in India and another representative named "Justin" that she was told was in Alabama. Justin assured her they would have the problem fixed. However, the problem was not fixed for Thanksgiving, and her cable remained out of service.

Commissioner Mitchell stated that her focus then became trying to get a telephone number for a Comcast representative who works in the West Palm Beach area. She did state that no one else she talked to in her neighborhood has Comcast cable, so she was not sure if the outage was for a whole area, or just her home, other than what Comcast had told her that the outage was reported in the area. She states that she called City Administrator Ed Mitchell the day after Thanksgiving only to ask for a local number for Comcast, so that she could talk to a live person in West Palm Beach. Mr. Mitchell said he did not, and that she brought up a good question; who do we call if there is a problem? He told her he would call her back. When he called her back, he told her that he had called the City hotline number to check if they had a local number. He then told her to call the hotline and speak to Joanne who would try to find a number for her. Commissioner Mitchell reiterated that she was only looking for a number to speak with a local person from Comcast when she called the hotline. She had gotten different answers from each Comcast representative, and her cable still was out. On Saturday, she had more guests coming for the Florida-Florida State football game, and wanted to get to a "live human being" to provide an answer as to when the cable would be repaired. She advised that as it turned out, Comcast had mistakenly turned off her cable instead of another customers' service. She again stated that her purpose was simply to obtain a local number for Comcast to get an answer and she did not intend for any calls to be made on her behalf to Comcast. She stated that she didn't ask the dispatcher or expect her to make calls on her behalf. I advised her that according the recorded conversations, when she spoke to dispatch she was told that the dispatcher had Comcast on hold. She stated she did not remember hearing that and may not have been paying attention to that part of the conversation.

I then asked Commissioner Mitchell why she would call the City Administrator about a cable problem in her home instead of the hotline number directly. She said because she knows him, and has worked with him for ten years. She never thought to call the hotline number, but knew Ed Mitchell had many emergency numbers available. She stated further that he's the City Administrator, and anything that happens in the City, he's getting calls on. And like her, he has many telephone numbers available in his cell phone for problems. I then stated that this didn't

have anything to do with the City, it was your personal cable, to which she replied, "but I live in the City, I personally live in the City, I'm personally a customer of Comcast. I wasn't calling him as a city commissioner. He's a human being that I know that would have a phone number for a problem that I'm trying to solve. So why wouldn't I do that, and why would I not be allowed to call him to ask him for a phone number?" I stated that he is the City Administrator and you're a City Commissioner and your calling about a private matter, not a City matter, to which she replied, "I'm also a resident of the City of West Palm, and once in a while I have a problem I try to solve just like you, if you have a problem, you try to solve them." She then reiterated that she was only trying to get a live person at Comcast to deal with to solve the problem she was having.

I then moved on to the telephone discussions with the Commissioner and Joanne, the Central Operations dispatcher. I stated that Joanne had told her at one point that she had a repair appointment scheduled for Sunday, and I asked Commissioner Mitchell what happened next. She stated she did not remember exactly what happened in that particular phone call. She stated that the first time she called the dispatcher she was given a telephone number that was not local. (In fact, she was told at that time that Joanne was on hold with Comcast, and she gave Joanne her home phone number that was attached to her account.) She again stated that her purpose was simply to get someone at Comcast who was local to tell her what was the problem was in West Palm Beach.

I told Commissioner Mitchell that at some point she had to know the dispatcher was setting appointments for her. I then asked if she ever thought to tell the dispatcher that she should not be doing that on City time. She stated that it was not a big discussion, and that she never asked the dispatcher to do that. The way she interpreted it was that Joanne took the initiative and was able to reach a live person at Comcast, and moved up the appointment from Sunday. She did not chastise Joanne for doing so, but maintained that all she wanted to do was get a telephone number. She was not there to supervise what Joanne was doing. She stated that her intent in calling the hotline was to get a telephone number. She stated, "I did not call and say Joanne, this is a very important city commissioner, you need to do X. I said do you have a phone number, that's it."

When I stated to her that she never asked for a telephone number when she called in, she maintained that was her reason for calling. I then asked if she would like to listen to the recordings of her calls, and she said, "For what? I'm telling you what my intent was, if I had a criminal or unethical intent, then, you could play that. But I didn't, so there is no point in playing it. I just wanted a phone number so I could call for myself to get a live person, to fix a problem that I had had for Tuesday, Wednesday, Thursday, Friday, okay?" I pointed out that when the Commissioner called dispatch the first time, she gave Joanne her home telephone number, as opposed to asking for a telephone number. Her answer was that she was told to give Joanne that telephone number, because her account is connected to her home telephone number. She then stated that she was not calling to give Joanne her home telephone number, she was calling to get a telephone number. Commissioner Mitchell did agree that when Joanne said to her that she would see what she could do with Comcast, the Commissioner gave her cell number to Joanne to call her back. At that point the Commissioner again stated, "To get a live person, that's all we were trying to do, get a live person."

There is some further discussion about problem solving within the City as a Commissioner or City employee, and reiterating that she was only asking for a telephone number and she did not want anyone intervening on her behalf. She simply wanted to have a number to speak to a local representative to solve the problem.

The interview was ended shortly thereafter.

Interview end: 1:33 PM

- **Legal Analysis**

The following portions of the PBC Code of Ethics ordinance are relevant to this Inquiry:

Sec. 2-443. Prohibited conduct.

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities: (Emphasis added)
- (1) *Himself or herself;* (Emphasis added)
 - (2) *His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;* (Emphasis added)
- (b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for *himself, herself, or others.* For the purposes of this subsection, "*corruptly*" means *done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.* (Emphasis added)

In order for a violation of §2-442(a) of the Code of Ethics to have occurred, there must have been some financial benefit to one of the seven (7) persons or entities listed in §2-442(a)(1-7). In this case, any improper financial benefit that may have been realized would inure to Commissioner Mitchell and to her spouse, as well as any other household members, in violation of §2-442(a)(1 & 2). Therefore, if Commissioner Mitchell's actions or inactions in having or allowing the on-duty City Central Operations dispatcher act as her agent in dealing with her personal residential Comcast Cable account was "prohibited conduct," and resulted in an improper financial benefit, it would meet the threshold for violations of §2-442(a)(1 & 2), in that such improper financial benefit would have been to her personally, and/or her spouse or other household members. The issue of whether or not Commissioner Mitchell obtained a "financial benefit" not shared by similarly situated members of the general public by her action or inaction in this matter is dispositive as it relates to a violation of §2-442(a), since any financial benefit would have been for herself, her spouse or any other household members. If the accelerated repair of her cable television, internet and home telephone service has a financial benefit, her actions or inactions in allowing an on-duty city employee to arrange her repair service may constitute a violation of this Section of the Code.

In order for a violation of §2-442(b) to have occurred, the employee or official would have had to "use his or her official position or office, or any property or resource which may be within his or her trust", to "corruptly" secure, or attempt to secure, a "special privilege, benefit or exemption," for herself or any other person. Under this Section of the Code, while a violation does not require a showing that the special privilege, benefit or exemption was "financial," it does require a "wrongful intent" in obtaining or attempting to obtain such privilege, benefit or exemption, and must be, "inconsistent with the proper performance of his or her public duties.

• **Factual findings**

Based on a review of the relevant recorded telephone calls from WPB Central Operations for Friday, November 25, 2011, and interviews conducted under oath with persons having information in this matter, as well as all other information uncovered during this inquiry, staff makes the following factual findings regarding this inquiry:

1. On or about Tuesday, November 22, 2011, Kimberly Mitchell, a Current West Palm Beach City Commissioner, had a disruption in the Comcast Cable signal at her residence within the City of West Palm Beach, causing the home to lose its cable television, internet and home telephone signal.

2. Commissioner Mitchell had guests scheduled to visit her home for the Thanksgiving Day holiday on Thursday November 24, 2011, and spent several days attempting to have her provider, Comcast Cable Company (Comcast) make repairs. The repairs were not made in time for the Thanksgiving holiday.
3. On Friday, November 25, 2011, Kimberly Mitchell contacted Edward Mitchell, the current City Administrator for West Palm Beach, by cell phone to assist her with contacting Comcast, asking him if he had an additional telephone number to make contact with Comcast locally, since she was not getting the desired results using the public telephone number, which was routed out of the area.
4. Administrator Mitchell was visiting friends and/or relatives on Florida's west coast for the Thanksgiving holiday, and after receiving this call, personally called the West Palm Beach Central Operations Center (Central Operations) in an attempt to locate an additional telephone number for Commissioner Mitchell.
5. Two (2) calls are placed to Central Operations by Administrator Mitchell. The first which is received by Dispatcher and Acting Supervisor Brenda Hubbard, who gives him an "emergency number" for Comcast, and then connects him to that number.
6. The second call is received by Dispatcher Joanne Civate, who is asked by Administrator Mitchell to attempt to find out the status of repairs to Commissioner Mitchell's residential Comcast service and then to notify the Commissioner of any repair status information she is able to obtain. During this discussion, Dispatcher Civate asks him, "Do we do that?" to which he replies, "yes." She then advises Administrator Mitchell that she needs a home telephone or account number for Commissioner Mitchell. Administrator Mitchell replies that he does not have that information, but does give her a home address. He then states that he just wants to know if the area is out, or if the whole City is out, and when repairs will be done.
7. Dispatcher Civate attempts to make a call to Comcast, and is placed on hold for over thirty (30) minutes on one of the Central Operations telephone lines.
8. Commissioner Mitchell calls Central Operations and advises Dispatcher Civate that Ed Mitchell told her to call about her Comcast account. Commissioner Mitchell is told that Civate is on hold with Comcast, and asks if Civate needs the home telephone number attached to the account. Commissioner Mitchell gives Dispatcher Civate her home telephone number then asks Civate if she wants her cell phone number to contact her when she hears something, and provided Civate with her cell number.
9. Dispatcher Civate is involved in several other telephone calls dealing with City issues, including a call to Acting Supervisor Hubbard about a water turn-off issue, and a separate report of a water service break. However, she keeps Comcast on hold, and is able to speak with a customer representative. The Comcast representative advises her that they do not have a schedule for when repairs will be done. Dispatcher Civate then calls Commissioner Mitchell to advise her of this information, stating during the conversation that she was on hold with Comcast for thirty-two (32) minutes. Commissioner Mitchell states that her cable has been out since Tuesday, she then thanks Civate for her efforts.
10. Dispatcher Civate later locates a telephone number for Comcast Dispatch, where she speaks to another Comcast representative, who tells her it does not appear that the outage is area wide, but that repairs to Commissioner Mitchell's service are scheduled for Sunday (November 27th). During this call, Civate receives at least one other telephone call concerning City parking meter enforcement, which she places on hold, and returns to after completing her Comcast call.
11. Dispatcher Civate calls Commissioner Mitchell to advise her of this new repair information, and is told that Commissioner Mitchell is aware of this, but was trying to have repairs made sooner since her service had been out since Tuesday, and she was having guests on Saturday for a football game. Civate states that she will call back and see if she can get an appointment sooner, to which Commissioner Mitchell replies, "okay, that would be awesome if they could come out sooner."

12. Dispatcher Civale then re-contacts Comcast Dispatch and is able to change the repair appointment to Saturday afternoon, November 26th. She then calls Commissioner Mitchell and advises her of the new repair appointment. Commissioner Mitchell thanks her for her effort, referring to her as "awesome" several times during this call.

- **Conclusion and recommendations as to legal sufficiency**

- **Legal Sufficiency:**

Based on the facts revealed by the initial inquiry, including sworn testimony taken under oath from persons known to have relevant information, I believe that there is legal sufficiency to open a formal investigation into this matter, and there is sufficient sworn testimony by material witnesses available to indicate that, if true, legal sufficiency exists that the actions or failure to act on the part of Kimberly Mitchell in allowing an on-duty City employee to schedule a repair appointment for her personal residential Comcast service, sufficiently alleges a violation of Section 2-442(a) or (b) of the Code of Ethics.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based upon facts which have been sworn to as true by a material witness, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

Therefore, staff recommends that a formal investigation case be opened, and that the Executive Director file a sworn Complaint based on the information provided by this inquiry, including the sworn testimony of material witnesses.

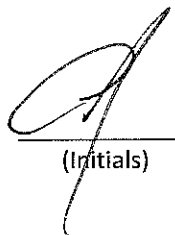
Submitted by:



Mark E. Bannon, Investigator
PB County Commission on Ethics

12/29/2011
Date

Reviewed by:


(Initials)

12/29/2011
Date

SUPPLEMENTAL MEMORANDUM OF INQUIRY

To: Alan Johnson, Executive Director
From: Mark E. Bannon, Investigator
Re: AN 11-026 – Kimberly Mitchell

Page 11 of the Memorandum of Inquiry is amended to correct the code designation from §2-442 to §2-443 of the Palm Beach County Code of Ethics as follows:

In order for a violation of §2-443(a) of the Code of Ethics to have occurred, there must have been some financial benefit to one of the seven (7) persons or entities listed in §2-443(a)(1-7). In this case, any improper financial benefit that may have been realized would inure to Commissioner Mitchell and to her spouse, as well as any other household members, in violation of §2-443(a)(1 & 2). Therefore, if Commissioner Mitchell's actions or inactions in having or allowing the on-duty City Central Operations dispatcher act as her agent in dealing with her personal residential Comcast Cable account was "prohibited conduct," and resulted in an improper financial benefit, it would meet the threshold for violations of §2-443(a)(1 & 2), in that such improper financial benefit would have been to her personally, and/or her spouse or other household members. The issue of whether or not Commissioner Mitchell obtained a "financial benefit" not shared by similarly situated members of the general public by her action or inaction in this matter is dispositive as it relates to a violation of §2-443(a), since any financial benefit would have been for herself, her spouse or any other household members. If the accelerated repair of her cable television, internet and home telephone service has a financial benefit, her actions or inactions in allowing an on-duty city employee to arrange her repair service may constitute a violation of this Section of the Code.

In order for a violation of §2-443(b) to have occurred, the employee or official would have had to "use his or her official position or office, or any property or resource which may be within his or her trust", to "corruptly" secure, or attempt to secure, a "special privilege, benefit or exemption," for herself or any other person. Under this Section of the Code, while a violation does not require a showing that the special privilege, benefit or exemption was "financial," it does require a "wrongful intent" in obtaining or attempting to obtain such privilege, benefit or exemption, and must be, "inconsistent with the proper performance of his or her public duties.

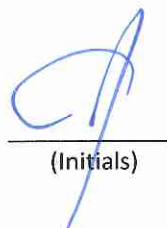
Submitted by:



Mark E. Bannon, Investigator
PB County Commission on Ethics

1/20/2012
Date

Reviewed by:


(Initials)

01/20/2012
Date

Trac 1 – Phone call between Ed Mitchell (EM) and City of West Palm Beach Dispatcher (D)

1 D: City of West Palm Beach, this line is being recorded, may I help you?

2 EM: Hi, this is Ed Mitchell, the City Administrator, is Chris working today by chance?

3 D: No, he's not. He's off.

4 EM: Ok, I have one of the commissioners calling me because their cable is out at the house. It has

5 been out for 2 or 3 days. Do we have a contact at Comcast Cable that I can give one of the

6 commissioners?

7 D: Ok, the number that I have for them is 478-8300.

8 EM: I believe that is their main number. I don't have a number

9 D: And then we also have an emergency number here, which is 227-4112.

10 EM Ok. I'll try that. Can you dial that and see if you can connect me to 227-4112.

11 D: Sure, hold on for one second.

12 EM Thank you.

13 D: Dial tone . . . Dialing . . . hang on . . . Dial tone . . . Dialing . . . Ok

14 Recording: You have reached Comcast Palm Beach County Dispatch. All of our dispatchers are

15 currently busy . . .

END OF CALL

Trac 2 - Call between Ed Mitchell (EM) and Joanne at Central Operations (J)

16 J: Central Operations, this line is recorded, Joanne speaking, may I help you?

17 EM: Hi Joanne, this is Ed Mitchell, the City Administrator.

18 J: Hi.

19 EM: Kimberly Mitchell is having all sorts of problems with her cable. Commissioner Mitchell I guess

20 lost it Tuesday afternoon. I've struck out trying to get hold of anybody. Any chance you can, uh

21 . . . they gave me a couple of the numbers from dispatch about a half an hour or so ago and no

1 one is picking up anywhere. You know, I keep going into their system, but not getting picked up,
2 so . . . Could you guys call . . . Commissioner Mitchell lives on Pilgrim. She lost it Tuesday
3 afternoon. She has no cable and no internet. No TV or anything, so I was wondering if you guys
4 could get through to somebody and maybe give me a call back and give her a timeline.

5 J: Umm, I guess, I don't . . . do we, do this here at dispatch. I just came in at 3:00 o'clock. Ok . . .

6 EM: *unintelligible . . . talk over . . .*

7 J: What is her address?

8 EM: 330 Pilgrim Road. Again, they told her . . . the whole neighborhood must be out because they
9 told her originally that they would have it back some time Wednesday, then they told her some
10 time Thursday, now they are telling her some time on Sunday.

11 J: Ok, and also, what was your name?

12 EM: My name is Ed Mitchell. I am the City Administrator.

13 J: Ok . . . alright. Umm, does she have a phone number or an account number?

14 EM: Umm, I don't have it.

15 J: Ok. How about a phone number to her home?

16 EM: Umm, I don't know. I guess, I guess, couldn't you just see if that area of the city is out. The
17 whole city is out, and when she is coming back.

18 J: Ok, I will try to see what I can do for you.

19 EM: Ok, thanks Joanne.

20 J: You're welcome,

21 EM: Bye-bye.

22 J: Bye-bye.

23 EM: Bye

END OF CALL

Trac 3 – Not Transcribed – No useful information

Trac 4 – Call between Kimberly Mitchell (KM) and Joanne in Central Operations (J)

1 J: Central Operations, this line is recorded, this is Joanne, may I help you?

2 KM: Hi Joanne, this is Kimberly Mitchell.

3 J: Hi.

4 KM: How are you?

5 J: Good, how are you?

6 KM: Good. Ahh, I just talked to Ed, and he said that he just got off the phone with you about seeing

7 if we could find somebody at Comcast?

8 J: Yes. Actually, I am on the other line on hold.

9 KM: Do you want my home phone number that it is attached to?

10 J: Yes.

11 KM: It's 561-202-0001.

12 J: Oh, great. Ok.

13 KM: Ok. Do you want my cell phone? Maybe you can let me know if you hear something . . .

14 J: Sure.

15 KM: It's 685-7093.

16 J: Alrighty.

17 KM: Thank you.

18 J: You're welcome. Hopefully I can get through.

19 KM: Ok.

20 J: Thank you. Bye.

ANOTHER CALL CAME IN TO CENTRAL OPERATIONS – Joanne (J) speaking with Melissa May (MM)

21 J: Operations, this line is recorded. This is Joanne, may I help you?

1 MM: Um, yes, I'm having a problem with my water . . . is leaking out of my yard on to the street
2 flooding the whole street. I think there is a line down there that might be broken.
3 J: Ok, what's your address?
4 MM: 365 Gregory Road.
5 J: Ok, and the name on the account.
6 MM: Melissa May.
7 J: Ok, one second. I am just going to bring that up in the system.
8 MM: Ok.
9 J: Do you have water in the home?
10 MM: Ummm, I did just a second ago. I right out front . . . yes . . . but yes, there is still water in the
11 home.
12 J: Oh, good. Ok. Alright, let me just get . . . I'm just gonna put you on hold for one minute.
13 MM: Ok. Thank . . .

ANOTHER CALL CAME IN TO CENTRAL OPERATIONS – Joanne (J) speaking with Ken (K)

14 J: Central Operations, this line is recorded. This is Joanne, may I help you?
15 K: Hi Joanne, how are you?
16 J: Good, how are you?
17 K: Good. I just, umm, pulled a boat up to one of the docks here in West Palm Beach and I . . .
18 J: Oh, sure, which dock is it?
19 K: I believe . . . let's see. There are three public docks. The one with the little boat dock. I think it
20 is right in the middle. It is directly across from Bradley's. I think that's dock 2.
21 J: Alright. And, what is the name on the boat please.
22 K: Ahh . . . the name on the boat . . . is . . . Premier 2.
23 J: Ok, and how many feet is it?

1 K: It is 29.
2 J: Color?
3 K: Ahh, color . . . it is . . . cream colored.
4 J: Alright, and your name?
5 K My name is Ken.
6 J: A phone number Ken where we can reach you?
7 K: It is 561-714-9924.
8 J: Ok, well thank you very much. Have a good day.
9 K: Thank you.
10 J: Bye-bye.

DIAL TONE

11 J: Ok, Melissa?
12 J: Alright, thank you for holding. Alright, I can get someone out there. Let me just take a look in
13 the system.
14 MM: Ok.
15 J: Let's just make sure everything is dated . . . up-to-date.
16 MM: Do I have to be here?
17 J: Umm, I don't believe so.
18 MM: Ok, cause I have to go pick up my daughter at art camp, so I will probably be gone about an hour
19 and then I will be back.
20 J: Ok, and the phone number where I can reach you at, Melissa?
21 MM: Umm, 603-8190.
22 J: Ok. I'll get a crew out there to take a look at that.
23 MM: Ok. Great. Thank you.

1 J: Bye-bye.

2 MM: Bye.

Trac 5 - Call from Joanne (J) in Central Operations Dispatch to Acting Supervisor, Brenda Hubbard (BH)

3 Dial Tone . . . Dialing . . . Ringing . . . Verizon Ring back tone . . . *music*

4 J: Bren?

5 BH: Hello?

6 J: Hi, it's Joanne.

7 BH: Hi . . . hi.

8 J: Ok . . . umm, first of all, I got Mitchell, Commissioner Mitchell calling me and Ed Mitchell calling
9 me wanting me to call Comcast. I've been on hold 15 minutes. My phones are ringing off the
10 hook.

11 BH: Umm-hmm.

12 J: So I got them on hold, but I have a woman on the phone screaming that she just got home from
13 being on vacation. 647 Executive Center Drive, okay?

14 BH: Umm-hmm.

15 J: She pays her water bill through her maintenance. I got her and a guy yelling at me on the
16 phone. They got an infant. There number is not even in the system. All I have . . .

17 BH: So this is a mass. This is a massive meter account and you're not gonna be able to pull it up.

18 J: That's what I am trying to tell her. I can't *talkover*

19 BH: But she gotta contact her homeowner's association.

20 J: She's saying no one is answering, and she is gonna sue the city. She has an infant. There's no
21 way we can come out there and just turn her on and she'll take care of it Monday. Now I got all
22 other addresses here at 601, 611. They are all the condo association places.

23 BH: Umm-hmm.

1 J: She's not even on here, and they're arguing with me that they're gonna sue us if we don't come
2 out there and . . .

3 BH: Wait a minute. Is all of this . . . Is all of them saying there off?

4 J: No . . . No. She's the only apartment that is off.

5 BH: Well then there's gotta be something . . . I mean . . . it . . . it . . . ah . . . if . . . you have to explain
6 to her that it's just one meter that controls all of the units.

7 J: That's what I told her.

8 BH: Ok. So, if it's a problem. If it's a problem and it's a City problem, then everybody out there
9 would be affected by it.

10 J: Right.

11 BH: So, she got to contact her building maintenance or somebody with the association and let them
12 know . . . um . . . that . . . to come out there take a look cause it could be something . . . well it is
13 definitely something wrong on the property itself.

14 J: She said . . . *talk over* . . . her

15 BH: Go ahead.

16 J: Her neighbor told her that a man came out two days ago and went and turned off her water.

17 BH: Umm

18 J: Maybe she didn't pay her condo fees, I don't know.

19 BH: I don't know. *Unintelligible*. Because if it's a master meter account they is . . . there is not
20 individual meters.

21 J: Right.

22 BH: So nobody can just go out there and just turn off her water only. *Talk over*

23 J: *Talk over*. I told them, but they are carrying on me that they're suing us. We have to get out
24 there. I just looked. Let me look into this a little further. Let me speak with my supervisor. I

1 will call you back. She says no one answers at the maintenance emergency number. Nothing.
2 Because probably it's the holiday. So I want to make sure I'm giving her the right information.
3 BH: Yeah. And . . . and she have to contact like a 24-hour service. Ask them do they got like a
4 builders maintenance. Some . . . it's gotta be something, somewhere, someone that they can
5 contact after hours like this.
6 J: Right.
7 BH: Because. Yeah. Because it's not . . . the City can't . . . there's nothing the City could when she's
8 the only person that don't have water.
9 J: Right.
10 BH: Everybody else is not out of water.
11 J: Alright, I just want to make sure. I'm gonna call her back.
12 BH: Ok.
13 J: Alright, thank you.
14 BH: Alrighty, bye-bye.
15 J: Bye-bye.

Dial Tone – Call between Joanne in Central Operations Dispatch and Customer Service Rep at Comcast

16 J: Hello?
17 CSR: Yes, Hello?
18 J: Yes maam, I've been on hold for the longest time. I'm calling for Commissioner Mitchell here in
19 West Palm Beach. She has no cable for a few days. Is there still a outage at 330 Pilgrim Road?
20 CSR: Ok, can I please have the phone number associated with your account.
21 J: Ahh, she said it's 202-0001.
22 CSR: Area code 561?
23 J: Yes, I'm sorry.

1 CSR: Ok, it's ok. Let me go ahead and pull up the account to see. Can I please have the name on the
2 account?

3 J: Ahh, it should be Kimberly Mitchell.

4 CSR: Ok. Yes, I do see here there's 3 outages affecting the high-speed internet, telephone and cable
5 services.

6 J: Right. It's been . . . she said it's been out for 2 days.

7 CSR: Ok. It doesn't say with umm . . . already completed or anything. It just says that still . . . there's
8 and outage and they are still working on it.

9 J: Yeah, this is the Commissioner. She called the City here and we're making the phone call for
10 her. Ok, what is your name?

11 CSR: Lily. L-I-L-Y.

12 J: Alright, so there's still a outage and they are still working on it and you don't have an ETA of
13 when this is gonna be up or operating?

14 CSR: Umm, no ma'am.

15 J: Ok, thank you.

16 CSR: Well thank you for calling Comcast.

17 J: You're welcome.

18 Dial Tone . . . Dialing . . . Ringing

19 KM: Hello?

20 J: Hi, Commissioner Mitchell?

21 KM: Yeah.

22 J: It's Joanne in emergency . . . *talk over*

23 KM: Hi, Joanne.

24 J: Hi. I was on hold for 32 minutes, but I got through and talked to a lady.

1 KM: Ok.

2 J: She said there is an outage in your area. They do not have an ETA on when it's gonna be up and
3 operating, but the . . . *talk over*

4 KM: Yeah, no. But that's not the problem here though. That's what they have been saying . . .

5 J: Yeah

6 KM: And then it goes back to . . . ahh . . . that is what they started saying on Tuesday, then on
7 Wednesday . . .

8 J: I told her that it's . . .

9 KM: And then they . . .

10 J: been out for a couple of days. She said, we're sorry about that maam, but that's all the
11 information we have at this time.

12 KM: Ok.

13 J: Alrighty?

14 KM: Alrighty, thanks.

15 J: I'm sorry about that.

16 KM: That's ok . . .

17 J: Alrighty, bye-bye.

18 KM: Thank you for trying. Bye.

19 J: Thank you. Bye-bye.

Trac 6 - Call between Joanne at WPB Central Operations dispatch (J) and Cathy at Comcast Cable (C)

20 C: Dispatch, Cathy.

21 J: Yes, hi Cathy, is this for Comcast?

22 C: Uhh, Huh.

1 J: Ok, I'm calling from the City of West Palm Beach Central Operations. Commissioner Mitchell's
2 cable has been out since Tuesday. She's calling here at Central Operations to see what the
3 status is on repairs. I can give you an address if that can help.
4 C: Ahhh . . . Ok, what's the address?
5 J: 330 Pilgrim Road
6 C: Is there a phone number there?
7 J: Ok, the number is 202-0001. It's Kimberly Mitchell. Could I put you on hold one second please?
8 C: Sure.
9 J: Thank you.

ANOTHER CALL CAME IN TO CENTRAL OPERATIONS

10 J: Central operations, this line is recorded, this is Joanne, please hold. Thank you.

RETURN TO CALL WITH COMCAST

11 C: She actually have an appointment on Sunday between the hours of 11 and 1, I mean 9 to 11.
12 J: 9 to 11?
13 C: Umm hmm.
14 J: Ok, the whole area's out, correct? Wasn't there an outage in the whole area?
15 C: Ummm, let's see . . . not that I'm aware of, umm, it depends on when she called in.
16 J: Oh, cause I called earlier, waited over 35 minutes. I spoke with Lily at one of the customer
17 service. She said the whole area has an outage, and she was still out. They were working on it.
18 So she does have an appointment Sunday between 9 and 11 am?
19 C: Yes.
20 J: Ok, I'm sorry. What was your name?
21 C: My name is Cathy.
22 J: Thanks Cathy, I'll let her know.

1 C: Ok.
2 J: Alright. Bye-bye.

Back to call placed on hold. Call between Joanne at (J) and an unknown male caller (MC)

3 Dial Tone . . .
4 J: Thank you for holding, this is Joanne, may I help you?
5 MC: Hi, are the meters, the parking meters being serviced today?
6 J: Are they being serviced?
7 MC: Like, are they putting out tickets today?
8 J: Umm, I believe today is a holiday. Cause the city is closed.
9 MC: Yeah. So that's what I'm thinking the meter's on a city holiday is no charge?
10 J: Yes, there is no charge today. The city is closed.
11 MC: Ok, thank you very much.
12 J: You're welcome, bye-bye.
13 MC: Bye-bye.

New Call between Joanne at Central Operations (J) and Kimberly Mitchell (KM)

14 Dial Tone . . . Dialing . . . Ringing
15 KM: Hello?
16 J: Hi, Commissioner Mitchell, this is Joanne from City Operations?
17 KM: Hi, Joanne.
18 J: Hi, I just got through to an emergency number for Comcast, and she says you have an
19 appointment Sunday.
20 KM: Uhh huh
21 J: I don't know if you are aware between 9 and 11 am.

1 KM: Yes. I was trying that . . . it . . . it . . . it's been out since Tuesday, so I was trying to get somebody
2 to come out before Sunday . . .

3 J: Yeah

4 KM: Because I am supposed to have people over to watch the Florida – Florida State game . . .

5 J: Oh . . .

6 KM: Tomorrow.

7 J: I'm sorry to hear that.

8 KM: Yeah . . .

9 J: I know, I go through this at my own home. You can't get them out for a week. Meanwhile you
10 go without cable for days.

11 KM: Right . . . right, and internet. It's awful.

12 J: I'll do what I can . . .

13 KM: I'd love you for that. I really appreciate it a lot. Ok.

14 J: I'll try to call them back again to see if I can get anything sooner for you.

15 KM: Ok.

16 J: Ok?

17 KM: That would be awesome. If they can just do it sooner.

18 J: Alright, I'll let you know.

19 KM: Ok. Thank you Joanne.

20 J: Alright. Bye-bye.

Call between Joanne at WPB Central Operations dispatch (J) and Cathy at Comcast Cable (C)

21 Dial Tone . . . Dialing . . . Ringing

22 C: Dispatch, Cathy.

23 J: Hi, Cathy, this is Joanne calling from City Operations. I just spoke with you.

1 C: Yes.

2 J: In regards to . . . I think it was Mrs. Kimberly Mithcell, she is the commissioner. Pilgrim road. Is

3 there any chance that she can get a sooner appointment than Sunday or is that the next

4 available? Cause she has been out of cable since Tuesday.

END OF DISK – CALL APARENTLY PUT ON HOLD BY COMCAST

Trac 7 - Call between Joanne at WPB Central Operations dispatch (J) and Cathy at Comcast Cable (C)

5 C: Maam?

6 J: Yes.

7 C: I'm sorry to keep you holding.

8 J: That's alright. I really appreciate your help.

9 C: Umm, I can have someone out there between 1 and 3 tomorrow.

10 J: Ok, that would be great. Saturday between 1 and 3?

11 C: Yes maam.

12 J: Oh, thank you. She would appreciate that so much. Okay, so you will change that then?

13 C: Yes.

14 J: Oh, thank you Cathy.

15 C: Alrighty.

16 J: Alright, thank you. Have a good night.

17 C: You too.

18 J: Bye-bye

Call between Joanne at WPB Central Operations dispatch (J) and Kimberly Mitchell (KM)

19 Dial Tone . . . Dialing . . . Ringing

20 KM: Hello?

21 J: Hi Commissioner Mitchell, its Joanne with dispatch.

1 KM: Hi.

2 J: Ok, I got you an appointment tomorrow between 1 and 3.

3 KM: Awesome

4 J: Okay?

5 KM: How awesome are you Joanne! You are so awesome! Thank you, thank you, thank you.

6 J: Oh, you're welcome Commissioner. So they should be there.

7 KM: Thank you. Ok.

8 J: Alright, thank you. Have a good day.

9 KM: You too. Bye.

END OF RECORDINGS

PALM BEACH COUNTY COMMISSION ON ETHICS

MEMORANDUM OF LEGAL SUFFICIENCY

To: Commission on Ethics
From: Alan Johnson, Executive Director
Date: December 30, 2011
Re: Complaint No. AN 11-026, Kimberly Mitchell

- **Recommendation**

Regarding Respondent, Kimberly Mitchell, City Commissioner, City of West Palm Beach, the Staff recommends a finding of LEGALLY SUFFICIENT be entered in complaint number AN 11-026.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based upon facts which have been sworn to by a material witness or witnesses, and if true would constitute the offenses alleged, relating to a violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background**

This matter came to the attention of the Commission on Ethics' (COE) staff on December 8, 2011 via a compact disk (CD) provided by an anonymous source and given to COE Executive Director, Alan Johnson by the West Palm Beach Ethics Officer. An initial inquiry was begun after listening to the information contained on this CD. The CD contained seven (7) recordings of telephone calls made to the City of West Palm Beach (the City) through their Central Operations Center, located within the Customer Service Section of the Public Utilities Department. According to the City's website, (www.wpb.org), the Central Operations Center, "provides 24 hour emergency response services to Public Utilities, Public Works, Parks, etc. It dispatches to all [City] departments with the exception of police and fire. It is also the operation location of the Mayor's Hotline. This hotline is designed to allow residents of the City of West Palm Beach and surrounding areas to voice their concerns, suggestions, and compliments regarding happenings in and around the City."

Telephone calls to Central Operations are recorded, and the CD appears to be a copy of several calls received by dispatchers at this Central Operations on Friday, November 25, 2011, during the Thanksgiving holiday period. Most City workers were off work on both Thursday, November 24, 2011 (Thanksgiving Day) and on Friday, November 25, 2011, including City Administration personnel. Two (2) of these telephone calls were from City Administrator Edward Mitchell to Central Operations, one (1) was from City Commissioner Kimberly Mitchell to Central Operations, and two (2) others from Central Operations to Commissioner Mitchell. The other two (2) telephone calls were from Central Operations to Comcast Cable Company.

- **Initial Inquiry**

Based upon information obtained from the recorded telephone calls to and from Central Operations on November 25, 2011, an initial inquiry was initiated by COE staff. During this inquiry, the following six (6) employees and officials of the City of West Palm Beach were interviewed by a COE investigator:

1. Charlene Whitley, Director of Community Relations (which includes Central Operations)
2. Chris Darryl, Central Operations Supervisor

3. Brenda Hubbard, Acting Supervisor/Dispatcher, Central Operations
4. Joanne Civile, Dispatcher, Central Operations
5. Edward Mitchell, City Administrator
6. Kimberly Mitchell, City Commissioner

The interviews with these employees and officials, combined with the information obtained from the telephone recordings, resulted in a recommendation of legal sufficiency from the COE investigator. The initial inquiry revealed that an on-duty Central Operations Dispatcher made contact with Comcast Cable Company due to an outage of Commissioner Mitchell's residential cable service. Although initially, contact was made by Commissioner Mitchell for the purpose of obtaining a working number for Comcast, the situation developed to the extent that city staff spent significant on-duty time in an attempt to resolve the issue for the commissioner with her full knowledge and consent. At one point, upon being advised by the dispatcher that her cable service was scheduled to be repaired on Sunday, November 27th, Commissioner Mitchell told the dispatcher that she was expecting guests to watch a televised football game at her home on Saturday, November 26th. When the dispatcher advised Commissioner Mitchell that she would call Comcast back to try and arrange an earlier appointment, Commissioner Mitchell did not attempt to dissuade this action, but instead told the dispatcher, "Okay, that would be awesome."

- **Analysis**

Pursuant to Chapter 2, Article V, Division 8, §2-258(a) of the Commission on Ethics Ordinance, the jurisdiction of the Commission on Ethics extends to the countywide code of ethics, county post-employment and lobbyist registration ordinances. Violations of § 2-443(a) and (b) of the Code of Ethics (Prohibited Conduct, financial misuse/corrupt misuse of official position) are within the jurisdiction of the Palm Beach County Commission on Ethics. The Commission on Ethics also has personal jurisdiction over Kimberly Mitchell as an official of the City of West Palm Beach, a Palm Beach County municipality.

The following portions of the PBC Code of Ethics ordinance are relevant to this Inquiry:

Sec. 2-443. Prohibited conduct.

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities: (Emphasis added)
 - (1) *Himself or herself;* (Emphasis added)
 - (2) *His or her spouse or domestic partner, household member* or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people; (Emphasis added)
- (b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for *himself, herself, or others*. For the purposes of this subsection, "*corruptly*" means *done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.* (Emphasis added)


In order for a violation of §2-443(a) of the Code of Ethics to have occurred, there must have been some financial benefit to one of the seven (7) persons or entities listed in §2-442(a)(1-7). Any special financial benefit from the acts of the dispatcher on her behalf would inure to Commissioner Mitchell and to her spouse, as well as any other household members, in violation of §2-443(a)(1 & 2).

In order for a violation of §2-443(b) to have occurred, the employee or official would have had to "use his or her official position or office, or any property or resource which may be within his or her trust", to "corruptly" secure, or attempt to secure, a "special privilege, benefit or exemption," for herself or any other person. Under this section of the code, while a violation does not require a showing that the special privilege, benefit or exemption was "financial," it does require a "wrongful intent" in obtaining or attempting to obtain such privilege, benefit or exemption, and must be, "inconsistent with the proper performance of his or her public duties." Use of on-duty personnel for the personal benefit of an official in a manner that is not available to all residents of the city meets the legal sufficiency threshold for a violation under this section, as being inconsistent with the proper performance of her public duties, and having been done with wrongful intent.

Based on the recorded telephone calls and the sworn testimony of material witnesses, the evidence is **legally sufficient** to allege a violation of both §2-442(a), *Misuse of public office or employment*, and §2-442(b), *Corrupt misuse of official position*, of the Code of ethics by Respondent, Kimberly Mitchell.

- **Conclusion**

Because sufficient information is provided by the telephone recordings and sworn testimony of material witnesses, reasonable inferences from those recordings and interviews, if true, could support a violation of the code of ethics, complaint number AN 11-026 against Respondent, Kimberly Mitchell, is **LEGALLY SUFFICIENT**. Therefore, a sworn complaint should be filed and an investigation into this matter should proceed.

By: 

Alan S. Johnson, Executive Director
Florida Bar # 223352
Commission on Ethics
2633 Vista Parkway
West Palm Beach, FL 33411
561-233-0720

12/30/2011
DATE



PALM BEACH COUNTY COMMISSION ON ETHICS

2633 Vista Parkway, West Palm Beach, Florida 33411

Hotline: 877-766-5920 or 561-233-0724

COMPLAINT FORM

1. Complainant (Person bringing Complaint) *Add pages, if necessary.*

Name: Alan S. Johnson, Executive Director, Commission on Ethics

Address: 2633 Vista Parkway

City: West Palm Beach

Zip: 33412

Telephone #: 561-233-0724

2. Respondent (Person against whom complaint is made) *Add pages, if necessary.*

Name: Kimberly Mitchell, City of West Palm Beach

Address: 401 Clematis Street

City: West Palm Beach

Zip: 33402

Home #: _____ Work #: 561-822-1400

Cell #: _____

Title/Office Held or Sought: Commissioner

3. IF KNOWN, CHECK THE BOX OR BOXES THAT APPLY

Allegation is against person in

☒ Government

Allegation is about County:

☐ Whistleblower Retaliation

4. STATEMENT OF FACTS AND SUPPORTING DOCUMENTATION ATTACHED

5. OATH and NOTARY

STATE OF FLORIDA

COUNTY OF PALM BEACH

Personally known to me and appeared before me, Alan S. Johnson whose signature appears below, being duly sworn, says that the allegations set forth in this complaint are based upon facts which have been sworn to as true by a material witness or witnesses and which if true would constitute the offenses alleged and that this complaint is instituted in good faith. Signed and sworn to on this 4th day of January, 2012.


Alan S. Johnson




(Signature of Notary Public, State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

January 5, 2012

Kimberly Mitchell, Commissioner
401 Clematis Street
West Palm Beach, FL 33402

Re: C12-001

Dear Commissioner Mitchell:

Enclosed please find a copy of Complaint C12-001, including Memorandum of Investigation, Memorandum of Inquiry, Memorandum of Legal Sufficiency and a transcript of telephone calls.

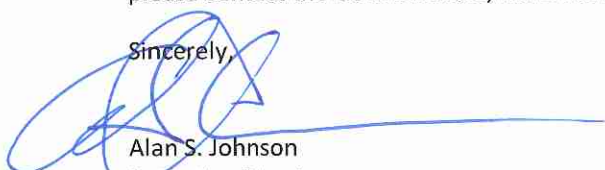
This Complaint has been assigned to Pro Bono COE Advocate Kai Li Fouts. Ms. Fouts will make a probable cause determination and submit her recommendation to the COE. You will receive a copy of the Advocate's recommendation under separate cover. At that time, this matter will be placed before the Commission on Ethics. All documents with the exception of the Complaint are exempt from public records disclosure unless and until the complaint is dismissed, probable cause is found, or you request in writing that the information be released.

The probable cause hearing will be in executive session and closed to the public unless you provide a written request that the hearing be held in a public forum. You have an opportunity, in accordance with the procedures as set forth in the Commission on Ethics Rules of Procedure, to file a written response to the advocate's recommendation prior to the probable cause hearing. Any documentary evidence that you wish to provide will also be considered by the COE.

Along with the COE Advocate, you will be permitted to make a brief oral statement in the nature of oral argument to the commission, based upon the Investigator's reports, your written response and the recommendation of the Advocate, before the probable cause determination. If the COE finds no probable cause, the Complaint will be dismissed. If probable cause is found, the COE will set a final public hearing in the matter. At any time prior to a final public hearing, a negotiated settlement may be entered into upon approval by the COE.

Should you or your representative have any questions regarding the complaint, or the procedures as described, please contact the COE Advocate, Kai Li Fouts at (561) 659-2009.

Sincerely,


Alan S. Johnson
Executive Director

ASJ/gal

Enclosures

cc: Kai Li Fouts, Pro Bono Advocate

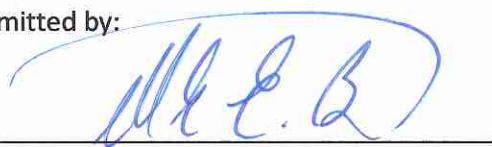
PALM BEACH COUNTY COMMISSION ON ETHICS
MEMORANDUM OF INVESTIGATION

To: Alan Johnson, Executive Director
From: Mark E. Bannon, Investigator
Date: January 4, 2011
Re: C12-001 – Respondent: Kimberly Mitchell

This matter came to the attention of the Commission on Ethics' (COE) staff on December 8, 2011 via a compact disk (CD) provided by an anonymous source and given to COE Executive Director, Alan Johnson by the West Palm Beach Ethics Officer. An initial inquiry was begun after listening to the information contained on this CD under case number AN 11-026, and was completed on December 27, 2011.

On December 30, 2011, the COE Executive Director filed a Memorandum of Legal Sufficiency regarding case number AN 11-026, recommending that a formal investigation be initiated. The Memorandum of Inquiry and the Memorandum of Legal Sufficiency filed under case number AN 11-026, are incorporated by reference into, and attached to this Memorandum of Investigation, now listed under case number C12-001. All telephone recordings, witness statements and other evidence uncovered during this initial inquiry are also incorporated by reference into this investigation.

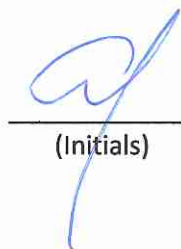
Submitted by:



Mark E. Bannon, Investigator
PB County Commission on Ethics

1/4/2012
Date

Reviewed by:


(Initials)

01/04/2012
Date



Palm Beach County Commission on Ethics

Commissioners

Edward Rodgers, *Chair*
Manuel Farach, *Vice Chair*
Robin N. Fiore
Ronald E. Harbison
Bruce E. Reinhart

Executive Director

Alan S. Johnson

January 10, 2012

Kimberly Mitchell, Commissioner
401 Clematis Street
West Palm Beach, FL 33402

Re: C12-001

Dear Commissioner Mitchell:

On January 5, 2012, you were notified that a complaint had been filed against you in the above referenced matter. On January 9, 2012 the Pro Bono Advocate issued a Memorandum of Probable Cause to the Commission on Ethics (COE) recommending probable cause be found. (see attached)

On February 2, 2012 the Complaint will be heard by the COE in executive session.

While it is recommended that you appear, you are not required to attend the executive session. The executive session will take place at the following time and location:

February 2, 2012 – 1:45 p.m.
Palm Beach County Governmental Center
301 North Olive Avenue
12th Floor McEaddy Conference Room
West Palm Beach, FL 33401

As previously explained in the letter of January 5, 2012, the probable cause hearing will be in executive session and closed to the public unless you provide a written request that the hearing be held in a public forum. You have an opportunity, in accordance with the procedures as set forth in the Commission on Ethics Rules of Procedure, to file a written response to the advocate's recommendation prior to the probable cause hearing. Any documentary evidence that you wish to provide will also be considered by the COE.

Along with the COE Advocate, you will be permitted to make a brief oral statement in the nature of oral argument to the commission before a probable cause determination is made, based upon the Investigator's reports, your written response and the recommendation of the Advocate. If the COE finds no probable cause, the Complaint will be dismissed. If probable cause is found, the COE will set a final public hearing in the matter within 120 days and you will be notified of the proceedings and requirements. At any time prior to a final public hearing, a negotiated settlement may be entered into upon approval by the COE.

As indicated, it will be the Commission on Ethics Staff recommendation that probable cause be found that you violated §2-443(a) and (b) of the Code of Ethics.

Should you or your representative have any questions or concerns regarding the above, please feel free to contact Commission on Ethics Advocate, Kai Li Aloe Fouts at 561-659-2009.

Sincerely,



Alan S. Johnson,
Executive Director

Enclosure

cc: Pro Bono Advocate, Kai Li Aloe Fouts

ASJ/gal

PALM BEACH COUNTY COMMISSION ON ETHICS
MEMORANDUM OF PROBABLE CAUSE

To: Commission on Ethics
From: Kai Li Aloe Fouts, Advocate
Re: Complaint Number: C12-001, Commissioner Kimberly Mitchell

- **Recommendation**

A finding of PROBABLE CAUSE should be entered in the above captioned matter as to the allegations made in the Complaint.

Probable Cause exists where there are reasonably trustworthy facts and circumstances for the Commission on Ethics (COE) to conclude that the Respondent, Kimberly Mitchell, violated the Palm Beach County Code of Ethics.

- **Jurisdiction**

COE has jurisdiction pursuant to Chapter 2, Article V, Division 8, section 2-258(a) of the Palm Beach County Commission on Ethics Ordinance which states in pertinent part:

Article V, Division 8, section 2-258. *Powers and duties.* (a) The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the;

- (1) Countywide Code of Ethics;
- (2) County Post-Employment Ordinance, and
- (3) County Lobbyist Registration Ordinance.

Article XIII, Section 2-443(a), *Misuse of public office of employment* prohibits a public official or employee from using their official position to take any action, or to influence others to take any action, in a manner which he or she knows or should know, will result in a special financial benefit, not shared by members of the general public, for any person or entity listed in §2-443(a)(1-7), which includes the official or employee and their spouse, domestic partner, or household member. Article XIII, Section 2-443(b), *Corrupt misuse of official position* of the Palm Beach County Code of Ethics prohibits any official or employee from using his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

- **Background**

This matter came to the attention of the Commission on Ethics' (COE) staff on December 8, 2011 via a compact disk (CD) provided by an anonymous source and given to COE Executive Director, Alan Johnson by the West Palm Beach Ethics Officer. An initial inquiry was begun after listening to the information contained on this CD. The CD contained seven (7) recordings of telephone calls made to the City of West Palm Beach (the City) through their Central Operations Center, located within the Customer Service Section of the Public Utilities Department. According to the City's website, (www.wpb.org), the Central Operations Center, "provides 24 hour emergency response services to Public Utilities, Public Works, Parks, etc. It dispatches to all [City] departments with the exception of police and fire. It is also the operation location of the Mayor's Hotline. This hotline is designed to allow residents of the City of West Palm Beach and surrounding areas to voice their concerns, suggestions, and compliments regarding happenings in and around the City."

Telephone calls to Central Operations are recorded, and the CD appears to be a copy of several calls received by dispatchers at Central Operations on Friday, November 25, 2011, during the Thanksgiving holiday period. Most City workers were off work on both Thursday, November 24, 2011 (Thanksgiving Day) and on Friday, November 25, 2011, including City Administration personnel. Two (2) of these telephone calls were from City Administrator Edward Mitchell to Central Operations, one (1) was from City Commissioner Kimberly Mitchell to Central Operations, and two (2) others from Central Operations to Commissioner Mitchell. The other two (2) telephone calls were from Central Operations to Comcast Cable Company.

- **Facts establishing probable cause**

The initial inquiry into this allegation did indicate that initially contact by Respondent, Kimberly Mitchell, may have been for the purpose of obtaining a working telephone number for Comcast. However, during at least the last two telephone communications between Central Operations Dispatcher Joanne Civalé and the Respondent, Respondent was aware that this City employee was spending a significant amount of on-duty time attempting to resolve a problem with Respondent's residential Comcast service. While Respondent did not specifically ask for this to be done, she did encourage the actions by providing the employee with her home telephone number, attached to her Comcast account, and advising the employee that the initial scheduled repair service was unsatisfactory because it was on the day after she was scheduled to have guests at her home to watch a football game. When the dispatch employee advised she would try and re-schedule the repair appointment, Respondent further encouraged this behavior and use of City resources by stating to the employee, "That would be awesome, if they can just do it sooner."

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a), the jurisdiction of the commission on ethics extends to the countywide code of ethics, county post-employment and lobbyist registration ordinances. Violations of §2-443 of the Code of Ethics (Prohibited Conduct) are within the jurisdiction of the Palm Beach County Commission on Ethics.

Applying the available recorded telephone conversations with Central Operations, and information gleaned from interviews with witnesses, we review the facts to determine whether there are reasonably trustworthy facts and circumstances for the Commission on Ethics (COE) to conclude that the Respondent, Kimberly Mitchell, violated the Palm Beach County Code of Ethics.

Sec. 2-443. Prohibited conduct.

Sec. 2-443(a)(1-2). *Misuse of public office or employment* states in relevant part:

- (a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, *in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit*, not shared with similarly situated members of the general public, for any of the following persons or entities: (Emphasis added)
 - (1) Himself or herself;
 - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;

Sec. 2-443(b). *Corrupt misuse of official position*, states as follows:

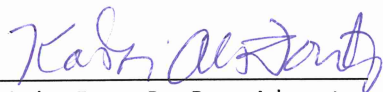
- (b) *Corrupt misuse of official position.* An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a *special privilege, benefit, or exemption for himself, herself, or others*. For the purposes of this subsection, "*corruptly*" means *done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties*. (Emphasis added)

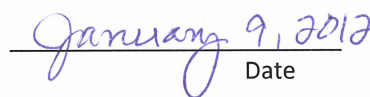
Sworn testimony and other competent evidence adduced provides reasonably trustworthy facts and circumstances for the Commission on Ethics (COE) to conclude that the Respondent, Kimberly Mitchell, violated the Palm Beach County Code of Ethics. The information provided sufficiently alleges a violation of §2-443(a)(1-2), and §2-443(b), in that Kimberly Mitchell was aware that she was using resources of an on-duty City employee and City telephone equipment to resolve an issue concerning her personal, residential Comcast service, and knew or should have known through the exercise of reasonable care that these resources provided a financial benefit to herself, her spouse, or household members that was not available to the general public. Further, her acts or omissions were done with wrongful intent and for the purpose of obtaining a benefit in a manner that was inconsistent with the proper performance of her public duties. Kimberly Mitchell encouraged the improper use of City personnel and resources in her telephone discussions with the on-duty employee, and in particular by the accolades she expressed to this employee when the repair appointment was changed to an earlier date through the efforts of the employee.

- **Conclusion**

There is probable cause to believe that Respondent, Kimberly Mitchell, has violated sec. 2-443(a)(1-2), *Misuse of public office or employment*, and sec. 2-443(b), *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics.

By:


Kai Li Aloe Fouts, Pro Bono Advocate


Date

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January 31, 2012

Palm Beach County Commission
on Ethics
2633 Vista Parkway
West Palm Beach, FL 33411

VIA: TELECOPIER (233-0735)

Re: Kimberly Mitchell
C12-001

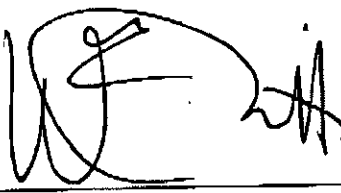
To Whom It May Concern:

Enclosed please find a brief summary response to the findings of the advocate with regard to the issue of probable cause.

We look forward to representing Commissioner Mitchell in this matter on Thursday, February 2, 2012, and providing a more detailed presentation of our position.

Sincerely,

PRUITT & PRUITT, P.A.

By 

William E. Pruitt

WEP/cs
Enclosures

PALM BEACH COUNTY COMMISSION ON ETHICS

RESPONSE TO MEMORANDUM OF PROBABLE CAUSE

To: Commission on Ethics

From: William E. Pruitt, Esq.

Re: Complaint Number: C12-001, Commissioner Kimberly Mitchell

Please be advised that this office represents Kimberly Mitchell with regard to the Recommendation of Probable Cause issued by the Pro Bono Advocate on January 9, 2012. The Advocate reached the conclusion that there was probable cause to believe that the Respondent had violated Section 2-443(a)(1-2) and Section 2-443(b). To the contrary, the Memorandum of Inquiry issued on or about December 27, 2011 by Mark E. Bannon and the copies of the telephone conversations and statements appended thereto, would indicate that such a finding would be improper and not based upon facts, the statements, the evidence and any reasonable conclusions and inferences that can be drawn therefrom.

This matter was anonymously referred and relates to a situation where a resident of the City of West Palm Beach, who happened to be a Commissioner, called the City Hotline after referral to do so, and received unsolicited assistance with an ongoing cable/internet problem. There is no evidence of "corrupt intent" and the Respondent did not seek or receive any financial benefit and obtained nothing not available to the general public nor did any employee act in any way which was inconsistent with the proper performance of his or her public duties.

Section 2-443(a)(1-2) states that "An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a *special financial benefit, not shared with similarly situated members of the general public, . . .*" (Emphasis supplied.) In this situation, Ms. Mitchell had no part in influencing others to take an action or fail to take an action which she would know or should know will result in special financial benefit to herself or anyone in her household. Ms. Mitchell did not receive a monetary benefit or value of any form. Further, if she had received benefit, it is no different than that which is also available to the general public through the use of the City Hotline.

Section 2-443(b) states that "An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to *corruptly* secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others." (Emphasis supplied.) "Corruptly" is defined as being "done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties."

In reviewing the transcripts of the telephone calls, it is clear that there is no "corrupt" intent on behalf of Ms. Mitchell. She sought only to obtain a telephone number to call a company operating a utility within the City from someone she suspected would have that number. Comcast had been giving her inconsistent and incorrect information for many days, some of which would indicate that the problem might be significant to the City at large. When he called the Hotline, Mr. Mitchell first asked for a number he could give the then unidentified Commissioner. This is consistent with what Ms. Mitchell says she requested. Mr. Mitchell was also interested in understanding the scope of the problem. This is reflective of the conversations Ms. Mitchell had with the Hotline operator where she first only identifies herself by name and not title. When Kimberly called, the operator was already on the line with Comcast. The City Hotline/Help Line is advertised as available 24 hours a day, seven days a week, to address the concerns of the citizens of the City of West Palm Beach and to get them the action they need. Next, Ms. Mitchell is advised that Comcast was saying that there was "an outage in your area" and that was "all the information we have at this time." Commissioner Mitchell thanked the operator for trying and hung up. No request was made for additional follow-up, no demand was made for the operator to do anything further. (Page 10 of 15, line 2 - 19). The operator then took it upon herself to go further. Not at the direction or even with the knowledge of Commissioner Mitchell. When the follow-up call was made, Ms. Mitchell understood it to be within the stated purpose of the Helpline mission.

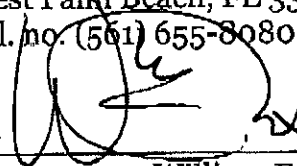
In interviews with the City Administrator, he indicated that this was the type of service the Hotline would perform for citizens. He stated it was a service they provide. The call center has the discretion to make further phone calls and to take the steps necessary to "own the problem" and correct it to satisfy residents. The Hotline was designed to take a complaint and solve the problem. It would be expected to be the same response for any resident or customer. Mr. Darryl also said that they try to help as much as possible.

The inference that Ms. Mitchell encouraged the improper use of City personnel by the accolades expressed, is not borne out by the facts. Being respectful, polite and appropriate should never be considered an ethical violation. To find that good manners and respect or appreciation are evidence of corrupt intent is unfounded. In short, this matter should be dismissed as there is no reasonable or competent evidence that any action was taken to influence others to obtain a special financial benefit nor was there a corrupt intent to obtain any benefit which was not also available to the public.

Respectfully submitted,

PRUITT & PRUITT, P.A.
Suite 5
3030 South Dixie Highway
West Palm Beach, FL 33405
Tel. no. (561) 655-8080

By



William E. Pruitt, Esq.
Florida Bar No. 273821