

PALM BEACH COUNTY COMMISSION ON ETHICS

EXECUTIVE SUMMARY

To: Megan S. Rogers, Interim Executive Director
From: Mark E. Bannon, Investigator
Re: C13-006 – James Cherof, City of Boynton Beach

- **Background**

On February 15, 2013, COE staff received sworn complaint from David Floering, containing allegations that Respondent James Cherof, contracted City Attorney for the City of Boynton Beach (the City) had violated the Palm Beach County Code of Ethics by failing to timely provide a videotape to Complainant which Respondent had determined was a public record. Complainant alleged that this lack of timely response to his valid public records request was done for the purpose of allowing Sarah Marquez-Rodriguez, wife of suspended City Mayor Jose Rodriguez, an opportunity to file court action to stop the release of this video tape. Complainant also alleges that Respondent provides legal advice to the Boynton Beach Community Redevelopment Agency (CRA) under a separate contract, which he states is involved in a lawsuit with a former employee. Complainant believes that Respondent “suppressed the videotape to shield testimony made by Mrs. Rodriguez to the Boynton Beach Police of her knowledge of a personal vendetta against the former CRA employee.”

During a telephone conversation between COE Interim Executive Director Megan Rogers and Complainant, he further alleged that Respondent’s actions in failing to produce the video was done to assist Mayor Rodriguez as well as the CRA in a lawsuit by former CRA Director Lisa Bright, who alleged in her lawsuit that she was fired from her position as a result of rejecting then Mayor Rodriguez’ sexual advances.¹ During this conversation with Director Megan Rogers, Complainant was advised that because the first allegation within the complaint alleged a violation of state law (specifically Chapter 119, Florida Statutes regarding Public Records), and not the PBC Code of Ethics, COE had no jurisdiction over state public records law. Complainant advised Director Rogers that he believed the actions of Respondent in failing to timely produce public records after his lawful request was a violation of Section 2-443(b), *Corrupt misuse of official position* based on the alleged reasons he failed to do so.

- **Inquiry information**

The initial “delay” in providing the video to Complainant was based on the fact that the request was received one (1) day prior to a non-working weekend (the City is closed on Friday, Saturday and Sunday each week, the request was received by Respondent on a Thursday), and that Respondent needed to research the public records laws as they related to the video, and make a determination of whether the video was a public record. The next working day (Monday) Complainant was advised that the video would be available to him at 4:00 PM Tuesday. This time period of one (1) day after the determination was made that the video was a public document subject to release to Complainant was not “unreasonable.” Further, Complaint alleges that even this delay was to allow an action to be filed in court to stop the release is undermined by the short time period mentioned, and Respondent’s letter to attorney Fronstin advising that he would not delay release of the video once it was determined to be a public record subject to release.

Prior to the release on the following Tuesday, an action was filed in PBC Circuit Court to prevent the video from being released. Respondent chose to maintain the “status quo” and not release the video pending the outcome of this action and direction from the court. While the court did later rule that the video was a public record and should have been released, Respondent’s action of not releasing the video while the case was pending do not rise to the level of “corrupt” as defined by the code. Respondent, as the City Attorney, made a strategic decision in an attempt to protect his client (the City) from further litigation should the court rule against the Complainant. The fact that the court ultimately found for the Complaint, and awarded attorney’s fees, does not make this strategic

¹ PBC Circuit Court case # 2010 CA 017387XXXX MB, was filed in July 2010 by Lisa Bright naming the City, the CRA, and Mayor Rodriguez as defendants. In July 2010 this case was dismissed based on a negotiated settlement. A second action was filed in March 2011 under case #2011 CA 003507XXXX MB naming the City, and the CRA as defendants and is currently ongoing.

decision rise to the level of a “corrupt” action. Further, Complaint’s allegation that Respondent was attempting to influence an unrelated civil case for Jose Rodriguez, who was a named defendant in this case cannot be true, since the case in which he was a defendant had been dismissed based on a mediated settlement agreement several months prior to this event.

- **Conclusion**

Staff believes there are no reasonably trustworthy facts and circumstances for the Commission on Ethics to conclude that the above listed actions by Respondent violated the Palm Beach County Code of Ethics, and recommends that this Complaint be DISMISSED as LEGALLY INSUFFICIENT.



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, Chair
Robin N. Fiore, Vice Chair
Ronald E. Harbison
Daniel T. Galo
Patricia L. Archer

Interim Executive Director

Megan C. Rogers

February 26, 2013

James Cherof, Esquire
Goren, Cherof, Doody & Ezrol, P.A.
3099 E. Commercial Blvd., Suite 200
Ft. Lauderdale, FL 33308

Re: C13-006

Sent via email only to: jcherof@cityatty.com

Dear Mr. Cherof,

This is to inform you that a complaint was filed against you in the above referenced matter on February 14, 2013. Attached please find a copy of the complaint as well as additional documents prepared by the Commission on Ethics Staff. This information is not a public record until probable cause is found or the complaint dismissed by the Commission.

On March 7, 2013, this matter will be heard by the Commission on Ethics. For the reasons contained in the reports, Staff is recommending that the complaint be dismissed.

You are not required to attend the executive session; however, if you wish to attend, the executive session will take place at the following time and location:

March 7, 2013 – 2:15 pm
Palm Beach County Governmental Center
301 North Olive Avenue
12th Floor McEaddy Conference Room
West Palm Beach, FL 33401

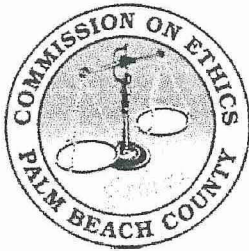
As indicated, it will be the Commission on Ethics Staff recommendation that the above referenced complaint be dismissed. If the Commission on Ethics does not dismiss the complaint, no other action will be taken at that time and you will be notified of any future proceedings or requirements.

Should you have any questions or concerns regarding the above, please feel free to contact me at 561-233-0736.

Sincerely,

Megan C. Rogers
Interim Executive Director

Attachments
MCR/gal



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.

Please list as: David Floering to be contacted. Our preference is email.

Name: Eastern Towing & Auto Body E-Mail: _____
Address: 417 NE 6th Avenue _____
City: Boynton Beach, FL 33435 Zip: _____
Home #: 561-685-3725 Cell #: _____
Email: dfloering@aol.com

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

Please provide as much information as possible.

Name: James A. Cherof City Attorney James Cherof _____
Address: Goren, Cherof, Doody & Ezrol, P.A. 100 E. Boynton Beach Blvd. _____
City: 3099 East Commercial Blvd, Suite 200 Boynton Beach, Florida 33435 _____
Home #: Fort Lauderdale, FL 33308 561-742-6000 _____
Title/Office: 954-771-4500 X304 _____
Email: jcherof@cityattv.com

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

☒ Allegation is against person in
County/Municipal Government

☐ Allegation is about County:
Whistleblower Retaliation

4. STATEMENT OF FACTS BASED ON YOUR PERSONAL KNOWLEDGE

In a separate attachment, please describe in detail the facts and actions that are the basis of your complaint, including the dates when the actions occurred. Also attach any relevant documents as well as names and contact information of persons who may be witnesses to the actions. If known, indicate the section of the ordinance you believe is being violated. For further instructions, see page 2 of this form.

5. OATH

I, the person bringing this complaint, do depose on oath or affirmation and say that the facts set forth in the foregoing complaint and attachments are true and correct, to the best of my knowledge and belief.

[Signature]
Signature of Person Making Complaint

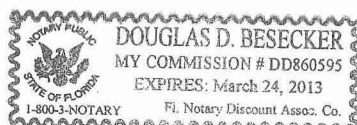
STATE OF FLORIDA
COUNTY OF Palm Beach

Sworn to (or affirmed) and subscribed before me
this 13 day of Feb, 2012, by

(Name of Person Making Statement)

who is personally known to me _____ or produced
identification _____. Type of identification
produced: _____

[Signature]
(Signature of Notary Public, State of Florida)



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

James Cherof has two separate contracts with the City of Boynton Beach and the City's Community Redevelopment Agency CRA) to provide legal services. The contracts are valued at approximately \$800,000 annually. My complaint is James Cherof has repeatedly violated Public Records Law of FSS Chapter 119.

- On March 2010, Jose Rodriguez was elected Mayor of Boynton Beach.
- Mayor Jose Rodriguez is married to Sarah Marquez Rodriguez.
- City Attorney Cherof willfully delayed a response to a 09/21/11 public records request for a copy of the videotape between the Mayor's wife, Sarah Rodriguez and the Boynton Beach Police Department.
- City Attorney Cherof notified Mrs. Rodriguez of the public records request thru Boynton Beach Police Chief Matt Immler to give her a "heads up."
- City Attorney Cherof was paid by the taxpayers for a legal opinion to determine if the videotape was a public record.
- City Attorney Cherof ruled the videotape was a public record but delayed access to the videotape in order for Mrs. Rodriguez to file a lawsuit.
- City Attorney Cherof provides legal counsel to the CRA which has an active lawsuit from a former employee. He suppressed the videotape to shield testimony made by Mrs. Rodriguez to the Boynton Beach Police of her knowledge of her husband's personal vendetta against the former CRA employee.
- City Attorney Cherof failed to disclose his conduct of assisting Mayor Rodriguez and his wife, Sarah Rodriguez, a third party, to the remaining four City Commissioners.
- City Attorney Cherof on his own authority and ignoring City Procurement Code engaged a third party legal vendor, his preferred vendor for the past 20 years, to represent the City in a lawsuit filed as a direct result of his conduct. Not providing legal representation for his own actions cost the taxpayers double.
- City of Boynton Beach released the Sarah Rodriguez and Boynton Beach Police videotape six months later by court order on March 6, 2012.
- According to the ruling on June 18, 2012, the Defendant (City of Boynton Beach) unlawfully refused to permit inspection and/or copying of video tape that was ruled a public record by City Attorney Cherof.
- James Cherof and the firm of Goren, Cherof, Doody & Ezrol, P.A. have provided legal services to the City of Boynton Beach since 1990 without review or Request for Proposal or Qualifications for the duration.
- James Cherof authored the City of Boynton Beach Ordinance No. 10-021 and received taxpayer compensation for this work as per his contract.
- Ordinance No. 10-021 adopting the Palm Beach County Code of Ethics and created the Palm Beach County Commission on Ethics effective June 1, 2011
- Ordinance No. 10-021 governs vendor contract services including the contract between the City Commission and the firm Goren, Cherof, Doody & Ezrol, P.A.
- City Attorney Cherof violated adopted Ordinance No. 10-021 by engaging in "unlawful conduct" as outlined in Judge Catherine Brunson's Order dated: June 18, 2012.

Witness List:

Suspended Mayor Jose Rodriguez – 561-628-5792
Sarah Rodriguez – 561-460-3500
Boynton Police Chief and Attorney Matt Immler – 561-742-6000
Sgt. Paul Sheridan – 561-742-6133
Attorney Mike Burke – 954-463-0100
Former City Commissioner Marlene Ross – 561-644-3610
City Commissioner and Attorney Steven Holzman – 561-742-6010
Mayor Woodrow Hay – 561-742-6010
Former City Commissioner Bill Orlove – 561-740-0217
Attorney Isidro Garcia – 561-832-7732
Herbert Suss – 561-734-9984
City Clerk Janet Prainito – 561-742-6061
City Paralegal Lynn Swanson – 561-742-6000
Attorney Dan Miller – 561-832-3300
Attorney Guy Fronstin – 561-447-4011
Palm Beach County State Attorney Latosha Lowe-Goode – 561-355-7100
Boynton Beach City Manager Lori LaVerriere – 561-742-6010
Joel Chandler of www.FOGWATCH.org

**CITY OF BOYNTON BEACH
REQUEST FOR PUBLIC RECORD INFORMATION**

Request submitted by:

NAME:

DAVID FLOERING

COMPANY NAME:

ADDRESS:

417 NE 6th AVE

CITY:

Boynton Bch

STATE:

Florida

ZIP CODE:

33435

PHONE NUMBER:

561-369-4356

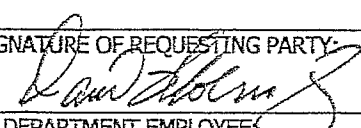
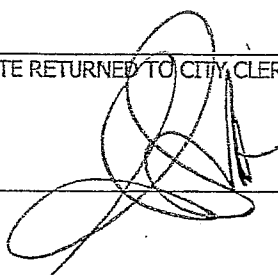
FAX NUMBER:

561-369-4356

RECORDS REQUESTED:

I REQUEST ALL POLICE DISPATCHED
POLICE CALLS TO 947 ~~WES~~ ISLES RD
FOR THE LAST 3 YEARS. PLUS POLICE REPORTS
THIS IS MAYOR JOSE RODRIGUEZ HOUSE

1. You may inspect the requested records without charge unless the nature or volume requires extensive clerical or supervisory assistance in which case you will be advised of a special service charge. (Extensive defined as taking more than 15 minutes to locate, review for confidential information, copy and re-file the requested material). Department of Administration Hearing - FACC 12/97, Vol. XVII, NO. 3)
2. Plain paper copies shall be furnished upon payment of \$.15 if the paper is copied on one side and \$.20 if the paper is copied on both sides.
3. Copies of microfiche shall be furnished upon payment of \$.25 per page (copied on one side of paper only)
4. Certification of documentations shall be charged a \$1.00 per page.
4. Used cassette tapes shall be furnished at a charge of \$1.00 each.

DATE OF REQUEST:	9/19/11	SIGNATURE OF REQUESTING PARTY:	
DATE COMPLETED:		BY DEPARTMENT EMPLOYEE:	
FORWARDED TO CITY DEPARTMENT:	Sgt. Gatto, PD	DATE RETURNED TO CITY CLERK:	

FYI COPIES TO:

TO THE RECEIVING DEPARTMENT(S):

- PLEASE FORWARD ALL RESPONSES TO THE CITY CLERK'S OFFICE FOR FORWARDING TO THE REQUESTING PARTY AND FOR CLOSEOUT OF THE REQUEST.
- INCLUDE A COVERSHEET THAT ITEMIZES THE COSTS TO THE REQUESTING PARTY (e.g., number of photocopies, cds, diskettes, labor, etc.)

S:\CC\WP\Public Records Requests\PUBLIC RECORDS REQUEST -

11 SEP 19 PM 1:38

CITY CLERK'S OFFICE
CITY OF BOYNTON BEACH



BOYNTON BEACH POLICE DEPT
BOYNTON BEACH, FL
Incident Report #11036375

Page 1 of 4

Not For Public Release

Date/Time Printed: Wed Sep 21 11:22:42 EDT 20 By: gittos

Case Title	Location 135 NE 1ST AVE
Date/Time Reported 08/06/2011 16:36:00	Date/Time Occurred to
Incident Type/Offense POLICE ASSIST OTHER (PASZ)	

Persons								
	Role	Name	Sex	Race	Age	DOB	Phone	Address
1	INVOLVED PARTY	MARQUEZ, SARAH MERCEDES	FEMALE	WHITE	38	11/01/1972	(home) (cell) 561-460-3500	947 ISLES ROAD BOYNTON BEACH, FL
2	INVOLVED PARTY	RODRIGUEZ, JOSE	MALE	WHITE	49	08/02/1962	(home) (cell)	947 ISLES ROAD BOYNTON BEACH, FL

Offenders								
	Status	Name	Sex	Race	Age	DOB	Phone	Address
							(home)	
							(cell)	
							(home)	
							(cell)	

Vehicles								
	Role	Type	Year	Make	Model	Color	Reg #	State
	Stolen \$	Rec Code	Date Rec	Rec \$	Rec By			

Property					
Class	Description	Make	Model	Serial #	Value

Narrative
<p>On 08/06/2011 at around 1330, I was contacted by Sgt Sheridan and instructed to respond to BBPD at 1500 on this date to meet with (W/F DOB: 11/01/1972) Marquez, Sarah Mercedes in reference to a domestic related dispute. Marquez is the wife of current Boynton Beach Mayor Jose Rodriguez.</p> <p>On 08/06/2011 at around 1500, I met with Marquez at BBPD. Sgt Sheridan and I greeted her at the lobby door and came directly into our recorded interview room inside of the detective bureau. Marquez told me that she currently lives with</p> <p>(Continued on next page)</p>

Reporting Officer CRAWFORDC (717) (08/08/2011 08:59:12)	Reviewing Officer	Approving Officer SHERIDANP (375) (08/08/2011 12:31:36)
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BOYNTON BEACH POLICE DEPT 1

Page 1 of 1

BOYNTON BEACH, FL

Incident Report #11036375

Not For Public Release

Date/Time Printed: Wed Sep 21 11:22:42 EDT 20 By: gittos

Case Title	Location 135 NE 1ST AVE
Date/Time Reported 08/06/2011 16:36:00	Date/Time Occurred to
Incident Type/Offense POLICE ASSIST OTHER (PASZ)	

Narrative (Continued from page 1)

her husband (Jose) at 947 Isles Road in Boynton Beach. Marquez has a daughter (Logan) who is 11 years old and lives with them, but was currently in Phoenix with family. Marquez told me that Jose has a 15 year old son (Jost) who primarily lives with his mother (Sue Shumate) in Wellington.

In summary, Marquez contacted Chief of Police Immler earlier on this date and requested assistance. As a result, she was told to come to BBPD to meet with detectives. She has been married to Jose for about one and one half years and that their marriage has been unstable since it's inception. The two argue routinely and she stated that Jose is verbally abusive. Jose has locked her out of her own home from time to time and has attempted to keep her from financial means that they both have together. Marquez denied any type of physical violence or threats have ever occurred between the couple. Marquez said that Jose has gotten mad and punched holes into the walls, but that there were never any threats attached to these actions. A copy of the video/audio was collected and will be turned into evidence. Marquez did not make any statements or allegations that met the threshold of a violation of Florida law. Marquez stated that she was going to seek an attorney during normal business hours. She was told that we would be more than willing to stand by as she went to her home to pick up belongings, but that we had no authority to force either party to vacate their marital home. Marquez advised that more than likely she would go and stay with a friend or her ex - husband (Neil Peiman - 12/15/1946). The interview ended and Marquez was given business cards of both Sgt Sheridan and I.

SEE AUDIO / VIDEO FOR FURTHER.

This is to be classified as a police assist and is closed pending any other information.

Reporting Officer CRAWFORDC (717)	Reviewing Officer	Approving Officer SHERIDANP (375)
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**CITY OF BOYNTON BEACH
REQUEST FOR PUBLIC RECORD INFORMATION**

Request submitted by:

NAME: DAVID FLOERING

COMPANY NAME:

ADDRESS: 417 NE 6TH AVE

CITY: BOYNTON BEACH

STATE: Florida

ZIP CODE: 33435

PHONE NUMBER: 561-369-4356

FAX NUMBER: 561-369-4371

RECORDS REQUESTED:

A COPY OF ALL VIDEO AND AUDIO
INTERVIEWS OF SARAH MERLEDES MARQUEZ
ON OR ABOUT 8/6/11 REPORT # 11036775

1. You may inspect the requested records without charge unless the nature or volume requires extensive clerical or supervisory assistance in which case you will be advised of a special service charge. (Extensive defined as taking more than 15 minutes to locate, review for confidential information, copy and re-file the requested material). Department of Administration Hearing - FACC 12/97, Vol. XVII, NO. 3)
2. Plain paper copies shall be furnished upon payment of \$.15 if the paper is copied on one side and \$.20 if the paper is copied on both sides.
3. Copies of microfiche shall be furnished upon payment of \$.25 per page (copied on one side of paper only)
4. Certification of documentations shall be charged a \$1.00 per page.
4. Used cassette tapes shall be furnished at a charge of \$1.00 each.

DATE OF REQUEST:	SIGNATURE OF REQUESTING PARTY:
DATE COMPLETED:	BY DEPARTMENT EMPLOYEE:
FORWARDED TO CITY DEPARTMENT:	DATE RETURNED TO CITY CLERK:

FYI COPIES TO:

TO THE RECEIVING DEPARTMENT(S):

- PLEASE FORWARD ALL RESPONSES TO THE CITY CLERK'S OFFICE FOR FORWARDING TO THE REQUESTING PARTY AND FOR CLOSEOUT OF THE REQUEST.
- INCLUDE A COVERSHEET THAT ITEMIZES THE COSTS TO THE REQUESTING PARTY (e.g., number of photocopies, cds, diskettes, labor, etc.)

S:\CC\WP\Public Records Requests\PUBLIC RECORDS REQUEST -

11 SEP 21 PM 12:41
CITY OF BOYNTON BEACH
CITY CLERK'S OFFICE

The City of Boynton Beach



OFFICE OF THE CITY ATTORNEY
100 E. Boynton Beach Boulevard
P.O. Box 310
Boynton Beach, Florida 33425-0310
(561) 742-6050
FAX: (561) 742-6054

September 22, 2011

VIA FACSIMILE TO:
561-369-4371

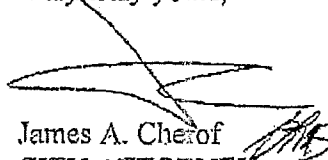
Mr. David Floering
Eastern Auto Body & Glass
417 N.E. 6th Avenue
Boynton Beach, FL 33435

Re: Public Records Request

Dear Mr. Floering:

Your public records request received September 21, 2011 at 12:41 p.m. requesting "A copy of all video and audio interviews of Sarah Mercedes Marquez on or about August 6, 2011, Report #11036375" has been forwarded to me by the City Records Custodian to evaluate whether the requested information is exempt from public records production. I am in the process of conducting that legal review. Since the City is closed on Fridays I may not be able to obtain all the information necessary for my review but should be in a position to respond at the beginning of next week.

Very truly yours,


James A. Cherof
CITY ATTORNEY

JAC/lms

cc: Lori LaVerriere, Interim City manager
G. Matthew Immeler, Chief of Police
Janet M. Prainito, City Clerk

GOREN, CHEROF, DOODY & EZROL, P.A.

ATTORNEYS AT LAW
SUITE 200
3099 WEST COMMERCIAL BOULEVARD
FORT LAUDERDALE, FLORIDA 33308
PHONE: (954) 776-4300
FAX: (954) 776-6922
WWW.CITYSTLY.COM

SAMUEL S. GOREN
JAMES A. CHEROF
DONALD J. DOODY
KERRY L. EZROL
MICHAEL D. CIRULLO, JR.
JULIE F. KLANQ
DAVID H. TOLCOB

BEACH OFFICE:
70 N.E. FIFTH AVENUE
OCEAN BEACH, FL 33480
PHONE: (561) 378-6800

JACOB G. HODROWITZ
SHANA H. BRIDGEMAN
STACEY R. WEINER
JENNIFER L. MCENITTE

STEVEN L. JOHNSON, OF COUNSEL

PLEASE REPLY TO FORT LAUDERDALE

September 22, 2011

Guy Fronstin, Esquire
Law Office of Guy Fronstin
515 N. Flagler Drive, Suite 203
West Palm Beach, FL 33401

Re: City of Boynton Beach [REDACTED]

Dear Mr. Fronstin:

I have reviewed your letter of September 22, 2011, to Chief Matt Innick, regarding a recent meeting between your client, [REDACTED] and officers of the City of Boynton Beach Police Department. The information to which you make reference is also the subject of a request for public record information submitted by a citizen on September 21, 2011. I am in the process of reviewing the public records request and, by extension, the issues you raise, which might constitute the grounds for refusing to produce the requested documents. A copy of my letter to David Floring, the individual who made the public records request is attached for your review.

Pursuant to your request, I will inform you of the City's decision regarding the release of the records in question when that decision has been made. As you are certainly aware, the Florida Public Records Act does not permit a custodian of public records to delay the production of records once a determination has been made that the records are not exempt from production. Accordingly, I am not in a position to agree to any fixed delay in producing the public records to accommodate your need to initiate court action to allow a court to rule on the matter of release of any documents. Although I am reluctant to invite litigation against the City, you may wish to

No. 1682 P. 3

evaluate the timing of your contemplated court action to the extent necessary to protect your client's interest.

Very truly yours

JAMES A. CHEROF, City Attorney

CC: Lori La Verriere, City Manager
Janet Pralinto, City Clerk
Mark Immler, Police Chief

HA199000012285483 Lewis-Frost, Guy (in: 1994)

SEP-27-2011 14:52 From: 5619107501
09/27/2011 16:52 5619107501

1210208E95 55191 1707/77/KN

9

LAW OFFICE OF GUY FRONSTIN

515 N. FLAGLER DRIVE, SUITE 203
WEST PALM BEACH, FL 33401
(561) 447-4011 * (561) 802-4121 (Fax)

September 22, 2011

Matt Immeler, Police Chief
Boynton Beach Police Department
100 E Boynton Beach Blvd.
Boynton Beach, FL 33435-3899

Dear Chief Immeler,

I represent Sarah Marquez-Rodriguez who recently met with Officers at the Boynton Beach Police Department to discuss a personal matter. When my Client met with the Officers, she believed the meeting was private and confidential. However, Ms. Marquez-Rodriguez has since learned that the meeting was video and audio recorded and that a report exists of the meeting.

Please be advised that pursuant to the Victim's Bill of Rights, as well as constitutional privacy rights, HIPAA rules and regulations, we object to the release of any and all records relative to Ms. Marquez-Rodriguez's meeting(s) with the Boynton Beach Police Department. Specifically, please accept this as our formal objection to the release of said records in response to any and all Public Records Requests.

If you determine you must release the above mentioned documents in response to a Public Records Request, I hereby request that you inform me of your decision prior to said release. In that event, I will file appropriate court motion asking the court to rule on the matter prior to the release of any documents.

Thank you for your time and consideration to this matter. Please do not hesitate to call me with questions or concerns.

Very Truly Yours,

G.F.

Guy Fronstin

CC: Jim Cherrof, Esq.-Boynton Beach City Attorney
CC: Latoshia Lowe-Goodie-State Attorney's Office-Public Record Requests
CC: Sarah Marquez-Rodriguez

The City of Boynton Beach



OFFICE OF THE CITY ATTORNEY
100 E. Boynton Beach Boulevard
P.O. Box 310
Boynton Beach, Florida 33425-0310
(561) 742-6050
FAX: (561) 742-6054

September 26, 2011

Via facsimile to:
561-802-4121


Guy Fronstin, Esquire
Law Office of Guy Fronstin
515 N. Flagler Drive, Ste. 203
West Palm Beach, FL 33401

Re: City of Boynton Beach/Sarah Marquez-Rodriguez

Dear Mr. Fronstin

As I advised you in my letter of September 22, 2011, the City is processing a public records request filed by David Floering. I have reviewed the circumstances which led to the creation of documents and recordings which constitute public records. I have determined that the public records were made in connection with the official business of the City Police Department and that they fall under no exemption provided by Chapter 119, Florida Statutes or any other provision of Florida law. Accordingly, I will be advising Mr. Floering, by copy of this letter, that he may examine the requested public records at 4:00 p.m. Tuesday, September 27, 2011.

Very truly yours,


JAMES A. CHEROF

Cc: Lori LaVerriere, Interim City Manager
G. Matthew Immeler, Chief of Police
David Floering via facsimile (561-369-4371)

S:\CA\LETTERS\Fronstin (PRR).doc

David Floering

417 ne 6th Ave

Boynton Beach, Florida 33435

561-436-8574

To: James A. Cherof

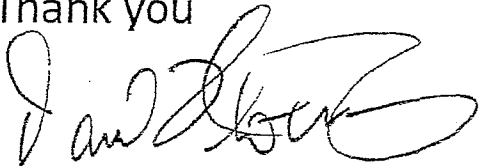
September 27, 2011

Re: Public records request/Sarah Marquez-Rodriguez

Sir, I have been waiting for my requested public record for 6 days. Yesterday per my phone calls to James A Cherof and his ruling that the City of Boynton Beach must produce my requested records by 4pm today.

Having come to city hall at 4 pm and still not receiving my requested records leaves me no choice but to seek a court order at a cost to the city for not producing the records in a timely manner.

Thank you



David Floering

11 SEP 27 PM 4:03

CITY OF BOYNTON BEACH
CITY CLERK'S OFFICE

The City of Boynton Beach



OFFICE OF THE CITY ATTORNEY
100 E. Boynton Beach Boulevard
P.O. Box 310
Boynton Beach, Florida 33425-0310
(561) 742-6050
FAX: (561) 742-6054

September 28, 2011

VIA FACSIMILE TO:
561-369-4371

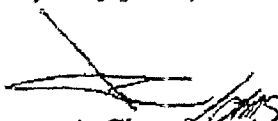
Mr. David Floering
Eastern Auto Body & Glass
417 N.E. 6th Avenue
Boynton Beach, FL 33435

Re: Public Records Request

Dear Mr. Floering:

In response to your September 25, 2011 request for additional records, attached is a copy of the Petition for Writ of Prohibition that has been filed with supporting exhibits. In light of the pending litigation you were not provided with a copy of the video recorded interview and the City will not provide that document to you until the court disposes of the Petition and provides direction to the City regarding the competing claims; your demand for public records and the Confidential Petitioner's demand that the records be deemed confidential.

Very truly yours,


James A. Cherof
CITY ATTORNEY

JAC/lms
Enc.

cc: Lotti LaVerriere, Interim City Manager

JOHNSON, ANSELMO, MURDOCH, BURKE, PIPER & HOCHMAN, P.A.

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RETIRED:
RONALD P. ANSELMO
BURL F. GEORGE

* BOARD CERTIFIED CIVIL TRIAL LAWYERS
† BOARD CERTIFIED APPELLATE LAWYERS

October 4, 2011

Mr. David Floering
Eastern Auto Body & Glass
417 Northeast 6th Avenue
Boynton Beach, Florida 33435

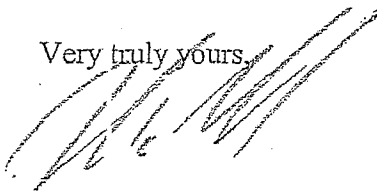
RE: Public Records Request
S.R. vs. City of Boynton Beach
Our File No. 281/31-396.

Dear Mr. Floering:

We have been retained to represent the City of Boynton Beach in the proceeding titled S.R. vs. City of Boynton Beach, Case No. 2011 CA 014905XXXX MB, regarding your public records request dated September 21, 2011. Enclosed please find a copy of S.R.'s Petition, the City's response thereto, and counterclaim for declaratory relief.

We are in the process of obtaining a hearing date and time for the Petition, the City's response thereto, and the City's claim for declaratory relief. Please advise if you would like to be notified of the hearing date and time.

Very truly yours,


Michael T. Burke
For the Firm

MTB/HCG/bbl
Enclosures
CC: Jim Cherof, Esquire

190-1145

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Updated: 7:04 p.m. Wednesday, Feb. 15, 2012 | Posted: 6:04 p.m. Thursday, Jan. 26, 2012

Governor suspends Boynton Beach mayor after arrest

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By Eliot Kleinberg and Michael LaForgia

Palm Beach Post Staff Writers

BOYNTON BEACH — As Gov. Rick Scott today suspended José Rodriguez, the beleaguered Boynton Beach mayor, new details emerged about the genesis of a corruption investigation that led to the mayor's Thursday arrest.

"I respect the governor's decision and look forward to the judicial process and the vindication of my name and status as mayor," Rodriguez, 49, said this evening in an email. He said he will not resign.

Accused of abusing his office to quash a child-abuse investigation that targeted him, Rodriguez turned himself in Thursday to face a felony and two misdemeanor charges. He maintains his innocence.

In publicizing the arrest, the State Attorney's Office said the corruption case hinged on the November reopening by city police of a probe into Rodriguez's treatment of his 11-year-old stepdaughter, a move that coincided with a public records request by an unnamed person.

What wasn't explained was why - after a three-month hiatus - police reopened the abuse case, and who made the public records request that supposedly triggered the renewed investigation.

The Palm Beach Post conducted interviews and scrutinized police reports and court documents and found that, according to one investigator, the abuse case was reopened after a chance conversation in the city police department's detective bureau, and that the public records request came from David Floering, a tow-firm operator who says Rodriguez caused him to lose a contract with the city.

Inserted into the larger narrative of the corruption investigation, the details shed new light on how the case took shape - and on who helped shape it.

Floering said today he requested records from Boynton Beach police after getting a call from former City Commissioner Ron Weiland. The tip: Pull police reports involving the mayor's home address. Weiland couldn't be reached for comment Friday.

When Floering did, and found no cases, he called the city police chief, Matt Immler, and demanded to know more.

Immler, Floering said, told him there were no police calls to the mayor's house. But, the chief added, the mayor's wife had visited the police station in August to complain that she was afraid of Rodriguez. Floering said he told the chief he wanted a copy of that report.

"He said that he would see that it was available," Floering said.

The report in question, taken Aug. 6, described a "domestic dispute" between the mayor and his now-estranged wife, Sarah Marquez. Drawn up after a video-recorded interview with detectives, the report noted that the case was closed and that no further investigation was warranted.

It remained that way until Nov. 9, eight days after Rodriguez had Chief Immler appear before the city commission and address concerns about the department after five police officers were arrested in the span of a month.

On that day, Detective Sgt. Tom Wallace, head of Boynton Beach police's special victims unit, was discussing a commission meeting with his boss when a fellow sergeant overheard them say the mayor's name, Wallace said. The sergeant stuck his head in the room and told Wallace the story of Marquez's complaint. Wallace said he watched the tape-recorded interview and ordered the case reopened.

It was a fateful moment for Rodriguez, who learned that the investigation was resurrected and flew into a rage, according to documents charging him with corruption and obstructing a police investigation.

Corruption investigators said he twice called Immler and told him to stop pursuing the child-abuse case. During the second call, two police majors who were in the room later reported, the mayor's shouts could be heard on the chief's cell phone. The chief refused to back off.

The same day, the affidavit said, Rodriguez called interim City Manager Lori LaVerriere, saying neither the police department nor its chief knew how to conduct an investigation and calling Immler a "lying piece of (expletive)."

Then, on Dec. 1, Rodriguez urged LaVerriere to pump police for information about the abuse investigation, suggesting that it would help in her bid to get hired as permanent manager, she told corruption investigators.

He said, "I would never ask you to do anything illegal or cover anything up," but told her that something needed to be done. "And in return you will get the same."

As in the earlier review, the special victims unit investigation ultimately concluded that Rodriguez broke no laws. But in the meantime, corruption investigators said, he committed new crimes when he bullied the police chief and tried to coerce the interim city manager into scuttling the police probe, corruption investigators said.

The state attorney charged Rodriguez with unlawful compensation or reward for official behavior, which is a felony; solicitation for confidential criminal information; and obstructing a law enforcement officer.

City Attorney James Cherof alerted the governor's office of the arrest this morning, at the same time sending city commissioners a synopsis of the mayor's status.

Cherof said the city's charter calls for the commission to appoint someone to temporarily fill Rodriguez' seat. Its next meeting is Feb. 7.

"Jose Rodriguez has the right to his seat back if he's acquitted or the state attorney withdraws the charges. He's only suspended. He has not been removed from office," Cherof said.

Vice Mayor Bill Orlove said in a statement this afternoon he will act as mayor, adding, "I hope that we can all come together, elected officials, staff and citizens, and do what is in the best interest of our community."

Staff writer Adam Playford and staff researcher Niels Heimeriks contributed to this story

THE PLAYERS

José Rodriguez, 49 : Mayor of Boynton Beach since 2010 and owner of real estate firm Reguez Investments.

Sara Mercedes Marquez, 39 : Married Rodriguez in 2010. Filed for divorce six months later, reconciled, and filed again in 2011.

David Floering, 51 : The auto body and tow-truck firm operator has been a sworn political enemy of Rodriguez since losing out of a lucrative city contract in 2010.

David Katz, 60 : The former city commissioner, also a longtime Rodriguez foe. The city formally fined Katz \$750 in October for lobbying without registering after the mayor said he did just that.

RODRIGUEZ TIMELINE

November 2003: Rodriguez makes failed city commission bid.

November 2006: Rodriguez elected to commission without opposition.

March 2010: Rodriguez wins seven-man race for mayor.

March: Former CRA executive director Lisa Bright's sues the city, alleging Rodriguez forced her out for rejecting his advances.

Aug. 4: The Palm Beach County Commission on Ethics clears Rodriguez of charges, filed by Floering, that he dodged taxes on the two suburban West Palm Beach lots owned by his real estate firm. The same day, Sarah Marquez goes to police to discuss problems with her marriage. Police tell her nothing Rodriguez did rises to the level of a crime. Marquez files for divorce Oct. 11.

Dec. 8: Rodriguez sues Floering for defamation, saying he spread lies suggesting Rodriguez was a crook.'

Dec. 8: Rodriguez sues Floering for defamation, saying he spread lies suggesting Rodriguez was a crook.

Jan. 26: Rodriguez is arrested. Gov. Rick Scott suspends him the next day.

Sources: Court records, Palm Beach Post archives

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- Lake Worth man, 19, accused of having sex with two girls, both under 10 (PalmBeachPost.com)
- Woman found dead in Palm Beach County Jail dragged deputy with car, tried to bite him during DUI arrest, report says (PalmBeachPost.com)

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

DAVID FLOERING,
Plaintiff,
v.
CITY OF BOYNTON BEACH,
Defendant.

CASE NO.: 502011CA015287XXXXMB
DIVISION: AO

S.R.,
Confidential Petitioner,
v.
CITY OF BOYNTON BEACH,
Respondent.

FILED
2012 JUN 18 PM 4:11
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

ORDER GRANTING PLAINTIFF'S REQUEST FOR FEES

THIS MATTER is before the Court on Plaintiff DAVID FLOERING's request for attorneys' fees pursuant to section 119.12, Florida Statutes (2011). The Court has heard argument from the parties, it has reviewed Plaintiff's motion, Defendant's response and the court file, and the Court is otherwise advised. Plaintiff's request for attorneys' fees is granted for the reasons explained below.

Section 119.12, Florida Statutes provides:

If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.

The Court finds that Defendant unlawfully refused to permit inspection and/or copying of a video tape that is a public record. After Defendant received Plaintiff's public records request dated September 21, 2011, on September 22, 2011, Defendant sent a letter to Guy Fronstin, Confidential Petitioner S.R.'s attorney, advising Mr. Fronstin of Plaintiff's public records

request. Defendant then sent Mr. Fronstin another letter (dated September 26, 2011) in which Defendant notified Mr. Fronstin that the video tape was subject to disclosure, and that Defendant intended to make the video tape available to Plaintiff the following day. S.R. then filed a Petition for Writ of Prohibition seeking to restrain Defendant from releasing the video, and Defendant refused to release the video pending the outcome of the Petition. S.R. did not assert any statutory exemption in the Petition, and in fact, none applied.

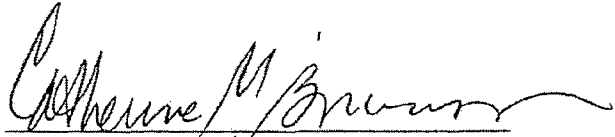
Defendant's refusal to make the video available to Plaintiff was unlawful because Defendant had not asserted a statutory exemption as a basis for the withholding, and S.R.'s Petition could not legally prevent disclosure of non-exempt public records. See Tribune Co. v. Cannella, 458 So. 2d 1073 (Fla. 1984) ("no provision is made for anyone other than the custodian of records to withhold a record, and the only justification for withholding a record or a portion thereof is the custodian's assertion of a statutory exemption."); see also WFTV, Inc. v. Robbins, 625 So. 2d 941 (Fla. 4th DCA 1993) (fees awarded where non-exempt records were withheld based upon an erroneous court order in another case).

Upon the Court's finding that Defendant unlawfully refused to disclose the video, the Court awards Plaintiff reasonable attorneys' fees that he incurred for bringing this action. See News and Sun-Sentinel Co. v. Palm Beach County, 517 So. 2d 743 (Fla. 4th DCA 1987), *holding limited on other grounds by New York Times Co. v. PHH Mental Health Servs., Inc.*, 616 So. 2d 27 (Fla. 1993). Although Defendant subsequently asserted and then withdrew its assertion that the video was exempt from disclosure because of an active criminal investigation, Plaintiff is entitled to attorneys' fees from the inception of this case because the original reason for the denial was unlawful. Accordingly, it is:

ORDERED AND ADJUDGED that Plaintiff's request for attorneys' fees is

GRANTED. Should the parties dispute whether Plaintiff's attorneys' fees are reasonable, the parties are directed to notice the matter for an evidentiary hearing.

DONE AND ORDERED in Chambers in Palm Beach County, Florida this 18th day of June 2012.


CATHERINE BRUNSON
CIRCUIT JUDGE

COPY TO:

Daniel Miller, Esq., Broad and Cassel, One North Clematis St., Ste. 500, West Palm Beach, FL 33401
Michael T. Burke, Esq., Johnson, Arneselmo, et al., 2455 E. Sunrise Blvd., Ste. 1000, Ft. Lauderdale, FL 33304

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Posted: 12:00 a.m. Tuesday, June 26, 2012

Judge says Boynton Beach failed to comply with provide public records request

By Julius Whigham II

Palm Beach Post Staff Writer

BOYNTON BEACH — A Palm Beach County Circuit Court judge has ordered the City of Boynton Beach to pay the attorney fees of a local tow firm operator after the city failed to comply with a public records request, court documents show.

Judge Catherine Brunson ruled in favor of David Floering in a June 18 decision. The ruling does not specify the amount awarded, but Floering said this evening that his attorney's fees were \$22,000.

According to the ruling, the city unlawfully refused to permit inspection and/or copying of a video tape that is a public record. Floering, who lives in Lake Worth but has a business in Boynton, said that he requested a tape that was related to a case involving the wife of suspended Boynton Beach mayor José Rodriguez.

According to the court document, Floering made the request in September. The city sent a letter to the attorney of a confidential petitioner advising of Floering's request. The petitioner, identified only as 'S.R.' in the document, filed a petition seeking to restrain the city from releasing the video, the document showed. The city then withheld release of the video, pending the outcome of the petition.

The petition could not legally prevent disclosure of non-exempt public records, the court document showed.

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Updated: 11:09 a.m. Thursday, June 23, 2011 | Posted: 2:12 p.m. Wednesday, June 22, 2011

Boynton Beach settles public records lawsuit with former CRA director Bright

Related

By Eliot Kleinberg

Palm Beach Post Staff Writer

BOYNTON BEACH — Former Community Redevelopment Agency chief Lisa Bright and the City Commission have settled a long-standing public records lawsuit that preceded her departure from the CRA.

Commissioners met in closed session before Tuesday's regular meeting and then voted at the meeting to pay \$4,000.

Bright asked June 18, 2010, for e-mails between Mayor José Rodriguez and a private citizen.

Two weeks later, Bright's lawyer, Isidro M. Garcia, threatened a suit, saying there'd been no response.

The city replied the next day that searching through a year of e-mails would take 18 hours of work over a 2-3 week period and would cost Bright \$540. Garcia then filed suit July 6, 2010.

Asked Tuesday if he eventually got records, Garcia said, "some of them." He said Bright eventually paid "substantially less than the city initially demanded."

A separate lawsuit Bright filed March 21 remains active; it claims Mayor José Rodriguez orchestrated Bright's departure in retaliation for her "rejecting his sexual advances" and reporting him to police.

That suit said that in 2006, then-commissioner Rodriguez "forcibly kissed" Bright during a dinner meeting. It said he also manhandled her and shouted at her during a 2008 workshop.

In April, Bright dropped a "malicious prosecution" count, the only one naming the city. The rest of the counts name the CRA.

The lawsuit filed in March 2011 said Rodriguez also wanted Bright out so he could retain control of the CRA and block the creation of an independent board that was set to assume its duties - and finances. The idea of an independent CRA board later was dropped and two outside members were added to the board, which was made up of city commissioners.

Bright was hired in June 2005. Her base salary was \$128,125.

Commissioners voted 4-1 in September not to renew her contract after a private investigator looking into her connection with Joseph Ferrer, an entertainment vendor for the CRA, concluded she hadn't notified the board about it.

On Dec. 28, the Palm Beach County State Attorney's Office declined to criminally pursue Bright, saying, "we have not found credible evidence" she benefited from her relationship.

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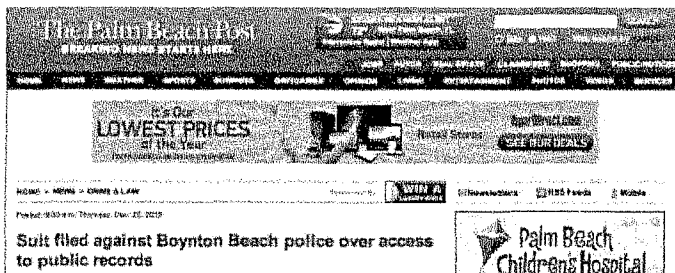
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An On-line Magazine

Palm Beach Post Reports On FOGWatch Lawsuit Against Boynton Beach Police Department

Posted on December 20, 2012

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The Palm Beach Post has reported that the Boynton Beach Police Department is being sued for violations of Florida's Public Records Act. The article states that "Joel Edward Chandler" filed the lawsuit. That is correct.

The lawsuit is one of many that has been filed (with many more to come) in the wake of our recent in-person-audits. So far Robert and I have filed forty-one new public records lawsuits within the past couple of weeks. We plan to file fifty-nine more before the end of the year to make it an even hundred.

The basis of the lawsuit against Boynton Beach Police Department is their unlawful policy of only allowing access to public records on Wednesdays and their demand that all public records requests be made in writing.

In an email to the Palm Beach Post about the lawsuit, Barbara Petersen, President of the Florida First Amendment Foundation wrote:

"The public records law gives us a right of access to the public records of any agency during normal business hours and restricting a citizen's right to request inspection of a public record to one day a week is, in my opinion, not only impermissible under the law, it's absurd.

"It's well settled law in Florida that an agency can't impose any conditions on our constitutional right of access to public records that operate to restrict that right. A policy like this, one that forces a requester to "come back next week – and only on Wednesday" or to force a requester put a request for public records in writing, is a restriction that is clearly unenforceable and based on what I know of the public records law, it's highly probable that Mr. Chandler will prevail."

Stay tuned, there's lots more to come.



EMPLOYMENT AGREEMENT

THIS AGREEMENT dated this 20 day of MARCH, 1990, between the CITY OF BOYNTON BEACH, a Florida municipal corporation located in Palm Beach County, Florida, hereinafter "CITY" and JOSIAS & GOREN, P.A., attorneys, duly admitted to practice in the State of Florida, and members in good standing of the Florida Bar, hereinafter "ATTORNEY".

WHEREAS, the CITY under its Charter possesses the power of authority to retain the professional services of a City Attorney; and

WHEREAS, the ATTORNEY and the CITY desire to enter into a professional services employment agreement;

NOW THEREFORE, in exchange of the mutual considerations contained below and other good and valuable considerations, the parties covenant and agree as follows:

1. The CITY hereby employs the ATTORNEY as City Attorneys for the City of Boynton Beach, Florida, effective March 8, 1990.

2. In consideration of the professional services to be provided by the ATTORNEY, the CITY hereby agrees to pay ATTORNEY as follows:

A. General Retainer - \$75,000.00 per year, payable in equal monthly installments of SIX THOUSAND TWO HUNDRED FIFTY (\$6,250.00) DOLLARS, plus customary costs reimbursement.

B. Litigation, Arbitration or other proceedings before administrative tribunals - \$100.00 per hour, plus customary costs reimbursement.

C. Property forfeitures under the Florida Contraband Forfeiture Act. \$800.00 per forfeiture for all vehicle or tangible personal property forfeitures. Forfeitures involving real property or

3. The ATTORNEY hereby agrees to undertake the position of City Attorney and shall faithfully represent the legal and public interest of the CITY as Attorney for the term of this Agreement and shall perform all legal services required by the CITY during the term of this Agreement or as set forth in the City Charter.

4. The ATTORNEY serves at the pleasure and discretion of the City Commission. This Agreement is terminable by the CITY at any time.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Signed and sealed by the
CITY in the presence of

Mary Anne Sisko
Blotchy Koch
Patricia Ramsayer
Shannon Burkett

CITY OF BOYNTON BEACH

BY: [Signature]
Mayor Gene Moore
THE CITY OF BOYNTON BEACH
BY: [Signature]
J. SCOTT MILLER
City Manager

ATTEST:

[Signature]
City Clerk (Seal of the
City of Boynton Beach, Florida)

Signed and sealed by the
ATTORNEY in the presence of

Rose Marie Switlikowski
Mary Anne Sisko

JOSIAS & GOREN, P.A.

BY: [Signature]

JAMES A. CHEROF

JAC/lms
P/B
EMPAGR

ORDINANCE NO. 10-021

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA AMENDING THE CITY OF BOYNTON BEACH CODE OF ORDINANCES ARTICLE I, BY CREATING SECTION 2-25, TO BE ENTITLED "CODE OF ETHICS"; INCORPORATING BY REFERENCE THE PALM BEACH COUNTY CODE OF ETHICS INTO THE CITY'S CODE OF ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Palm Beach County, pursuant to its authority under Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida Statutes, the Palm Beach County Charter, and section 112.326, Florida, adopted the Palm Beach County Code of Ethics and created the Palm Beach County Commission on Ethics (Commission on Ethics); and

WHEREAS, the Board of County Commissioners and the City of Boynton Beach desire to have the Code of Ethics regulations and the Commission on Ethics jurisdiction to apply to the City of Boynton Beach; and

WHEREAS, the Board of County Commissioners and the City of Boynton Beach have entered into an Interlocal Agreement to provide services to the City of Boynton Beach in the same manner that as those services are provided to Palm Beach County as set forth herein; and

WHEREAS, the City Commission of the City of Boynton Beach finds that adopting the Palm Beach County's Code of Ethics is in the best interests of the citizens and residents of the City.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

1 Section 1. The foregoing whereas clauses are true and correct and are now ratified
2 and confirmed by the City Commission.

3 Section 2. Article I, Section 2-25 of the City's Code of Ordinances, to be entitled
4 "Code of Ethics", is hereby created as follows:

5 Sec. 2-25 Code of Ethics

6
7 The City of Boynton Beach hereby adopts by reference as its own the Palm Beach
8 County Code of Ethics, Palm Beach County Code, Chapter 2, Article XII,
9 sections 2-441 through 2-443, section 2-444(c), (d), and (e), section 2-445
10 through section 2-448, and the Palm Beach County Commission on Ethics, Palm
11 Beach County Code, Chapter 2, Article V, Division 8, sections 2-254 through 2-
12 260.10, as may be amended from time to time.
13

14 Section 3. The Palm Beach County Code of Ethics and Commission on Ethics
15 ordinances in existence as of the effective date of this Ordinance are hereby incorporated by
16 reference and attached hereto as Exhibits 1 and 2 respectively.

17 Section 4. All references to county government provided for in the Palm Beach
18 County Commission on Ethics and Code of Ethics ordinances, including but not limited to
19 county elected and appointed officials, county employees, county divisions and departments,
20 shall be deemed as reference to the corresponding elected and appointed officers, divisions
21 and departments of the City of Boynton Beach as appropriate to effectuate the intent of this
22 Ordinance.

23 Section 5. Each and every other provision of the City of Boynton Beach Code of
24 Ordinances not herein specifically amended, shall remain in full force and effect as originally
25 adopted.

26 Section 6. All laws and ordinances applying to the City of Boynton Beach in
27 conflict with any provisions of this ordinance are hereby repealed.

1 Section 7. Should any section or provision of this Ordinance or any portion
2 thereof be declared by a court of competent jurisdiction to be invalid, such decision shall not
3 affect the remainder of this Ordinance.

4 Section 8. This Ordinance shall become effective immediately.

5 FIRST READING this 7th day of September, 2010.

6 SECOND, FINAL READING AND PASSAGE this 21 day of September
7 2010.

CITY OF BOYNTON BEACH, FLORIDA

Mayor – Jose Rodriguez

Vice Mayor – Marlene Ross

Commissioner – William Orlove

Commissioner – Woodrow L. Hay

Commissioner – Steven Holzman

ATTEST:

Janet M. Prainito
Janet M. Prainito, MMC
City Clerk



COMPLAINT FORM INSTRUCTIONS

The Palm Beach County Board of County Commissioners through Ordinance 97-105 established the Palm Beach Commission on Ethics & Public Trust.

The Ethics Commission encourages persons with personal knowledge of suspected violations of ordinances within its jurisdiction to bring forth evidence in a legally sufficient complaint. **TO BE LEGALLY SUFFICIENT, THE COMPLAINT MUST MEET THE FOLLOWING CRITERIA:**

1. The complaint must allege a violation of any ordinance within the jurisdiction of the Ethics Commission.
2. The allegations must be based substantially on personal knowledge.
3. The complaint must be signed under oath or affirmation by the complaining person.
4. The alleged violation must have occurred after May 1, 2010 for a county employee/official or after June 1, 2011 for a municipal employee/official.

If known, please indicate within your complaint the name and/or subsection of the ordinance that may have been violated. The Ethics Commission has jurisdiction to hear complaints related to the following:

1. CODE OF ETHICS, ARTICLE XIII, SECTIONS 2-441 through 2-448
(Ordinance no. 2009-051)
2. COMMISSION ON ETHICS, ARTICLE V, SECTIONS 2-254 through 2-260
(Ordinance no. 2009-050)
3. LOBBYIST REGISTRATION, ARTICLE VIII, SECTIONS 2-351 through 2-357
(Ordinance nos. 2003-018/2005- 055)
4. POST EMPLOYMENT, ARTICLE VI, SECTIONS 2-141 through 2-146
(Ordinance no. 88-30)

Within thirty (30) days after receipt of the complaint by the Ethics Commission, a copy shall be sent to the alleged violator.

A filing fee is not required, but costs and fees may be assessed against those who file frivolous complaints, as per Article V, sec. 2-260.

The completed complaint form, notarized and substantiated with relevant documents, if available, may be mailed or delivered in person to the Palm Beach County Commission on Ethics, 2633 Vista Parkway, West Palm Beach, FL 33411.

Do not contact Commissioners directly as any such communication may compromise the processing of the complaint or result in the recusal of the Commissioner.

Additional information about the complaint process can be obtained by calling 877-766-5920 or 561-233-0724 or by following the link to the Ethics Commission at www.palmbeachcountyethics.com.

The Ethics Hotline number is 877-766-5920 or 561-233-0724.

PALM BEACH COUNTY COMMISSION ON ETHICS

MEMORANDUM OF INQUIRY

To: Megan C. Rogers, Interim Executive Director
From: Mark E. Bannon, Investigator
Re: C13-006 – Respondent James Cherof, City Attorney, City of Boynton Beach

- **Background**

On February 15, 2013, COE staff received a sworn complaint from David Floering, alleging that Respondent, James Cherof, contracted City Attorney for the City of Boynton Beach (the City) had violated the Palm Beach County Code of Ethics by failing to timely provide a videotape to Complainant. Complainant alleged that Respondent declined to provide him with properly requested public records in order to allow Sarah Marquez-Rodriguez, wife of suspended City Mayor Jose Rodriguez, an opportunity to file court action to stop the release of the record. Complainant also alleges that Respondent provides legal advice to the Boynton Beach Community Redevelopment Agency (CRA) under a separate contract, which Complainant states is involved in a lawsuit with a former employee. Complainant believes that Respondent “suppressed the videotape to shield testimony made by Mrs. Rodriguez to the Boynton Beach Police of her knowledge of a personal vendetta against the former CRA employee.”

During a telephone conversation between COE Interim Executive Director Megan Rogers and Complainant, he further alleged that Respondent failed to produce the video in order to assist Mayor Rodriguez, the City and the CRA in defending a lawsuit by former CRA Director Lisa Bright. In her lawsuit, Ms. Bright alleged that she was fired from her position as a result of rejecting then Mayor Rodriguez’ sexual advances.¹ During this conversation with Director Megan Rogers, Complainant was advised that the first allegation in the complaint referenced a possible violation of state law (specifically Chapter 119, Florida Statutes) and that the COE did not have jurisdiction over public records law. Complainant advised Director Rogers that he believed the Respondents failure to timely produce public records after review of Complainant’s lawful request was a violation of Section 2-443(b), *Corrupt misuse of official position*.

- **Documents submitted to file (from Complainant)**

The following documents were attached to this sworn complaint and are submitted to the Inquiry file:

1. Statement of facts, and witness list. (2 pages)
2. Copy of public records request filed with the City by Complainant on September 19, 2011 requesting all police dispatched calls to 947 Isles Road (identified as Mayor Rodriguez’ home) for the past three (3) years, and any police reports regarding this address. (1 page)
3. Copy of Boynton Beach Police report dated August 8, 2011 under incident #11036375. (2 pages)
4. Copy of public records request filed with the City by Complainant on September 21, 2011 requesting a copy of “all video and audio interviews of Sarah Mercedes Marquez on or about 8/6/11 [under] report #11036375.” (1 page)
5. Copy of letter dated September 22, 2011 on City letterhead from Respondent to Complainant advising the request for a public record regarding the video has been received and is being evaluated. (1 page)
6. Copy of letter from Respondent dated September 22, 2011 on Respondent’s law firm letterhead to attorney Guy Fronstin. This letter advises receipt of Fronstin’s letter to Boynton Beach Police Chief Matt Immler regarding his belief in the non-public nature of the video, and advising that Respondent is in the process of reviewing a public records request for this video. (2 pages)

¹ PBC Circuit Court case # 2010 CA 017387XXXX MB, was filed in July 2010 by Lisa Bright naming the City, the CRA, and Mayor Rodriguez as defendants. In July 2010 this case was dismissed based on a negotiated settlement. A second action was filed in March 2011 under case #2011 CA 003507XXXX MB naming the City, and the CRA as defendants and is currently ongoing.

7. Copy of letter dated September 22, 2011, from attorney Guy Fronstin to Police Chief Matt Immler advising that Fronstin believes the video of a meeting between Sarah Marquez-Rodriguez and Boynton Beach police officers is not a public document based on the Victim's Bill of Rights and HIPAA regulations. (1 page)
8. Copy of letter dated September 26, 2011 on City letterhead from Respondent sent by fax to Fronstin advising that he has determined that the video is a public record that is not exempt, and that he will make the video available to Complainant at 4:00 PM on the following day. (1 page)
9. Copy of letter dated September 27, 2011 from Complainant to Respondent advising that he came to City Hall at 4:00 PM the previous day as advised by Respondent but did not receive the requested records [video]. He states he will be seeking a court order. (1 page)
10. Copy of letter dated September 28, 2011 from Respondent to Complainant advising that due to the filing of a writ of prohibition concerning the video, the City will not provide it to Complainant until the court provided direction as to whether it is a public record. (1 page)
11. Copy of letter dated October 4, 2011 from Michael T. Burke of the law firm of Johnson, Anselmo, et. al., to Complainant stating that the City has retained the firm to represent them in the matter of S.R. v. City of Boynton Beach, and that they are attempting to schedule a hearing for that petition. (1 page)
12. Copy of PB Post article dated February 15, 2012 entitled, "Governor suspends Boynton Beach Mayor after arrest." (3 pages)
13. Copy of "Order Granting Plaintiff's Request for Fees" in the matter of David Floering v. City of Boynton Beach and S.R. v. City of Boynton Beach, signed and dated June 18, 2012 by Circuit Judge Catherine Brunson, granting attorneys fees to Complainant under §119.12, Florida Statutes, advising that the pending petition could not legally prevent disclosure of the video. (3 pages)
14. Copy of PB Post article dated June 26, 2012 entitled, "Judge says Boynton Beach failed to comply with provide public records request." (1 page)
15. Copy of PB Post article dated June 23, 2011 entitled, "Boynton Beach settles public records lawsuit with former CRA director Bright." (2 pages)
16. Copy from Florida Open Government Watch, an online magazine dated December 20, 2012 entitled, "Palm Beach Post Reports on FOGWatch Lawsuit Against Boynton Beach Police Department." (1 page)
17. Copy of "Employment Agreement" between the City of Boynton Beach and Josias & Goren, P.A., attorneys dated March 30, 1990. The agreement lists no expiration date or term of employment, and states only that it is terminable by the City at any time. (2 pages)
18. Copy of City Ordinance 10-021 adopting the Code of Ethics by the City. First reading listed as September 7, 2010, second reading listed as September 21, 2010, and signed five (5) City Commission Members, including Mayor Jose Rodriguez. (3 pages)

- **Inquiry**

The following timeline is established to assist in understanding the timing involved in the allegation of a violation of §2-443(b), *Corrupt misuse of official position* as presented in this complaint:

- October 19, 2010, the City of Boynton Beach comes under the jurisdiction of the COE and the Code of Ethics by way of City Ordinance 10-021, which is passed by the City Commission in September, 2010.
- July 6, 2010, former CRA Director Lisa Bright files a lawsuit in PBC Circuit Court for termination from her position as being based on employment discrimination. She names the City, the CRA and then Mayor Jose Rodriguez as defendants. This action was dismissed due to a mediated settlement agreement on July 12, 2011.²

² PBC Clerk and Comptroller website (www.mypalmbeachclerk.com)

- March 7, 2011, former CRA Executive Director Lisa Bright files a second lawsuit in PBC Circuit Court for her termination from her position. She names the City and the CRA as defendants. Jose Rodriguez was not a named defendant in this action, which is currently ongoing.³
- August 6, 2011, Sarah Marquez Rodriguez is interviewed at the Boynton Beach Police Department by Officer Crawford and Sergeant Sheridan in reference to a domestic issue. This interview is video and audio recorded.⁴
- Monday, September 19, 2011, Complainant makes a public records request for all dispatched police calls and reports filed for the home of Mayor Rodriguez.
- Wednesday, September 21, 2011, he files a second request specifically for a copy of the video of the August 6th interview of Sarah Marquez Rodriguez discussed above.
- Thursday, September 22, 2011, Respondent faxes a letter to Complainant on City letterhead advising that his public records request has been received, and is being evaluated to determine whether the video tape is subject to any exception of the public records laws. He advises that since the City offices are closed on Friday [September 23, 2011] this determination will be made the following week.
 - September 22, 2011, Respondent was given a letter sent to City Police Chief Matt Immler from attorney Guy Fronstein (Law Office of Guy Fronstin, who represents Sarah Marquez-Rodriguez), in which he argues that the video tape is not a public record because it may violate both Florida and federal law, and should not be disbursed to Complainant.
 - September 22, 2011, Respondent sends a letter to Fronstin on the letterhead of his law firm advising him that he has received Fronstin's letter concerning his belief that the video is not a public record and that he will keep Fronstin informed of the determination when made. This letter further states:

"As you are certainly aware, the Florida Publics records Act does not permit a custodian of public records to delay the production of records once a determination has been made that the records are not exempt from production. Accordingly, I am not in a position to agree to any fixed delay in producing the public records to accommodate your need to initiate court action to allow a court to rule on the matter of release of any documents. Although I am reluctant to invite litigation against the City, you may wish to evaluate the timing of your contemplated court action to the extent necessary to protect your client's interest." (Emphasis added)
- Monday, September 26, 2011, Respondent notifies Complainant and attorney Fronstin by letter on City letterhead that he has determined that the video tape is a public record and does not meet any exception to the public records laws. Therefore, Complainant will be allowed to examine this video tape on [Tuesday] September 27, 2011 at 4:00 PM.
- Tuesday, September 27, 2011, Complainant sends a typewritten letter to Respondent, advising that he came to City Hall at 4:00 PM as advised, but was not allowed to view the video tape as scheduled. He advises that he will be seeking a court order to enforce this right.
- Wednesday, September 28, 2011, Respondent faxes a letter on City letterhead to Complainant advising that there has been a writ of prohibition filed regarding the video, demanding that the video remain confidential. A copy of the writ was included. Respondent advises that in light of this litigation, it was determined that the video would not be released until a court disposes of that petition and gives the City direction regarding the competing claims.
- Tuesday, October 4, 2011, a letter from the law firm of Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, P.A., signed by Michael T. Burke, was sent to Complainant advising that the law firm had been retained to represent the City in the matter of *S.R. vs. City of Boynton Beach* under case

³ Ibid.

⁴ Reported under Boynton Beach Police incident #11036375 and listing the involved parties as Sarah Mercedes Marquez and Jose Rodriguez.

#2011 CA 014905XXXX MB, filed to prevent the release of the video regarding Complainant's public records request. The letter states that they are in the process of setting a hearing date.

- Tuesday, October 4, 2011, Complainant files an action in PBC circuit court against the City for failure to allow him access to the video as a public record (Case #2011 CA 015287XXXX MB). Eventually this case is consolidated with 2011 CA 014905XXXX MB, and the case winds through the court with several documents filed, motions, hearings and depositions scheduled, an agreed order, and a stipulation for dismissal entered, and an order of dismissal entered.
- On June 18, 2012, upon a motion for attorney's fees filed by Complainant, Circuit Judge Catherine Brunson holds that the City improperly denied Complainant access to inspect and/or copy the video which was a public record. Judge Brunson awards Complainant attorney's fees because S.R. never asserted a statutory exemption as to why the video was confidential, and none existed.

- **Applicable code provisions**

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

Sec. 2-442. Definitions.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "employee" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county. *The term also includes contract personnel and contract administrators performing a government function...* (Emphasis added)

As the contracted City Attorney for the City of Boynton Beach, Respondent is within the jurisdiction of the PBC Code of Ethics.⁵

Sec. 2-443(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)

- **Additional documents submitted to file**

The following documents were reviewed during this initial Inquiry, and are also submitted to the file:

1. Copy of Article IV. *Purchasing and Consultants*, from the City of Boynton Beach City Code. Section 2-56.1 addresses exemptions to competitive bidding. (4 pages)
2. Copy of unofficial docket record for case #2011 CA 014905XXXX MB, *S.R. v. City of Boynton Beach*, from the PBC Clerk and Comptroller website. (5 pages)
3. Copy of unofficial docket record for case #2011 CA 015287XXXX MB, *David Floering v. City of Boynton Beach*, from the PBC Clerk and Comptroller website. (10 pages)
4. Copy of unofficial docket record for case #2011 CA 003507XXXX MB, *Lisa Bright v. City of Boynton Beach*, from the PBC Clerk and Comptroller website. (33 pages)
5. Copy of unofficial docket record for case #2010 CA 017387XXXX MB, *S.R. v. City of Boynton Beach*, from the PBC Clerk and Comptroller website. (7 pages)

⁵ RQO 11-096 (An attorney who contracts with a municipality to provide ongoing legal services as a Town Attorney is a contract employee within the meaning of the code).

- **Analysis**

There are two (2) separate though related issues to be addressed in this analysis, but both are based on whether Respondent violated §2-443(b) by denying Complainant timely access to the subject video. The following analysis is based on evidence submitted in the initial complaint or found during the initial Inquiry.

The definition of “legal sufficiency” used by COE staff is as follows:

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.

Under this definition, the legal sufficiency determination made by the COE Executive Director must be based on the facts submitted in the complaint, and if true, whether these facts would constitute a violation of the Code of Ethics by a person or persons under COE jurisdiction. However, this determination is not made in a vacuum based solely on the allegations made in the complaint. Where the complaint includes additional documentation, that information is considered in making a determination of legal sufficiency. In the analysis, we consider two (2) separate but intertwined issues regarding Respondents actions.

First, Respondent scheduled the examination and/or copying of this video by Complainant for a time within one (1) day of making the determination that it was a public record and not subject to disclosure exceptions. Complainant alleges that arranging for a time for Complainant to view and/or copy this video even within one (1) day of making this determination was “unreasonable” to the point of being “corrupt” under the circumstances, because this also allowed attorney Fronstin time to file an action in court to stop the dissemination of the video.

Second, after arranging a time for Complainant to review and/or copy the video, Respondent later denied Complainant access to this video for several months after being noticed that an action for a writ of prohibition had been filed to prevent this disclosure. Complainant alleges that this denial of access to this video for several months while awaiting a court ruling on a writ of prohibition to stop the disclosure of the video was also a “corrupt” act within the code definition, based on the later ruling by a court that the video should have been released at the point Respondent determined it was a public record.

We first examine the initial one (1) day delay. Complainant alleges that Respondent delayed his access to the video because Respondent wanted to allow Sarah Marquez-Rodriguez, through her legal counsel Guy Fronstin, sufficient time to file a court challenge to the determination that the video was a public record. He alleges several reasons for this, including that Respondent provided legal counsel for the CRA, the City, and former Mayor Rodriguez who were all initially named as defendants in a discrimination lawsuit with a former employee, and that the video may have been detrimental to this lawsuit.

In his letter to attorney Fronstin on September 22nd Respondent specifically states that he would not delay the release of the video to Complainant once he made a determination that the video was a public record. He arranged to allow the release of the video to Complainant one (1) day after he made that determination. The documents attached to the complaint showed the following sequence of events: Respondent received the public records request for the video from Complainant on Wednesday, September 21, 2011. He responded the next day by advising Complaint that before he could produce the video, he needed to make a determination that it was a public record, and that no exception applied. He further advised Complainant that the next day (Friday, September 23rd), the City offices were closed, so he would make that determination early the following week. On the next work day, Monday, September 26th, Respondent advised both Complainant and attorney Frontin that his determination was that the video was a public record outside of any exception, and he had made arrangements for Complainant to review and/or copy this video on Tuesday, September 27th at 4:00 PM. Prior to the 4:00 PM viewing scheduled for September 27th however, the court action was filed by Fronstin, which included a request

for a writ of prohibition to stop the release of the video. The delay over a non-working weekend for Respondent to research this issue and the one (1) day delay in release of the video once the determination was made that it was a public record are not unreasonable, and do not fall within the code definition of a corrupt act. The fact that he informed Fronstin and Complainant on the same date that he was going to make a determination after the weekend, and that once made, he would not delay the release of the video indicates only that Respondent sought to treat each party in equal fashion. The delay in releasing the video from Thursday, September 22nd to Tuesday, September 26th (with Friday, Saturday and Sunday as days off work in between,) was not an unreasonable time period under the circumstances, and does not rise to a corrupt action on the part of Respondent.

Further, based on the timeline presented, there is no evidence that the delay was for an improper purpose, i.e. assisting then Mayor Jose Rodriguez or the CRA in the civil case filed by Lisa Bright. The case in which Rodriguez was a named defendant (2010 CA 01738XXXX MB) had been settled at mediation and dismissed on July 12, 2011. This is two (2) months prior to Complainant's public records request for the video being filed with the City, and several weeks prior to the video even being recorded on August 6, 2011. Rodriguez was not a named defendant in the pending second action filed in March 2011 (2011 CA 003507XXXX MB), although the CRA was. However, there is no allegation by Complainant that this tape was later found to be detrimental to CRA's defense of its suit. Complainant, after receiving the video per the court order, never actually alleges anything on this video was even found to be related to the Lisa Bright lawsuit against the City and the CRA. Respondent must have been aware of what was on the video, as he reviewed it prior to deciding it was a public record. Based on the analysis of this issue, no legal sufficiency exists to believe Respondent acted in a corrupt manner in violation of §2-443(b) by scheduling the release of the video the day after he determined it was a public record.

We next analyze the second delay of several months in release of the video to Complainant while the court action filed by Fronstin was pending. Once Respondent was aware that an application for a writ of prohibition was filed, and that the basis of this action was that to release the video may violate both state and federal law (which Fronstin pointed out in his letter to Chief Immler) it was not inconsistent with the proper performance of Respondent's duties for him to maintain the "status quo" until a court could rule on this issue.

Attorney Frontin documented several reasons for the belief that the video was not public including alleged violation of the Florida Victim's Bill of Rights and the federal Health Insurance Portability and Accountability Act (HIPAA) privacy regulations. Regardless of the final outcome in circuit court, including the award of attorney's fees to Complainant by the court, Respondent had little choice but to allow the court to rule before the video could be released. To do otherwise may have exposed the City to further liability if the court had ruled that the video was not a public record and should not have been released. Even though a court later ruled that the video should have been released, the action of not releasing it once an action had been filed was based on Respondent's legal judgment of the potential ramifications to the City should the court decide for the Petitioner who wished the video declared private. A legal judgment made by an attorney based on his attempt to protect his client (the City) from further litigation until a court had settled the matter, is not inconsistent with the proper performance of Respondent's public duties, even where that action is later found to be improper, as long as it was not done for an improper motive. Again, Complainant offers only speculation as to Respondent's motive being improper, with no evidence of such a motive ever presented.

Code section 2-443(b), *Corrupt misuse of official position*, states that in order for an action to be "corrupt," it must be 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." By advising Frontstin that he could not by law delay the release of public documents and arranging the release of the video to Complainant within one day of making his determination that the video was subject to the public disclosure laws, Respondent acted in a manner *consistent* with the proper performance of his public duties.

Further, even though attorney's fees were awarded to Complainant by the court for the several month delay in the release of the video, it also cannot be reasonably argued that once the matter was before a court, Respondent's refusal to release the video until the court had ruled on the matter was a "corrupt" action within this definition. Regardless of his own initial belief that the video was a public record. If the court ruling had been against the

Complainant, Respondent and the City may have been in the unenviable position of having violated the law by release of a video that was not public, and subject to further litigation under state and federal law. Based on this analysis, Respondent's decision not to release the video and to maintain the "status-quo" until the court had ruled on its public nature cannot be considered a corrupt action by Respondent.

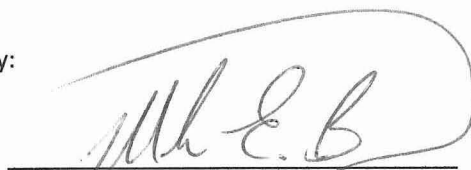
Taking into account all of the information submitted by Complainant and discovered during the initial Inquiry, staff believes no legal sufficiency exists to believe that Respondent acted corruptly, and in violation of the Code of Ethics by not releasing a video that was the subject of a pending court challenge over Respondent's determination that the video was a public record. Respondent took no action to destroy the video or deny its existence. He maintained the "status quo" by refusing release it to Complainant until the court had a chance to rule on the matter. While the court found that he was in error by not releasing the video and that it was a public record that does not change the analysis regarding whether Respondent corruptly misused his official position.

- **Conclusion:**

Based on the allegations by Complainant in his sworn complaint and an examination of the documentary evidence provided by Complainant and discovered in the initial Inquiry, Respondent's actions if true, do not constitute a corrupt misuse of official position. Therefore, staff recommends that **NO LEGAL SUFFICIENCY EXISTS** to open a preliminary investigation into the matter of whether Respondent violated §2-443(b), *Corrupt use of official position*, by failing to timely release a video to Complainant that was a public record after a proper public records request had been filed. The question as to whether or not Respondent's delay is a violation of Chapter 119, (Public Records), Florida Statutes is a determination that can only be made at the state level. Staff recommends this complaint and accompanying documents from the file be forwarded to the proper state authorities to review this issue.

There was also an allegation listed in the body of the statement of facts filed with the complaint that Respondent and his law firm, Goren, Cherof, Doody & Ezrol, P.A., have represented the City since 1990 (the firm of Josias & Goren, P.A., contracted with the City on March 20, 1990), without any review or Request for Proposal or Qualifications for the duration of that time. That issue was not addressed in this Inquiry for the following reasons. Currently, §2-56. *Purchasing agent, selection, duties; competitive bidding*, and §2-56.1, *Exceptions to competitive bidding*, found within Article IV, *Purchasing and Consultants*, of the City Code does not list legal services as an exception to the bidding process required for services. This contract between the law firm and the City was signed on March 20, 1990, and appears to be ongoing, with no expiration date listed. However, the Commission on Ethics (COE) is without jurisdiction to review this issue since it does not implicate the PBC Code of Ethics. Whether or not this type of long-term contract without expiration or review is a practical use of City funds, is a matter better considered by the PBC Office of Inspector General (OIG). Staff recommends that as to only this specific issue, there is **NO LEGAL SUFFICIENCY** to open a preliminary investigation regarding this allegation, and that it be referred to the OIG for further review.

Submitted by:


Mark E. Bannon, Senior Investigator
PB County Commission on Ethics

2/26/2013
Date

Reviewed by:

mck
(Initials)

2/26/2013
Date

PALM BEACH COUNTY COMMISSION ON ETHICS

**MEMORANDUM OF NO LEGAL SUFFICIENCY AND
RECOMMENDATION OF DISMISSAL**

To: Palm Beach County Commission on Ethics
From: Megan C. Rogers, Interim Executive Director
Re: C13-006 – James Cherof, contracted City Attorney, City of Boynton Beach

- **Recommendation**

Regarding the Complaint against Respondent, James Cherof, contracted City Attorney for the City of Boynton Beach, the Interim Executive Director, Megan C. Rogers, has found **NO LEGAL SUFFICIENCY** in complaint number C13-006 and recommends **DISMISSAL** pursuant to Art. V, §2-260(b) and Rule of Procedure 4.2.

Legal sufficiency exists where there is an allegation containing the elements 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 substantially on the personal knowledge of the Complainant, 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.

- **Background**

On February 15, 2013, COE staff received sworn complaint from David Floering, containing allegations that Respondent James Cherof, contracted City Attorney for the City of Boynton Beach (the City) had violated the Palm Beach County Code of Ethics by failing to timely provide a videotape to Complainant which Respondent had determined was a public record. Complainant alleged that this lack of timely response to his valid public records request was done for the purpose of allowing Sarah Marquez-Rodriguez, wife of suspended City Mayor Jose Rodriguez, an opportunity to file court action to stop the release of this video tape. Complainant also alleges that Respondent provides legal advice to the Boynton Beach Community Redevelopment Agency (CRA) under a separate contract, which he states is involved in a lawsuit with a former employee. Complainant believes that Respondent “suppressed the videotape to shield testimony made by Mrs. Rodriguez to the Boynton Beach Police of her knowledge of a personal vendetta against the former CRA employee.”

During a telephone conversation between COE Interim Executive Director Megan Rogers and Complainant, he further alleged that Respondent’s actions in failing to produce the video was done to assist Mayor Rodriguez as well as the CRA in a lawsuit by former CRA Director Lisa Bright, who alleged in her lawsuit that she was fired from her position as a result of rejecting then Mayor Rodriguez’ sexual advances.¹ During this conversation with Director Megan Rogers, Complainant was advised that because the first allegation within the complaint alleged a violation of state law (specifically Chapter 119, Florida Statutes regarding Public Records), and not the PBC Code of Ethics, COE had no jurisdiction over state public records law. Complainant advised Director Rogers that he believed the actions of Respondent in failing to timely produce public records after his lawful request was a violation of Section 2-443(b), *Corrupt misuse of official position* based on the alleged reasons he failed to do so.

Pursuant to COE Rule of Procedure 4.1.3, a limited inquiry was conducted. COE Investigator Mark Bannon reviewed the documentation obtained from Complainant, and obtained additional documentation relevant to this Inquiry.

¹ PBC Circuit Court case # 2010 CA 017387XXXX MB, was filed in July 2010 by Lisa Bright naming the City, the CRA, and Mayor Rodriguez as defendants. In July 2010 this case was dismissed based on a negotiated settlement. A second action was filed in March 2011 under case #2011 CA 003507XXXX MB naming the City, and the CRA as defendants and is currently ongoing.

The initial “delay” in providing the video to Complainant was based on the fact that the request was received one (1) day prior to a non-working weekend (the City is closed on Friday, Saturday and Sunday each week, the request was received by Respondent on a Thursday), and that Respondent needed to research the public records laws as they related to the video, and make a determination of whether the video was a public record. The next working day (Monday) Complainant was advised that the video would be available to him at 4:00 PM Tuesday. This time period of one (1) day after the determination was made that the video was a public document subject to release to Complainant was not “unreasonable.” Further, Complainant alleges that even this delay was to allow an action to be filed in court to stop the release is undermined by the short time period mentioned, and Respondent’s letter to attorney Fronstin advising that he would not delay release of the video once it was determined to be a public record subject to release.

Prior to the release on the following Tuesday, an action was filed in PBC Circuit Court to prevent the video from being released. Respondent chose to maintain the “status quo” and not release the video pending the outcome of this action and pending direction from the court. While the court did later rule that the video was a public record and should have been released, Respondent’s action of not releasing the video while the case was pending does not rise to the level of “corrupt” as defined by the code. Respondent, as the City Attorney, made a strategic decision in an attempt to protect his client (the City) from further litigation should the court rule against the release of the video. The fact that the court ultimately found for the Complainant, and awarded attorney’s fees, does not make this strategic decision rise to the level of a “corrupt” action. Further, Complainant’s allegation that Respondent was attempting to influence an unrelated civil case for Jose Rodriguez, and the CRA, who were named defendants in this case cannot be true, since the case in which both were defendants had been dismissed based on a mediated settlement agreement several months prior to this event. The later action did not list Jose Rodriguez as a Defendant. Further, even after release of the video per a court order, Complainant never alleges any material on the video was ever found to be damaging to the CRA or the City as defendants in the case filed by the former employee, an issue that Respondent would have been aware of based on his initial review of the video to determine if it was a public record.

- **Analysis**

As a contracted City Attorney for the City of Boynton Beach, Respondent is subject to the provisions of the Palm Beach County Code of Ethics (the Code), as of October 19, 2010, when the City voluntarily came under the jurisdiction of the COE.

The following section of the Palm Beach County Code of Ethics is relevant to this inquiry.

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

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)

There was no evidence presented by Complainant or found during this inquiry to indicate Respondent acted corruptly by either delay in releasing a video that was later ruled by a Circuit Court to be a public record subject to release. The initial delay was not for an unreasonable time period, and was based on a legal review of the issue. Complainant submitted documents that themselves verified that Respondent had stated in a letter to attorney Guy Fronstin that the law would not allow him to delay release of the video, and that he would not do so.

Further, the delay of releasing the video based on an action being filed to stop the release is not a corrupt act. When faced with such an event, the decision to maintain the “status quo” until a court ruled on the matter before

it appears to be a strategic legal decision based on the protection of his client, the City. That the court later ruled this was improper does not make the action corrupt under the code.


Finally the allegation in the complaint that the Respondent's law firm has an improper contract with the City because it appears to be ongoing without any review process is a matter outside of the COE's jurisdiction to review.

- **Conclusion**

Based on the fact that the allegations provided in the Complaint, even if true, do not allege a violation of any provision of the Palm Beach County Code of Ethics, and the COE Inquiry did not find any evidence of such a violation, there is **NO LEGAL SUFFICIENCY** to open a formal investigation into this matter.

It is the recommendation of staff that this **COMPLAINT** be **DISMISSED** based upon a finding of **NO LEGAL SUFFICIENCY**.

BY:



Megan C. Rogers, Interim Executive Director
Florida Bar No. 86555
Commission on Ethics



Date