

PALM BEACH COUNTY COMMISSION ON ETHICS
300 North Dixie Highway, Suite 450, West Palm Beach, Florida 33401
Hotline: 877-766-5920 or 561-355-1915

COMPLAINT FORM

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

Please list all information where you would like to be contacted. Our preference is email.

Name: DAVID C PRICE E-Mail: DPRICE38444@BELLSOUTH.NET
Address: 706 SW 27TH TERRACE
City: BOYNTON BEACH FLORIDA Zip: 33435
Home #: 561-732-6947 Work #: _____ Cell #: _____

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

Please provide as much information as possible.

Name: RICHARD LUCIBELLA E-Mail: _____
Address: 6450 NORTH OCEAND BLVD
City: OCEAN RIDGE Zip: 33435
Home #: 561-733-9903 Work #: 561-732-8331 Cell #: _____
Title/Office Held or Sought: COMMISSIONER TOWN OF OCEAN RIDGE

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.

David C Price
Signature of Person Making Complaint

RECEIVED

JAN 20 2015

Commission on Ethics
by: [Signature]

STATE OF FLORIDA

COUNTY OF Palm Beach

Sworn to (or affirmed) and subscribed before me
this 10 day of Jan, 2015, by

DAVID PRICE
(Name of Person Making Statement)

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

FLORIDA AL

(Signature of Notary Public, State of Florida)

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



When I saw the WPTV segment on the Ocean Ridge Pd I was totally appalled, but not surprised about the arrogance/stupidity of Town Commissioner Lucibella's actions and uncalled for verbal assault on the Chief for doing his job according to law.

Public officials should be held to higher standards then the rest. I believe

Lucibella violated the following;

1. Possession of stolen property/credit cards.
2. Failure to obey a request of a law enforcement officer in the performance of his duties, in requesting surrender of said stolen property.
3. Creating a hostile work environment by threatening and attempting to intimidate by cursing at subordinates.
4. Violation of state and federal Whistle Blower/retaliation laws by Attempting to fire/fire the Chief for doing his duties as stated by Florida Statute.
5. Was the conversation replies by Lucibella, in violation of the Florida In the Sunshine Laws for discussing town business not in a town meeting.

You can get the incident reports from ORPD along with the tapes. 1 station says the State Attorney opened a case, and already may have what's needed.

<https://www.youtube.com/watch?v=Z-lBq4HJj9U> wptv yanuzzi video

https://www.youtube.com/watch?v=6_QtSutT9Oc wpbf stating state atty investigation opened

Gina A. Levesque

From: Ethics
Sent: Wednesday, January 14, 2015 1:16 PM
To: Mark Bannon E.
Cc: Steve Cullen
Subject: Fwd: formal complaint Ocean Ridge Town Commissioner Lucibella.please contact if any issues
Attachments: When I saw the WPTV segment on the Ocean Ridge Pd I was totally appalled.doc

Mark,

Will you please respond to Mr. Price.

Thank you,

Gina

Sent via the Samsung GALAXY S®4, an AT&T 4G LTE smartphone

----- Original message -----

From: David Price <dprice38444@bellsouth.net>
Date: 01/14/2015 9:02 AM (GMT-05:00)
To: Ethics <Ethics@palmbeachcountyethics.com>
Cc:
Subject: formal complaint Ocean Ridge Town Commissioner Lucibella.please contact if any issues

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Ocean Ridge commissioners vote to negotiate with police chief in special meeting Thursday

Town Manager's termination of chief not overturned

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Hide message history

OCEAN RIDGE, Fla. -- Town of Ocean Ridge Commissioners did not vote to overturn a decision the town manager made to let go of Police Chief Chris Yannuzzi, instead they voted to have a special negotiation meeting with the chief and his attorney Thursday. The purpose of the meeting will be to find a reasonable resolution and will be followed by a public commission meeting Thursday at 6 p.m.

Dozens of people praised the chief at Monday night's commission meeting. The council had the option of voting to overturn a decision the town manager made Friday to terminate the chief.

The town manager doesn't deny that the decision to terminate Chief Yannuzzi was partially caused by ongoing tension between the chief and a commissioner.

Chief Yannuzzi secretly recorded a call with Commissioner Rich Lucibella while investigating a stolen credit card case. The card was found on Lucibella's property, but the commissioner said he was already working with the investigating agency.

"I kind of felt that I was baited. I don't apologize for losing my temper in that situation," said Commissioner Lucibella during Monday night's commission meeting.

The tape was the focus of the public meeting. During the chief's moment on the floor, he began by stating he wanted to play the tape. The mayor responded by saying that he was not going to allow it to be played at the public meeting.

Members of the public who have heard the recording attacked Lucibella's responses to the chief on tape.

"When I heard on the news, the recording of the discussion with the chief, it saddened me, it disappointed me, and I cannot believe that a commissioner would behave in that way.

Lucibella responded to those comments by saying residents don't have all the facts.

"Within the first 60 seconds, 120 seconds of that 8 minute tape recording he already got all the information he needed, who the credit card belonged who the investigating agency was and the rest of it was a will battle," said Lucibella during the commission meeting.

Two commissioners voiced their opposition against the chief's termination, another saying the town manager had all the right to make the decision.

Chief Yannuzzi says he was humbled by the positive comments towards him.

"I haven't lost my edge," said Chief Yannuzzi after the vote. "Obviously, there's some stress involved, but at the same time I have a job to do, so I focus on the job."

The Chief's last performance evaluation was in 2012 when he received an outstanding review. Commissioners said he's had no issues put in writing since.

One commissioner questioned the legality of the chief secretly recording a conversation. The town attorney says the state attorney's office has decided not to open up a case against the chief because he acted in the scope of his authority and in good faith.

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PALM BEACH COUNTY COMMISSION ON ETHICS
MEMORANDUM OF INQUIRY

To: Steven P. Cullen, Executive Director
From: Mark E. Bannon, Senior Investigator
Re: C15-003 – Richard Lucibella – Town Commissioner, Town of Ocean Ridge

- **Background**

This matter came to the attention of the PBC Commission on Ethics (COE) staff by way of a sworn complaint with an attached email which serves as the "statement of facts," signed by David C. Price (Complainant) on January 10, 2015, and received by COE staff on January 20, 2015.

The allegations contained within the Complaint were originally sent via email on January 14, 2015. A few hours before reviewing the email, I was contacted by Complainant by telephone asking if a sworn complaint to COE could be sent via email, or if the original had to be sent as a "hardcopy." I advised Complainant that an original document with a notarized signature was required. After that conversation, I received and reviewed the email sent by Complainant listing five (5) separate allegations against Respondent, Ocean Ridge Town Commissioner Richard Lucibella. At that time, I responded to the email stating that since the five (5) allegations did not involve possible violations of the PBC Code of Ethics, the COE had no jurisdiction to investigate or act on the issues. Complainant responded that he had already mailed the Complaint.

The information came from two (2) sources. They include a television broadcast and a newspaper article both reporting on a recent Town Council discussion as to whether the Ocean Ridge Police Chief Chris Yannuzzi should be terminated. The discussion involved an issue that developed over a stolen credit card found by Respondent at or near his home, as well as a discussion between Respondent and Yannuzzi which was recorded, in which Yannuzzi apparently asked for the credit card to be turned in to the Police Department. Respondent instead turned the card over directly to the Broward County police agency that reported it as stolen.

- **Inquiry:**

The specific allegations made by Complainant against Respondent are as follows as listed in the email of January 14, 2015:

From: David Price <dprice38444@bellsouth.net>
Date: 01/14/2015 9:02 AM (GMT-05:00)
To: Ethics <Ethics@palmbeachcountyethics.com>
Cc:
Subject: formal complaint Ocean Ridge Town Commissioner Lucibella. please contact if any issues

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3. Creating a hostile work environment by threatening and attempting to intimidate by cursing at subordinates.
4. Violation of state and federal Whistle Blower/retaliation laws by Attempting to fire/fire the Chief for doing his duties as stated by Florida Statute.
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On January 14th, I was requested by COE Intake Manager Gina Levesque to respond to this email, and in doing so I sent the following email response to Complainant:

Good afternoon Mr. Price.

We spoke this morning on the telephone when you asked if you had to send a "hard copy" of a formal complaint to COE. I had not yet been privy to your email when we spoke, but my answer remains that to make a formal sworn complaint you must send a "hard copy" of the sworn and notarized complaint to the COE. However, having now read your email I will tell you that I do not think we have any jurisdiction over these issues, and please allow me to explain why by individually addressing the five (5) issues you bring up.

Please understand from the beginning that COE jurisdiction is limited to actions taken by a county or municipal official or employee that are in violation of one of the provisions of the PBC Code of Ethics, and that violation normally must be done using the official or employees official position in an unlawful manner.

1. **Possession of stolen property.** Any event dealing with the use of stolen property is a criminal matter and should be referred to the State Attorney's Office. We have no initial jurisdiction over such matters unless they are directly linked to the employee or official's governmental position. In this case, the card was found on the Commissioner's private property and while he did refuse to return it to the Chief, he did return it to the agency that reported it stolen (Dania P.D.).
2. **Failure to obey a request from an LEO....** Again, this is a charge based on state law and is thus not within our jurisdiction to act upon.
3. **Creating a "hostile work environment."** This particular "issue" is covered by federal, state and county law as it pertains to a workplace situation. There is no such prohibition listed within the PBC Code of Ethics for that reason. However, I believe that the person who is impacted by an alleged "hostile work environment" must make such a complaint. I do not think that another person has standing to file a local, state or federal complaint for that person in such a matter. But you would need to check with EEOC for that information. Also, as a side matter, where the Commissioner advised that he was going to take action as a Commissioner to have the Chief fired, since the commissioner did not ask for any "quid pro quo" from the Chief to stop that action, and the Commissioner has the power as an elected official to seek to replace any employee where he feels the employee should be replaced, this is not a misuse of office. Whether attempting to have the Chief of Police fired was a good or bad decision by the Commissioner is not for the COE to decide. It is an issue of "governing" by an elected official, and that's why we hold elections.
4. **Violation of state and federal whistleblower protection.** Again, these are state and federal laws not within COE jurisdiction. However, I believe under both statutes the "whistle blower" has to ask for and be granted protection under these statutes before they apply. I do not believe the Chief did so, and so they may not be applicable.
5. **Florida Sunshine Violation.** Once again, this is a state law outside of COE jurisdiction. The State Attorney's Office would have jurisdiction here as well, as it is a crime to violate this law. However, a violation would require that an "official" discuss matters likely to come before his or her governing body outside of a public meeting, with another official of that same body (or at least with them present). An

official may always discuss matters with town staff, so long as town staff does not then pass this information directly to another official in violation of the act. You may chose to send your formal sworn complaint if you wish. But based on the information I have given you I cannot see a scenario where the COE will have jurisdiction over these events. Thus, the complaint will have to be dismissed without action. Much like a court of law, where the COE has no jurisdiction over an event it cannot take action....including conducting an investigation. However, according to what you sent us, the State Attorney's Office seems to be aware of the issues, and I assume will take action if warranted. If you have any further questions, please do not hesitate to call me at my office at 561-355-1946.

Respectfully,

Mark E. Bannon
Senior Investigator
PBC Commission on Ethics
Ph 561-355-1946
Fx 561-355-1904

- **Applicable law**

The following sections of the PBC Commission on Ethics ordinance are relevant to this matter:

Section 2-254. Creation and jurisdiction.

The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby established. *The jurisdiction of the commission on ethics shall extend to any person required to comply with the countywide code of ethics...* (Emphasis added)

Sec. 2-258. Powers and duties.

- (a) The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the:
 - (1) Countywide Code of Ethics;
 - (2) County Post-employment Ordinance; and
 - (3) County Lobbyist Registration Ordinance.

Sec. 2-260. Procedure on Complaints filed.

- (a) *Filing of complaints.*
 - (1) *Any person may file a complaint with the commission on ethics.* (Emphasis added)
- (b) *Legal sufficiency of complaints.*
 - (1) In order to be found legally sufficient, complaints filed by persons under section (a) 1 above, must:
 - a. Be in writing, and executed on a form prescribed by the commission on ethics;
 - b. Allege the elements of a violation within the commission on ethics' jurisdiction in the complaint and/or supporting documents provided;
 - c. Be based substantially upon the personal knowledge of the complainant; and
 - d. Be signed under oath or affirmation by the complaining person.

The following sections of the PBC Code of Ethics are relevant to this matter:

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. (Emphasis added)

Sec. 2-443. Prohibited conduct.

(a) *Misuse of public office or employment.* An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:

- (1) Himself or herself;
- (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
- (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
- (5) A customer or client of the official or employee's outside employer or business;
- (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner-- "substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
- (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

Sec. 2-443. Prohibited conduct.

(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)

- **Documents submitted to the file by Complainant:**

The following documents are submitted to the Inquiry file:

1. Original sworn and notarized complaint form dated January 10, 2015. (1 page)
2. Copy of "statement of facts" for Complaint as sent in email format (1 page)
3. Copy of email string dated January 14, 2015 between Complainant and COE Senior Investigator Bannon, including a newspaper article provided by Complainant from the Palm Beach Post (undated). (5 pages)

- **Analysis**

As pointed out in the background information, Complainant advised that he had already mailed the Complaint to COE prior to receiving my email response of January 14th. However, the information provided by Complainant's initial email to COE staff is the same information listed in the formal sworn complaint. Therefore, the answer sent by me to Complainant via email is still applicable. Each of the five (5) allegations made in this Complaint are issues of state and/or federal law. None allege any action taken by Respondent that if true, would amount to a violation of the PBC Code of Ethics.

In order for COE to have authority to investigate this Complaint, it would have to first be found to be legally sufficient. Legal sufficiency of a sworn complaint is determined based on the following:

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.

As in this case, even where COE has jurisdiction over the official or employee of the county or municipal entity, where the Complaint does not allege a violation of the PBC Code of Ethics (or other ordinance under the jurisdiction of COE), the Complaint cannot be legally sufficient on its face, and COE may not act on the matter other than to dismiss the Complaint as legally insufficient.

- **Recommendation**

Based on the above information, it is my recommendation that this Complaint be **administratively dismissed** as being **LEGALLY INSUFFICIENT** to proceed further.

Submitted by:



Mark E. Bannon
PB County Commission on Ethics



Date

Reviewed by:



(Initials)



Date

PALM BEACH COUNTY COMMISSION ON ETHICS
LEGAL SUFFICIENCY DETERMINATION

To: Palm Beach County Commission on Ethics
From: Steven P. Cullen, Executive Director
Re: C15-003 – Richard Lucibella – Town Commissioner, Town of Ocean Ridge

- **Recommendation**

Regarding the above-referenced Complaint against Respondent, Richard Lucibella, I have found **NO LEGAL SUFFICIENCY** and recommend **DISMISSAL** pursuant to Article V, Section 2-260(b) and Rule of Procedure 4.2.

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 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**

This matter came to the attention of the PBC Commission on Ethics (COE) staff by way of a sworn complaint with an attached email which serves as the "statement of facts," signed by David C. Price (Complainant) on January 10, 2015. The allegations contained within the Complaint were originally sent via email on January 14, 2015.

Senior Investigator Mark Bannon responded to the initial email, which contained five (5) allegations regarding Respondent, Ocean Ridge Town Commissioner Richard Lucibella. The response stated that since none of the allegations involved possible violations of the PBC Code of Ethics, the COE had no jurisdiction to investigate or act on the issues. However, Mr. Price responded that he had already mailed the Complaint.

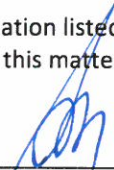
The five (5) issues raised by Complainant are all matters of state and/or federal law. However, none of the allegations listed in the Complaint, even if true, would have led to a violation of any section of the PBC Code of Ethics, including the only section that could be applied based on the allegation, Section 2-443, *Prohibited conduct*.

Where a Complaint is legally insufficient, the COE is not empowered to take any further action beyond dismissing the Complaint.

- **Conclusion**

Based on the information listed above, there is **NO LEGAL SUFFICIENCY** to find a violation of the PBC Code of Ethics by Respondent, and this matter should be administratively dismissed.

BY:



Steven P. Cullen, Executive Director
Florida Bar No. 362204
PBC Commission on Ethics

11/27/2014

Date