



John A. Carey
Inspector General

**OFFICE OF INSPECTOR GENERAL
PALM BEACH COUNTY**



Inspector General
Accredited

“Enhancing Public Trust in Government”

Investigative Report

2016-0002

**West Palm Beach
Public Records**

September 28, 2016

Insight – Oversight – Foresight



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INVESTIGATIVE REPORT CASE NUMBER: 2016-0002

DATE ISSUED: SEPTEMBER 28, 2016



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WEST PALM BEACH PUBLIC RECORDS EXECUTIVE SUMMARY

WHAT WE DID

On September 18, 2015, the Office of Inspector General (OIG) received complaints involving the City of West Palm Beach's (City) Director of Communications, Elliot Cohen.¹

The complaints alleged that **(1)** Mr. Cohen disclosed "classified and confidential information"² relating to the City Police Department and other local and federal agencies to the public. The complaints also alleged that **(2)** Mr. Cohen used his position at the City, as well as, City time and resources to conduct his private business (Cohen Publicity). The complaints further alleged that **(3)** Mr. Cohen had a "side job" with City contractor Redevelopment Management Associates (RMA). After requesting and receiving further information from the City regarding the first two of these allegations, the OIG initiated an investigation.

WHAT WE FOUND

As to **Allegations (1), (2), and (3)**, the information obtained and reviewed by the OIG **supports** the allegations. The OIG

found that Mr. Cohen disclosed "exempt" and "confidential and exempt" information. We concluded that Mr. Cohen had an obligation to ensure that "exempt" and "confidential and exempt" information was redacted before he disclosed the records. In addition, Mr. Cohen should have done an analysis of exempt information regarding criminal investigations to determine whether disclosure would have impeded an ongoing investigation or allowed a suspect to avoid apprehension or escape detention or put police/informants in danger. Additionally, we found that Mr. Cohen did use his position, government assigned office space, desk, computer, desk phone, and cell phone to conduct his Cohen Publicity business. Finally, we found that Mr. Cohen, doing business as Cohen Publicity, had a contract with City contractor RMA before, during, and after the City let RFQL 12-13-407 and awarded the contract to RMA.

Information obtained regarding **Allegation (3)** as it relates to F.S. § 112.313(7)(a) was **referred** to the State Attorney's Office and the Florida Commission on Ethics for any actions they deem appropriate (as well as any other matters of interest within this report). The Palm Beach County (PBC) Commission on Ethics (COE) dismissed a complaint (C15-021) against Mr. Cohen on April 7, 2016 after concluding that no

¹ Mr. Cohen resigned from his position effective August 19, 2016.

² While the complaint used the term "classified and confidential information," § 119.071 Florida Statutes uses the terms "exempt" and "confidential and exempt," which will be used throughout the report.

probable cause existed to believe that Mr. Cohen had a relationship with RMA that violated § 2-443(d) of the PBC Code of Ethics.

Based on the information obtained during this investigation, the OIG developed three additional allegations.

Allegation (4) that Mr. Cohen misused his official public office or employment to solicit business for Cohen Publicity. **Allegation (5)** that RMA did not properly disclose its business relationship with Mr. Cohen (Cohen Publicity) to the City during the procurement process for RFQL 12-13-407. **Allegation (6)** that RMA did not properly disclose it was employing Mr. Cohen (Cohen Publicity) after it was awarded the above contract by the City.

As to **Allegation (4)**, it was *referred* to the PBC COE, the State Attorney's Office, and the Florida State Commission on Ethics for any actions they deem appropriate. As to **Allegations (5)**, and **(6)**, the information obtained and reviewed by the OIG *supports* the allegations. The OIG found that RMA had a contract with Mr. Cohen (Cohen Publicity) that began prior to RFQL 12-13-407 being let and the contract with Mr. Cohen (Cohen Publicity) continued for over eight months after RMA was awarded the contract for RFQL 12-13-407. We also found that RMA failed to properly disclose its contractual relationship with Mr. Cohen (Cohen Publicity) both during the proposal period and after being awarded the contract as required.

Based on our supported findings in **Allegations (3)**, **(5)**, and **(6)**, and particularly that RMA did not disclose its business relationship with Mr. Cohen (Cohen Publicity) as required, we

consider the entire amount the City has spent to date on the RMA Contract, **\$3,205,611.78³** to be questioned costs⁴.

WHAT WE RECOMMEND

The OIG recommends that the City:

1. Take appropriate personnel actions.
2. Take appropriate action to ensure that City employees adhere to General Administration, Chapter 1, Policy 1-2, Public Records Requests.
3. Revise written policies and procedures on outside employment requiring employees to obtain approval for leave or work schedule adjustment prior to performing outside employment during the official business day. They should be clearly communicated to City employees and documented.
4. Establish internal controls that accurately represent actual hours worked by exempt City employees.
5. Review the City's contract with RMA in light of the findings and information provided within this report and take appropriate action.

The responses to this report from the City, Mr. Cohen, and RMA are attached. A summary of these responses with our related comments begin on page 33.

³ Information provided by the City.

⁴ Questioned costs can include costs incurred pursuant to a potential violation of a provision of law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds, and/or a finding that such costs are not supported by adequate documentation, and/or a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable in amount. As such, not all questioned costs are indicative of potential fraud or waste.

BACKGROUND

On September 4, 2015, City of West Palm Beach (City) Director of Communications Elliot Cohen forwarded a public records request (PRR) he received from the media to the City Information Technology (IT) Department. An IT Computer Operator gathered the records (over 2,200 pages of emails) relevant to the request, and provided them to Mr. Cohen as he requested.

On September 8, 2015, Mr. Cohen posted the records on the City's official website.

"Exempt" and "confidential and exempt" records from the City Police Department, Palm Beach County Sheriff's Office, and federal law enforcement agencies were included in this disclosure. The records were subsequently removed from the website, but not before they were available for access by the public. The City's practice of posting PRRs and responses to PRRs on its website ceased after this incident came to light.

On September 18, 2015, the Office of Inspector General (OIG) received complaints involving Mr. Cohen. It was alleged that Mr. Cohen posted "classified and confidential information" on the City's website. The complaints also alleged that Mr. Cohen used his position at the City, as well as, City resources to conduct his private business (Cohen Publicity). The complaints further alleged that Mr. Cohen had a "side job" with City contractor Redevelopment Management Associates (RMA).

On September 28, 2015, the OIG requested the City conduct an inquiry into the first two allegations, respond to additional questions, and provide related information to our office. Based on our analysis of the information received from the City, the OIG initiated an investigation.

Due to the number of individuals mentioned in this report, **Attachment A** is provided listing all individuals mentioned by name and title.



WPTV records request
LaGrone, Katie to: ECohen@wpb.org
Cc: "hcarson@wpb.org" 09/04/2015 11:34 AM

Hi Elliot-

Pursuant to Chapter 119 of Florida Statutes, we are requesting the following public records:

- Any and all internal/external emails, memos, drafts, letters, texts and/or any another documented material sent and/or received by city employees between Friday, August 28 – Wednesday, September 2 and include the following terms: "camera," "surveillance," "Doris", "Mower", "Heimeriks", "Entin", "Channel 5", "WPTV", "Palm Beach Post", "transparency", "transparent", "#transparency"

We ask that this information be provided to us electronically . Given the time sensitive nature of this topic, we, respectfully, ask that this information be provided as quickly as possible.

Thank you!
Katie LaGrone
WPTV
561-313-6334

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ALLEGATIONS AND FINDINGS

During the course of our investigation, we conducted 32 interviews. We reviewed hundreds of thousands of pages of records from the City including: calendar appointment records, cell phone records, Commissioner records, computer logon/logoff records, emails with selected attachments (for six City employees), Ethics Officer records, land line phone records (for two City employees), ordinances, parking records, personnel files, policies and procedures, procurement records, PRR records, time & attendance records, videos, and web history. We also reviewed records from Cohen Publicity to include: billing statements, cell phone records, contracts, County Business Tax receipt, and emails. Additionally, we reviewed Mr. Cohen's personal Sunpass records, Town of Miami Lakes emails to/from Mr. Cohen, as well as, records from RMA including: contract with Cohen Publicity, emails to/from Mr. Cohen, payment history to Mr. Cohen, and work product from Mr. Cohen.

Allegation (1):

City of West Palm Beach Director of Communications Elliot Cohen improperly disclosed "exempt" and "confidential and exempt" information. If supported, the allegation would constitute a violation of § 119.071 Florida Statute; City of West Palm Beach General Administration, Chapter 1, Policy 1-2, Public Records Requests, A2-4, D1, and D3; City of West Palm Beach, Chapter 1, Computer Policy, Policy 1-28, Computer Hardware/Software, Networks and Communications Policy, 7.11; City of West Palm Beach Employee Handbook, Employee Relations, Code of Conduct, Performance, j).

Finding:

The information obtained **supports** the allegation based on the OIG review of records and witness interviews. Mr. Cohen was not interviewed due to the referral to the State Attorney's Office in **Allegation (3)**.

We found that Mr. Cohen released a Social Security Number ("confidential and exempt" under § 119.071(5)(a)5), information regarding the City's security systems or emergency plans ("confidential and exempt" under § 119.071(3)), active criminal and intelligence information ("exempt" under § 119.071(2)(c)), information regarding confidential informants ("exempt" under § 119.071(2)(f)), and documents that reveal the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime ("exempt" under § 119.071(2)(j)1).

Standards

"Florida's Public Records Law, Ch. 119, F.S., provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. In the absence of a statutory exemption, this right of access applies to all materials

made or received by an agency in connection with the transaction of official business which are used to perpetuate, communicate or formalize knowledge.”⁵

Section 119.071 F.S. details records/information which are “exempt” or “confidential and exempt” from public records request disclosure.

From the City’s October 26, 2015 response⁶ to the OIG’s September 28, 2015 Management Inquiry:

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

Chronology of Events Regarding the Public Records Release

Between Friday August 28, 2015 and Wednesday, September 2, 2015, Mr. Cohen gave several media interviews regarding the City’s surveillance cameras. Mr. Cohen gave information to the media that he later retracted.

On September 2, 2015 at 4:01PM, Hazeline Carson [City Clerk⁷] sent an email to Venice Johnson [Deputy City Clerk-at the time] and Jomekeyia McNeil [Deputy Clerk], “Good afternoon, Per Elliot Cohen, any public records request that comes to this office regarding the IT department or the security cameras are to be sent directly to him. He is creating a public records site on the City’s home page to post this information. Thanks.”

On September 4, 2015 at 11:34AM, Mr. Cohen received an email (pictured on page 3) from Katie LaGrone [WPTV Reporter] CC: Ms. Carson.

On September 4, 2015 at 12:31PM, Mr. Cohen forwarded Ms. LaGrone’s email to Renato Nardoni [Interim Director of IT-at the time] and Christine Brevik [Assistant Director of IT-at the time], “Here is another email records request. Please send the results when completed.”

⁵ From 2015 Sunshine Law Manual (page 52), found at [http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9UPM53/\\$file/2015SunshineLawManual.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9UPM53/$file/2015SunshineLawManual.pdf).

⁶ **Attachment B.**

⁷ Per General Administration, Chapter 1, Policy 1-2, Public Records Requests, the City Clerk is the “Custodian of Public Record”.

On September 4, 2015 at 1:18PM, Mr. Cohen forwarded Ms. LaGrone's email to Rita Sackmann [City Computer Operator] without comment; however, the body of Ms. LaGrone's email had been edited to remove everything but the search items being requested⁸ (for reference, see original email on page 3).



On September 4, 2015 at 1:31PM, Ms. Brevik forwarded Mr. Cohen's 12:31PM email to Ms. Sackmann, "Rita, Please let me know when completed."

On September 4, 2015 at 1:47PM, Ms. Brevik replied to Mr. Cohen's 12:31PM email CC: Mr. Nardoni and Ms. Sackmann, "Elliot, Rita will begin working on the email request. It is my understanding that the Clerk's office is responsible for 'memos, drafts, letters, texts and/or any other documents'. Is that your understanding?" Ms. Brevik informed us, "Mr. Cohen contacted her [Ms. Sackmann] directly and said she was supposed to turn it over directly to him, which she did. And that [conversation] happened without my knowledge."

On September 4, 2015 at 1:48PM, Mr. Cohen responded to Ms. Brevik CC: Mr. Nardoni and Ms. Sackmann, "yes. Spoke to rita. You guys are just emails."

On September 4, 2015 at 3:13PM, Mr. Cohen forwarded Ms. LaGrone's unedited 11:34AM email to Ms. Carson, "I'm taking care of this also."

On September 4, 2015 at 4:05PM, Ms. Sackmann sent an email [the TO: portion of the email is blank] BCC: Mr. Cohen, "Hi Elliot...I also have the CDs if you need them." The email contained two file attachments, one of which was titled ECohen-LaGrone.pdf.

On September 8, 2015 at 11:40AM, a software package, WordPress, was used by "ecohen" to edit the City's #transparency webpage to add a download link to a file titled LaGrone.pdf.

On September 8, 2015 at 11:45AM, Mr. Cohen responded to Ms. LaGrone's September 4, 2015 11:34AM email, "Katie, The records you've requested are available for download at <http://bit.ly/WPBprr> Thx."

⁸ We found multiple instances, in addition to this request, where Mr. Cohen would cut and paste only the information being requested and only send that to whomever he was asking to gather the information. At times, enough information was removed so it was no longer obvious that it was a public records request.

On Friday September 11, 2015 at 3:24PM, WordPress was again used by “ecohen” to edit the City’s #transparency webpage to remove the download link to the file titled LaGrone.pdf.

Actions that were Undertaken During the Gathering of the Emails

It should be noted that from the time Ms. Sackmann was notified of the LaGrone PRR (September 4, 2015 at 1:18PM) until she emailed Mr. Cohen the results (September 4, 2015 at 4:05PM, an elapsed time of **2 hours 47 minutes**), Ms. Sackmann had to conduct 2 keyword searches⁹ of 4 separate databases,¹⁰ for a total of 8 searches, to identify the 1,073 emails containing 2,224 pages. She then had to copy those 2,224 pages of emails to a separate location, convert them to pdf format, and compile them into a single file. Ms. Sackmann told us that the entire time was taken up processing Mr. Cohen’s request. She stated, “We don’t know how to redact, we don’t know what needs to be dract [redacted]... we haven’t, we weren’t trained on that type of...” Ms. Sackmann said that even if she would have been responsible to perform redaction, there would have been no time for her to do it prior to her emailing Mr. Cohen the resulting file. “There’s no way. Absolutely, no way.”

Dorritt Miller, Deputy City Administrator, a 25 year City employee, the last 17 of which have been in City Administration, stated with regard to requests involving the IT department, “They would extract the information give it to you on a CD or a thumb drive and then it’s taken to the respective departments to get it redacted.” She was asked if IT would have been the one to take it to the various departments and she said, “it would have gone back to Hazel [Carson] or whomever it is...based on state law you can actually redact your personal email...that is the normal practice.”

Susan Stone, Systems Administrator, who has worked in the City IT department for 20 years and has conducted similar keyword searches of City emails, without knowledge of the timeframe of the LaGrone PRR, indicated a request of this nature could take 2-3 days. She stated the searches can take so long that she will sometimes start them prior to going home for the day and let them run overnight.

Additionally, Danielle Davila, Police Services Supervisor, was later required to redact the 2,224 pages in a subsequent public records request after the LaGrone PRR was removed from the City’s website. Ms. Davila stated **it took her 40 hours to do the redaction.**

Based on witness statements and documents reviewed, it has been determined that the records could not have been identified, copied, converted, REVIEWED, AND REDACTED in the 2 hours 47 minutes it took Ms. Sackmann to fulfill Mr. Cohen’s

⁹ The LaGrone PRR was for a search of 12 keywords. The City’s email software, Lotus Notes, would not permit a search of this many keywords without failing. Ms. Sackmann conducted a search of the first eight keywords and then had to conduct a second search of the remaining four keywords.

¹⁰ The way Lotus Notes was configured at the City, it requires at least one database for each month. For both August and September 2015, there were two databases for each month, thus requiring a total of four databases to be searched.

request. It will later be demonstrated that with Mr. Cohen's training and experience, he should have realized that the records provided back to him by IT could not have been properly reviewed and redacted in only 2 hours and 47 minutes.

City's Response to the Release of Public Records

In the City's October 26, 2015 response to the OIG, Jeffrey Green, City Administrator, wrote, "The release of exempt and confidential information was due to a break down in application of the City of West Palm Beach Public Records policy."

Mayor Muoio told us regarding Mr. Cohen, "I just don't think it was on the front of his mind to consider redaction, that's not something he's responsible for, he gets the records, he puts them out. I don't see why that would even enter, you know, his thought process." She also said, "Everybody was doing their job and it just went wildly out of control...to some extent we decided to be more open and more transparent and really make it, information available to the public. Obviously, we should have redacted them but there was no point of responsibility."

Mr. Cohen's Employment/Background/Experience Dealing with Sensitive Public Records Requests

Mr. Cohen was the Public Information Officer (PIO) for the City from January 18, 2005 to September 2, 2005. He served as the Director of Media Relations for the Broward County Sheriff's Office (BSO) from September 12, 2005 to February 15, 2008. During his tenure at BSO, his office was responsible for handling PRRs. He was rehired by the City as PIO

on May 14, 2012 and was promoted to Director of Communications (his position during the timeframe covered by this investigation) on November 25, 2012. When the LaGrone PRR came in, it is reasonable to assume that based on Mr. Cohen's background and experience he should have expected that the first two key words being searched for, "camera" and "surveillance," would result in emails related to the Police Department which may include "exempt" or "confidential and exempt" information.



News Release
Broward Sheriff's Office • Public Information Office
954.831.8300 • www.sheriff.org

NEW E-MAIL ADDRESS FOR BSO PUBLIC RECORDS REQUESTS

mediarelations@sheriff.org

In an effort to better respond to public records inquiries and other matters concerning written requests for information, a new e-mail address has been set up to receive all public records requests.

The new address – mediarelations@sheriff.org - will ensure your request is distributed to a wider list of recipients than previous requests sent to one individual member of the Department of Media Relations. Inquiries sent to this address will also now be able to be tracked more quickly than requests sent to individual public information officers.

Please make sure every member of your staff who will be sending future public records requests has this new e-mail address to ensure their request is properly received and processed.

This is the latest change following the recent media relations customer survey. BSO Media Relations would like to thank all the members of the media who responded to the survey. We are currently working on additional changes in response to media suggestions. The survey remains available at www.sheriff.org/mediasurvey.

This report by:
Elliot Cohen / Dir. Of Media Relations

Posted At: 01/13/2006 12:19 PM

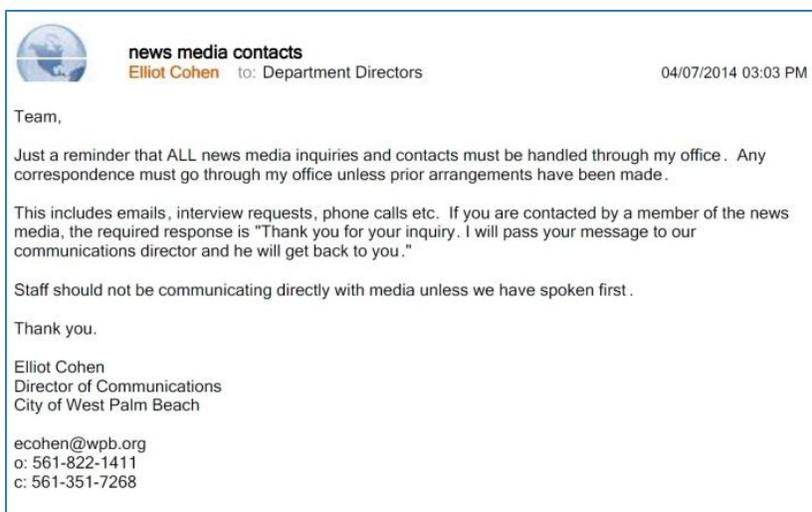
City Public Records Policy

Custodian of Public Record – the City Clerk has custody of all official City documents, such as ordinances, resolutions and contracts, and all records in accordance with applicable laws regarding records retention.

Public Records Request Database – the database is a tool that will help in determining the cost related to the request, tracking the request to ensure a response is provided in a timely manner, and determining if the City Clerk’s Office or City Attorney’s Office should handle the request.

Redact – concealment from a copy of an original public record or from an electronic image that is available for public viewing, that portion of the record containing exempt information.

Standards and Procedures, A.4 states, “Requests from media organizations, e.g. newspapers, television stations, and radio stations, shall be coordinated with the City’s Public Information Officer.” OIG Comment: The policy states “coordinated with the City’s Public Information Officer” NOT “handled” or “executed” by the City’s Public Information Officer. Ms. Carson, who has 12



years experience being the Custodian of Public Record for multiple municipalities, told us that when she first started with the City in September 2012, Mr. Cohen told her that “he would take care of all media requests” for PRRs. Ms. Carson expected that he would enter them into the database. She asked Mr. Cohen, “Do you use the database?” Ms. Carson told us in the affirmative that he said “he puts them in himself.” After the release of the LaGrone PRR, Ms. Carson was told by the Mayor any media PRR will go through her [Ms. Carson’s] office.

Standards and Procedures, A.2c & 3b, requires entry into the City’s Public Records Request Database if the request will take 5 days or more (2c) or if it is a “Complex Request” – “Requests of such nature that assembling documents may involve much research ... review and/or redaction of information is necessary, or exemptions may exist” (3b). OIG Comment: This is the type of request Mr. Cohen received in the LaGrone PRR by nature of the specific terms to be queried and the span across multiple City departments, including the Police Department. As such, it was a “complex

request.” However, the LaGrone PRR was not entered into the City’s Public Records Request Database as required by City policy.

Exemptions and Confidential Records, D.1 states, “Requests for documents which may contain information that is exempt from disclosure under Florida law may be delayed until the records can be reviewed and redacted as necessary by the Custodian of the Records.” OIG Comment: As a result of Mr. Cohen’s actions, he circumvented City policy for review and redaction by the custodian of the records.

Exemptions and Confidential Records, D.3 provides examples of records that may be confidential and/or exempt from disclosure under the Public Records Act. They include, but are not limited to:

- Active criminal and intelligence information (119.071(2)(c)).
- Information regarding confidential informants (119.071(2)(f)).
- Social Security Numbers (119.071(4)).
- Information regarding the City’s security systems or emergency plans (119.071(3)).
- Information regarding victims of crime – some limitation to exemption (119.071(2)).

It should be noted that there were additional aspects of the City’s PRR Policy that Mr. Cohen did not follow with the LaGrone PRR. As example, charging for public records and waiting until a 50% deposit is collected prior to proceeding with the request. Neither of these policy requirements were followed.

Analysis of Mr. Cohen’s Actions

Mr. Cohen circumvented the process. He excluded the Custodian of Public Record, thereby assuming the responsibilities of the Custodian of Public Record. We reviewed thousands of Mr. Cohen’s emails, including many related to media PRR. It is clear



Complex records request from the media
Elliot Cohen To: Sylvia Gregory, David Bernhardt
 Cc: Vincent Demasi, Hazeline Carson, Claudia McKenna 03/08/2013 01:50 PM

Sylvia & Dave,

We’ve received a records request from the media for the following:

- To view the employee files, HR documents, Investigation files, or any other internal employment file associated with 911 dispatch center employees

I have informed the reporter that due to the fact that they are asking for police dept personnel records, it will require us to review, copy and redact any protected information. I have also informed the reporter that we will require a 50% deposit before we begin this work.

As a reminder, the information that needs to be located and redacted before the record is copied includes:

“...The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers...”

I assume that they are asking for records that are located both at the PD as well as HR.

Therefore, can you please send me:

- A list of what employees this request covers.
- An estimate of the total cost to your department to satisfy this request. (Please factor in ALL work for ALL files in ALL locations)

The cost must include staff time in both PD and HR, as well as anywhere else that may need to get involved in this request. (Remember, staff cost is salary PLUS benefits calculated). Cost also includes the cost of copies (15 cents per page).

PLEASE DO NOT BEGIN TO WORK ON THIS UNTIL YOU HAVE HEARD FROM ME. Policy requires we give them a cost estimate ahead of time, and also requires they pay us a 50% deposit before we begin.

I just want to get the \$\$ amount to send them.

Call me if there are any questions.

Thx

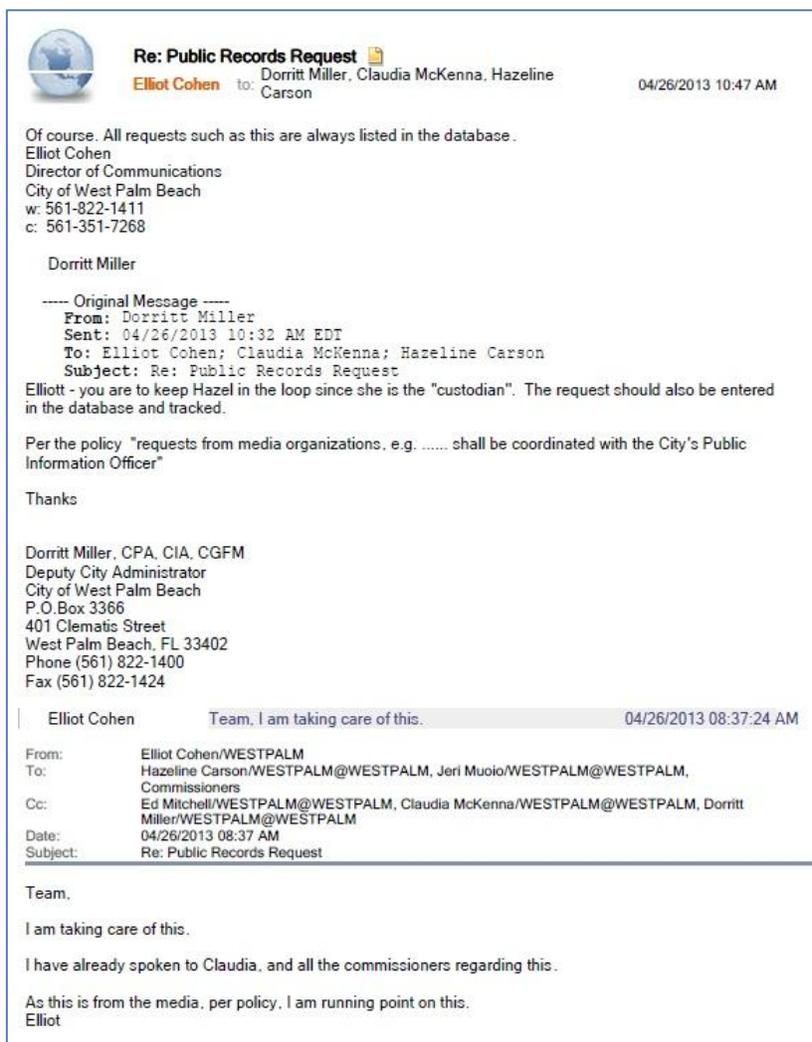
Elliot Cohen
 Director of Communications
 City of West Palm Beach

through these emails that Mr. Cohen was aware of the City's PRR policy. For example, a March 8, 2013 email sent to Sylvia Gregory [Compensation and Employment Manager-at the time], David Bernhardt [Police Captain] demonstrates Mr. Cohen's knowledge of: the need for review and redaction (due to the nature of the request); specific information needing redaction¹¹; providing the PRR requestor with a cost estimate; and, collection of 50% estimated deposit before beginning the work. Additionally, Mr. Cohen instructs the recipients of this email, **"PLEASE DO NOT BEGIN TO WORK ON THIS UNTIL YOU HAVE HEARD FROM ME."**

One month later, Mr. Cohen received PRR processing instructions via email from Ms. Miller.

On April 26, 2013 at 8:37AM, Mr. Cohen replied to all parties, "Team, I am taking care of this. I have already spoken to Claudia, and all the commissioners regarding this. As this is from the media, per policy, I am running point on this."

On April 26, 2013 at 10:32AM, Ms. Miller replied to this email to Mr. Cohen, Claudia McKenna [City Attorney-at the time], and Ms. Carson, "Elliot – you are to keep Hazel in the loop since she is the 'custodian'. The request should also be entered in the database and tracked. Per the policy 'requests from media organizations, e.g. shall be coordinated with the City's Public Information Officer' Thanks"



On April 26, 2013 at 10:47AM, Mr. Cohen replied to Ms. Miller, Ms. McKenna, and Ms. Carson, "Of course. All requests such as this are always listed in the database."

We asked Ms. Miller why she sent this email and she replied that it "must have been that Hazel must have said this is not happening and this was a reminder to her...to him

¹¹ The quote in the center of Mr. Cohen's email is a citation from § 119.071(4)(d)2.a.I, Florida Statutes.

that it needs to be done...So there was a conversation and now remember that I said to him it needs to be there for tracking mechanism to make sure we actually comply with the public records request because we do have some guidelines and timeliness as well to make sure it's being done."

Our investigation disclosed that at no time did Mr. Cohen enter media PRR into the City's Public Records Database. The PRR discussed in the above April 26, 2013 emails was entered into the City's database, but not by Mr. Cohen. Furthermore, the LaGrone PRR of September 4, 2015 was never entered into the City's database – by anyone.

The City's PRR Policy has not changed since December 2009. It states that media PRR requests "shall be coordinated with the City's Public Information Officer." However, this has not been the case at least since Ms. Carson became the City Clerk in September 2012. Ms. Carson told us that after she began, Mr. Cohen told her that he will "handle" all media PRR requests. In doing so, Mr. Cohen usurped Ms. Carson's position and responsibilities as "Custodian of Public Record." In the case with the LaGrone PRR, Mr. Cohen did not "coordinate" with the City Clerk as required by policy. Instead, he told her he was "taking care of this." Mr. Green told us, "If it [the LaGrone PRR] had come from the Clerk's office, then the process would have followed through the way we had it set up." He also said, "Records need to come through the Clerk's office, everybody is supposed to follow that process. And if it would had been followed that way, we wouldn't had a problem." Mr. Green told the media "The breakdown probably wouldn't have happened had the clerk been handling the request, since 'it's really the clerk's function.'"¹² The manner in which Mr. Cohen failed to follow the policy in the processing of the LaGrone PRR has been the norm, not the exception, at least since Ms. Carson became the City Clerk in September 2012.



Both the current Director of IT and the Computer Operator who processed the City public records requests for e-mails (LaGrone PRR) stated the Department has never been responsible for redacting emails they provide to Mr. Cohen for media requests. This is of particular concern since this is not the first time Mr. Cohen has released PRR and; therefore, other instances of improper release of "exempt" or "confidential and exempt" records are a possibility.

¹² From <http://www.mypalmbeachpost.com/news/news/wpb-mayor-blames-process-breakdown-for-release-of-/nnf5Y/>, posted September 15, 2015, updated September 16, 2015.

Damage Caused by the Improper Release of the “Exempt” and “Confidential and Exempt” Information

Some of the sensitive law enforcement information released involved active investigations the City Police Department was working with other local and federal agencies. The damage related to on-going investigations, include identifying information of law enforcement personnel and confidential informants. Department representatives reported concern for the safety of those individuals exposed by the improper release of information. Additionally, they reported that some law enforcement agencies were directed to no longer communicate with City Police Department officers via email concerning police operations.

Corrective Actions Reported by the City to Address the City’s PRR Process

In its October 26, 2015 response to our request for information, the City outlined the following changes in its PRR process:

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

Allegation (2):

City of West Palm Beach Director of Communications Elliot Cohen used his position at the City, as well as, City time and resources to conduct his private business, Cohen Publicity. If supported, the allegation would constitute a violation of City of West Palm Beach General Administration, Chapter 1, Computer Policy, Policy 1-28, Computer Hardware/Software, Networks and Communications Policy, 7.20; City of West Palm Beach Employee Handbook, Employee Relations, Code of Conduct, Integrity and Honesty, o).

Finding:

The information obtained **supports** the allegation based on the OIG review of records and witness interviews. Mr. Cohen was not interviewed due to the referral to the State Attorney’s Office in **Allegation (3)**.

On April 21, 2006, Mr. Cohen filed documents with the Florida Department of State Division of Corporations registering a fictitious name for his business – Cohen Publicity.

On January 9, 2013, Elliot Cohen signed, as President of Cohen Publicity, a professional services contract with RMA to provide “public relations & marketing guidance and support in accordance with a mutually agreed upon marketing plan.” This contract states,



“Independent Contractor [Cohen Publicity] agrees to be available upon reasonable notice for teleconference calls during regular business hours.” The contract further states, “Client [RMA] acknowledges a pre-existing personal and financial relationship with the City of West Palm Beach. RMA, its principles and/or representatives serve as the leadership for the City of West Palm Beach Community Redevelopment Agency. RMA has a longterm relationship with the elected leadership of the City of West Palm Beach.”

On February 2, 2015, Elliot Cohen signed, as President of Cohen Publicity, a professional services contract with the Town of Miami Lakes to provide “Communications, Public Relations and Marketing Support.” The contract states, “Client [Town of Miami Lakes] warrants there exists no business, contractual or personal relationship between Client and the municipal government of the City of West Palm Beach, Florida nor between Client and any of the elected officials of the City of West Palm Beach, Florida that has not been disclosed prior to the execution of this contract.”



Chronology of Events Regarding Mr. Cohen Using City Resources to Conduct his Cohen Publicity Business

On March 30, 2015, Mr. Cohen’s vehicle entered the City’s parking garage at 9:11AM. At 9:18AM, Mr. Cohen utilized the City’s biometric system¹³ to punch in¹⁴ for work. He

¹³ A biometric scanner is used to scan a City employee’s finger print into KRONOS. For “exempt employees”, as Mr. Cohen, one “punch in” would automatically credit the employee for working an eight hour day.

logged in¹⁵ to his City computer at 9:59AM. At 10:02AM, there was an internal phone call on Mr. Cohen's City desk phone that lasted 7 minutes and 52 seconds. At 10:41AM, Mr. Cohen received a call on his Cohen Publicity cell phone¹⁶ from the Town of Miami Lakes. The call lasted 27 minutes and 29 seconds. At 11:08AM, there was an internal phone call on Mr. Cohen's City desk phone that lasted 2 minutes and 20 seconds. Mr. Cohen's vehicle exited the City's parking garage at 7:36PM. Mr. Cohen billed Miami Lakes \$131.25 for 45 minutes for "Client conference call – Client conference call / working on court decision talking points" on this date.

On April 1, 2015, Mr. Cohen's vehicle entered the City's parking garage at 8:33AM. At 12:55PM, Mr. Cohen received an email at his Cohen Publicity email address, from Nicole Lesson [Town of Miami Lakes Communications Manager and Public Information Officer] "*This is the statement the Mayor wrote himself.*" At 1:02PM, Mr. Cohen received a call on his Cohen Publicity cell phone from the Town of Miami Lakes. The call lasted 52 seconds. At 1:05PM a call was placed from Mr. Cohen's City desk phone to the Town of Miami Lakes. The call lasted 40 minutes and 16 seconds. Mr. Cohen's vehicle exited the City's parking garage at 6:02PM. Mr. Cohen billed Miami Lakes \$131.25 for 45 minutes for "Client conference call – Client conference call / discussion on how to handle post-verdict Mayor interviews" on this date.

| City of West Palm Beach Detail Report by Extension | | | | | | | |
|---|-------|----------|---------------|-----------|----------------|----------|------------------------------------|
| Detail Report by Extension | | | | | | | From 03/07/2014 through 03/06/2016 |
| Date | Time | Duration | Cost Facility | Call Type | Phone Number | Location | Account / Matter |
| Data Source: City Hall (1) (Continued) | | | | | | | |
| Extension: 1411 - Cohen, Elliot (Continued) | | | | | | | |
| 04/01/2015 | 13:05 | 0:40:16 | 0.00 2 WAYS | LD | 1-305-364-6100 | OUTBOUND | |

On April 13, 2015, Mr. Cohen's vehicle entered the City's parking garage at 10:59AM. At 11:05AM, Mr. Cohen utilized the City's biometric system to punch in for work. At 12:42PM a call was placed from Mr. Cohen's City desk phone to the Town of Miami Lakes. The call lasted 48 seconds. At 12:54PM, an email was sent from Mr. Cohen's Cohen Publicity email address to Ms. Lesson, "*Nicole, here are some small edits to what you put together...*" Mr. Cohen's vehicle exited the City's parking garage at 7:19PM.

On June 2, 2015, Mr. Cohen's vehicle entered the City's parking garage at 7:53AM. At 7:56AM, Mr. Cohen utilized the City's biometric system to punch in for work. At 2:44PM, an email was sent from Mr. Cohen's City email address. At 3:14PM a call was placed from Mr. Cohen's City desk phone to Ms. Lesson. The call lasted 5 minutes and 14 seconds. Mr. Cohen's vehicle exited the City's parking garage at 6:28PM.

¹⁴ From the Time Detail clock ring sheet for Mr. Cohen as provided by the City from their KRONOS time and attendance system. This report titles this column as "in punch", we will use the more common phrase "punch in".

¹⁵ The information provided by City IT regarding Mr. Cohen's computer access describes this action as "Login", we will use the phrase "logged in".

¹⁶ (561) 676-4949 is shown as the contact phone number on the Cohen Publicity website and the registration for said site.

On July 2, 2015, Mr. Cohen's vehicle entered the City's parking garage at 9:55AM. At 2:19PM, Mr. Cohen utilized the City's biometric system to punch in for work. At 2:31PM a call was placed from Mr. Cohen's City desk phone to the City of Pahokee. The call lasted 1 minute and 39 seconds. At 2:33PM another call was placed from Mr. Cohen's City desk phone to the City of Pahokee. This call lasted 3 minutes and 1 second. At 3:17PM, an email was sent from Mr. Cohen's Cohen Publicity email address to Chandler Williamson [City of Pahokee City Manager] "Subject: Contacting you at the request of WPB Deputy Admin Dorritt Miller". [the body of this email when Mr. Cohen solicits business for Cohen Publicity will be discussed in [Allegation \(4\)](#)] At 3:23PM a call was placed from Mr. Cohen's City desk phone. The call lasted 1 minute and 9 seconds. Mr. Cohen's vehicle exited the City's parking garage at 6:49PM.

On July 29, 2015, Mr. Cohen's vehicle entered the City's parking garage at 8:31AM. At 8:37AM, Mr. Cohen utilized the City's biometric system to punch in for work. At 6:02PM, an email was sent from Mr. Cohen's Cohen Publicity email address to Mr. Williamson, "Subject: Follow up email". [the body of this email will also be discussed in [Allegation \(4\)](#)] Mr. Cohen's vehicle exited the City's parking garage at 6:42PM.

Mr. Green stated regarding Mr. Cohen's use of government property, "Yeah, we've looked into that. Government property, he didn't use, as far as I can tell, his email account, or his computer, his phone." He stated, "Kimberly Rothenberg, the City Attorney, spent time going through that. We had all the emails printed out. We had all the phone records pulled. As far as we can tell, that didn't happen. To be honest, we looked at the dates he billed his clients." He concluded, "We couldn't, we didn't find anything related to government property that he was using."

Chronology of Events Regarding Client Meetings During the City's Official Business Day¹⁷

For the following five client meetings that we identified, which occurred during the City's official business day, we reviewed all City records that were available to us, including: appointment calendars, emails, time and attendance, and parking records. We also reviewed Mr. Cohen's Cohen Publicity: emails and phone records. Records show that for each day; Mr. Cohen was paid for eight hours of work with no leave taken; he did not have any City related appointments before or after the official business day; and, available parking records indicate that Mr. Cohen did not return to the parking garage after client meetings. Additionally, the City's October 26, 2015 response to our Management Inquiry did not provide any documentation that conflicts with our findings. Furthermore, the manner in which the City tracks exempt employee work hours precludes anyone from determining actual hours worked.

On Wednesday, March 13, 2013 at 5:32PM, an email was sent from Mr. Cohen's Cohen Publicity email address to Sharon McCormick [RMA Director of Marketing] and Kim Briesemeister [RMA Managing Member], subject: "Thurs [March 14, 2013] agenda".

¹⁷ Per West Palm Beach General Administration, Chapter 4, Policy 4-6, Work Schedule Policy, Official Business Day is defined as "any day Monday through Friday from 8:00 a.m. to 5:00 p.m."

The email starts out, *“Team, I have two main topics I would like to cover in the morning.”* The email ends with, *“See ya’ in the morn!”*

On Thursday, March 14, 2013 at 10:58PM, an email was sent from Mr. Cohen’s Cohen Publicity email address to Ms. Briesemeister, Christopher Brown [RMA Principal-in Charge] and Ms. McCormick, subject: “Summary of todays meeting”, “Team, Attached is a summary of what was decided today. Please review it and alert me to any changes/errors...I think today was critical to setting up our process. We’re now in a position to really get humming. ec” OIG comment: these two emails indicate a meeting took place the morning of March 14, 2013. Time and attendance records reflect that he was paid eight hours.

On Thursday, March 14, 2013 at 11:14AM, Mr. Cohen received an email at his Cohen Publicity email address from Alicia Alleyne [RMA Project & Marketing Coordinator] “Hi all, How is your schedule for Tuesday [March 19, 2013] @ 130p for about 30-45 mins to meet with Jeremy. He’s going to give us a crash course in our new RMA website, for editing/updating/uploading etc. Elliot, Jeremy said it is not a wordpress site but you will be able to insert text directly. Thanks, Alicia” At 4:54PM, a reply to Ms. Alleyne’s email was sent from Mr. Cohen’s Cohen Publicity email address, “I will be there Tues [March 19, 2013] @ 1:30pm thx ec”

On Tuesday, March 19, 2013, time and attendance records reflect that he was paid eight hours. Mr. Cohen had a scheduled appointment on his calendar from 1:30PM – 2:30PM, subject “web meeting” [see above stated RMA appointment].

On Saturday, January 10, 2015, an email was sent from Mr. Cohen’s Cohen Publicity email address to Diana Young [Town of Miami Lakes Community Affairs Manager] “Let’s get together Monday [January 12, 2015] @ 3pm.”

On Sunday January 11, 2015, Ms. Young replied to Mr. Cohen’s email, “Okay, let’s shoot for 3pm. If anything changes I will let you know. You will be coming to our Town Hall, located at 6601 Main Street, Miami Lakes, Florida 33014.”

On Monday, January 12, 2015, Mr. Cohen’s vehicle entered the City’s parking garage at 8:53AM. At 9:01AM, Mr. Cohen utilized the City’s biometric system to punch in for work. *At 1:32PM, an email was sent from Mr. Cohen’s City email address to David Townsley [Palm Beach County Convention Center Director of Event Technology] “Sure. I am free between now and 2:45 on my cell.”* Mr. Cohen’s vehicle exited the City’s parking garage at 1:37PM. Telephone records for Mr. Cohen’s City cell phone identified his location between the hours of 2:35PM and 5:14PM as Dade County, including Miami Gardens, Miami, and Hialeah. Mr. Cohen billed Miami Lakes \$350.00 for two hours for a “Client meeting” on this date.

On Wednesday, January 21, 2015, Mr. Cohen’s vehicle did not enter the City parking garage, nor did he utilize the City’s biometric system to punch in for work. He was paid

for eight hours worked.¹⁸ At 10:21AM, Mr. Cohen received a call on his Cohen Publicity cell phone from Ms. Lesson. The call lasted 7 minutes 22 seconds. Telephone records for Mr. Cohen's City cell phone identified his location between the hours of 1:59PM and 5:56PM as Broward and Dade County, including Pompano, Coral Springs, Tamarac, Sunrise, and Miami Lakes. Mr. Cohen billed Miami Lakes \$525.00 for three hours for a "Client meeting" on this date.

On Thursday, February 5, 2015, Mr. Cohen's vehicle entered the City's parking garage at 9:33AM. At 9:40AM, Mr. Cohen utilized the City's biometric system to punch in for work. At 2:05PM, Mr. Cohen received a call on his Cohen Publicity cell phone from Ms. Lesson. The call lasted 38 seconds. At 2:09PM, a call was placed from Mr. Cohen's Cohen Publicity cell phone to Ms. Lesson. The call lasted 9 minutes and 52 seconds. At 4:28PM, another call was placed from Mr. Cohen's Cohen Publicity cell phone to Ms. Lesson. This call lasted 5 minutes and 25 seconds. Mr. Cohen's vehicle exited the City's parking garage at 5:40PM. Mr. Cohen billed Miami Lakes \$87.50 for 30 minutes for "Client communication / emails / phone calls" on this date.

On Tuesday, March 10, 2015, Mr. Cohen's vehicle entered the City's parking garage at 8:29AM. At 10:00AM, Mr. Cohen utilized the City's biometric system to punch in for work. At 2:23PM, Mr. Cohen received a call on his Cohen Publicity cell phone from the Town of Miami Lakes. The call lasted 6 minutes and 25 seconds. At 2:44PM, Mr. Cohen received a call on his Cohen Publicity cell phone from Ms. Lesson. The call lasted 3 minutes and 39 seconds. Mr. Cohen's vehicle exited the City's parking garage at 5:16PM. *At 7:30PM, Mr. Cohen received an email at his Cohen Publicity email address, from Ms. Lesson, "My call with the reporter went fine, she said she only was extending an opportunity for Slaton to comment since Pizzi did. Let's see if info is correct in the story. See below. Have a good night and will see you tomorrow [March 11, 2015]."*

On Wednesday, March 11, 2015, Mr. Cohen's vehicle entered the City's parking garage at 8:40AM. Mr. Cohen did not utilize the City's biometric system to punch in for work. He was paid for eight hours worked. Mr. Cohen had a scheduled appointment on his calendar from 12:00PM – 4:00PM for "ML" [Miami Lakes]. Mr. Cohen's vehicle exited the City's parking garage at 12:08PM. At 12:48PM, Mr. Cohen received a call on his Cohen Publicity cell phone from Ms. Lesson. The call lasted 52 seconds. Telephone records for Mr. Cohen's City cell phone identified his location between the hours of 3:20PM and 4:47PM as Palm Beach, Broward and Dade County, including Hialeah, Parkland, Pompano Beach, and Boca Raton. Mr. Cohen billed Miami Lakes \$350.00 for two hours for a "Client meeting" on this date.

¹⁸ Authorized City personnel may override the system to indicate that an employee either did not punch in or was working offsite.

| Cohen Publicity emails, phone calls, meetings occurring M-F 8-5 non-Holiday, non-Leave (2013 – 2015) and client payments | | | | | | |
|---|-------------|----------|------------|------|----------|-------------|
| | Phone calls | | Emails | | Meetings | Payments |
| | # | duration | sent/rec'd | sent | | |
| RMA | 167 | 10:01:59 | 125 | 65 | 2 | \$ 9,159.00 |
| Town of Miami Lakes | 43 | 3:15:02 | 40 | 9 | 3 | \$ 5,400.00 |

We asked the Mayor when Mr. Cohen is working in the office if he is he working for her or is he working for RMA? She replied, "When he's working in the office, he's working for me." She was asked if he was working for any of his clients then? Mayor Muoio answered, "Not that I was aware of." We asked her if that would that be acceptable to her? She responded, "No." Mayor Muoio was then asked if he was doing work for one of his clients RMA or whoever in the office, would that not be acceptable to her? She replied, "I would not expect that that would occur."

OIG Comment/Conclusion

The fluidity, at times, in which Mr. Cohen intermingled his working for the City and his Cohen Publicity business during the City's official business day, using City resources, and whether in or out of his City office space is troubling. We could not with reasonable assurance determine whether he was or was not working for his Cohen Publicity business while being paid by the City. Taxpayers may recognize that many public servants work outside employment. They do not expect to subsidize public servants in their outside employment by the use of government time or resources.

Additionally, taxpayers expect public officials to be good stewards of their dollars, including those surrounding personnel costs (time paid to public servants to work a day's wage for a day's pay). Controls are usually in place to account for small dollar items, like office supplies, so it seems prudent to have adequate controls for the time of highly paid public officials.

There are several types of internal controls both government and private sector employers use to account for employees' time. While no standard exists, the following represents some of the controls often used in accounting for employee time: written policy, work schedules, timesheets/logs, electronic time/attendance software, individual calendars kept with access to supervisors/second parties, project plans with objectives and milestones, on-sight observance, checking in and out verbally or by e-mail with a supervisor/second party (evidence of approval by an authorized official), and completed tasks. We suggest the City consider implementing more of these controls.

Allegation (3):

City of West Palm Beach Director of Communications Elliot Cohen had a contractual relationship with City contractor Redevelopment Management Associates. If supported, the allegation could constitute a violation of F.S. § 112.313(7)(a) and would constitute a violation of City of West Palm Beach Code of Ordinances, Chapter 2, Article VII, Division 2, § 2-513(a).

Finding:

The information obtained **supports** the allegation based on the OIG review of records and witness interviews. Mr. Cohen was not interviewed due to the referral to the State Attorney's Office in **Allegation (3)**. **However, on April 7, 2016, during the PBC COE executive session, Mr. Cohen argued before the commission that his contract with RMA was suspended in June 2013, not cancelled.**

None of the exemptions to F.S. § 112.313(7)(a) as noted in F.S. § 112.313(12) are relevant to the contractual relationship between Mr. Cohen (Cohen Publicity) and RMA.

As mentioned in the previous allegation, Mr. Cohen / Cohen Publicity had a contract with RMA from January 9, 2013 through September 4, 2014 to provide "public relations & marketing guidance and support in accordance with a mutually agreed upon marketing plan."

On December 16, 2013, when RMA signed its contract with the City, Mr. Cohen came into conflict with F.S. § 112.313(7)(a), which states, "No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee". Similarly, City Code of Ordinances § 2-513(a), which states, "The mayor, members of the city commission, and all department heads or directors of the city shall not solicit, accept, nor be employed, directly or indirectly, by any person, firm or corporation having any contractual relation with, or rendering any services to the city, or any department or agency thereof."

Mr. Green told us that he was unaware of Mr. Cohen's contract with RMA until the fall of 2015. Mr. Green stated that he did not view Mr. Cohen's work with RMA as a conflict. He said, "From my standpoint, it would be a conflict if he was doing work for RMA on jobs that we, the City, assigned RMA to accomplish."

Mayor Muoio stated that she was aware that Mr. Cohen has done work for RMA and she did not view his relationship as a conflict. She stated, "As long as he doesn't work on anything related to the City. They have multiple clients and if he works for some other city that's not a conflict." She added, "As long as he continues to do the work I expect him to do as his supervisor and he's there when I need him...then I'm ok with that."

Norman Ostrau¹⁹, City Ethics Officer, told us that during a discussion following the improper records release (in the fall of 2015), “He [Mr. Cohen] never told the Mayor, or Jeff [Green], or anybody. Specifically, that he had the contract [with RMA]. He told me that. And they [Muio and Green], said that also.” Mr. Ostrau stated, “The contract, in my mind was a violation, just the contract having was a violation of the code.” He continued, “It really is a State violation so it should have gone up to the State...Because the State says it’s an absolute prohibition to have any contractual relationship with anybody doing business with your agency. There’s an absolute prohibition. There is no exemption under the thing. If you have a contractual relationship, you either got to get rid of the contractual relationship or leave your agency. So, there is no exemption to it.”

Information obtained regarding **Allegation (3)** as it relates to F.S. § 112.313(7)(a) was *referred* to the State Attorney’s Office and the Florida Commission on Ethics for any actions they deem appropriate (as well as any other matters of interest within this report). PBC COE dismissed a complaint (C15-021) against Mr. Cohen on April 7, 2016 after concluding that no probable cause existed to believe that Mr. Cohen had a relationship with RMA that violated § 2-443(d) of the PBC Code of Ethics.

ADDITIONAL ALLEGATIONS AND FINDINGS

Based on the information obtained during this investigation, the OIG developed three additional allegations and they will be presented with numbers consecutive to those made by our complainants.

Allegation (4):

City of West Palm Beach Director of Communications Elliot Cohen misused his official public office or employment to solicit business for Cohen Publicity. If supported, the allegation would constitute a violation of Palm Beach County Code of Ordinances, Chapter 2, Article XIII, § 2-443(a).

The OIG will make no finding in this allegation as it was referred to the PBC COE for its review. Mr. Cohen was not interviewed due to the referral to the State Attorney’s Office in **Allegation (3)**. During our document review related to **Allegation (2)**, we identified the following information relative to this allegation:

¹⁹ OIG Comment – it is important to note Mr. Ostrau’s background prior to becoming the City’s Ethics Officer. He spent 7 years as the Chairman of Ethics and Elections for the Florida Legislature and 11 years as Broward County’s Deputy County Attorney. He has also served as the Chairman of the State Ethics Commission and as the Director of the Public Ethics Academy at Florida Atlantic University.

On July 2, 2015, at 3:17PM, an email was sent from Mr. Cohen's Cohen Publicity email address to Mr. Williamson, "Subject: Contacting you at the request of WPB Deputy Admin Dorritt Miller".

Chandler,

Congratulations on your new position with the City of Pahokee.

I am the Director of Communications in the Mayor's Office at the City of West Palm Beach and Dorritt Miller has asked that I reach out to you.

I've had a chance to do a short review of your city's communications efforts, and I would be happy to meet with you to talk about creating some successful tactics and strategies to reach best your residents and (sometimes more importantly) keep your Mayor and Commission feeling informed.

I have designed and implemented several successful strategies here in West Palm Beach (city newsletters for residents, employee communications, positive news coverage, and more.) I handle all the city's crisis communications (and would be happy to provide references). I am responsible for the city's social media outreach as well. Under my watch West Palm Beach has tripled the number of people receiving news from the city via social media. In effect, I run a small internal news bureau here at the city that specializes in getting city news directly to residents.

It's always critical that residents know all the good work their city is doing on their behalf, and it's even more important that both residents and Commissioners stay informed.

My complete background can be seen on LinkedIn:
<https://www.linkedin.com/in/elliottcohen>

As an independent consultant, I work with other cities on various communications efforts. I would like to suggest we meet to talk about how I would be able to improve Pahokee's communications efforts. I offer turnkey government communications solutions from the design and maintenance of city newsletters to new websites, to press releases and news media coverage and more. I also can provide video production services to promote the city on social media, your government station and elsewhere. As I have learned, the best way to serve a city such as Pahokee is to make communications as low-maintenance as possible so city leadership can focus on bigger issues. My job is to make sure your residents know about those bigger issues.

I can be reached at this email, or at the cell number below. Again, congratulations on your new position. I look forward to the possibility of helping to design and implement a fresh new communications plan for the city.

Elliot Cohen
cohenpublicity
PR / Video Production/ Crisis Management / Marketing
www.cohenpublicity.com
561-676-4949

On July 29, 2015, at 6:02PM, an email was sent from Mr. Cohen's Cohen Publicity email address to Mr. Williamson, "Subject: Follow up email".

Chandler,

I am following up on my earlier email. I know you have been contacted by others recommending my experience in government communications.

For the purposes of clarity, allow me to further expand on my intent. I became aware of your new position during a city meeting, but after a review of the Pahokee's communications I believe I may be able to help the city as part of my outside work as a government communications expert.

I work as a consultant for several clients including several cities in South Florida. My work is both for immediate crisis management as well as for longer term public relations and communications. Rest assured my work is done with the knowledge and blessing of the city.

I completely understand the financial pressures felt this time of year when preparing next year's budget. That is why I structure my services to be very affordable while providing significant benefits.

Let's get together and talk about how your elected officials and residents can benefit from some basic PR strategies.

Look forward to speaking with you.

Elliot Cohen
561-676-4949

On July 29, 2015 at 6:17PM, Mr. Williamson forwarded the above two emails to Ms. Miller. Mr. Williamson questioned Mr. Cohen's contact and stated "I don't believe these were your intentions for the City of Pahokee."

During an interview, Ms. Miller told us, "I never recommended anybody to them [Pahokee] ok. This is what happened now that you've mentioned about it...We had a meeting, City Manager's Association, where he [Chandler Williamson] said to me he would like, he's trying to do a lot of work in Pahokee, he would to have me be like a mentoring or partner with some city like West Palm Beach. He said to me that if we could help. And he talked about HR best practices oh I said absolutely let me know what you need because we could share services." She further stated, "Now, I had a department head meeting and so it came up where I said ok now we have a big city here and we have lot of resources and we have this guy out in Pahokee he's trying to get some work done he wants to build his city. And we could be like a sister to them a brother to them and so I told him that he could come over here or we could help him with policies and procedures whatever. And so, the meeting ended and it was the intent that we could help him with different policies whatever it is."

Ms. Miller's comment to City department heads intent was for City staff to assist the new Pahokee City Manager, not for anyone to solicit private business.

On July 29, 2015 at 9:35PM, Ms. Miller forwarded Mr. Williamson's email to Mr. Green.

Ms. Miller told us that she met with Mr. Green the next morning, July 30, 2015, regarding Mr. Cohen's emails to Mr. Williamson. She stated that they went to see the Mayor to discuss this issue. While in the meeting, Mr. Green was the one who brought it up to the Mayor.

Mr. Green told us he remembered talking to Ms. Miller about this issue stating "She was concerned whether that would be a conflict or not. Didn't come to any conclusion on it." He said, "She was concerned about it...I didn't have a concern about it because we had talked previously and I knew he was going to solicit business from other cities." He was asked if he talked to the Mayor about this, and he replied "I can't recall."

Allegation (5):

Redevelopment Management Associates did not disclose its business relationship with Elliot Cohen (Cohen Publicity) to the City of West Palm Beach Procurement Official during the procurement process for RFQL 12-13-407. If supported, the allegation would constitute a violation of City of West Palm Beach Code of Ordinances, Chapter 2, Article VII, Division 2, § 2-513(b) and Attachment C, Item 2, in the bid proposal package.

Finding:

The information obtained **supports** the allegation based on the OIG review of records and witness interviews.

As previously mentioned in **Allegations (2) and (3)**, Cohen Publicity and RMA entered into a contract in January 2013 that lasted into September 2014.

Standards

City Code of Ordinances § 2-513(b) states, "No person, firm or corporation having any contractual relation with, or rendering any services to the city, or any department or agency thereof, shall employ, directly or indirectly, the mayor, any member of the city commission, or any department head or director of the city. **No persons, firm or corporation which has the mayor, member of the city commission, or department head or director as an employee, shall be eligible to be considered to have a contractual relation with or to render for any consideration, services to the city.**" [emphasis added]

On October 3, 2013 at 4:25PM, RMA submitted its response to RFQL 12-13-407, Administration of Community Redevelopment Agency (CRA) and City Redevelopment Activities. As part of its proposal, respondents



were required to complete and sign Attachment C, Representations and Disclosures. Item 2 of this form is pertinent to this allegation.

“Conflict of Interest. Proposer has disclosed any actual, apparent or potential conflicts of interest that are present or could develop with respect to providing services under this solicitation any parties to this solicitation or any third parties. Proposer has identified the name of any officer, director, employee or agent who is also an employee or official of the City of West Palm Beach or the West Palm Beach Agencies. Further, Proposer has disclosed the name of any City official or employee or Official who owns, directly or indirectly, interest of ten percent (10%) or more in the Proposer’s firm or any of its affiliates or team members.”

Ms. Briesemeister, RMA Managing Member, signed Attachment C on October 2, 2013 without disclosing any “actual, apparent or potential conflicts of interest” as required.

OIG interview of Kim Briesemeister, Redevelopment Management Associates Managing Member

During our interview, Ms. Briesemeister was asked about her relationship with Mr. Cohen and if it was personal, she replied, “we had a business relationship.” She was asked if she informed the City that Mr. Cohen worked for RMA and she said, “I had told, I believe, the City Manager [Green] and I had asked Elliot to make sure that whatever his outside authorization was, was in place. So yes, I believe I did mention it to the, I believe I mentioned this to the Mayor as well. But, I believe Elliot was the one that was communicating with them directly.” Ms. Briesemeister was asked when this conversation with Mr. Green and the Mayor took place, and she replied, “That would have been before I resigned.” She continued, “Somewhere in February March 2013 that I would have said something. But again I said to Elliot make sure you have your outside employment authorization in place...That would have been in February.”

Ms. Briesemeister was asked if she told anyone else with the City about her business relationship with Mr. Cohen when she submitted her proposal. She replied, “No, because when the RFQ was out, there was a ‘cone of silence’²⁰ so I couldn’t talk to anybody in the City. Because as soon as the City issues the bid, there can be no communication between a potential respondent of which obviously we were one and anybody in the City. That’s the ‘cone of silence’.”

Ms. Briesemeister stated there were no communications either emails or telephone calls with Mr. Cohen (during the ‘cone of silence’), and she said, “That’s correct, from whatever time that bid went out.” She was asked if there were any personal, face to face conversations with Mr. Cohen, she replied, “No, that would have been a violation of the ‘cone of silence’.” Ms. Briesemeister was asked if anyone from her firm had contact with Mr. Cohen and she replied, “No, the same thing. Our firm was on notice and we would have told our employees that you cannot communicate with anybody.”

²⁰ According to the City’s procurement personnel, the Prohibited lobbying ordinance is synonymous with ‘cone of silence’ as used by Ms. Briesemeister.

On January 9, 2013, Elliot Cohen signed, as President of Cohen Publicity, a professional services contract with RMA. Section 7: Term and Termination of the Cohen Publicity / RMA contract states, "The term of this Agreement shall commence on the date hereof. Either party may terminate this contract on 30 days' written notice; otherwise, the contract shall remain in force."

On June 21, 2013 at 3:37PM, an email was sent from Mr. Cohen's Cohen Publicity email account to Ms. Briesemeister at her RMA email account, "Kim, As you know, I've been doing some occasional press release writing for you. In anticipation of the start of the public process next week to discuss the future of the City of West Palm Beach CRA, I think it is best to hold off on that kind of work until the city completes its process of possibly selecting a firm to run the CRA. As you know, I have no role in making any decisions, nor do I have any control in any selection process. I am not paid by the CRA, and I am not involved in the awarding of any contracts, nor in the drafting of any RFQ. I don't have any role in deciding the future of the CRA. However, until the process is over, it's probably best to put it on hold. Thanks. Elliot"

During two sworn interviews with the PBC COE investigator, Mr. Cohen stated "In June [2013] when they started that conversation [to outsource staffing of the CRA] I actually suspended my relationship with RMA" (December 10, 2015 interview) and that he "suspended it [his contract with RMA] in June of 2013 and then it was terminated at the end of the summer of 14." (January 26, 2016 interview) **On April 7, 2016, during the PBC COE executive session, Mr. Cohen argued before the commission that his contract with RMA was suspended in June 2013, not cancelled.**

On September 4, 2014 at 4:33PM, an email was sent from Mr. Cohen's Cohen Publicity email account to Ms. Briesemeister at her RMA email account subject: Termination of our contract, "Kim, After much consideration I would like to propose we terminate the current arrangement we have for PR...I would propose that we terminate the current arrangement of a monthly retainer, and instead work on a case-by-case basis."

City's Expressed Intent for Propriety and Openness

On August 29, 2013, Mayor Muoio sent a memo to the West Palm Beach CRA Staff and Procurement Staff. The memo discussed the impending "RFQ process regarding the restructure of the Community Redevelopment Agency." It reminds and admonishes staff regarding any discussion about the procurement solicitation for administration of the CRA Agency. The Mayor wrote, "I also remind you that you may not have contact with any member of the CRA Board, any potential proposer, nor any officer, employee, sub-contractor, representative or lobbyist of any potential proposer, regarding any matter related to the procurement solicitation." Mr. Cohen was in receipt of this memo.

In a video interview with a local reporter, which was "published" on September 4, 2013²¹ Mayor Muoio responded to the reporter's statement, "There's concern that it's already a done deal, that Ms. Briesemeister's company is going to get the job." She replied, "I

²¹ <http://www.youtube.com/watch?v=BrqjDYGW2OE>

know that. I know that there's concern. I guess I would like to assure people that we are going to do this in the most transparent way and the fairest way possible. And whoever is the most qualified and has the most potential to give us what we want will get the contract."

RMA, Mr. Cohen, and Mayor Muoio not disclosing the contractual relationship between RMA and Mr. Cohen and Mr. Cohen's involvement in the procurement process was contrary to the City's expressed intent for transparency. If procurement officials would have been notified of the contractual relationship between RMA and Mr. Cohen, they would have raised conflict of interest issues.

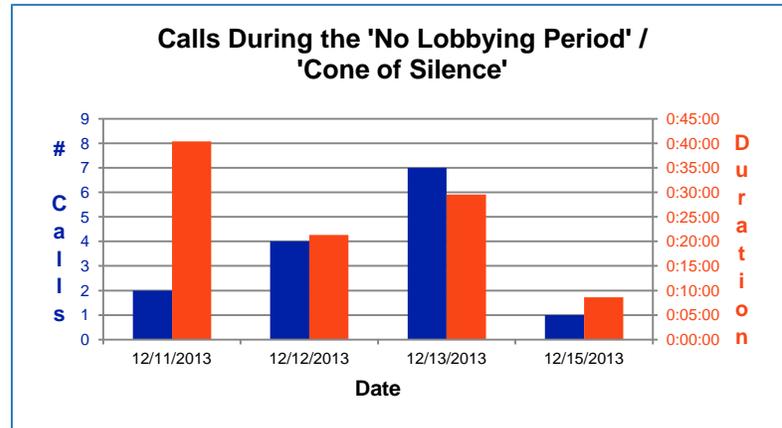
Consequences of Not Disclosing Mr. Cohen's Business Relationship with RMA

Had City procurement officials been made aware of Mr. Cohen's business relationship with RMA, steps would have been taken to investigate and take appropriate actions. Since these officials were not aware of this relationship, Mr. Cohen was included in the selection process.

Between August 20, 2013 and December 16, 2013, Mr. Cohen sent, received, and was copied on several emails pertaining to the selection process. He attended private meetings with City officials, to include procurement officials, where the selection process was discussed and decisions were made. His involvement included input regarding those who would sit on the proposal evaluation committee:

On October 4, 2013 at 3:42PM, Josephine Grosch [City Senior Purchasing Agent] sent an email to Mr. Cohen's City email address and Christopher Roog [City Director of Economic Development], "Elliot & Chris, Attached please find the proposal list. Please advise your recommended elevation [sic] committee list. Please aware that The Urban Group has submitted their proposal, so they will not be permitted to be on the committee. Since we have 6 proposers, are you still target next Friday for evaluation meeting? It seems rush since we don't have the committee list yet." (this was not public knowledge)

During the no lobbying period, which ran from September 4, 2013 (the advertised time) until December 16, 2013 (completed procurement),²² 14 telephone calls lasting a total of 99 minutes occurred between Ms. Briesemeister's cell phone and Mr. Cohen's Cohen Publicity cell phone. Five of these calls were initiated by Ms. Briesemeister and nine were initiated by Mr. Cohen. According to Ms. Briesemeister's statements to us, she had no contact with Mr. Cohen during this time period.



On October 7, 2013 at 4:08PM, Ms. Grosch sent an email to Mr. Cohen's City email address, Mr. Roog, and Mr. Green CC: Festus Hayden [City Procurement Official-at the time]²³ and the selection committee members, subject: "CRA Committee List", "Dear All, Anyone call or approach to you regarding CRA evaluation, please refer all the calls to Procurement. Anyone ask who is on the CRA Committee, please refer to Procurement as well."

OIG interview of Josephine Grosch, City Senior Purchasing Agent

Ms. Grosch told us that during the procurement for the Administration of CRA (RFQL 12-13-407), she was unaware of Mr. Cohen's contract with RMA. She was asked knowing now about Mr. Cohen's relationship with RMA, would that have been a problem during the procurement process. She said, "Yes, would be a problem. Because if he worked for the RMA, then it wouldn't be a fair..." Ms. Grosch told us, "I don't like to let people know who's my selection [committee], I don't like proposers [to] know who's my selection committee. The reason for that is avoid, they solicit our selection committee." She said she would not have wanted Mr. Cohen to know who the selection committee members were prior to it becoming public knowledge much less want him to participate in the selection of those members. Ms. Grosch was asked what else would she have done and she said, "I would tell my supervisor Jeff Green [Director of Finance-at the time].²⁴ Hey, I believe there's a conflict [of] interest Elliot [Cohen] has in this project. He shouldn't be the one knowing about this project info." Ms. Grosch also said, "If I knew he was working with RMA? I would recommend that Elliot shouldn't be copied on everything."

²² As defined in the City of West Palm Beach Code of Ordinances Chapter 66, Article I, § 66-4(b), Completed procurement means the occurrence of the following: the city has executed a contract for the goods, services, or construction procured; and any appeals regarding the procurement have been resolved; or the city has determined that such goods, services, or construction are no longer needed and no further procurement solicitation will be issued.

²³ Festus "Frank" Hayden became the Procurement Official on September 23, 2013. On November 10, 2014, his position title was changed to Director of Procurement.

²⁴ The Procurement Official position reported to the Director of Finance, Mr. Green, and had been vacant from July 5, 2013 until September 23, 2013 when it was filled by Mr. Hayden. Due to this vacancy, Ms. Grosch reported to Mr. Green until Mr. Hayden began as the Procurement Official.

Ms. Grosch was asked about the proposal's Attachment C and whether or not RMA mentioned its contract with Cohen. She replied, "The proposer need[s] to tell the City, right, with a statement...RMA never mentioned it." Ms. Grosch was asked what would be some of the actions that she thought should have been taken? She responded, "I would report to my supervisor that I am aware there is a, that Elliot was this proposer's employee." Ms. Grosch was asked if this would also lend itself to the potential of an unfair advantage? "Yeah, looking back now he was copied on everything – yes." She was asked if this gave RMA an unfair advantage? She responded, "The perception is yes."

OIG interview of Frank Hayden, City Procurement Official-at the time

Mr. Hayden, explained to us what a conflict of interest is, "It's like you have an unfair advantage. In terms of the other folks who will [be] playing the game." He was asked if the onus is on the proposer to disclose to him if they have a conflict? Mr. Hayden said, "Yes...The onus is upon you [the proposer] to bring it to my attention...You can either do it by email or you can pick up the phone and give me a call." He said if a possible conflict was noted, "Then it would be on our benefit that we'd have to investigate into that. And if it is a conflict in terms of that, then we should remove whatever that conflict is."

Mr. Hayden was asked if he was made aware that an employee with the City had a contract with one of the firms? He said, "No. I was not made aware of that." He continued, "No. I did not. Never heard that." Mr. Hayden was asked if he knew during the procurement process that Mr. Cohen had a contract with RMA? He responded, "No sir...and yes, based on what you're saying to me, him having this information [the names of the selection committee members] could be viewed as a conflict of interest because now he has knowledge that nobody else who is proposing for this project has knowledge of." He said, "I would view it as a conflict of interest no matter what his contract was with the company." Mr. Hayden was asked if he felt that Mr. Cohen should have, if RMA did not, disclosed this contractual relationship? He replied, "Yes...He added, "as I said to both of you before, process is important to me. Integrity within your process is important. And when the slightest thing implies that you don't have a fair process, excuse my language, it pisses me off." Mr. Hayden was asked what if you were told that during the cone of silence period there was contact between Mr. Cohen and RMA? He stated, "Then I'd move past anger and be truly pissed. And it's not about Elliot. It is about, you have to have integrity in terms of what you do. People are not gonna want to come play in your sandbox if the sandbox is filthy and dirty."

Mr. Hayden was asked if by not disclosing the contractual relationship between Mr. Cohen and RMA and then RMA was awarded the contract, what happens then? He said, "It would depend, in my opinion, what weight the non disclosure had on whether or not this firm was awarded the contract." He continued, "So, hypothetically, it would require us to do some investigation and if the investigation turned out that having this contract with this City employee at the time that they were awarded the contract gave them an unfair advantage over everybody else, then as far as I'm concerned, the contract would have to be terminated."

OIG interview of Geraldine Muoio, City Mayor

When we spoke with Mayor Muoio, we inquired about the large amount of effort they put into having transparency regarding the outsourcing of the CRA. She replied, "Outsourcing was a new approach to take and people were generally skeptical of the approach so I wanted to make sure that everybody knew what was going on and how we were approaching it." During our interview with Mayor Muoio we asked, when she first become aware of the contract between RMA and Mr. Cohen? Mayor Muoio said, "I can't really say, I really don't remember when I first knew it. I knew that he had outside work. I knew that he had done some work for them [RMA] but I can't exactly tell you when I knew." We asked, if she knew prior to the posting of the LaGrone PRR in the Fall of 2015. She replied, "I knew prior to when we contracted with RMA." The Mayor was asked, if this would be in 2013. She said, "So, I knew that [Mr. Cohen] had worked with them [RMA] before that. I knew that he stopped working with them as we were going through the procurement process as we would have expected him to do. And then, I know that after that he had another contract with them." We asked, how she knew that he stopped working for them? She said, "He told me." We inquired if she asked for any kind of proof and she replied that she did not. We inquired if she asked to see the contract at that time? She said, "No."



We inquired if she had any discussions with Ms. Briesemeister about Mr. Cohen's relationship with RMA or what he was doing. The Mayor said, "No." We queried whether she asked Ms. Briesemeister if Mr. Cohen put his contract on hold during this time period, and she replied, "No." We asked her if she had a conversation about

Mr. Cohen's contract with RMA with anybody and she replied, "No." Mayor Muoio was asked, if there came a time when she spoke with the City's Ethics Officer, Mr. Ostrau about the relationship between Mr. Cohen and RMA and she did not recall.

OIG interview of Norman Ostrau, City Ethics Officer

Mr. Ostrau, who interviewed Mr. Cohen in the fall of 2015 after the press published his contract with RMA, was asked who would have had knowledge of Mr. Cohen working for RMA? Mr. Ostrau said, "Who he told? He said 'nobody'." After speaking to Mr. Cohen, Mr. Ostrau said he spoke to Mr. Green and then the Mayor came in where they were speaking and he spoke to both of them. Mr. Ostrau was asked when he told the Mayor and Mr. Green that Mr. Cohen worked for RMA, neither one of them had any knowledge of this fact. Mr. Ostrau said, "That's what they said." Mr. Ostrau stated, "They [RMA] had an obligation to disclose if they had any relationship prior to this...they [RMA] have

an affirmative obligation.” Mr. Ostrau concluded, “After I had the general discussion with him [Mr. Cohen], I went to the Mayor and said I think they’re both messed up and I think something should be done. Then that was it, for me.”

Allegation (6):

Redevelopment Management Associates did not properly disclose its business relationship with Elliot Cohen (Cohen Publicity) to the City of West Palm Beach once it was awarded the contract for RFQL 12-13-407. If supported, the allegation would constitute a violation of City of West Palm Beach Code of Ordinances, Chapter 2, Article VII, Division 2, § 2-513(b) and the Agreement for Management and Staffing of the West Palm Beach Community Redevelopment Agency and West Palm Beach Redevelopment Activities, No Conflicts, 19.3.

Finding:

The information obtained **supports** the allegation based on the OIG review of records and witness interviews.

As previously discussed in **Allegations (2), (3), and (5)**, Cohen Publicity and RMA entered into a contract in January 2013 that lasted into September 2014.

On December 16, 2013, the Agreement for Management and Staffing of the West Palm Beach Community Redevelopment Agency and West Palm Beach Redevelopment Activities (Contract) was signed by the Mayor for the City and Mr. Brown for RMA.

Standards

City Code of Ordinances § 2-513(b), states “***No person, firm or corporation having any contractual relation with, or rendering any services to the city, or any department or agency thereof, shall employ, directly or indirectly, the mayor, any member of the city commission, or any department head or director of the city.*** No persons, firm or corporation which has the mayor, member of the city commission, or department head or director as an employee, shall be eligible to be considered to have a contractual relation with or to render for any consideration, services to the city.” [emphasis added]

The Contract, Section 19 NO CONFLICTS, 19.3 “***RMA represents that it does not employ, directly or indirectly, the mayor, members of the city commission or any official, department director, head of any City agency, or member of any board, committee or agency of the City.***” [emphasis added] Section 19.9 of the Contract discusses how RMA must notify the City of all potential conflicts of interests or any events described in Section 19.

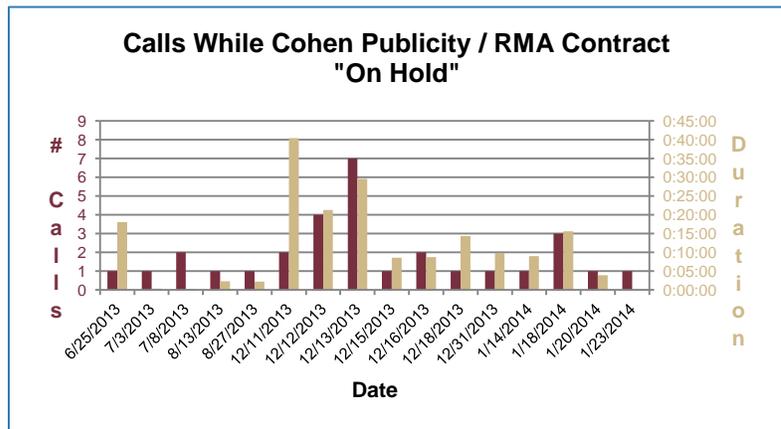
Contact between Mr. Cohen and RMA while their contract was “on hold”

As previously discussed in **Allegation (5)**, on June 21, 2013, Mr. Cohen told RMA principal, Ms. Briesemeister, via email regarding Cohen Publicity’s contract with RMA,

that he wanted to "...until the city completes its process of possibly selecting a firm to run the CRA...it's probably best to put it on hold." Additionally, Ms. Briesemeister told us that "we had a business relationship" when asked about her relationship with Mr. Cohen.

On January 31, 2014, a series of emails was sent between Mr. Cohen's Cohen Publicity email account and Ms. Briesemeister and Mr. Brown discussing moving forward with their contractual agreement, culminating with Ms. Briesemeister saying, "I'm saying again as much as we want you to start again, your boss (Jeff) [Green] has to agree." Mr. Cohen responded by saying, "That's great, because he knows and says it's perfectly fine."

There were 30 phone calls lasting over 3 hours between Mr. Cohen's Cohen Publicity cell phone and either Ms. Briesemeister or Ms. McCormick that occurred after June 21, 2013 and prior to January 31, 2014 while the contract between Cohen Publicity and RMA was "on hold."



Mr. Ostrau told us "RMA had an affirmative obligation to let us [the City] know at the time that they entered the contract that they had an employment relationship with him [Mr. Cohen]. They never did. They never said anything." Mr. Ostrau continued, "So, if it was ongoing it would have been an absolute violation and at that time if he had a contractual relationship it would not only be a violation of that [County Ethics code] but also the State Ethics code 112.313(7)." Mr. Ostrau said he reviewed the file containing RMA's contract with the City and he said "I asked the attorneys in the office if anybody had gotten, when they did the contract, if they had any disclosures cause I pulled the contract." There were not any disclosures.

Based on our supported findings in **Allegations (3), (5), and (6)**, and particularly that RMA did not disclose its business relationship with Mr. Cohen (Cohen Publicity) as required, we consider the entire amount the City has spent to date on the RMA Contract, **\$3,205,611.78** to be questioned costs.

RECOMMENDATIONS

The OIG recommends the following:

1. Take appropriate personnel actions.

2. Take appropriate action to ensure that City employees adhere to General Administration, Chapter 1, Policy 1-2, Public Records Requests.
3. Revise written policies and procedures on outside employment requiring employees to obtain approval for leave or work schedule adjustment prior to performing outside employment during the official business day. They should be clearly communicated to City employees and documented.
4. Establish internal controls that accurately represent actual hours worked by exempt City employees.
5. Review the City's contract with RMA in light of the findings and information provided within this report and take appropriate action.

QUESTIONED COSTS

Questioned Costs: \$3,205,611.78

RESPONSE FROM MANAGEMENT

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, on September 15, 2016, the City, Elliot Cohen, and RMA were provided the opportunity to submit a written explanation or rebuttal to the findings as stated in this Investigative Report within ten (10) calendar days. On September 21, 2016, the City provided its written response. On September 26, 2016, written responses were provided by Mr. Cohen and RMA. All responses, in their entirety, are attached to this report.

The following addresses the City's response to our recommendations

OIG Recommendation #1: Take appropriate personnel actions.

City's Response, in part: "...the City has determined that no personnel actions are necessary."

OIG Comment: Since Mr. Cohen resigned from his position before this report was issued and the City deems no other personnel actions are necessary, we will close this recommendation.

OIG Recommendation #2: Take appropriate action to ensure that City employees adhere to General Administration, Chapter 1, Policy 1-2, Public Records Requests.

City's Response, in part: "Elliott [sic] Cohen did not review the records but believed that the documents were public records that were reviewed and redacted as required. The release of exempt and confidential information was due to a break down in application of the City of West Palm Beach Public Records policy."

OIG Comment: The “break down in application of the City of West Palm Beach Public Records policy” was due to Mr. Cohen circumventing said policy. In doing so, Mr. Cohen assumed the responsibilities of the Custodian of Public Records which would include the redaction process. Additionally, evidence provided in our report demonstrated that due to Mr. Cohen’s experience in dealing with PRRs, he should have known IT was not responsible for reviewing or redacting. The 2 hours 47 minutes it took Mr. Cohen to receive the LaGrone PRR file from IT (1,073 emails containing 2,224 pages) would have been insufficient time for anyone to review and redact this material.

City’s Response, in part (continued): “The City believes that no further changes are needed at this time. The City will, however, continue to review its public records policy to see if any additional changes can be made to further protect exempt and confidential information.”

OIG Comment: On page 13 of this report, we acknowledge four corrective actions reported by the City to address its PRR process and that the City will continue to review.

OIG Recommendation #3: Revise written policies and procedures on outside employment requiring employees to obtain approval for leave or work schedule adjustment prior to performing outside employment during the official business day. They should be clearly communicated to City employees and documented.

City’s Response, in part: “The City has many checks and balances to assure that employees are working during City work hours...Supervisors are expected to manage their employees in such a manner as to ensure they are expending at least 40 hours per week performing work for the City...The City does not believe that any additional changes to its policies are needed at this time.”

OIG Comment: We agree with the City that supervisors should be expected to manage their employees and have adequate internal controls in place to account for employee time. However, in this particular case, we did not find evidence of sufficient accounting. This contributed to an environment where Mr. Cohen could fluidly move from his City employment to his personal Cohen Publicity work during the “official business day” using City resources paid for by taxpayer dollars.

We urge the City to reconsider our recommendation.

OIG Recommendation #4: Establish internal controls that accurately represent actual hours worked by exempt City employees.

City’s Response, in part: The City provides a description of some of its controls to monitor employee time and states, “The City is comfortable with the controls it already has in place to monitor the actual hours worked by exempt employees.”

OIG Comment: Similar to our comments regarding Recommendation #3, in this particular case we did not find evidence of sufficient controls in place to account for Mr. Cohen's (an exempt employee) time. We could not find nor could the City provide us with sufficient evidence that Mr. Cohen routinely worked 80 hours per pay period.

We urge the City to reconsider our recommendation.

OIG Recommendation #5: Review the City's contract with RMA in light of the findings and information provided within this report and take appropriate action.

City's Response, in part: "The City will review what weight (if any) the non-disclosure had on RMA being awarded the contract. In the event the City determines that it did not have a material effect on the contract award, then no further action will be taken."

OIG Comment: We accept the City's response as a concurrence with our recommendation and will follow-up on its implementation.

The following addresses Mr. Cohen's response²⁵ to our findings

Mr. Cohen's comments prior to addressing the findings in our report:

Mr. Cohen's Response, in part: "...a request to the OIG to review all the documents and transcripts in their entirety...was denied by the OIG...The OIG cites county ordinances as justification for the refusal, but ignore the question of fundamental fairness of the process."

OIG Comment: Section 2-423(10) of Palm Beach County, Florida – Code of Ordinances, Chapter 2 – Administration, ARTICLE XII – INSPECTOR GENERAL, as well as, § 112.3188(2) and § 119.0713(2)(b), F.S. provides legal requirements related to OIG "confidential and exempt" information. "Fairness" in this case must be measured within these legal standards.

Mr. Cohen's Response, in part: "...the OIG and the City of West Palm Beach have been fighting for several years in court...over the city's refusal to pay what the OIG claims is the city's share of money to fund the OIG office."

OIG Comment: Several municipalities are involved in a lawsuit against Palm Beach County over the County ordinance's OIG funding language. The OIG is not a party to this lawsuit or involved in any funding disputes between the County and some of the municipalities.

²⁵ Reference to page numbers by Mr. Cohen in the OIG Draft report will not match the page numbers in this OIG Final report as Mr. Cohen only received the pages containing the allegations against him, as required by the IG Ordinance.

Mr. Cohen's Response, in part: "At no time was Mr. Cohen interviewed or given an opportunity to provide further information. Mr. Cohen was never afforded the choice to waive any privilege in the interest of providing information."

OIG Comment: Since some of the allegations have been referred to the State Attorney's Office for possible criminal investigation, Mr. Cohen was not interviewed. During the course of our investigation, Mr. Cohen provided, via subpoena, hundreds of pages of documents/evidence. Contrary to Mr. Cohen's assertion, he was afforded the opportunity to provide additional information and or documents as well as respond to the allegations which he took advantage of in his attached written response.

OIG supported finding to Allegation #1: Elliot Cohen improperly disclosed "exempt" and "confidential and exempt" information.

Mr. Cohen's Response, in part: "...the city, which is the only legal entity responsible for...making the determination if any city policy violation occurred..."

OIG Comment: The OIG has authority to determine whether any city policy violations occur. Section 2-422 of Palm Beach County, Florida – Code of Ordinances, Chapter 2 – Administration, ARTICLE XII – INSPECTOR GENERAL states, "The inspector general shall initiate, conduct, supervise and coordinate investigations designed to detect, deter, prevent and eradicate fraud, waste, mismanagement, misconduct, and other abuses by elected and appointed county and municipal officials and employees." Section 2-423(2) states, "The inspector general shall conduct investigations and audits in accordance with applicable laws, rules, regulations, policies and past practices." Therefore, Mr. Cohen incorrectly asserts that the City "is the only legal entity responsible for...making the determination if any city policy violation occurred..."

Mr. Cohen is correct in stating the City is responsible "for enforcing all city policies." He is also correct in that the City's October 26, 2015 response to our Management Inquiry stated that the release of the confidential and exempt information was a "break down in application of the City of West Palm Beach Public Records policy." From our further investigation, we concluded the root cause of the "break down" was Mr. Cohen not following the written policy.

Mr. Cohen's Response, in part: "...the city...determined a year ago there was no violation of policy. A third party OIG opinion a year after the fact and expressed in this report does not change that determination."

OIG Comment: The OIG is not a "third party," but an "independent" investigative office as described in Section 2-422 of Palm Beach County, Florida – Code of Ordinances, Chapter 2 – Administration, ARTICLE XII – INSPECTOR GENERAL. As mentioned in our report and above in our response to the City, the "break down in application of the City of West Palm Beach Public Records policy" was due to Mr.

Cohen circumventing said policy. In doing so, Mr. Cohen assumed the responsibilities of the Custodian of Public Records which would include ensuring the records were redacted before they were released.

OIG supported finding to Allegation #2: Elliot Cohen used his position at the City, as well as, City time and resources to conduct his private business, Cohen Publicity.

Mr. Cohen's Response in part: Mr. Cohen quotes the City's October 26, 2015 report: "Based on the information reviewed, there has been **no evidence found to support the allegation** that Elliot Cohen is operating a private business during 'his City work hours.'" [emphasis added by Mr. Cohen] Mr. Cohen addresses some of the issues regarding his time and attendance. He did not address the issues of abuse of his position and use of City resources for his personal business (Cohen Publicity).

OIG Comment: We investigated and supported the allegation that Mr. Cohen used City resources during the City's "official business day," as defined by West Palm Beach General Administration Chapter 4, Policy 4-6, to conduct his private business, Cohen Publicity. Neither the City nor Mr. Cohen provided any information to show that his supervisor approved an alternate work schedule in writing as required by the City's policy. Furthermore, as mentioned in our report and reiterated in our response to the City regarding Recommendations #3 and #4, we did not find evidence of sufficient controls in place by the City to account for Mr. Cohen's work time.

OIG supported finding to Allegation #3: Elliot Cohen had a contractual relationship with City contractor Redevelopment Management Associates.

Mr. Cohen's Response, in part: "Following an investigation by the Commission [Palm Beach County on Ethics] and a probable cause hearing before Commissioners, 'the Commission concluded no probable cause exists to believe any violation occurred.'"

OIG Comment: The COE investigated and ruled on the County Code of Ethics. We investigated § 112.313(7)(a), F.S., as well as, City of West Palm Beach Code of Ordinances, Chapter 2, Article VII, Division 2, § 2-513(a). Due to our supported finding, we have made a referral to the State Attorney's Office for possible criminal investigation and the Florida Commission on Ethics for any actions they deem appropriate regarding § 112.313(7)(a), F.S.

OIG Allegation #4: Elliot Cohen misused his official public office or employment to solicit business for Cohen Publicity.

Mr. Cohen's Response: "No action was taken on this matter. No work was performed."

OIG Comment: We did not make a determination on this allegation as it was referred to the PBC COE, State Attorney's Office for possible criminal investigation, and the Florida Commission on Ethics for any actions they deem appropriate.

The following addresses RMA's response to our findings

OIG supported finding to Allegation #5: Redevelopment Management Associates did not disclose its business relationship with Elliot Cohen (Cohen Publicity) to the City of West Palm Beach Procurement Official during the procurement process for RFQL 12-13-407.

RMA's Response, in part: "During the timeframe in question, the parties had no ongoing business relationship...the consulting agreement was suspended by mutual consent...Accordingly, the parties had no understanding or agreement resembling a current or ongoing business relationship when the CRA procurement was under review by the City..."

OIG Comment: The contract between RMA and Mr. Cohen (Cohen Publicity) signed on January 9, 2013 continued until terminated on September 4, 2014. As a result of Mr. Cohen's email to Ms. Briesemeister, they agreed to put any work performed by Cohen for RMA "on hold" until the selection process ended. However, having an ongoing contract with work "on hold," was still an ongoing contract that was in effect during the time RMA responded to the RFQL, as well as, throughout the entire procurement process. Indeed, Mr. Cohen argued before the COE that the contract was maintained in effect throughout the procurement process, albeit "suspended." On her own accord and without consulting, or even informing, the City procurement officials (as required by Attachment C to the RFQL), Ms. Briesemeister determined this relieved RMA from its responsibility to disclose its business relationship with Mr. Cohen. The RFQL, General Terms and Conditions, Ethics Requirements, allows for "Any affected party may seek a conflict of interest opinion from the State of Florida Ethics Commission and/or Palm Beach County Ethics Commission regarding conflict of interest provisions." There is no evidence that RMA sought an opinion from either entity. During our interview with the City Ethics Officer (whom Ms. Briesemeister neither consulted nor informed about this issue) he stated, "They [RMA] had an obligation to disclose if they had any relationship prior to this...they [RMA] have an affirmative obligation."

OIG supported finding to Allegation #6: Redevelopment Management Associates did not properly disclose its business relationship with Elliot Cohen (Cohen Publicity) to the City of West Palm Beach once it was awarded the contract for RFQL 12-13-407.

RMA's Response, in part: "...the only reason the relationship was resumed in the spring of 2014 was based on assurances RMA received from Cohen indicating the City Manager (Cohen's superior) had no objections to the parties restarting their relationship...any business relationship that took effect after the CRA contract was signed had been approved by the City Manager."

OIG Comment: The Agreement for Management and Staffing of the West Palm Beach Community Redevelopment Agency and West Palm Beach Redevelopment Activities does not give Mr. Green as the City Manager nor any other City employee the authority to waive RMA's obligation to disclose under 19.3 or 19.9 of their agreement. Moreover, Mr. Green as the City Manager nor any other City employee has the authority to waive RMA's obligation to adhere to the requirement of the City of West Palm Beach Code of Ordinances, Chapter 2, Article VII, Division 2, § 2-513(b).

RMA's assertion regarding "antilobbying violations"

RMA's assertion, in part: "It is curious to note that there are no allegations of contact between Cohen and RMA until December 11, 2013...The records show that Cohen (as a representative of the City) had contacted Briesemeister on December 11th to advise her that the Mayor would be recommending RMA for award of the CRA contract...Moreover, the City had been in contact with Briesemeister before December 11, 2013...the City Manager, and Assistant City Attorney Suzanne Payson had frequent discussions with RMA regarding a potential agreement between the two parties during the months of November and December 2013."

OIG Comment: As a point of fact, neither our Draft report nor our Final report contains an allegation of prohibited lobbying. Because RMA has addressed this issue, we will comment. The City of West Palm Beach Code of Ordinances Chapter 66, Article I, § 66-8 - Prohibited lobbying, states:

"No person, firm, corporation, or others representing such person, firm, or corporation shall contact or lobby the mayor, the city commissioner, city staff, or evaluation committee member in person, by telephone, in writing, by e-mail, or any other means of communication, regarding the procurement of goods, services, or construction from the time the intent to procure such goods, services, or construction is advertised to the time of completed procurement.²⁶ The only permissible contact regarding a procurement solicitation shall be with the procurement official or with the evaluation committee at a duly noticed public meeting." [emphasis added]

RFQL 12-13-407 was posted on the City's Procurement website on September 4, 2013 which would be the start of the no lobbying period as defined by "the time the intent to procure such goods, services, or construction is advertised." December 16, 2013, was the date the City had an executed contract which would be the end of the no lobbying period as defined by "Completed procurement means the occurrence of

²⁶ As defined in the City of West Palm Beach Code of Ordinances Chapter 66, Article I, § 66-4(b), Completed procurement means the occurrence of the following: the city has executed a contract for the goods, services, or construction procured; and any appeals regarding the procurement have been resolved; or the city has determined that such goods, services, or construction are no longer needed and no further procurement solicitation will be issued.

the following: the city has executed a contract for the goods, services, or construction procured.” Many of these contacts admitted to by RMA in its response appear to be in conflict with the City’s Prohibited lobbying ordinance.

This Investigation has been conducted in accordance with the ASSOCIATION OF INSPECTORS GENERAL Principles & Quality Standards for Investigations.

ATTACHMENT A

Individuals Mentioned in this Report

| Individual | Title |
|--------------------------|---|
| Alleyne, Alicia | RMA Project & Marketing Coordinator |
| Bernhardt, David | City Police Captain |
| Brevik, Christine | City Assistant Director of IT-at the time |
| Briesemeister, Kim | RMA Managing Member |
| Brown, Christopher | RMA Principal-in Charge |
| Carson, Hazeline "Hazel" | City Clerk |
| Cohen, Elliot | City Director of Communications |
| Davila, Danielle | City Police Services Supervisor |
| Green, Jeffrey | City Administrator |
| Gregory, Sylvia | City Compensation and Employment Manager-at the time |
| Grosch, Josephine | City Senior Purchasing Agent |
| Hayden, Festus "Frank" | City Procurement Official-at the time |
| Johnson, Venice | City Deputy City Clerk-at the time |
| Kummerlen, Bryan | City Chief of Police |
| LaGrone, Katie | WPTV Reporter |
| Lesson, Nicole | Town of Miami Lakes Communications Manager and Public Information Officer |
| McCormick, Sharon | RMA Director of Marketing |
| McKenna, Claudia | City Attorney-at the time |
| McNeil, Jomekeyia | City Deputy Clerk |
| Miller, Dorritt | City Deputy City Administrator |
| Muoio, Geraldine "Jeri" | City Mayor |
| Nardoni, Renato | City Interim Director of IT-at the time |
| Ostrau, Norman | City Ethics Officer |
| Roog, Christopher | City Director of Economic Development |
| Rothenberg, Kimberly | City Attorney |
| Sackmann, Rita | City Computer Operator |
| Stone, Susan | City Systems Administrator |
| Townsley, David | PBC Convention Center Director of Event Technology |
| Williamson, Chandler | City of Pahokee City Manager |
| Young, Diana | Town of Miami Lakes Community Affairs Manager |



City Administration
401 Clematis Street
West Palm Beach FL 33401
Office: 561-822-1400
Fax: 561-822-1424

October 26, 2015

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

Dear Ms. Rentz:

Issue 1

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

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

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

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

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

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

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

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

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

Issue 2

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

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

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

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

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

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

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

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

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

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

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

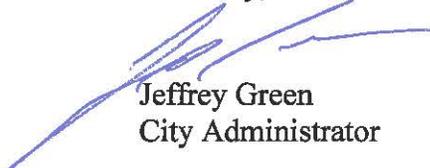
- 2) Reviews of Elliot Cohen's City e-mails from January 2015 to September 2015, including the specific dates listed in the Miami Lakes billing records; City phone and time records going back approximately one year; Commission on Ethics Employee Conflict of Interest Waiver; and Town of Miami Lakes invoices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

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

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

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

Sincerely,



Jeffrey Green
City Administrator



City Administration
401 Clematis Street
West Palm Beach FL 33401
561-822-1400
Fax: 561-822-1424

September 21, 2016

Mr. John Carey, Inspector General
Office of Inspector General
Palm Beach County
P.O. Box 16568
West Palm Beach, FL 33416-6568

Re: OIG Case No. 2016-0002

Dear Mr. Carey:

We are in receipt of your report draft on OIG Case Number 2016-002. We wish to provide to you the following comments regarding your recommendations:

Recommendation 1 – Take appropriate personnel actions.

Response:

After reviewing your report, the City has determined that no personnel actions are necessary.

Recommendation 2 – Take appropriate action to ensure that City employees adhere to General Administration, Chapter 1, Policy 1-2 Public Records Requests.

Response:

As discussed, in our letter to you dated October 26, 2015, the City explained its public records policy and the changes it made as a result of the improper release of exempt or confidential information.

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

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

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

The release of exempt and confidential information was due to a break down in application of the City of West Palm Beach Public Records policy.

Based on the City's existing policies, all e-mails are to be considered public records and should not be regarded as private communications and any documents containing confidential and exempt information is required to be redacted prior to being released. In this case, the protected information was included in public e-mails and was not redacted prior to release. To address the break down in the City's process, the City made the following changes in October 2015:

1. Media records requests are now processed directly through the City Clerk's office;
2. All e-mails compiled by the City's Information Technology Department are sent to the primary department (via the City Clerk's office) responding to the public records request. The primary responding department will review the records and will be responsible for redacting any confidential and exempt information;
3. The Police Department is the primary department in any search that deals with any police matters;
4. The IT department is currently planning for an email migration from Lotus Notes to Microsoft Office 365. As part of this planning, the City will create a separate email domain for the Police Department or other architecture that is compliant with FDLE/CJIS requirements. In addition, since October, 2015, the IT department has required all employees with access to systems storing police related data to complete all CJIS certification requirements

The City believes that no further changes are needed at this time. The City will, however, continue to review its public records policy to see if any additional changes can be made to further protect exempt and confidential information.

Recommendation 3 – Revise written policies and procedures on outside employment requiring employees to obtain approval for leave or work schedule adjustment prior to performing outside employment during the official business day. They should be clearly communicated to City employees and documented.

Response:

The City has many checks and balances to assure that employees are working during City work hours. Exempt employees are required to biometrically scan their finger into the City's Kronos time system each day that they are at work for the City. Supervisors are expected to manage their employees in such a manner as to ensure they are expending at least 40 hours per week performing work for the City. They accomplish this through a variety of different means

including project plans with objectives and milestones, on-sight observations, and the use of project calendars.

It should be noted that because of the nature of city operations, many exempt employees are asked to perform services during hours outside the standard work week. As a result, many of the City's exempt employees put in much more than 40 hours during a standard work week. As such, the City gives supervisors discretion as to how best schedule these employees.

The City does not believe that any additional changes to its policies are needed at this time.

Recommendation 4 – Establish internal controls that accurately represent actual hours worked by exempt City employees.

Response:

The City is comfortable with the controls it already has in place to monitor the actual hours worked by exempt employees. As discussed in our letter dated October 26, 2015, the City currently has policies to limit use of City phone and e-mail use for personal reasons. The City's computer policy allows for limited personal use of e-mail and internet access provided that the use concurs with an employee's personal time, that is lunch breaks, before or after work, or on weekends, and in accordance with individual departmental rules, if any. See Policy 1-28(a)(10). However, no personal commercial activity is permitted. The City's telephone policy states that City telephones are to be used primarily for business purposes. See Policy 1-42(B). The City's Cellular Device and Stipend Policy states that City rules prohibit excessive use of City time for personal business. See Policy 1-44 (I)(A). It further specifies that City issued cellular devices are to be used solely for City business. Personal phone calls are not allowed except in emergencies. See Policy 1-44(IV)(C).

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

As discussed in response number 3 above, in addition to written standards, the City has many checks and balances to assure that employees are working during City work hours. Exempt employees are required to biometrically scan their finger into the City's Kronos time system each day that they are at work for the City. Supervisors are expected to manage their employees in such a manner as to ensure they are expending at least 40 hours per week performing work for the City. They accomplish this through a variety of different means including project plans with objectives and milestones, on-sight observations, and the use of project calendars.

It should be noted that because of the nature of city operations, many exempt employees are asked to perform services during hours outside the standard work week. As a result, many of the

City's exempt employees put in much more than 40 hours a week. As such, the City gives supervisors discretion as to how best schedule these employees.

Recommendation 5 – Review the City's contract with RMA in light of the findings and information provided within this report and take appropriate action.

Response:

The City will review what weight (if any) the non-disclosure had on RMA being awarded the contract. In the event the City determines that it did not have a material effect on the contract award, then no further action will be taken. The initial term of the existing contract with RMA is set to expire on December 31, 2016. Prior to that date the City will decide whether to extend this contract or to terminate it and do a new RFP process.

Please feel free to contact me if you have any questions.

Sincerely,



Jeffrey L Green
City Administrator

September 26, 2016

Jeff Himmel, Director of Investigations
Office of Inspector General
PO Box 16568
West Palm Beach, FL 33416
E: inspector@pbcgov.org

Re: Response to draft report 2016-002

Pursuant to the opportunity afforded by ordinance, below is a response to draft report 2016-002.

It should be noted for the record that the OIG report relies on selected excerpts from interviews and documents to support its case. While the legal system requires all evidence be provided to both sides, a request to the OIG to review all the documents and transcripts in their entirety in order to prepare a comprehensive response and ensure excerpts were portrayed in their proper context was denied by the OIG (see attached emails). The OIG cites county ordinances as justification for the refusal, but ignores the question of fundamental fairness of the process.

It should also be noted that the OIG and the City of West Palm Beach have been fighting for several years in court and continue to fight each other in a court of law over the city's refusal to pay what the OIG claims is the city's share of money to fund the OIG office. This dispute has spilled into the public arena.

It should finally be noted that despite numerous assurances from the Inspector General himself to city staff that his office would contact Mr. Cohen and offer him a chance to provide information, Mr. Cohen was never contacted by the OIG for the purposes of gathering information. He was never afforded an opportunity to provide evidence, documents or testimony prior to this report. At no time was Mr. Cohen interviewed or given an opportunity to provide further information. Mr. Cohen was never afforded the choice to waive any privilege in the interest of providing information.

Finding (1):

A PRIOR REVIEW ALREADY FOUND NO VIOLATION

It is regretful that any improper information was released, but the city, which is the ***only*** legal entity responsible for enforcing all city policies and making the determination if any city policy violation occurred **determined a year ago there**

was no violation of policy. A third party OIG opinion a year after the fact and expressed in this report does not change that determination.

Following an internal investigation, and detailed in a letter to the OIG dated October 26, 2015 the city informed the OIG the resulting release of information was a **“break down in the City’s process.”** (OIG Attachment B)

There is no evidence that any improper information was intentionally released.

The media request was handled by the PIO office, per city policy. City of West Palm Beach General Administration Policy 1-2, entitled “Public Records Request” signed into effect December 3, 2009 was the policy in effect September 2015. It clearly states “requests from media organizations, e.g. newspapers, television stations, and radio stations, ***shall be*** [emphasis added] coordinated with the City’s Public Information Officer.”

The OIG report states previous instances demonstrate “Mr. Cohen’s knowledge of: the need for review and redaction.” (OIG pg. 8) The issue was not whether anyone knew the emails required review. The issue was who was responsible for doing the reviewing.

The OIG report itself quotes West Palm Beach Mayor Jeri Muoio as saying redaction was **“not something [Mr. Cohen was] responsible for.”** (OIG pg. 5)”

The break down in process occurred in the IT department. For many years, media email requests were handled by one individual in the IT department. The IT department would process the request, send it to any relevant department for redaction and provide the redacted information. It was not the practice for the PIO to review the material. The PIO is not qualified or required to determine what information should be redacted.

For example, if a request included emails from the legal department, it was up to city attorneys to review the information and determine what was considered privileged information. A PIO is not qualified or expected to make such legal determinations.

The individual who had been handling email requests left the city IT department, and the break down occurred when his replacement was not properly trained or supervised under a new IT director as to how to handle the requests.

Finding (2)

A PRIOR REVIEW – AND THE OIG - FOUND NO VIOLATIONS

OIG EXCLUDED RECORDS SHOWING ADDITIONAL CITY-RELATED WORK

The city, which is the ***only*** legal entity responsible for enforcing all city policies and making the determination if any city policy violation occurred ***determined a year ago there was no violation of policy. A third party OIG opinion a year after the fact and expressed in this report does not change that determination.***

The OIG itself admits it “could not with reasonable assurance determine” (pg. 18) if any city policy had been violated.

City policy **does not prohibit** personal calls on city office phones. Infrequent non-city related calls are allowed.

Following an internal investigation in 2015, and detailed in a letter to the OIG dated October 26, 2015 the city stated:

“Based on the information reviewed, there has been ***no evidence found to support the allegation*** that Elliot Cohen is operating a private business during “his City work hours.” (OIG Attachment B)

FLEX HOURS PERMITTED

The October 26, 2015 letter further states:

“Elliot Cohen does not work a regular work schedule but rather works a flexible work schedule with the approval of the Mayor and City Administrator. As an exempt employee, Elliot Cohen is required to be available whenever needed. His day could start well before 8:00 a.m. or stretch well beyond 5:00 p.m. For example, in December of 2014, Elliot Cohen was on vacation from December 22nd through December 29th. However, during that time Elliot Cohen was available to administration and responded to inquiries including requests from Deputy City Administrator Dorritt Miller and Mayor Muoio. He also works on Holidays, weekends, and while taking sick and vacation time.” (OIG Attachment B)

A MORE ACCURATE REVIEW OF TIME SPENT

The OIG report reconstructs several timelines that give the impression of something improper. Included in the OIG reconstruction is a review of ***personal*** cell phone records. ***(It should be noted that nothing prohibits the making or receiving of personal calls on a personal cell phone during the work day).***

What the OIG has excluded for the same period of time are the ***city*** cell phone records that document when city-related business was taking place. ***These records were provided to the OIG. The OIG’s motive for excluding these records is unclear.*** Although noted again is the fact that the OIG and City of West Palm Beach continue to fight each other in a multi-year legal battle during which the city has refused to fund the OIG’s office.

The OIG itself admits it “could not with reasonable assurance determine whether he was or was not working for his Cohen Publicity business while being paid by the city (pg.18).”

The OIG raises the issue of “time paid to public servants to work a day’s wage for a day’s pay” (OIG pg. 18) Yet a more thorough review, which includes a review of Mr. Cohen’s **city cell phone records** indicates numerous examples of public work conducted on behalf of taxpayers before and after regular business hours, on weekends, while on vacation, during holidays and out sick. Exempt employees **receive no additional compensation or overtime** for work done outside regular business hours. Therefore, a more complete review of **all available records** portrays a vastly different picture.

Below is a list of calls related to **city** business conducted before and after regular business hours, on weekends, while on vacation, during holidays and while on sick leave. The representative time period (March, 2015 – July 2015) corresponds to the weeks/months in 2015 detailed by the OIG. (Other phone records were not available during the limited ten-day window provided to respond to the OIG report.)

| <u>Date</u> | <u>Time</u> | <u>Number</u> | |
|----------------|-------------|---------------|--------------------------|
| March 25, 2015 | 5:34pm | AFTER HOURS | city department director |
| March 25, 2015 | 5:39pm | AFTER HOURS | city vendor |
| March 26, 2015 | 8:58am | ON VACATION | News media call |
| March 26, 2015 | 8:59am | ON VACATION | city department director |
| March 26, 2015 | 10:57am | ON VACATION | city hall |
| March 26, 2015 | 1:25pm | ON VACATION | city hall |
| March 26, 2015 | 1:54pm | ON VACATION | city attorney |
| March 26, 2015 | 1:56pm | ON VACATION | city hall |
| March 26, 2015 | 3:13pm | ON VACATION | city hall |
| March 26, 2015 | 3:14pm | ON VACATION | Mayor’s Chief of Staff |
| March 26, 2015 | 3:37pm | ON VACATION | city administrator |
| April 6, 2015 | 1:17pm | OUT SICK | News media call |
| April 6, 2015 | 2:59pm | OUT SICK | WPB Fire Rescue |
| April 6, 2015 | 3:01pm | OUT SICK | News media call |
| April 6, 2015 | 4:32pm | OUT SICK | city hall |
| April 6, 2015 | 4:33pm | OUT SICK | city hall |
| April 6, 2015 | 4:35pm | OUT SICK | News media call |
| April 6, 2015 | 4:38pm | OUT SICK | city hall |
| April 6, 2015 | 4:47pm | OUT SICK | city voicemail |
| April 6, 2015 | 4:50pm | OUT SICK | city voicemail |
| April 6, 2015 | 6:26pm | OUT SICK | |
| | | AFTER HOURS | News media call |
| April 7, 2015 | 9:04pm | AFTER HOURS | News media call |
| April 7, 2015 | 9:08pm | AFTER HOURS | mayor |
| April 8, 2015 | 7:43am | BEFORE HOURS | city voicemail |

| | | | |
|----------------|--------|--------------|--------------------------|
| April 8, 2015 | 7:53am | BEFORE HOURS | city department director |
| April 8, 2015 | 5:01pm | AFTER HOURS | city administrator |
| April 8, 2015 | 6:09pm | AFTER HOURS | All Aboard Florida rep |
| April 8, 2015 | 6:23pm | AFTER HOURS | city department director |
| April 8, 2015 | 8:24pm | AFTER HOURS | city administrator |
| April 8, 2015 | 8:28pm | AFTER HOURS | All Aboard Florida rep |
| April 8, 2015 | 8:29pm | AFTER HOURS | All Aboard Florida rep |
| April 8, 2015 | 8:30pm | AFTER HOURS | All Aboard Florida rep |
| April 8, 2015 | 9:09pm | AFTER HOURS | All Aboard Florida rep |
| April 8, 2015 | 9:14pm | AFTER HOURS | All Aboard Florida rep |
| April 8, 2015 | 9:28pm | AFTER HOURS | city administrator |
| April 10, 2015 | 7:28am | BEFORE HOURS | News Media call |
| April 14, 2015 | 6:54pm | AFTER HOURS | city department director |
| April 14, 2015 | 6:56pm | AFTER HOURS | city voicemail |
| April 14, 2015 | 6:58pm | AFTER HOURS | city administrator |
| April 14, 2015 | 7:37pm | AFTER HOURS | city department director |
| April 15, 2015 | 7:52am | BEFORE HOURS | News media call |
| April 15, 2015 | 7:54am | BEFORE HOURS | News media call |
| April 15, 2015 | 7:56am | BEFORE HOURS | News media call |
| April 15, 2015 | 5:11pm | AFTER HOURS | News media call |
| April 15, 2015 | 5:12pm | AFTER HOURS | city hall |
| April 15, 2015 | 5:14pm | AFTER HOURS | News media call |
| April 15, 2015 | 5:35pm | AFTER HOURS | city voicemail |
| April 16, 2015 | 5:29pm | AFTER HOURS | city department director |
| April 17, 2015 | 6:28pm | AFTER HOURS | city vendor |
| April 20, 2015 | 7:58am | BEFORE HOURS | city TV station employee |
| April 20, 2015 | 7:59am | BEFORE HOURS | city hall |
| April 21, 2015 | 7:38am | BEFORE HOURS | Mayor's chief of staff |
| April 21, 2015 | 7:53am | BEFORE HOURS | Mayor's chief of staff |
| April 21, 2015 | 5:21pm | AFTER HOURS | News media call |
| April 21, 2015 | 5:40pm | AFTER HOURS | News media call |
| April 21, 2015 | 6:09pm | AFTER HOURS | News media call |
| April 21, 2015 | 6:16pm | AFTER HOURS | News media call |
| April 21, 2015 | 7:13pm | AFTER HOURS | mayor |
| April 21, 2015 | 7:58pm | AFTER HOURS | mayor |
| April 21, 2015 | 9:08pm | AFTER HOURS | city administrator |
| April 21, 2015 | 9:14pm | AFTER HOURS | city administrator |
| April 21, 2015 | 9:16pm | AFTER HOURS | city department director |
| April 21, 2015 | 9:26pm | AFTER HOURS | city department director |
| April 21, 2015 | 9:42pm | AFTER HOURS | city administrator |
| April 22, 2015 | 7:40am | BEFORE HOURS | mayor |
| April 22, 2015 | 7:44am | BEFORE HOURS | city administrator |
| April 22, 2015 | 7:45am | BEFORE HOURS | city department director |
| April 22, 2015 | 7:46am | BEFORE HOURS | city administrator |
| April 22, 2015 | 7:55am | BEFORE HOURS | city voicemail |
| April 22, 2015 | 7:58am | BEFORE HOURS | city voicemail |
| April 22, 2015 | 6:31pm | AFTER HOURS | city voicemail |

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| April 22, 2015 | 6:52pm | AFTER HOURS | city attorney |
| April 22, 2015 | 6:55pm | AFTER HOURS | city attorney |
| April 23, 2015 | 5:02pm | AFTER HOURS | city vendor |
| April 23, 2015 | 6:44pm | AFTER HOURS | mayor |
| April 23, 2015 | 7:10pm | AFTER HOURS | mayor |
| April 23, 2015 | 7:21pm | AFTER HOURS | city department director |
| April 23, 2015 | 7:24pm | AFTER HOURS | city department director |
| April 23, 2015 | 7:46pm | AFTER HOURS | News media call |
| April 23, 2015 | 7:54pm | AFTER HOURS | city administrator |
| April 23, 2015 | 10:51m | AFTER HOURS | News media call |
| April 23, 2015 | 10:55pm | AFTER HOURS | News media call |
| April 24, 2015 | 5:23pm | AFTER HOURS | city administrator |
| April 24, 2015 | 6:41pm | AFTER HOURS | city vendor |
| April 27, 2015 | 11:14pm | AFTER HOURS | News media call |
| April 29, 2015 | 5:02pm | AFTER HOURS | city commissioner |
| April 29, 2015 | 5:26pm | AFTER HOURS | News media call |
| April 29, 2015 | 5:27pm | AFTER HOURS | News media call |
| April 29, 2015 | 5:30pm | AFTER HOURS | city commissioner |
| April 29, 2015 | 5:59pm | AFTER HOURS | News media call |
| May 1, 2015 | 5:25pm | AFTER HOURS | Asst. city administrator |
| May 1, 2015 | 6:45pm | AFTER HOURS | Asst. city administrator |
| May 4, 2015 | 11:08am | ON VACATION | city department director |
| May 4, 2015 | 11:11am | ON VACATION | News media call |
| May 4, 2015 | 11:13am | ON VACATION | city department director |
| May 4, 2015 | 11:45am | ON VACATION | city hall |
| May 4, 2015 | 11:52am | ON VACATION | city hall |
| May 4, 2015 | 12:28pm | ON VACATION | News media call |
| May 4, 2015 | 12:32pm | ON VACATION | News media call |
| May 5, 2015 | 11:20am | ON VACATION | city voicemail |
| May 5, 2015 | 11:24am | ON VACATION | city hall |
| May 5, 2015 | 11:27am | ON VACATION | city hall |
| May 5, 2015 | 11:28am | ON VACATION | city hall |
| May 5, 2015 | 11:32am | ON VACATION | city hall |
| May 5, 2015 | 12:50pm | ON VACATION | city voicemail |
| May 5, 2015 | 1:39pm | ON VACATION | city hall |
| May 5, 2015 | 1:40pm | ON VACATION | city hall |
| May 5, 2015 | 1:44pm | ON VACATION | city hall |
| May 5, 2015 | 1:45pm | ON VACATION | city hall |
| May 5, 2015 | 1:49pm | ON VACATION | city department director |
| May 5, 2015 | 2:32pm | ON VACATION | News media call |
| May 5, 2015 | 3:02pm | ON VACATION | city department director |
| May 5, 2015 | 3:03pm | ON VACATION | city hall |
| May 5, 2015 | 3:04pm | ON VACATION | city department director |
| May 5, 2015 | 3:30pm | ON VACATION | city voicemail |
| May 5, 2015 | 3:40pm | ON VACATION | city hall |
| May 5, 2015 | 3:51pm | ON VACATION | city hall |
| May 5, 2015 | 4:53pm | ON VACATION | News media call |
| May 5, 2015 | 4:54pm | ON VACATION | News media call |

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| May 5, 2015 | 4:55pm | ON VACATION | News media call |
| May 5, 2015 | 5:25pm | ON VACATION | city hall |
| May 6, 2015 | 7:12pm | AFTER HOURS | mayor |
| May 7, 2015 | 7:01pm | AFTER HOURS | News media call |
| May 8, 2015 | 5:54pm | AFTER HOURS | CRA employee |
| May 10, 2015 | 10:47pm | AFTER HOURS | city voicemail |
| May 11, 2015 | 5:04pm | AFTER HOURS | News media call |
| May 12, 2015 | 6:12pm | AFTER HOURS | News media call |
| May 13, 2015 | 5:12pm | AFTER HOURS | city department director |
| May 13, 2015 | 5:34pm | AFTER HOURS | mayor |
| May 14, 2015 | 5:04pm | AFTER HOURS | city administrator |
| May 19, 2015 | 7:13am | BEFORE HOURS | city voicemail |
| May 19, 2015 | 7:42am | BEFORE HOURS | city hall |
| May 19, 2015 | 6:18pm | AFTER HOURS | city administrator |
| May 20, 2015 | 7:55am | BEFORE HOURS | city hall |
| May 21, 2015 | 6:08pm | AFTER HOURS | DDA |
| May 22, 2015 | 7:25am | BEFORE HOURS | DDA |
| May 22, 2015 | 7:34am | BEFORE HOURS | police PIO |
| May 22, 2015 | 7:50am | BEFORE HOURS | city administrator |
| May 22, 2015 | 7:59pm | AFTER HOURS | police PIO |
| May 22, 2015 | 8:12pm | AFTER HOURS | police PIO |
| May 22, 2015 | 8:14pm | AFTER HOURS | city administrator |
| May 22, 2015 | 8:21pm | AFTER HOURS | police PIO |
| May 27, 2015 | 6:07pm | AFTER HOURS | city voicemail |
| May 28, 2015 | 7:48am | BEFORE HOURS | city hall |
| May 28, 2015 | 7:59am | BEFORE HOURS | city staff |
| May 28, 2015 | 5:05pm | AFTER HOURS | All Aboard Florida rep |
| May 28, 2015 | 5:12pm | AFTER HOURS | Mayor's chief of staff |
| May 28, 2015 | 5:36pm | AFTER HOURS | News media call |
| May 29, 2015 | 5:02pm | AFTER HOURS | Mayor's chief of staff |
| May 29, 2015 | 5:15pm | AFTER HOURS | Mayor's chief of staff |
| June 1, 2015 | 6:16pm | AFTER HOURS | city department director |
| June 1, 2015 | 6:31pm | AFTER HOURS | State Attorney staff |
| June 1, 2015 | 7:02pm | AFTER HOURS | State Attorney staff |
| June 2, 2015 | 5:55pm | AFTER HOURS | mayor |
| June 2, 2015 | 6:05pm | AFTER HOURS | News media call |
| June 2, 2015 | 6:07pm | AFTER HOURS | mayor |
| June 2, 2015 | 6:49pm | AFTER HOURS | DDA |

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| June 3, 2015 | 5:39pm | AFTER HOURS | All Aboard Florida rep |
| June 8, 2015 | 7:29pm | AFTER HOURS | city voicemail |
| June 9, 2015 | 5:07pm | AFTER HOURS | News media call |
| June 9, 2015 | 5:22pm | AFTER HOURS | city commissioner |
| June 9, 2015 | 5:31pm | AFTER HOURS | city commissioner |
| June 9, 2015 | 7:20pm | AFTER HOURS | city administrator |
| June 9, 2015 | 7:21pm | AFTER HOURS | police PIO |
| June 9, 2015 | 10:51pm | AFTER HOURS | News media call |
| June 9, 2015 | 10:52pm | AFTER HOURS | News media call |
| June 9, 2015 | 10:54pm | AFTER HOURS | News media call |
| June 9, 2015 | 10:56pm | AFTER HOURS | News media call |
| June 9, 2015 | 11:10pm | AFTER HOURS | News media call |
| June 10, 2015 | 7:36am | BEFORE HOURS | PBSO |
| June 10, 2015 | 7:37am | BEFORE HOURS | PBSO |
| June 10, 2015 | 6:10pm | AFTER HOURS | News media call |
| June 11, 2015 | 5:58pm | AFTER HOURS | city vendor |
| June 11, 2015 | 6:00pm | AFTER HOURS | city vendor |
| June 23, 2015 | 6:07pm | AFTER HOURS | city attorney |
| June 23, 2015 | 6:42pm | AFTER HOURS | All Aboard Florida rep |
| June 26, 2015 | 7:30am | BEFORE HOURS | city hall |
| July 3, 2015 | 9:27am | HOLIDAY | city staff |
| July 3, 2015 | 10:09am | HOLIDAY | city department director |
| July 3, 2015 | 10:15am | HOLIDAY | city staff |
| July 3, 2015 | 10:45am | HOLIDAY | city department director |
| July 3, 2015 | 10:49am | HOLIDAY | city department director |
| July 3, 2015 | 10:49am | HOLIDAY | city department director |
| July 3, 2015 | 11:02am | HOLIDAY | city department director |
| July 3, 2015 | 11:29am | HOLIDAY | city staff |
| July 3, 2015 | 12:05pm | HOLIDAY | city department director |
| July 6, 2015 | 9:27am | AFTER HOURS | city department director |
| July 6, 2015 | 8:25pm | AFTER HOURS | All Aboard Florida rep |
| July 8, 2015 | 10:30am | OUT SICK | city department director |
| July 8, 2015 | 10:33am | OUT SICK | News media call |
| July 8, 2015 | 10:35am | OUT SICK | News media call |
| July 8, 2015 | 11:08am | OUT SICK | city department director |
| July 8, 2015 | 11:17am | OUT SICK | Asst city administrator |
| July 8, 2015 | 11:21am | OUT SICK | city voicemail |
| July 8, 2015 | 11:24am | OUT SICK | city voicemail |
| July 8, 2015 | 11:27am | OUT SICK | city voicemail |
| July 9, 2015 | 8:45am | OUT SICK | city hall |
| July 9, 2015 | 2:03pm | OUT SICK | city voicemail |
| July 9, 2015 | 2:12pm | OUT SICK | News media call |
| July 9, 2015 | 2:26pm | OUT SICK | News media call |
| July 9, 2015 | 4:14pm | OUT SICK | city department director |

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| July 9, 2015 | 4:15pm | OUT SICK | city hall |
| July 11, 2015 | 9:48am | WEEKEND | city voicemail |
| July 11, 2015 | 9:54am | WEEKEND | All Aboard Florida rep |
| July 11, 2015 | 10:00am | WEEKEND | News media call |
| July 13, 2015 | 9:25am | OUT SICK | New media call |
| July 13, 2015 | 9:37am | OUT SICK | News media call |
| July 13, 2015 | 9:39am | OUT SICK | city department director |
| July 13, 2015 | 11:37am | OUT SICK | city voicemail |
| July 13, 2015 | 11:40am | OUT SICK | city hall |
| July 13, 2015 | 11:42am | OUT SICK | city hall |
| July 13, 2015 | 11:43am | OUT SICK | city hall |
| July 13, 2015 | 11:57am | OUT SICK | city hall |
| July 13, 2015 | 1:41pm | OUT SICK | city hall |
| July 13, 2015 | 1:42pm | OUT SICK | city administrator |
| July 13, 2015 | 1:44pm | OUT SICK | News media call |
| July 13, 2015 | 1:46pm | OUT SICK | Mayor's chief of staff |
| July 13, 2015 | 1:47pm | OUT SICK | city department director |
| July 13, 2015 | 1:49pm | OUT SICK | city hall |
| July 13, 2015 | 1:50pm | OUT SICK | city hall |
| July 13, 2015 | 1:52pm | OUT SICK | city department director |
| July 13, 2015 | 1:53pm | OUT SICK | Mayor's chief of staff |
| July 13, 2015 | 1:56pm | OUT SICK | city department director |
| July 13, 2015 | 1:57pm | OUT SICK | News media call |
| July 13, 2015 | 2:14pm | OUT SICK | city hall |
| July 13, 2015 | 3:59pm | OUT SICK | News media call |
| July 14, 2015 | 6:04pm | AFTER HOURS | city voicemail |
| July 14, 2015 | 6:24pm | AFTER HOURS | city administrator |
| July 16, 2015 | 5:08pm | AFTER HOURS | News media call |
| July 16, 2015 | 5:39pm | AFTER HOURS | city administrator |
| July 20, 2015 | 6:28pm | AFTER HOURS | News media call |
| July 21, 2015 | 5:21pm | AFTER HOURS | Call with city staff |
| July 21, 2015 | 6:23pm | AFTER HOURS | city administrator |
| July 23, 2015 | 6:53pm | AFTER HOURS | News media call |
| July 23, 2015 | 6:56pm | AFTER HOURS | All Aboard Florida rep |
| July 23, 2015 | 7:33pm | AFTER HOURS | News media call |
| July 23, 2015 | 7:34pm | AFTER HOURS | News media call |
| July 24, 2015 | 7:45am | BEFORE HOURS | mayor |
| July 24, 2015 | 7:56am | BEFORE HOURS | city administrator |
| July 25, 2015 | 9:33am | WEEKEND | mayor |
| July 25, 2015 | 11:28am | WEEKEND | city department director |

A more comprehensive review of *all records* related to time spent working clearly indicates **Mr. Cohen's work days frequently began before the traditional work day and stretched into the evening hours. He consistently worked early mornings, nights, weekends, while out sick, during holidays or on vacation.**

Viewed in the context of the city's permission to work flex hours, the OIG's observations are incomplete and the OIG's conclusions are not supported once **all evidence** is examined.

In addition, the OIG's own timeline seems to prove Mr. Cohen remained at City Hall after regular business hours on multiple occasions.

According to the OIG report, on March 30, 2015 Mr. Cohen exited the city garage at 7:36pm. This followed an after-hours City Commission meeting that ended after 7 p.m. that evening.

According to the OIG report, on April 13, 2015 Mr. Cohen exited the city garage at 7:19 p.m. This followed another after-hours City Commission meeting that ended after 7 p.m. that evening.

According to the OIG's own report, Mr. Cohen also remained at city hall after regular business hours on February 5, 2015, March 10, 2015, April 1, 2015, June 2, 2015, July 2, 2015, and July 29, 2015.

Finding (3):

**THIS MATTER WAS ALREADY CLEARED BY
THE PALM BEACH COUNTY COMMISSION ON ETHICS**

**THE PALM BEACH COUNTY COMMISSION ON ETHICS FOUND NO PROBABLE
CAUSE AND DISMISSED THE CASE**

Matters concerning work for Redevelopment Management Associates were thoroughly investigated by the Palm Beach County Commission on Ethics.

Following an investigation by the Commission and a probable cause hearing before Commissioners, "the Commission concluded **no probable cause exists to believe any violation occurred.**" (PBC CoE, C15-021)

The complaint was dismissed. A copy of the dismissal order is attached.

Finding (4):

NO WORK WAS PERFORMED

No action was taken on this matter. No work was performed.

Attachments:

Re:2016-002 Inbox x Print Share People (2)

 **Elliot Cohen** Sep 16 (8 days ago) ☆ Reply

to LCAllen, inspector, bcc: me

Mr. Allen,

I am in receipt of your draft report. In light of the allegations being made by your office, and in order to properly prepare a response, I request copies of all evidence that is part of this case.

In addition, while your report contains only selected excerpts from the interviews conducted, in order to properly prepare a response and to ensure the selected portions have been portrayed in their proper context, it would be necessary to obtain the entire transcripts of the interviews conducted. I request those transcripts as well. It is impossible to adequately respond to allegations when I am unable to see the evidence. This is a bedrock principle of the legal system. I would hope, suspect and assume your office would be governed by the same fundamental principles of fairness since you do operate as a quasi-legal investigative agency granted the same subpoena powers and other authorities as your legal counterparts.

As I am the subject of the report, and clearly entitled to view it before it becomes a public document, I am not prohibited under Florida public records laws. I would also be entitled to view the evidence upon which it is based before that also becomes public.

While your office has had an entire year to review the requested material, the principles of Due Process demand an extension to the 10 day deadline be provided in order to properly review all the material. I request such an extension. I request 60 days be provided from the date of receipt of all the requested material in order to be afforded enough time to adequately review all the material and prepare a proper response. Again, given the allegations being made by your office, the principles of Due Process and fairness require such an accommodation be provided.

Given the nature of this matter, and the time limitations, I request all the requested material be provided as quickly as possible and preferably by the close of business today. I also request the items be provided in electronic format if they already exist in that format, and that any fees associated with this request be waived in the interest of due process.

Your immediate response is required.

...

 [Click here to Reply, Reply to all, or Forward](#)

8.64 GB (8%) of 100 GB used [Manage](#) [Terms - Privacy](#) Last account activity: 0 minutes ago [Details](#)

RE: Re:2016-002

Inbox x



People (2)



Leo Allen C.

to me, Jeff

Sep 16 (8 days ago)

Reply

Leo Allen C.

lcallen@pbcgov.org



Show details

Mr. Cohen,

The OIG's process is controlled by County Ordinance. Per Section 2-423 of the Ordinance (Palm Beach County, Florida – Code of Ordinances, Chapter 2 – Administration, ARTICLE XII. – INSPECTOR GENERAL), "The inspector general's records related to active audits, investigations and reviews are confidential and exempt from disclosure, as provided by Florida Statutes, § 112.3188(2) and ch. 119."

Per Section 2-427,

"The inspector general shall publish and deliver finalized reports and recommendations to the board or the appropriate municipality, and to the county commission on ethics. Notwithstanding any other provision of this article, whenever the inspector general determines that it is appropriate to publish and deliver a report or recommendation which contains findings as to the person or entity being reported on or who is the subject of the recommendation, the inspector general shall provide the affected person or entity a copy of the findings. Such person or entity, who is the subject of a finding or recommendation resulting from an investigation or review, shall have ten (10) calendar days to submit a written explanation or rebuttal of the findings before the report or recommendation is finalized. In the case of an audit, such person or entity shall have twenty (20) calendar days to submit a written explanation or rebuttal of the audit findings or before the report or recommendation is finalized. The inspector general shall grant reasonable extensions of time for providing a written explanation or rebuttal upon written request. Such timely submitted written explanation or rebuttal shall be attached to the finalized report or recommendation. The requirements of this subsection shall not apply in matters subject to the State of Florida Whistle-blower's Act, or when the inspector general, in conjunction with the state attorney or U.S. Attorney, determines that supplying the affected person or entity with such report will jeopardize a pending criminal investigation."

Per § 119.0713(2)(b), F.S.

The audit report of an internal auditor and the investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record when the audit or investigation becomes final. An audit or investigation becomes final when the audit report or investigative report is presented to the unit of local government. Audit workpapers and notes related to such audit and information received, produced, or derived from an investigation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

As you can see from the ordinance, our records are "confidential and exempt from disclosure" until our report is finalized. The ordinance requires us to provide "Such person or entity, who is the subject of a finding or recommendation resulting from an investigation or review, shall have ten (10) calendar days to submit a written explanation or rebuttal of the findings before the report or recommendation is finalized." At the expiration of the ten calendar days, and the IG has reviewed and commented on any responses, our report will be finalized and published.

I have shared your request for an extension with the IG and he has denied an extension of time.

You are neither required nor compelled to respond, but if you voluntarily choose to do so, please forward your response to Jeff Himmel, Director of Investigations, on or before September 26, 2016, as mentioned in the letter emailed to you yesterday.

Leo C. Allen, Jr.

Office of Inspector General

Palm Beach County

PO Box 16568

West Palm Beach FL 33416-6568

Office: [\(561\) 233-2350](tel:(561)233-2350)

Hotline: [\(877\) 283-7068](tel:(877)283-7068)

Fax: [\(561\) 233-2375](tel:(561)233-2375)



Palm Beach County Commission on Ethics

Commissioners

Michael S. Kridel, Chair
Clevis Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
Sarah L. Shullman

Executive Director

Mark E. Bannon

In Re: Elliot Cohen

C15-021

Public Report Finding No Probable Cause and Order of Dismissal

Complainant, J. Mark Dougan, filed the above referenced complaint on September 23, 2015, alleging that Respondent, Elliot Cohen, City of West Palm Beach Communications Director, violated §2-443(d) of the Palm Beach County Code of Ethics by entering into a prohibited contractual relationship with a vendor of the City of West Palm Beach.

Pursuant to §2-258(a)¹ of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On April 7, 2016, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, Report of Investigation, and Probable Cause Determination. After oral statements by the Advocate and Respondent, the Commission concluded no probable cause exists to believe any violation occurred.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Elliot Cohen, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on April 7, 2016.

By: _____

Michael S. Kridel, Chair

¹ Section 2-258. Powers and duties. (a) The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the:

(1) County Code of Ethics;

The Historic 1916 Palm Beach County Courthouse

300 North Dixie Highway, Suite 450, West Palm Beach, FL 33401 561.355.1915 FAX: 561.355.1904



REINVENTING YOUR CITY

September 26, 2016

Jeff Himmel, Director of Investigations
Palm Beach County Office of Inspector General
PO Box 16568
West Palm Beach, FL 33416

Subject: RMA's Response to Palm Beach Office of Inspector General
("OIG") Draft Investigative Report Case No. 2016-0002

Dear Mr. Himmel:

Redevelopment Management Associates has reviewed the Palm Beach Office of Inspector General Draft Investigative Report OIG Case Number 2016-0002, dated September 15, 2016 (the "OIG Report") and hereby provides this response in accordance with Article XII, Section 2-427 of the Palm Beach County Code.

SUMMARY RESPONSE

The bulk of the OIG Report addresses allegations of RMA's failure to disclose its business relationship with Elliott Cohen ("Cohen") to the City of West Palm Beach in connection with RFQL 132-13-407. The Report contends that RMA had a legal duty to disclose its relationship with Cohen once the City awarded the CRA contract to RMA. Further, the Report claims that the company's relationship with Cohen should have been reported by RMA to the City in the Representations and Disclosures Section of the RFQL because this relationship created an actual, apparent or potential conflict of interest. Finally, the Report alleges that RMA engaged in prohibited lobbying when company personnel communicated with the City prior to the completed procurement.

As to the alleged failure to disclose, RMA strongly disagrees with the OIG's conclusion. During the timeframe in question, the parties had no ongoing business relationship. In fact, as early as June 2013 (nearly three months before the advertisement date of September 4, 2013) the consulting agreement was suspended by mutual consent until the spring of 2014. More significantly, the only reason the relationship was resumed in the spring of 2014 was based on assurances RMA received from Cohen indicating the City Manager (Cohen's superior) had no objections to the parties restarting their relationship. Accordingly, the parties had no understanding or agreement resembling a current or ongoing business relationship when the CRA procurement was under review by the City and any business relationship that took effect after the CRA contract was signed had been approved by the City Manager.

As to the unreported conflict of interest charge, RMA would have had no reason to disclose a prior business relationship as a conflict of interest based on the City's definition of this term. A proposer is only

required to identify the name of any officer, director, employee or agent of the proposer who is also an employee or official of the City of West Palm Beach. Admittedly, Cohen was employed by the City when RMA submitted its proposal on October 13, 2013, but he did not have any of the enumerated relationships with the proposer necessitating disclosure by RMA.

Finally, as to the assertion that RMA contacted or lobbied City officials or employees while the anti-lobbying period was in effect, it is not supported by the evidence. As evidence of improper contact, the Report identifies phone calls between Cohen and Kim Briesemeister (“Briesemeister”), Managing Member of RMA. However, the only purported contact between them began on December 11, 2013 and ended on December 15, 2013. The initial phone call on December 11th was placed by Cohen on behalf of the City to Briesemeister advising her that the Mayor had selected her company to manage the West Palm Beach CRA. The other concern with respect to highlighting these phone calls and not presenting them in the proper context is the fact that the Report does not identify other phone calls between City officials and RMA predating December 11, 2013 (possibly as early as November 2013) when the City Manager’s Office and the City Attorney’s Office were in regular contact with RMA for purposes of negotiation an agreement.

The purpose of the “no contact or no lobbying provision” is to preclude the proposer from attempting to influence the procurement process by contacting or lobbying the decision-makers. Since the “no contact” language is not meant to cover contacts initiated by City staff and RMA would have had no reason to lobby the City once it was advised it was recommended for award and was in the negotiation stage, RMA complied with both the “no contact” and anti-lobbying rules throughout this process.

RMA’S RESPONSE TO OIG FINDINGS

NONDISCLOSURE OF BUSINESS RELATIONSHIP

As a City employee and its Director of Communications, Cohen was authorized to engage in outside employment as of May 18, 2012 when he received permission from the Mayor Muoio. On January 9, 2013, Cohen Publicity signed a professional services agreement with RMA to provide general public relations services and marketing for the company. From February 2013 to June 2013, Cohen Publicity was paid a total of \$5,159 for these services. In an email from Cohen to Briesemeister dated June 21, 2013, Cohen suggested that the parties should suspend their relationship due to the fact the City would be discussing the future of its CRA and may be selecting on outside firm to run the CRA.¹ He further advised her in this email that he would have no involvement whatsoever in deciding the future of the CRA or playing a role in the selection process.

Based on this email, Cohen Publicity did not perform any additional services for RMA until May of 2014. At the time RMA submitted its proposal on October 13, 2013, it accurately stated it had no business relationship with Cohen Publicity. The business relationship disclosure provision contained in Section 2-513(b) of the City Code disqualifies a firm seeking to do business with the City if the firm employs a City official or City employee. In order to violate the section, there must a showing that

¹ This email is contained in the OIG file.

the City official is employed by the proposer and there is employment relationship during the procurement process.

The business relationship disclosure provision operates in the present tense and only captures current relationships. In the instant case, Cohen was never employed by RMA, as he was retained as an independent contractor to provide professional services.² Assuming for the sake of argument that the definition of employment could be extended to incorporate the type of work performed by Cohen for RMA, he most certainly was not employed by the RMA from September 2013 to December 2013, warranting disclosure to the City. The records reflect the fact that from the date of advertisement through the date of award, Cohen performed no work for RMA, was not entitled to receive his monthly retainer, nor did he receive any form of compensation from RMA. It should be noted that utilization of Cohen's professional services was resumed many months after the selection of RMA to manage the CRA.³ Therefore, RMA was not compelled to either disclose a prior business relationship at the time its submitted its proposal or disclose this relationship once the contract was awarded.

It should also be noted that RMA proceeded with extreme caution once it was awarded the CRA contract in terms of its relationship with Cohen. Before agreeing to resume its consulting agreement with Cohen, RMA, in an email dated January 31, 2014, raised the issue whether RMA's selection as the CRA Administrator would affect RMA's re-engaging of Cohen. Cohen assured Briesemeister that the City Manager was perfectly fine with the parties renewing their relationship.⁴ Therefore, based on Cohen's representations that the City Manager had approved this arrangement, Cohen provided RMA with professional services for a brief time in 2014 for work unrelated to the City of West Palm Beach or the West Palm Beach CRA.

The nature of the relationship between Cohen and RMA was also examined by the Palm County Commission on Ethics ("Ethics Commission") when it considered whether Cohen violated Section 2-443(d) of the Palm Beach Ethics Code.⁵ The Ethics Commission found that Cohen and RMA had no prohibited contractual relationship in either early 2013 when the consulting agreement commenced or in the spring of 2014 after the parties resumed their relationship. As a result of this finding, the Ethics Commission dismissed the complaint against Cohen on April 7, 2016.⁶

CONFLICT OF INTEREST

Attachment C of the solicitation required all proposers to sign the attachment indicating they have no conflict of interest in the present or that could develop with respect to providing services under this

³ Cohen was paid a total of \$4,000 between the months of May and August 2014 for work commenced in 2014.

⁴ See January 31, 2014 email exchange between Briesemeister and Cohen.

⁵ Section 2-443(d) states in pertinent part as follows: "No official or employee shall into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business."

⁶ Public Order Finding No Probable Cause and Order of Dismissal – C15-021 In Re; Elliot Cohen

solicitation.⁷ Presumably, a conflict of interest is also created if an officer, director, employee or agent of the proposer is an employee or official of the City of West Palm Beach. RMA's understanding with Cohen was that his professional services entailed promoting RMA as a separate entity and he would not take on any assignments involving the City of West Palm Beach or the CRA.⁸ Given that his duties with the City included servicing the public relations and marketing efforts for the City, there was no overlap between his public duties for the City of West Palm Beach and his consulting work for RMA. Moreover, Cohen did not participate in the selection of RMA as a City contractor and his position with the City did not include contract oversight or contract enforcement for the CRA. Consequently, based on the scope of his consulting work for RMA in early 2013 and in the spring of 2014, his responsibilities with the City, and the fact that the parties severed their relations during the CRA solicitation, there would have been no legal basis for RMA to disclose an actual or potential conflict of interest because no such conflict of interest ever existed between RMA and any City officials or employees. Furthermore, there would have been no reason for RMA to have identified Cohen as a City employee who also held a position as an officer, director, employee or agent of RMA because he never held any of these positions with the company as a professional consultant.

ANTILOBBYING VIOLATIONS

The OIG Report cites evidence of impermissible contact and/or lobbying between RMA and Cohen by referring to 14 calls placed between Briesemeister and Cohen beginning on December 11, 2013 and ending on December 15, 2013. The inference drawn from this information is that RMA must have violated Section 66-8 of the City Code by contacting or lobbying City officials or staff during the ongoing procurement process and that such contact was tied to this procurement.

If the premise is accepted that the contact was related to the CRA procurement, it is important to take into account Ms. Briesemeister's statement when she was interviewed by the Office of Inspector General.⁹ Although Briesemeister refers to the anti-lobbying rule as a "Cone of Silence" she was intimately familiar with its purpose and understood the consequences of violating this provision. It is curious to note that there are no allegations of contact between Cohen and RMA until December 11, 2013. The December 11, 2013 date is significant because Briesemeister received an email from Eliot Kleinberg of the Palm Beach Post at 11:24 a.m. on that day advising her that Mayor Muoio had selected RMA as the CRA contractor.¹⁰ The records show that Cohen (as a representative of the City) had contacted Briesemeister on December 11th to advise her that the Mayor would be recommending RMA for award of the CRA contract. Therefore, since the initial Cohen contact regarding this procurement was initiated by the City and it was simply to inform the company of the Mayor's choice, it would seem grossly unfair to enforce the "no contact" rule against RMA when all Briesemeister did was accept Cohen's phone call. Moreover, the City had been in contact with

⁷ See Attachment C Representations and Disclosures, Item 2 of the RFQ

⁸ Cohen sworn statement given to Palm Beach County Ethics Commission Investigator on December 10, 2015 and included in Memorandum of Inquiry C 15-021

⁹ OIG undated interview – excerpts included in draft report date September 15, 2016

¹⁰ Email chain from Reporter Kleinberg to Briesemeister dated December 11, 2013, with a follow up emails on December 13th

Briesemeister before December 11, 2013, when the Mayor instructed City staff to commence negotiations with RMA.¹¹ Based on the Mayor's authority to direct negotiations, the City Manager, and Assistant City Attorney Suzanne Payson had frequent discussions with RMA regarding a potential agreement between the two parties during the months of November and December 2013.

Returning to the December 11-15 timeframe, there is no denying that additional calls were placed during this four-day period, but they were related to process and procedure and to gain an understanding of when final action would be taken regarding the contract award to CRA. Given RMA's interest in this matter, RMA was alerted to the special city commission meeting set for December 16, 2013.¹² At this meeting, the City Commission approved RMA as the administrator for the West Palm Beach CRA.

Not only is there no showing of RMA's intentionally breaching the no contact rule, there is no evidence that the company sought to exert influence over the City's decision-makers by attempting to lobby them. When the City-initiated calls were placed as early as November 2103, RMA was under the impression that all of the critical players had indicated their preference for RMA and the only remaining entity to finalize the contract was the City Commission. Although it was unnecessary, RMA could have lobbied the City Commission at the December 16th meeting because it was a duly-notice public meeting and would not have violated the anti-lobbying rules. All things considered, RMA principally adhered to "no contact" and anti-lobbying provisions throughout this process and only engaged in contact with City staff after it had been informed that the City wished to enter into negotiations as a precursor to its selection as the CRA Administrator.

CONCLUSION

RMA, in response to the OIG Report acted appropriately and in good faith during the procurement process for RFQL 12-13-407 as it had no duty to disclose a non-existent business relationship; did not have to report or identify a conflict of interest because no such conflict was ever created between RMA and City staff and complied with the City's "no contact" and "anti-lobbying rule" during this solicitation. Moreover, RMA urges the OIG to take notice of the findings of the Palm Beach County Commission on Ethics regarding its interpretation of contractual relationships between the parties. Under the circumstances, RMA respectfully requests that the OIG drafts a Final Report which incorporates this response.

RMA'S RESPONSE TO OIG DRAFT INVESTIGATIVE REPORT NO. 2016-0002

SEPTEMBER 26, 2016

¹¹ The City Manager contacted RMA as early as November 2013 (after the November City Commission Meeting) to advise the company that the City wished to enter into negotiations. These negotiations took place regularly throughout the month of November and into the month of December.

¹² City of West Palm Beach Special Commission Meeting of December 16, 2013

EXHIBIT LIST

- Exhibit "A": Kleinberg (Palm Beach Post) Emails to Briesemeister dated December 11th and December 13th
- Exhibit "B": December 16, 2013 City of West Palm Beach Special Commission Meeting
- Exhibit "C": Palm Beach County Commission on Ethics Memorandum of Inquiry
C 15-021 – Elliot Cohen
- Exhibit "D": January 31, 2014 Email Regarding City Manager Approval of Resuming Agreement
- Exhibit "E": Emails between City Staff and RMA Beginning November Regarding Negotiations

Alicia Alleyne

From: Kleinberg, Eliot (CMG-WestPalm) <EKleinberg@pbpost.com>
Sent: Wednesday, December 11, 2013 11:24 AM
To: Kim Briesemeister
Subject: CRA

Ms. Briesemeister: We're being told Mayor Muoio has selected RMA. Looking for reaction from you. Thanks.

Eliot Kleinberg

Staff Writer

The Palm Beach Post 2751 S. Dixie Highway, West Palm Beach, Fla. 33405

The Palm Beach Post
REAL NEWS STARTS HERE



voice: 561.820.4418 | fax: 561.820.4407 | toll-free: 800.432.7595 ext. 4418

Eliot_Kleinberg@pbpost.com www.palmbeachpost.com

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Contents of this e-mail may be confidential and proprietary. Use discretion when forwarding.

Alicia Alleyne

From: Kim Briesemeister
Sent: Friday, December 13, 2013 5:14 PM
To: richard.pinsky@akerman.com
Subject: FW: WPB CRA

From: Kleinberg, Eliot (CMG-WestPalm) [<mailto:EKleinberg@pbpost.com>]
Sent: Friday, December 13, 2013 5:07 PM
To: Kim Briesemeister
Subject: RE: WPB CRA

Got it. thanks

Eliot Kleinberg

Staff Writer

The Palm Beach Post 2751 S. Dixie Highway, West Palm Beach, Fla. 33405

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Eliot_Kleinberg@pbpost.com www.palmbeachpost.com

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Contents of this e-mail may be confidential and proprietary. Use discretion when forwarding.

From: Kim Briesemeister [<mailto:kim@rma.us.com>]
Sent: Friday, December 13, 2013 5:05 PM
To: Kleinberg, Eliot (CMG-WestPalm)
Subject: RE: WPB CRA

Everyone at RMA is honored to have been selected to begin providing redevelopment services to the West Palm Beach Community Redevelopment Agency. The rigorous selection process established by the City allowed the opportunity for entities like RMA to put their best foot forward and demonstrate why we each believe we are the best choice. A great deal of effort went into our response and coming in first certainly validates the hard work of the entire RMA staff. Regarding Jon Ward, Jon is one of the best urban redevelopment professionals in the business and RMA is proud to have him on our team. RMA thoroughly vetted Jon's entire background and career and as a result enthusiastically invited Jon to RMA. West Palm Beach is not Ft Pierce, and while each community has its unique set of redevelopment challenges, John and RMA are 100% focused upon how best to maximize the current and exciting growth spurt taking place in West Palm Beach.

From: Kleinberg, Eliot (CMG-WestPalm) [<mailto:EKleinberg@pbpost.com>]
Sent: Friday, December 13, 2013 4:21 PM
To: Kim Briesemeister
Subject: RE: WPB CRA

Ok thanks.

Eliot Kleinberg

Staff Writer

The Palm Beach Post 2751 S. Dixie Highway, West Palm Beach, Fla. 33405

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voice: 561.820.4418 | fax: 561.820.4407 | toll-free: 800.432.7595 ext. 4418

Eliot_Kleinberg@pbpost.com www.palmbeachpost.com

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Contents of this e-mail may be confidential and proprietary. Use discretion when forwarding.

From: Kim Briesemeister [<mailto:kim@rma.us.com>]

Sent: Friday, December 13, 2013 4:21 PM

To: Kleinberg, Eliot (CMG-WestPalm)

Subject: RE: WPB CRA

Yes Elliot, let me get out of meetings and I'll send you a response in a bit.

From: Kleinberg, Eliot (CMG-WestPalm) [<mailto:EKleinberg@pbpost.com>]

Sent: Friday, December 13, 2013 2:03 PM

To: Kim Briesemeister

Subject: WPB CRA

Ms. Briesemeister: trying again to see if you want to give us a comment, or "no comment" on your selection by West Palm Beach.

Also, you saw we obtained the dollar figures and contract. We wanted to see if you want to comment on that.

Also, can you or Mr. Ward respond to what's described in this news article from Fort Pierce? Can you say if you told West Palm Beach officials of the circumstances of Mr. Ward's departure from that post?

<http://www.tcpalm.com/news/2013/jul/16/fort-pierce-urban-redevelopment-director-3-staff/?print=1>

Eliot Kleinberg

Staff Writer

The Palm Beach Post 2751 S. Dixie Highway, West Palm Beach, Fla. 33405

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**City of West Palm Beach
Special City Commission**

AGENDA

**December 16, 2013
11:00 A.M.**

IN ACCORDANCE WITH THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT (ADA), PERSONS IN NEED OF A SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHALL, WITHIN THREE DAYS PRIOR TO ANY PROCEEDING, CONTACT THE CITY CLERK'S OFFICE, 401 CLEMATIS STREET, WEST PALM BEACH, FLORIDA 33401, {(561) 822-1210}

MAYOR

GERALDINE MUOIO

CITY COMMISSION

PRESIDENT KEITH JAMES

COMMISSIONER KIMBERLY MITCHELL

COMMISSIONER ISAAC ROBINSON, JR.

COMMISSIONER SYLVIA MOFFETT

COMMISSIONER SHANON MATERIO

ADMINISTRATION

CITY ADMINISTRATOR JEFFREY L. GREEN

CITY ATTORNEY CLAUDIA M. MCKENNA

CITY CLERK – HAZELINE F. CARSON

CALL TO ORDER:

INVOCATION:

PLEDGE OF ALLEGIANCE:

CIVILITY AND DECORUM: The City of West Palm Beach is committed to civility and decorum by its officials, employees and members of the public who attend this meeting. The City Code, Secs. 2-31(8), 2-31(18) and 2-31(22), provides in pertinent part:

- Officials shall be recognized by the Chair and shall not interrupt a speaker.
- Public comment shall be addressed to the City Commission as a whole and not to any individual on the dais or in the audience.
- Displays of anger, rudeness, ridicule, impatience, lack of respect and personal attacks are strictly prohibited.
- Unauthorized remarks from the audience, stamping of feet, whistles, yells and similar demonstrations shall not be permitted.
- Offenders may be removed from the meeting.

RESOLUTION:

1. **Resolution No. 361-13 approving an Agreement for Administration of the West Palm Beach Community Redevelopment Agency and West Palm Beach Redevelopment Activities between the City and Redevelopment Management Associates, LLC; and**

Resolution No. 362-13 approving an Interlocal Agreement between the City and the West Palm Beach Community Redevelopment Agency providing for the funding of staffing for the CRA and the Agreement for Administration; and

Resolution No. 363-13(F) authorizing the appropriation or transfer of City Funds in Fiscal Year 2013/2014 to amend the General Fund to provide funding for the administration of the CRA.

RESOLUTION NO. 361-13: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING AN AGREEMENT FOR ADMINISTRATION OF THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY AND WEST PALM BEACH REDEVELOPMENT ACTIVITIES BETWEEN THE CITY AND REDEVELOPMENT MANAGEMENT ASSOCIATES, LLC; PROVIDING FOR AN EFFECTIVE DATE; AND OTHER PURPOSES.

RESOLUTION NO. 362-13: A RESOLUTION OF THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF WEST PALM BEACH AND THE WEST PALM BEACH COMMUNITY

REDEVELOPMENT AGENCY FOR FUNDING FOR THE ADMINISTRATION OF THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY AND WEST PALM BEACH REDEVELOPMENT ACTIVITIES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

RESOLUTION NO. 363-13(F): A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE APPROPRIATION OR TRANSFER OF CITY FUNDS IN FISCAL YEAR 2013/2014 IN ACCORDANCE WITH SECTION 4.03 OF THE CITY CHARTER OF THE CITY OF WEST PALM BEACH, FLORIDA, FOR THE PURPOSE OF AMENDING THE GENERAL FUND TO PROVIDE FUNDING FOR THE ADMINISTRATION OF THE COMMUNITY REDEVELOPMENT AGENCY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Agenda Cover Memorandum No.: 19688

Staff Recommended Motion:

Approve Resolutions No. 361-13, Resolution No. 362-13 and Resolution No. 363-13(F).

Background:

CONTRACT FOR ADMINISTRATION

The City issued Request for Qualifications No. 12-13-207 seeking submittals of qualifications from firms interested in providing redevelopment, management and consulting services to the CRA, including the management of all activities and operations of the CRA. The City received proposals from six firms and a selection committee met on November 1, 2013 to hear presentations from each of the proposers. The Selection Committee selected three finalists, Redevelopment Management Associates, CH2M Hill and The Urban Group. On November 5, 2014, the City Commission heard presentations from the three firms. At that meeting, the City Commission directed the Mayor to negotiate with RMA and CH2M Hill and RMA was selected.

Redevelopment Management Associates will operate, administer and manage the CRA starting January 1, 2014. There will be a transition period from January 1 to February 28, 2014 during which time the City will maintain and pay the salaries of the existing CRA employees. RMA will provide the following transition team from January 1, 2014 to February 28, 2014: full time Executive Director, part time Senior Project Manager, and support staff including part time Marketing Coordinator and part time combined services including Urban Designer, Planning, Economic Development, Project Engineering and Construction Management services. Starting March 1, 2014, RMA shall provide the following staffing services: full time Executive Director, full time Administrative Assistant, part time Senior Project Manager, full time Project Manager II, part time Project Manager I or Coordinator, full time Marketing Manager, part time Special Event Coordinator, part time Real Estate Administrator, part time/limited combined services of Urban Designer, Project Engineer, Construction Manager, Marketing Director.

The City shall pay RMA the total fixed sum, including overhead and profit, of \$41,000.00 per month for January 1 – February 28, 2014. Commencing March 1, the fee

will increase to \$78,000.00 per month (the "Fee"). For services outside of the Scope of Services in the Agreement, such as assistance with bond and long term financing projections, and public/private partnership negotiations, these services will be assigned by work authorization based upon the hourly rates or a fixed lump sum.

Resolution No. 361-13 approves the contract with RMA for a term of three years with the right to renew for two additional years.

INTERLOCAL FOR FUNDING

Article V of the By-laws of the West Palm Beach Community Redevelopment Agency, as amended and restated February 11, 2008, provides that an interlocal agreement between the City and CRA shall provide for staff support and services by the City for the CRA as deemed necessary to undertake and carry out redevelopment activities and projects in the CRA's redevelopment areas.

Resolution No. 362-13 approves an interlocal agreement between the City and the CRA pursuant to which the CRA will fund those services related to the administration and management of CRA projects and activities provided by RMA to CRA under the City contract.

Resolution No. 363-13(F) appropriates funds in the City budget for the RMA contract.

2. **Resolution No. 353-13 approving and authorizing the submission of the City's Consolidated Annual Performance and Evaluation Report (CAPER) for fiscal year 2012-2013 to the U.S. Department of Housing and Urban Development (HUD) and authorizing the execution and submission of any related documents.**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING THE CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER) FOR FISCAL YEAR 2012-2013; AUTHORIZING THE MAYOR TO EXECUTE ALL RELATED DOCUMENTS; AUTHORIZING AND DIRECTING THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT TO SUBMIT THE CAPER FOR FISCAL YEAR 2012-2013 TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR REVIEW AND APPROVAL; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Agenda Cover Memorandum No.: 19687

Staff Recommended Motion:

Approve Resolution No. 353-13.

Background:

The City of West Palm Beach is a recipient of federal funds through the Community Development Block Grant (CDBG) Program, the HOME Investment Partnerships (HOME) Program and the Housing Opportunities for Persons With AIDS (HOPWA)

Program. As a condition for receipt of such funds, the City must comply with federal regulations pertaining to the submission of an annual progress report entitled Consolidated Annual Performance and Evaluation Report (CAPER) to the U.S. Department of Housing and Urban Development (HUD) Miami Field Office.

The CAPER formally reports to HUD the progress that the City has made in carrying out its Consolidated Plan and Action Plan. The CAPER must include programmatic, financial, geographic and demographic data. It must also include the actions that the City has taken to affirmatively further fair housing and Section 3 concerns. The CAPER must be submitted to HUD within 90 days after the close of the City's program year, or December 27, 2013.

Upon receipt of the CAPER, the HUD Miami Field Office will review the document for compliance matters, progress made towards goals, and accuracy of information. Once reviewed, HUD will issue its determination in writing to the City. A notice to the public was published in the Palm Beach Post Newspaper on November 15, 2013 pertaining to the availability of the CAPER for public review and comment.

Attached is Resolution No. 353-13 which (1) Approves the Consolidated Annual Performance and Evaluation Report Program Year 2012, (2) Authorizes the Mayor to execute all related documents; and (3) Authorizes and directs the Department of Housing and Community Development to submit the CAPER for program year 2012 to the U.S. Department of Housing and Urban Development for its review and approval.

Fiscal Note:

No fiscal impact.

ADJOURNMENT:

NOTICE: IF ANY PERSON DECIDES TO APPEAL ANY DECISION OF THE CITY COMMISSION AT THIS MEETING, THAT PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND FOR THAT PURPOSE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY OF WEST PALM BEACH DOES NOT PREPARE OR PROVIDE SUCH A RECORD.

Minutes of the City of West Palm Beach
Special City Commission Meeting Held on December 16, 2013

The City Commission of the City of West Palm Beach met in special session on Monday, December 16, 2013 at 11:03 a.m., at City Hall, with the following persons present:

Mayor Geraldine Muoio; President of the Commission Keith James; Commissioner Shanon Materio; Commissioner Kimberly Mitchell; Commissioner Sylvia Moffett; Commissioner Isaac Robinson Jr.; City Administrator Jeff Green; City Attorney Claudia McKenna; City Clerk Hazeline Carson.

CIVILITY AND DECORUM: The City of West Palm Beach is committed to civility and decorum by its officials, employees and members of the public who attend this meeting. The City Code, Sections 2-31(8), 2-31(18) and 2-31(22), provides in pertinent part:

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Resolution No. 363-13(F) authorizing the appropriation or transfer of City Funds in Fiscal Year 2013/2014 to amend the General Fund to provide funding for the administration of the CRA.

Mayor Muoio stated that she is looking forward to the new organizational structure of the CRA and thinks it will put the City in a better place. She stated that approximately eight or nine months ago, Ms. Briesemeister, the former CRA Executive Director, spoke to her and former City Administrator Ed Mitchell recommending that they look at the CRA differently and to take a different approach. Mayor

Muoio stated that she thinks that the model being presented will bring a variety of personnel to help with the critical goals outlined in the City's five year plan. She went on to state that our CRA has been one of the most successful in the State and that this will put us on the cutting edge of what CRA agencies are supposed to be doing. She also noted that they will address some of the questions raised by the press and in the newspaper regarding travel expense, health care and a federal housing project. She advised that the City considered what was proposed with an open mind. Every bidder was considered carefully and after the presentations to the City Commissioners, selections were narrowed down to two bidders. Both presented and were interviewed by her and City Administrator Green and RMA was selected as the best choice for the City. Mayor Muoio asked Mr. Green to address questions raised in the newspaper.

City Administrator Jeff Green explained the travel as set out in the contract and read the language into the record. He advised that the contract does provide for mileage reimbursement if an RMA consultant travels on behalf of the CRA for related business.

Mayor Muoio stated that all expenses will be approved by the Finance Director through the approval process.

Commissioner Materio asked if a request by the City for a RMA employee to attend a conference have to be presented to the City Commission for approval.

Mr. Green responded that the budget has been approved for travel and training, so it would not be presented to the City Commission.

Commissioner Moffett mentioned long distance telephone calls and because of the use of cell phones, asked to strike language mentioned in the contract.

Commissioner Mitchell stated that they may have to set up conference calls and may have to make long distance calls from a landline.

Mayor Muoio addressed the issue with the housing project ran by Mr. Ward. She said we are not hiring Mr. Ward, but RMA.

Commissioner James asked that a presentation of the business case be made for making this move. He wanted to know the fiscal impact for justifying this decision.

Mayor Muoio stated that the City is contracting for personnel for the budget allotted; additional money is not being spent. She also stated that Mr. Green has a list of positions that this will buy and they are positions we do not currently have.

Mr. Green explained the basic business concept for the funds. He stated that the budget is approximately \$960,000.00 which is approximately \$80,000.00 a month that funds nine positions, including benefits. He said this plan gives the City a more flexible organization and the ability to

get specialized services for less than what it currently costs.

Commissioner Mitchell said she has reviewed the documents, but would like to have a conversation about measurements. She noted that they are looking at a different model and she wants to ensure that it will work for the taxpayers and community.

Commissioner Robinson expressed concern about the seven people who are still working for the CRA. He questioned where they would fit within the new organizational structure.

Mayor Muoio said the CRA Board has laid out the strategic plan which details what is being worked on, as well as the frame work moving forward. She went on to state that the current employees will be assumed into the organization. She stated that they are buying flexibility. She also stated that there may be times when those employees are working full time and there may be times when they are part time. She also said that it is not a traditional organization and will provide for the needs required.

Mr. Green said that the current employees will be offered fulltime employment with RMA.

Commissioner Materio stated that they need to have benchmarks in place to make sure the strategic plan is being followed. She feels that RMA has more full time talent to add to the full time talent already employed.

Commissioner Moffett expressed concerns about the salary for the current employees.

Mr. Green stated that he is not sure if all employees will earn the same salaries; however, all salaries will be reviewed and current employees will be offered competitive salaries.

Mayor Muoio suggested regular reports be submitted from RMA to the CRA Board for review of what has been accomplished.

Commissioner James commented on the contract stating that the City did not select RMA, as a formal vote was not taken. He feels that this should be removed from the contract.

City Attorney Claudia McKenna stated that the contract is between the City and RMA and as part of the Whereas clause it states that they are okay with the Mayor's choice.

Commissioner James expressed concern about 1.2A which states that RMA is designating an employee as an Executive Director of the CRA. He stated that he would like a face to face introduction. He feels this is premature because he is unsure as to whether this individual is acceptable to the City.

Ms. McKenna stated that selecting an Executive Director is an

operational function. She further stated that RMA has to provide the City with someone who will serve as the Executive Director and the City has the sole discretion to say whether that is a good choice. She said this person has not yet been identified, but RMA has had discussions with the Mayor and Mr. Green about a selection.

Commissioner James stated that he feels it is more appropriate for the City Commission as a body to make the decision of who the Executive Director will be.

Ms. McKenna stated that the contracting body is the municipal corporation. She then stated that the Charter provides that the Mayor shall supervise and direct the operations of the department's divisions and agencies of the City. Historically, a City employee has served as the Executive Director of the CRA which has been selected by the Mayor.

Mayor Muoio stated that they will not identify a director at this time. She further stated that the City Commission will have the opportunity to meet whomever RMA selects.

Commissioner Materio stated that she thought the Statute was clear on the CRA's purview. She said if they are approving a contract, she feels that they should all participate in selecting the CRA Director. She also feels that they should have been able to participate in making the final selection.

Commissioner Mitchell agrees that the CRA Statute is clear on the role of the CRA Board. She feels that the CRA Board is distinct from the City and suggested removing language from the contract relating to the selection of the Executive Director so that they can move forward with a vote. She then noted that the City Commission wants the right to decide on who the Executive Director for the CRA will be.

Mayor Muoio stated that the CRA employees are employees of the City and the CRA enters into an Interlocal Agreement with the City to provide for the CRA implementation.

Ms. McKenna read a portion of the Statute governing employees of the CRA relating to the employment of agency employees.

Commissioner Materio stated that there is a section of the Statute that is not being read. She then stated that she is not comfortable with approving this contract and would like an opinion from Mr. Lewis or the Commission's attorney. She requests the contract be denied until such time as an opinion is received.

Commissioner James wanted to know why the contract is between the City and RMA as oppose to the CRA and RMA.

Mayor Muoio stated that the City hires the personnel for the CRA according to an Interlocal Agreement it has with the City.

Ms. McKenna advised that the CRA cannot take any action inconsistent

with the City's Charter. She said that the City's Charter controls the departments, divisions and agencies of the City. She said in 1992 when the City decided to move to a strong Mayor form of government, the policy decision made by the voters was that there would be one person accountable for City business. She also said that City business includes CRA business, even though it is an agency that is allowed to be created by Statute. She stated that from 1984 forward when the CRA was established, one of the first resolutions adopted was that the City would staff the CRA; however, that changed in 1992 when the City became a strong Mayor form of government. She said the Commission can seek a Charter change to have the CRA structure separate and apart from the City.

Commissioner James stated that the Charter did not contemplate outsourcing the management of one of the departments.

Mayor Muoio stated that this gives us an opportunity to do something innovative and creative. She believes they should move forward. She further asked that the language in dispute can be removed from the contract.

Commissioner Materio agrees with removing that language from the contract. She stated that for purposes of clarification for the future, she wants an opinion from the Commission's General Counsel.

Motion was made by Commissioner Materio, seconded by Commissioner Robinson, to request the Commission's General Counsel for an opinion on the City's Special Districts; and thereafter it was voted as follows: Ayes: Commissioners James, Materio, Mitchell, Moffett and Robinson. Motion therefore carried unanimously.

Commissioner Mitchell stated that the CRA did not make the decision to hire Ms. Briesemeister; it was the purview of the Mayor. The Commission only discussed the salary.

Ms. McKenna stated that the Commission is not approving a contract for administration of the CRA, but for staffing. She said the Mayor will continue to administer the day to day operations of the CRA. She also said that the principals of RMA will direct their employees. We are not hiring RMA to administer the CRA.

Commissioner James stated that in Section 1.1 of the contract it states that RMA shall provide all services necessary to operate, administer and manage the CRA.

Ms. McKenna responded that the word "administer" should be removed from the contract because RMA will administer their staff as they will be staffing the functions needed to achieve the CRA's objectives.

There was discussion on a performance matrix, quarterly review, measurable goals, objectives and standards, incorporating language in the contract on benchmarks, the task list, and a work plan.

Commissioner Materio asked if there is a legal way to approve the contract to start doing business with RMA, but gives the Commission flexibility to make changes.

Mayor Muoio stated that the contract allows for changes. In addition, the contract can be voided within thirty (30) days for cause.

Commissioner Materio spoke about having a CRA Board meeting within thirty (30) days after details are ironed out.

Mayor Muoio recommended approving the contract with the understanding that they will come back to the Commission within thirty (30) days with a 90 day plan or 120 day plan showing the Commission what will happen and with the benchmarks and timelines as they relate to the City's five year plan. She said if the timeline needs to be changed, we need to advise RMA on what has to change and bring it forward to the CRA Board.

Commissioner James spoke about Section 3.3 relating to the administration expenses. He asked if there was a cap on the administrative expenses.

Mr. Green advised that the CRA currently pays for the administration expenses.

Commissioner James asked about a 5% administrative fee noted in Section 3.4 for expenses and asked to negotiate a lower fee.

Mr. Green responded that the original request was for 10%. He said that a 5% administrative fee is typical for these type contracts.

Public comments were made by Curt Thompson and Sandy Matkivich.

Mayor Muoio stated that the City has had one of the best CRAs in the State of Florida for the past eight years. She said this contract with RMA gives the City a chance to take it to the next level.

Commissioner Mitchell stated that the contract with RMA allows them to hire a CRA director in house that will make the staffing decisions. She also noted the CRA will be able to utilize the same people and add personnel while taking the model in a different direction. The City will not risk losing money because they are spending less money on the new CRA initiative. Commissioner Mitchell feels that approving the contract is the right decision as RMA is the best choice. She noted that the Mayor has taken responsibility of the decision and the City Commissioners will provide guidance.

RESOLUTION NO. 361-13: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING AN AGREEMENT FOR ADMINISTRATION OF THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY AND WEST PALM BEACH REDEVELOPMENT ACTIVITIES BETWEEN THE CITY AND REDEVELOPMENT MANAGEMENT

**ASSOCIATES, LLC; PROVIDING FOR AN EFFECTIVE DATE;
AND OTHER PURPOSES.**

Motion was made by Commissioner Mitchell, seconded by Commissioner Moffett, to approve Resolution No. 361-13.

Commissioner Robinson commented on the timeline for the historic northwest area. He also said that he was worried about what will happen to the current staff.

Mayor Muoio stated that it is difficult to get tasks done without approving the contract.

Commissioner Moffett stated that she is optimistic because the task sheet reflects that RMA will be involved throughout the year.

Commissioner James stated that he is not in favor of approving the contract until he sees the revised language.

Mayor Muoio suggested adding to the motion to take out "administration" and the phrase "the CRA will designate an Executive Director acceptable to the City".

There was further discussion on amendments to the contract and when to bring it back.

A revised motion was made by Commissioner Mitchell to approve Resolution No. 361-13 with the following amendments to the contract: in Section 1.1 strike the word "administration"; amend the Section that describes the fulltime CRA Director position in RMA's contract to come back to this body at a later date; language should be included that within 30 days or less, the Commission will reconvene with RMA to look at the tasks currently in our plan for dialogue and discussion on how we prioritize and benchmarks; also for the first year to have quarterly review and interaction with RMA in order to give different direction and twice yearly thereafter. Commissioner Moffett seconded the motion with the amendments.

Commissioner Robinson asked if the entity agrees with the recommendations.

Kim Briesemeister, of RMA, stated that they have not been able to talk to the Commission for four months and a lot of things they talked about today would have been resolved. She stated that accountability is important to them. She advised that the tasks are listed on the wall at the CRA and includes details of how the tasks will be completed. This can be made available to the Commission in any format. She also noted that this is an ongoing initiative and changes monthly requiring them to have meetings every two to three months tracking whether or not benchmarks are being met. She noted that they will be able to work through the operational concerns.

Commissioner James asked Ms. Briesemeister if a decision to approve

the contract in January 2014 will adversely affect their plans.

Ms. Briesemeister responded that there has been a tremendous amount of time that has lapsed. She said the CRA has continued to operate; however, their inability to function as the management team will compound the situation. She also noted that there is nothing addressed today that if the contract is approved, could not be worked out immediately.

Commissioner Mitchell agreed with Ms. Briesemeister. She urged the City Commission to support the contract so that RMA can begin working on projects.

Mayor Muoio stated that she has built an excellent team of administrators and leaders of the City and she feels strongly that RMA is another excellent decision which will make the City stronger. She said the issues discussed will be addressed in the contract.

Commissioner James explained his reluctance to approve the contract because of the need for the revised language. He feels that the contract should be revised and presented to the City Commission on January 6, 2014.

Mayor Muoio asked if additional questions can be addressed and amendments made at a later date, if they were to move forward today with the amendments that have been proposed.

Ms. McKenna responded that the contract can be amended; however, it requires the agreement of both parties. She stated that Ms. Briesemeister advised that she is amenable to addressing the issues raised. She noted that the benchmark document will be an exhibit to the base agreement which will be prepared within the next thirty (30) days for Commission approval. She said the base contract will be amended to make clear that this is a professional staffing agreement and the staff that RMA designates is going to be required to carry out the day to day tasks of the CRA activities that are required to achieve the identified projects in the strategic finance plan. She also said that RMA will provide the staff for the Executive Director position. She said that Paragraph 14 will be amended to take out the word "periodically" and to add "quarterly."

Commissioner James referred to Section 15.1 regarding termination upon thirty (30) day notice for cause and would like a more specific definition of what constitutes cause.

Ms. McKenna stated that she will look at that, but typically contracts are left more open ended.

Mayor Muoio asked for additional comments and received none.

Thereafter it was voted as follows: Ayes: Commissioners Materio, Mitchell and Moffett. Nays: Commissioners James and Robinson. The motion therefore carried 3-2.

RESOLUTION NO. 362-13: A RESOLUTION OF THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF WEST PALM BEACH AND THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY FOR FUNDING FOR THE ADMINISTRATION OF THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY AND WEST PALM BEACH REDEVELOPMENT ACTIVITIES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Motion was made by Commissioner Mitchell, seconded by Commissioner Moffett, to approve Resolution No. 362-13; and thereafter it was voted as follows: Ayes: Commissioners Materio, Mitchell and Moffett. Nays: Commissioners James and Robinson. Motion therefore carried 3-2.

RESOLUTION NO. 363-13(F): A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE APPROPRIATION OR TRANSFER OF CITY FUNDS IN FISCAL YEAR 2013/2014 IN ACCORDANCE WITH SECTION 4.03 OF THE CITY CHARTER OF THE CITY OF WEST PALM BEACH, FLORIDA, FOR THE PURPOSE OF AMENDING THE GENERAL FUND TO PROVIDE FUNDING FOR THE ADMINISTRATION OF THE COMMUNITY REDEVELOPMENT AGENCY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Motion was made by Commissioner Mitchell, seconded by Commissioner Moffett, to approve Resolution No. 363-13; and thereafter it was voted as follows: Ayes: Commissioners Materio, Mitchell and Moffett. Nays: Commissioners James and Robinson. Motion therefore carried 3-2.

2. Resolution No. 353-13 approving and authorizing the submission of the City's Consolidated Annual Performance and Evaluation Report (CAPER) for fiscal year 2012-2013 to the U.S. Department of Housing and Urban Development (HUD) and authorizing the execution and submission of any related documents.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING THE CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER) FOR FISCAL YEAR 2012-2013; AUTHORIZING THE MAYOR TO EXECUTE ALL RELATED DOCUMENTS; AUTHORIZING AND DIRECTING THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT TO SUBMIT THE CAPER FOR FISCAL YEAR 2012-2013 TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR REVIEW AND APPROVAL; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Mayor Muoio asked if there were questions on this item.

Commissioner Materio asked Deputy City Administrator Miller if she has been having conversations with HUD, not necessarily regarding the CAPER. She also asked if they could schedule a workshop in thirty (30) days to discuss specific issues with HUD.

Ms. Miller responded, yes they have been having conversations with HUD. She said they will request that a HUD representative be present at the workshop.

Public comment was made by Curt Thompson.

Commissioner Materio stated that she believes that it is important to ensure that the finances are executed so that they are distributed to the appropriate end user.

Motion was made by Commissioner Materio, seconded by Commissioner Robinson, to approve Resolution No. 353-13.

Commissioner Robinson stated that he has reviewed previous CAPER's and asked that documents with a due date from a state or federal entity be received by the Commission thirty (30) days prior in a draft form.

Mayor Muoio stated that the Commission received the CAPER the first time on November 22, 2013 and again a week later.

Thereafter it was voted as follows: Ayes: Commissioners James, Materio, Mitchell, Moffett and Robinson. Motion therefore carried unanimously.

ADJOURNMENT:

There being no further business to come before the Commission, the meeting was adjourned at 1:00 p.m.

APPROVED:


PRESIDING OFFICER

ATTEST:


CITY CLERK

EXHIBIT C

PALM BEACH COUNTY COMMISSION ON ETHICS REPORT OF INVESTIGATION

To: Mark E. Bannon, Executive Director
From: Anthony C. Bennett, Chief Investigator
Re: C15-021 – Elliot Cohen, Communications Director, City of West Palm Beach

The information provided in the Memorandum of Inquiry and Legal Sufficiency Determination, including all documentary and other evidence from the initial inquiry, is incorporated by reference into this Investigative Report.

- **Investigation**

I began this investigation by obtaining additional background information on West Palm Beach Communications Director Elliot Cohen via the City of West Palm Beach (City) website (www.wpb.org), as well as the website for the City's Community Redevelopment Agency (CRA)(www.wpb/Departments/CRA.org), and the website for the business entity Cohen Publicity (www.cohenpublicity.com).

On the City's website, I found Elliot Cohen's biography and was able to verify that he is the current City Communications Director. I also found information regarding the business entity Cohen Publicity listing Respondent's biography, as well as listing him as the contact person. This information was verified during a sworn statement given by Respondent on December 10, 2015. There was no listing of current or past clients on the Cohen Publicity webpage.

On December 31, 2015, Respondent forwarded a signed copy of the written contractual agreement between Redevelopment Management Associates and Cohen Publicity based on a request I made on December 28, 2015. According to Respondent, a verbal agreement was made as of December 1, 2012. A written agreement (the Agreement) was signed for Redevelopment Management Associates (RMA) on January 5, 2013 and by Respondent on January 9, 2013 respectively. This Agreement described an "Independent Contractor – Client Relationship." RMA is listed as "the Client" and Cohen Publicity is listed as "the Independent Contractor." In Section 3 of the Agreement it states, "The Client shall pay the Independent Contractor on a monthly retainer basis at the agreed upon rate of \$1,000.00 per month."

In Section 7 of the document, titled "Term and Termination," it states, "Either party may terminate this contract on 30 days' written notice; otherwise the contract shall remain in force." "In the event of termination, and provided that Independent Contractor is not in material breach of its obligations hereunder, the Independent Contractor shall be entitled to keep all monies already paid." The Agreement was signed by both parties on January 5, 2013 and January 9, 2015 respectively.

I researched information about RMA by reviewing their website (www.RMA.us.com). It stated RMA was formed in 2009 with its principal members being Kim Briesmeister and Christopher J. Brown. They describe their entity on this website as the most experienced full service consulting and management firm in the State of Florida specializing in repositioning and redeveloping places for cities, counties and CRA's nationwide. There was no listing of the West Palm Beach CRA on the RMA website. There was also no listing of Cohen Publicity or Elliot Cohen on the RMA website.

Next, I researched information regarding the relationship between the CRA and RMA. I went to the City CRA website. It listed Mr. Jon Ward as the Executive Director. Several board members and advisory board members were listed on the website, Respondent's name was not listed. In the CRA Overview Section, it stated the CRA operations had been outsourced to another entity in 2013. The entity listed was RMA, Pompano Beach, FL. CRA Executive Director Jon Ward's listed his current occupation as Executive Director of the City of West Palm Beach CRA for RMA in his biography found on the LinkedIn website (www.linkedin.com). Based on that information, I contacted Executive Director Jon Ward for an interview.

- Interview: Jon Ward, CRA Director:

On Thursday, January 7, 2016, at 11:00 am, I conducted a sworn audio recorded interview with Mr. Jon Ward, Executive Director of the West Palm Beach Community Development Agency, at City Hall – 401 Clematis Street, West Palm Beach, FL 33401. Below are the details of that interview:

Prior to questioning, Mr. Ward clarified his actual position as Executive Director of the West Palm Beach CRA. He stated approximately two (2) years ago the City elected to outsource the management of their CRA. Through a bid process, RMA, which is his actual employer based in Pompano Beach, FL won the bid to manage that agency. He advised he is a Senior Redevelopment Associate with RMA. He is employed by RMA to run the West Palm Beach CRA. He stated he currently serves as a consultant under contract to run the CRA, but is considered an employee of RMA. He stressed he is not a City employee but an RMA employee as he receives his paycheck directly from RMA.

Mr. Ward stated he has been the Executive Director of the CRA since January 2, 2014. His duties include being in charge of all agency administration, all building projects, initiatives, budgeting, hiring, firing, and all daily activities performed by the agency. He advised he would have knowledge of all contracts held by the agency, to include individual contracts. He stated he is the approving authority that moves the contracts from the agency to the Mayor for final approval. City Mayor (Geraldine) Moulo has the final approval authority over CRA contracts.

Mr. Ward advised the CRA's purpose is to look at certain blighted areas within the city and propose ways to revitalize these areas. This includes rebuilding areas that may be considered slum areas, with the goal of economic development which would bring jobs to that area and ultimately help the overall community. He stated the CRA uses a bid process to hire qualified individuals to physically rebuild the identified areas. The CRA does not do the building; they are responsible for the area planning and finding solutions for the area prior to the building.

Mr. Ward gave the example of the (CRA) currently buying the Sunset Lounge, a defunct business located on 8th Street and Henrietta Street. The plan is to revitalize the property as a cultural destination for the community. They will use CRA funds to buy it, an architect will be hired to create remodeling plans, and a contractor will be hired to complete the work.

Mr. Ward stated he was hired by RMA in Pompano Beach where he worked on a separate four (4) month project. When that project ended, he was hired as the Executive Director for the CRA. Ward stated the City made the decision to privatize the CRA, and entered into a contract with RMA. Although the employees he supervises are City employees, he is still considered a contracted employee of RMA. He stated he participated with RMA in preparing documents and attending public meetings prior to formally taking over the CRA, so he has extensive knowledge on the process it took to get contract and the overall relationship between the City and RMA. He stated the contract between RMA and City was approved by the City Council in December 2013 and took effect on January 2, 2014.

Mr. Ward stated his office is located in city hall and he reports to the Mayor of West Palm Beach and also responds to the direction of RMA owners Kim Briesmeister and Chris Brown, but they do not have any direct involvement in the day-to-day activities of the CRA. He does speak to the RMA owners once or twice every month to discuss relevant information. They will become involved if there is a specific problem or he needs to consult with someone regarding an issue or challenge. Mr. Ward stated his conversations only pertain to City and RMA business and he is not involved in other RMA contractual business.

Mr. Ward stated he knew Respondent as the Director of Communications for the City and said Respondent's office is down the hall on the same floor as his office. He stated his interaction with Respondent is exclusively business. Ward stated Respondent works with him and the CRA on public relations issues and to communicate CRA information to the media as City Communications Director. This is not done by Respondent under separate contract or by a separate company, but as a City employee. Ward stated that when projects are being completed by the CRA where there is public interest, Respondent would be involved in the informational meetings so that the information could be shared with the public through the press, social media, video pieces and other avenues.

Ward again reiterated that Respondent is acting under his title as Communications Director when this work is completed.

Mr. Ward said he was not familiar with the Company Cohen Publicity and that he only learned of its existence during the course of this investigation. He assumed the owner to be Elliot Cohen based on the name of the company, but had no other knowledge of the company itself. Ward stated Cohen Publicity unequivocally does not have any current or former contracts with the CRA. By him being the CRA Executive Director since the first day it was contracted out, he has knowledge of all CRA contracts. Cohen Publicity has no contractual relationship with the CRA. All work done by Respondent for the CRA was completed under Respondent's Communications Director's authority.

Mr. Ward stated he did not know if Cohen Publicity or Respondent had any direct contracts with RMA. If Respondent's company did have such contracts, he would not have been involved in the processing or approving of any contract with RMA. Mr. Ward stated he had heard that Respondent has done work for RMA in the past, but he was not aware of any of the details of that work or the time the work was completed. His knowledge of the previous work was through word of mouth only.

Mr. Ward had no other information to add.

The interview was completed Thursday, January 7, 2016 at 11:16 am

To get clarification of the timeline as to when Respondent began the RMA Agreement, suspended the Agreement and subsequently completed the additional work for RMA, I contacted him again for a second interview.

- **Second Interview, Elliot Cohen, Respondent:**

On Tuesday, January 26, 2016, at 2:15 pm, I conducted a second sworn audio recorded interview with Respondent at City Hall – 401 Clematis Street, West Palm Beach, FL 33401. Respondent requested that he also be allowed to record this interview, to which I agreed. Below are the details of that interview:

Respondent identified himself as the current Director of Communications for the City of West Palm Beach. I explained to Respondent the purpose of this second interview was to clarify the timeline he had given in the first interview in regard to a contract held between him/his company and RMA.

Respondent confirmed he initially secured a contract with RMA in January of 2013. The contract was between RMA and Cohen Publicity (the business entity created by Respondent). Respondent stated he "suspended" the contract in June of 2013 and it was terminated at the end of the summer of 2014. Respondent advised the he suspended the RMA contract in June of 2013 in writing via email.

Respondent again stated he did some work for RMA in the summer of 2014. I asked him if this work was done under a new contract or the same contract. He stated the work was completed under the same contract and there was no new contract written. He then stated it was done more on an "informal" basis in which RMA contacted him to do the work and they did not resume the previous original contract. Again he said it was verbally agreed upon between the two parties that he would do the work.

Mr. Cohen was asked how much was he paid under the contract. He stated he was not sure and needed to formally review the contract. He then said he believed it was \$1,000 a month, but was not sure without reviewing the contract. I showed him the emailed copy of the contract that he sent to me. He verified that it was a copy of the original contract and then verified the pay amount was \$1,000 per month. I asked if he received this payment from January of 2013 (the date when the contract was signed) through each month. He stated he did not receive the money consistently every month, but only if he had done work for RMA. He advised he would need to verify the months he was paid. I asked if he received any payments from RMA after June of 2013 for work completed outside of the work done in the summer of 2014. He advised that he was not sure and he would have to check.

Respondent stated he contacted RMA at some point in 2014 and asked them if they wanted to continue the relationship. He stated he did not receive an answer from them for several months. Then in the summer of 2014, they made a verbal agreement to complete video work over the course of the summer. He stated he was paid a "couple of thousand dollars" for the work. He stated he believed the checks were made out by RMA to Cohen Publicity. Respondent stated outside of the previous work done for RMA under the contract of 2013 and the work done in the summer of 2014, he had not done any other work for RMA from that point to the present.

Respondent then went over the timeline again, stating the initial contract was started in January of 2013, and then he suspended it in June of 2013 once he realized RMA would be bidding on the CRA contract. In June of 2013, he sent notification to RMA that he would be suspending the contractual relationship between them and Cohen Publicity. In December of 2013, RMA was offered the CRA contract and started in January of 2014. He did additional work for RMA in the summer of 2014. He reiterated the work he did for RMA was for them exclusively and that there was no private work done for the City or CRA. He stated his role under his companies agreement with RMA was to promote them solely as a private entity.

Respondent stated the contract had a termination clause but did not have a termination date. He stated he had nothing else to add to the interview at this point.

The interview was completed Tuesday, January 26, 2016 at 2:23 pm

On February 11, 2016, I contacted RMA and requested a copy of all contractual documents between them and Cohen Publicity or Elliot Cohen. I also requested copies of all payments made to either or both Cohen Publicity and Elliot Cohen.

On March 7, 2016 Ms. Alicia Alleyne, RMA Director of Administration sent an email to me and Ms. Briesmeister containing copies of the signed contract between RMA and Cohen Publicity, an itemized list of payments made to Cohen Publicity from RMA, and a cancelled check from RMA to Cohen Publicity. The email was added to the file as supporting documentation.

The attached contract, (the Agreement) was four (4) initialed pages which outlined the terms of service to be provided to RMA from Cohen Publicity. The last page was signed by Elliot Cohen on January 9, 2013 and the second signature, which was illegible, was signed on January 5, 2013 (under the signature, the words "For RMA" was written). The Agreement appeared to mirror the agreement provided by Responded earlier in the investigation. It was added into the file as supporting documentation.

The next email attachment, titled "Redevelopment Management Associates, LLC Payments to Cohen Publicity", listed the dates, check numbers and monetary amounts that were paid to Cohen Publicity between February of 2013 and August of 2014. The spreadsheet is listed the following:

| Redevelopment Management Associates, LLC Payments to Cohen Publicity | | | Public Relations & Video Services related to Old Pompano Redevelopment | | |
|---|-----------------|---------|---|-----------------|----------------|
| Date for Services | Check Number | Amount | Date for Services | Check Number | Amount |
| RMA Public Relations Services & Marketing | | | 05/20/14 | 2163 | \$2,000 |
| 02/11/13 | 1559 | \$1,159 | 06/03/14 | 2169 | \$1,000 |
| 03/20/13 | 1597 | \$1,000 | 08/27/14 | 2244 | \$1,000 |
| 04/08/13 | 1615 | \$1,000 | Total | | \$4,000 |
| 05/21/13 | 1677 | \$1,000 | | | |
| 06/13/13 | 1690 | \$1,000 | Grand Total for both jobs | | \$9,159 |
| Total | | \$5,159 | | | |

Based on the information provided, Respondent was paid a total \$5,159 between the months of February and June of 2013. Respondent was also paid a total of \$4,000 between the months of May and August of 2014. The total

amount paid to Respondent by RMA was \$9,159. This information is also consistent with a detailed payment record report provided by RMA, which also lists dates, check numbers and total amounts paid to Cohen Publicity between 2013 through 2014. RMA also provided a copy of a signed check written August 2014, made out to Cohen Publicity for the amount of \$1,000. The check number is #2244, which is listed on both of the provided payment record documents. All of these documents have been added to the file.

On February 9, 2016, I requested Respondent provide a copy of the documentation he referred to in his second taped statement, in which he stated he notified RMA that he was suspending the relationship due to a conflict. On February 12, 2016, Respondent forwarded an email with an attachment that shows a copy of an email written by "Elliot" to "Kim." Based on the information already learned, "Elliot" is the Respondent in this case and used an email address which matches the email address used by Cohen Publicity. "Kim" is Kim Briesmeister, one of the coowners of RMA and the email address this information was forwarded to is consistent with the email address used by Ms. Briesmeister that is on file.

In the content of email, Respondent writes the following:

"In anticipation of the start of the public process next week to discuss the future of the City of West Palm Beach CRA, I think it is best to hold off on that kind of work until the city completes its process of possibly selecting a firm to run the CRA.

As you know, I have no roles in making any decisions, nor do I have any control in any selection process. I am not paid by the CRA, and I am not involved in the awarding of any contracts, nor in the drafting of any RQO. I don't have any role in deciding the future of the CRA.

However, until the process is over, it's probably best to put it on hold.

Elliot"

This email was sent to Ms. Breismeister by Respondent on Friday, June 21, 2013 at 3:37 pm. A copy has been added into the file documents.

- **Summary of the allegations in the Complaint**

Complainant alleges that Respondent may have acted in violation of §2-443(d), *Contractual relationships*, while a salaried employee of the City and working for RMA as an independent contractor under the banner of his own public relations company, Cohen Publicity.

The Complaint references a second job by Respondent with the City of Miami Lakes at \$150 per hour. Since the City of Miami Lakes has no contractual relationship with the City of West Palm Beach, and is another governmental entity, there is no violation of §2-443(d), *Contractual relationships* by Respondent for employment with the City of Miami Lakes.

Complaint states Respondent works his salaried job for the City in conjunction with his second job with his public relations company. Based on information gathered, Respondent does not work traditional hours. He is subject to call outs and other mandatory City work situations where he is required to respond during off hours. Per statements from Respondent's supervisor, Mayor Muoio, he is allowed to utilize a "flex time" system. Respondent stated during his interviews, that he works for his personal public relations company on his personal time and does not mix the two. Although the allegation was made, Complainant provided no relevant documentation to dispute both the statement of Mayor Muoio or Respondent relative to his working hours or schedule. Likewise, there is no substantial information indicative of a violation of COE §2-443(a), *Misuse of public office or employment* by Respondent.

However, there is substantial evidence to believe Respondent may have violated §2-443(d), *Contractual relationships*, from June 2014 through August 2014, by entering into a contractual relationship with RMA. During Respondent's interview on December 10, 2015, he referenced Commission on Ethics (COE) RQO 10-038 OE

(January 26, 2011) as authority he used to justify his contractual relationship with RMA. Within the RQO, he highlighted below section of the opinion:

"IN SUM, based on the facts you have submitted, the commission has determined that even working as a sub-contractor for a company with contracts for electrical services with the City of Boynton Beach creates enough "privity" of contract to establish an indirect contractual relationship with the City. Therefore, such a relationship violates the ethics rules under §2-443(c) *Prohibited contractual relationships*. Based on the facts presented, Mr. Ellis cannot sub-contract for electrical work for the City while he is a Chief Electrician for the City of Boynton Beach."

- **Analysis**

Respondent's analysis of this advisory opinion RQO 10-038 was incorrect. RQO 10-038 advises that the petitioner is not permitted to sub-contract work for a City when he is a City employee. In Respondent's situation, although RMA is not a City, they are under contract with the City where Respondent is employed and are classified a "vendor". The Code in §2-443(d), prohibits employees from entering into contracts with vendors of City that they are employed with. Respondent does not meet the special circumstances which would allow him to provide services to RMA as he is not a "sole source" provider, the contract completed in an emergency situation, nor does any other exception apply in this situation.

Respondent ultimately notified RMA in writing that he was going to suspend the contract in June of 2013. Then, by re-establishing his outside working relationship with RMA, in essence he entered into a new agreement with RMA for the work completed between the dates of June through August of 2014. According to Respondent's own statement given Thursday, January 7, 2016 at 11:16 am, "He contacted RMA at some point in 2014 and asked them if they wanted to continue the relationship. They made a verbal agreement to complete video work."

Code of Ethics §2-443(d), states "*No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable...(emphasis added).*" RMA, while under contract with the City of West Palm Beach to administer it's CRA is identified as a vendor for the municipality.

- **Applicable law**

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

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. 2-256. *Applicability of code of ethics ordinance.*

The countywide code of ethics ordinance shall be applicable to all persons and/or entities within the jurisdiction of said ordinance and shall apply to the members and staff of the commission on ethics.

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;

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

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 "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the

board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other federal regional, local, or municipal government entity, ***of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered*** or goods sold or produced. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses. (Emphasis added)

Sec. 2-443. Prohibited conduct

(d) Contractual relationships. No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to Section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable.

(e) Exceptions and waiver

- (5) Notwithstanding any provision to the contrary, subsection (d) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county or municipality as applicable provided that:
 - f. The employee has obtained a conflict of interest waiver from the chief administrative officer and the employee's department head of the county or municipality based on a finding that no conflict exists. The employee shall submit the request for waiver in writing and under oath. The request for the waiver shall be signed by the employee under oath or affirmation on an approved form provided by the commission on ethics. The document shall contain written acknowledgment of compliance with the provisions of subsection (5)a. through (5)e. of this subsection, together with such pertinent facts and relevant documents that support such waiver. A waiver under this subsection must be approved by both the employee's supervisor and chief administrative officer of the county or municipality. The county or municipality shall record such waiver in the employee's personnel file and shall submit a copy of the waiver and all related documents to the commission on ethics. The commission on ethics in its discretion may elect to review, comment on, or investigate any waiver. The commission on ethics review or investigation shall not delay an employee's ability to take the part time employment

• **Additional documents submitted to the File**

1. Letter from the PB Office of Inspector General addressed to Mr. Jeffery Green. (2 pages)
2. Email to PB OIG from "JD". (2 pages)
3. Respondent emails – multiple. (6 pages)
4. RQO's (10-038) - provided by Respondent. (3 pages)
5. Conflict of Interest Waiver. (1 pages)
6. Cohen Publicity / RMA signed contract (provided by Respondent). (4 pages)
7. COE Sworn Interview Form – 1/7/2016. (2 pages)
8. Contract Suspension email – with envelope. (1 page)
9. WPB CRA website information. (2 pages)
10. RMA website information. (3 pages)
11. Misc. CRA articles and information. (8 pages)

12. Jon Ward LinkedIn profile. (5 pages)
13. Respondent news articles provided by Complainant. (5 pages)
14. Emails provided by Complainant. (5 pages)
15. Emails and payment information provided by RMA. (5 pages)
16. COE Sworn Interview Form – 1/26/2016. (2 pages)
17. Cohen Publicity / RMA signed contract (provided by RMA). (4 pages)

- **Summary of Investigation findings**

The investigation into this matter by COE staff revealed Respondent may have violated PBC Code of Ethics §2-443(d). Based on the information given to COE staff by Complainant and information uncovered during the investigation, the facts support a possible violation of code section 2-443(d), *Contractual relationships*. From June of 2014 through August of 2014, Respondent received a total of \$4,000 from RMA for contractual work that was provided through Respondent's personal company, Cohen Publicity.

Although the Code allows for established contracts to remain in effect after an entity becomes a vendor of a municipality, Respondent may have violated the Code once he formally suspended the contractual relationship and then re-established said relationship.

End of Investigation

Submitted by:



Anthony C. Bennett
PB County Commission on Ethics

3/23/16
Date

Reviewed by:

AKB
(Initials)

3/23/16
Date

Alicia Alleyne

From: elliot@cohenpublicity.com
Sent: Friday, January 31, 2014 1:49 PM
To: Kim Briesemeister; CHRISTOPHER BROWN
Subject: RE: Looking to Hire RMA

That's great, because he knows and says it's perfectly fine.

Elliot Cohen

cohenpublicity

PR / Video Production / Crisis Management / Marketing

www.cohenpublicity.com

561-676-4949

----- Original Message -----

Subject: RE: Looking to Hire RMA
From: Kim Briesemeister <kim@rma.us.com>
Date: Fri, January 31, 2014 1:41 pm
To: CHRISTOPHER BROWN <christopher.brown0@icloud.com>, "elliot@cohenpublicity.com" <elliot@cohenpublicity.com>

How can you not Love this guy? Ok, ok, lets talk, but I'm saying again as much as we want you to start again, your boss (Jeff) has to agree.

From: CHRISTOPHER BROWN [<mailto:christopher.brown0@icloud.com>]
Sent: Friday, January 31, 2014 1:37 PM
To: elliot@cohenpublicity.com
Cc: Kim Briesemeister
Subject: Re: Looking to Hire RMA

Dear Mayor: we don't use pr firms only word of mouth. It's better. But if you think your better than word of mouth bring your words and your mouth to RMA this Saturday. We assure you that we will give you adequate time. CB

Sent from my iPhone

On Jan 31, 2014, at 1:25 PM, elliot@cohenpublicity.com wrote:

Dear RMA management team,

I am the mayor of a large city in the state of Florida, and I am seeking a company to run my Community Redevelopment Agency.

I have heard positive things about RMA, and would like to hire you, however your website hasn't had any new PR/news items in over six months, and I haven't seen RMA mentioned in any recent news clippings.

Are you still in business? It's hard to tell from your site. You really need someone who can concentrate on promoting your business to mayors like myself.

I would suggest you connect with whoever had been doing such a stellar job keeping RMA in the news months ago, and resume your efforts.

I understand all the obstacles have been taken care of, and they are ready to move forward!

Respectfully,

Elliot Cohen
Mayor of the town of "Let's Get Going-ville"

:)

Alicia Alleyne

From: Kim Briesemeister
Sent: Tuesday, December 3, 2013 5:38 PM
To: 'jgreen@wpb.org'
Subject: Draft #2 CRA Contract
Attachments: Continuing Services Contract WPB; Draft Dec 3 2013.doc; Copy of Copy of Work Plan.xlsx

Jeff, per your request, please find the revisions to the contract you requested including:

- Term of agreement was revised
- Cancellation provision revised
- Insurance section removed to make room for WPB specific requirements
- Signature Block needs to be added for the City
- TBD Fixed Fee Increase

Also attached is a revised "Work Plan" which is the Scope of Services as well as the Exhibit For Work Authorization #1. I also highlighted the "exhibits" in the text so if legal would like to make changes they can easily find them in the document.

Tomorrow I will forward the revised fee proposal.

Have a good night.

Alicia Alleyne

From: Kim Briesemeister
Sent: Monday, December 9, 2013 11:54 AM
To: 'SPayson@wpb.org'; Chris Brown; jgreen@wpb.org
Cc: 'NURcheck@wpb.org'; 'BMurray@wpb.org'
Subject: RE: Matter No. 13757

Good morning Jeff,

I called and left you a message to review the contract Suzanne sent. We're fine with the revised format but need to clarify a few sections of the document and Scope. Please call when you are available.

Thanks,

Kim

Kim Briesemeister
3109 E. Atlantic Blvd., Suite B
Pompano Beach FL 33062
RMA.us.com
965.695.0754

-----Original Message-----

From: SPayson@wpb.org [mailto:SPayson@wpb.org]
Sent: Friday, December 06, 2013 2:51 PM
To: Kim Briesemeister; Chris Brown
Cc: JGreen@wpb.org; NURcheck@wpb.org; BMurray@wpb.org
Subject: RMA: Matter No. 13757

Kim and Chris - attached is the City's proposed draft of the agreement for your review. If you have any questions regarding the business terms, feel free to discuss those directly with Jeff. And let me know if you have any issues regarding the contract. We look forward to working with you to finalize this.

Thanks

(See attached file: RMA CRA Consulting Agreement 120613.doc)

Suzanne Payson
Assistant City Attorney
401 Clematis Street
West Palm Beach, FL 33401
(561) 822-1369

----- Forwarded by Suzanne Payson/WESTPALM on 12/06/2013 02:48 PM -----

From: Jeffrey Green/WESTPALM
To: Suzanne Payson/WESTPALM
Date: 12/06/2013 09:08 AM
Subject:Fwd: Revised Scope

Sent from my iPhone

Begin forwarded message:

> From: "Kim Briesemeister" <kim@rma.us.com>
> Date: December 6, 2013 8:48:52 AM EST
> To: "jgreen@wpb.org" <jgreen@wpb.org>
> Cc: "Kim Briesemeister" <kim@rma.us.com>, "Chris Brown"
> <chris@rma.us.com>
> Subject: Revised Scope
>
> Jeff,
> Please find the revised scope per your request. I believe there are a
> few
items we need to discuss and clarify, I look forward to hearing from you.
>
> Kim