

# CITY OF CORAL GABLES

## - MEMORANDUM -

TO: CATHY SWANSON-RIVENBARK  
CITY MANAGER

DATE: APRIL 25, 2017

FROM: EDWARD J. HUDAK, JR.  
CHIEF OF POLICE

SUBJECT:  
DISPOSITION OF INTERNAL  
AFFAIRS CASE 2016IA-013

---

COMPLAINANT – MARIA CRUZ

On September 28, 2016, the City of Coral Gables Commission convened in chambers. Agenda item, A-1, 16-5407 (Presentation of the Coral Gables Neighborhood Safety Aide Program) was addressed.

During the course of this presentation, Coral Gables resident, Maria Cruz, was afforded an opportunity to speak. Once at the podium, Mrs. Cruz stated to Commissioners she was insulted and indicated she found a police Major keeping track of what she was texting while standing in the audience.

### ALLEGATION(S):

Mrs. Cruz completed a complaint intake form and documented the following allegations therein:

- 1) *"During City commission mtg Sgt. (sic) E. Molina kept me under watch, reading my text message – violated my rights, privacy etc."*
- 2) *"when confronted by me 'stop watching me' she blurted out 'stop texting commissioners' loudly – City Attorney replied – she can text the Commissioners."*
- 3) *"Molina informed Frank Fernandez of the content of my texts – witness told me about it City Manager may have been present."*

### REFERENCE VIOLATIONS:

#### City of Coral Gables Personnel Rules and Regulations; 10.4 Reasons for Discipline:

10.4.3 - Violation or disobedience of any regulation, order or directive

10.4.4 - Offensive, profane or abusive conduct or language toward the public, supervisors or employees.

10.4.26 - Engaging in any other actions which are determined by the City Manager to be sufficient cause for disciplinary action.

17.2 - **Customer Service** - Employees of the City of Coral Gables are expected to maintain courteous relationships with other employees, City officials, and the general public at all times.

**Departmental Rules and Regulations of the Coral Gables Police Department:**

**01.03 - Personal Accountability and Authority:**

Personnel at each level of the Department will have the authority and responsibility commensurate with their position to make decisions necessary for the effective execution of their duties. All personnel are fully accountable for the use or misuse of authority and or the failure to use that authority

**01.09 - Improper Conduct Offenses:**

**a. Courtesy:** Personnel will be polite and courteous in contacts with the public and with each other.

**pp. Misuse or Abuse of Authority:** It is the duty of each officer to respect and protect the rights guaranteed to each citizen by the Constitution. Persons will not be deprived of Constitutional rights because they are suspected of having committed a crime. Officers who lawfully act within the scope of their authority do not deprive persons of their civil liberties.

**vv. Conduct Unbecoming:** It is necessary to the goals and objectives of the Department for its personnel to conduct themselves in a manner consistent with the Department's Rules and Regulations which garners public support and confidence. Conduct unbecoming is defined as any conduct or act by personnel which has an adverse impact upon the operation of the Department and diminishes public respect and confidence in the Department and its personnel. Such conduct may include, but is not limited to, participation in any immoral, indecent, or disorderly conduct, or conduct which causes substantial doubt concerning a member's honesty, fairness, or respect for the rights of others, or the laws of the state or nation, regardless of whether such act or conduct constitutes a crime.

**DISPOSITION:**

**Allegation 1:**

The facts of the case establish Major Molina, even if she believed that she had been acting within the scope of her law enforcement authority, conducted an illegal search of the cell phone. A person has a reasonable expectation of privacy in the call records and text messages on their cell phone. *Smallywood v. State*, 113 So. 3d 724 (Fla. 2013). *(Because a person has a high expectation of privacy in a cell phone's contents, police must then obtain a warrant before intruding into the phone's contents. Id. Cell phones are "effects" as that term is used in the Fourth Amendment.*

*Tracey v. State, 152 So. 3d 504, 524 (Fla. 2014).*) As such, any information she would have gotten from the text messages, would have probably been found to be a violation of the Fourth Amendment and thus suppressed. (*State v. Tsavaris, 382 So. 2d 56, 68 (Fla. 2d DCA 1980), certified question answered, 394 So. 2d 418 (Fla. 1981) (Evidence obtained by a search and seizure in violation of the Fourth Amendment to the United States Constitution is inadmissible in state courts under the due process clause of the Fourteenth Amendment.)* Also, Major Molina's actions may have subjected the City to civil litigation and or liability. (*See Section 934.10, Fla Stat, 2016.*)

Major Molina exceeded her legal authority when she photographed complainant Maria Cruz's cell phone text conversation with two City of Coral Gables Commissioners during the presentation of the Coral Gables Neighborhood Safety Aide Program under Commission Agenda item, A-1, 16-5407 on September 28, 2016.

**The aforementioned action is found to be a violation of:**  
**Departmental Rules and Regulation of the Coral Gables Police Department 01.03 Personal Accountability and Authority and 01.09 Improper Conduct Offenses: pp. & vv.**

As such the allegation is SUSTAINED.

**Allegation 2:**

In regards to Major Molina's open communication with the complainant in commission chambers specifically when she instructed Mrs. Cruz to "stop texting Commissioners" was done in a non-courteous, improper form. Major Molina asserts she believed a violation of the Sunshine Law had transpired and offered such justification for her actions. Major Molina's belief was incorrect and as a result the Complainant's right to petition her government representatives was brought into question in a public forum in an unprofessional, discourteous matter which brought the Department into a diminished light in the public. Commensurate with Major Molina's position where a higher standard of conduct is demanded and required of that position, I have determined the below reference violations:

**The aforementioned actions are found to be a violation of:**  
**Departmental Rules and Regulation of the Coral Gables Police Department 01.03 & 01.09 Improper Conduct Offenses: a (Courtesy)**  
**City of Coral Gables Personnel Rules and Regulations; 10.4 Reasons for Discipline; 17.2 (Customer Service).**

As such the allegation is SUSTAINED.

**Allegation 3:**

In review of the entire case file including all statements and memorandums/emails there is no evidence that supports what was said or shown to the director of Public Safety and subsequently the City Manager in regards to the "*contents*" of the photographs that Major Molina stated she had taken of the complainant's text messages in an effort to intercede in the constitutionality of the complainant's rights to communicate with citing elected officials. Major Molina stated she recalled relaying to Director Fernandez that she believed she had witnessed inappropriate unethical behavior taking place via text messaging and that she had taken a photo. At which time according to her statement she was instructed to advise the City Manager which she did. There is no additional information presented as to any additional actions by any of the three parties. As such the allegation is **NOT SUSTAINED**.

**DISCIPLINARY ACTION:**

In reviewing the totality of the facts and taking into consideration of past practices by the city involving discipline recommended by the department when it involved a senior ranking member of the police staff, I am recommending that Major Molina be considered for termination. By copy of this memo, I am hereby making that recommendation to the City Manager.

cc: Major Theresa Molina  
Frank Fernandez, Director of Public Safety  
Karla Green, Interim Human Resources Director  
Raquel Elejabarrieta, Labor Relations and Risk Management Director  
Internal Affairs Section