

City of Coral Gables City Commission Meeting
Agenda Item I-1
September 8, 2015
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason
Commissioner Pat Keon
Commissioner Vince Lago
Vice Mayor Frank Quesada
Commissioner Jeannett Slesnick

City Staff

City Manager, Cathy Swanson-Rivenbark
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia

Public Speaker(s)

Agenda Item I-1 [Start: 3:01:07 p.m.]

Discussion regarding the Internal Affairs Audit Report

Mayor Cason: And then finally I-1.

City Attorney Leen: Thank you Mr. Mayor. I'm going to turn this discussion over to...

Vice Mayor Quesada: One thing before we get to I-1, I'm sorry, going back to the Charter Review. On the minutes, I noticed they briefly discussed having the election on a Saturday or Sunday. You just remind them they deferred the conversation, so just remind them to...

City Attorney Leen: You're right.

Vice Mayor Quesada: So just flush that conversation out.

City Attorney Leen: Yes sir.

Vice Mayor Quesada: Potentially, having an election on a Saturday or a Sunday.

City Attorney Leen: I will bring it up this evening.

Vice Mayor Quesada: I don't know if it's going to make sense in the long run. I want it vetted.

City Attorney Leen: You want it vetted. I got it. So you already have it in your packet, so this is the Coral Gables Police Department Internal Affairs Section Case Audit. I'm going to briefly introduce it and then have former Judge Israel Reyes talk a little bit about the report. I also know that the Director of Public Safety has looked at the report and has some thoughts as well. Just to begin, my office requested this report when we found out of a concern that there had been an investigation, an Internal Affairs investigation of Interim Chief, at the time he was not Interim Chief, but Interim Chief Hudak, text messaging with Commissioners and specifically Commissioner Lago. And I was very concerned about that as City Attorney, and I want to preface this by saying that this happened before the current City Manager was here and before the current Director of Public Safety was here and before Chief Hudak was Interim Chief. So when my office heard that, the concern I had initially was that we do not want Internal Affairs used to investigate the Commission or the Police Chief, and if it is going to be the Police Chief or the Commission there should have been some approval that was done. I was very concerned about that because we never want Internal Affairs used in any sort of, what's the best word, political investigation, there should never be that in the City; and then two, I was concerned because there was no crime that was being investigated, and I had given a City Attorney opinion now multiple times that Commissioners can talk to staff and staff can talk to Commissioners. So there is nothing wrong with Ed Hudak communicating with you and you communicating with Ed Hudak, so there is nothing to investigate. So for those two reasons I asked for an Internal Affairs Audit Report and with that I will turn it over to Israel Reyes to talk about it.

Judge Reyes: Good afternoon once again. I'm sorry; I was mediating a case at my office, which I settled, do they are writing up the settlement agreement as we speak, so I had a little break, I was able to come over, so I apologize for not being here earlier. As Mr. Leen said, we conducted this review, we called it an audit, not in the traditional definition of the term audit, because we are not auditors, but we went over the procedures of the Internal Affairs Unit, sort of as a beginning

or the first part of a discussion, so we could see what was going on there, what were the issues that we uncovered. We didn't review every single report and every single investigation, we did not audit any investigations, and it was not an investigation either. I know how to conduct an investigation and you've seen from the Parks and Recreation incident, it was 150-page report, that's an investigation, this was not an investigation. So we looked at some of the issues that had arisen – record retention issues, of course the issue you mentioned of that investigation. How the “in” complaints, the intake process for the complaints, how they were classified, how the case numbers were assigned, how their records were retained, those record retention issues. We made some recommendations as to that. The report of course is self-explanatory. We also looked at whether the server was being used, as opposed to the program called IA-Pro, and we made some recommendations as to that. We looked at this investigation that was conducted involving Commissioner Lago and then Major Hudak, we reported on that. We talked about the public records request and we put it all in that 19 or 20 page report, along with some of the report forms that were used, as I said, along with our recommendations and some of the issues that we saw that needed further discussion and further evaluation by Internal Affairs professionals, whether in or out of the department.

City Attorney Leen: And I just wanted to add one more point. Regarding the investigation of Commissioners what the report recommends and what I've spoken with the Director of Public Safety, the City Manager, Izzy Reyes, there won't be Internal Affairs investigations of Commissioners, that doesn't mean that you are above the law, you would never want that. It means you are held to a different standard, it's actually a higher standard. Any sort of investigation that needs to be done will be referred to the State Attorney's Office or the Commission on Ethics, but there won't be an Internal Affairs investigation done of Commissioners, that's in the policy. The second thing is, if the Lieutenant in charge of IA is concerned with something that the Chief of Police has asked, or if there is any sort of concern at all regarding IA, it now calls for that person to go to the Director of Public Safety, the City Attorney, and/or the Police Legal Advisor. So there are protections checks and balances put in here now that will ensure that there is never a political investigation done again. However you want to call this, I'm not necessarily saying it's a political investigation, whatever it is, that won't happen again.

Mayor Cason: Question on the rank of the Internal Affairs is it usually a Lieutenant?

Judge Reyes: Yes. It's a Lieutenant, right now there is an Acting Lieutenant there, but it's a Lieutenant and then a Sergeant and an investigator.

Mayor Cason: Is that a standard set of people from other Police Departments that high rank or...?

Judge Reyes: No. The Miami-Dade Police which is where I was, it was only Sergeants and above could work there as investigators, so the minimum, the lowest ranking officer there who is an investigator was a Sergeant, because those are supervisors and then of course they would be supervised by Lieutenants, and the discussion I had with Director Fernandez, I think he implemented the same thing with the City that only a Sergeant and above could work there.

Mayor Cason: I guess there is some argument that the higher you get, you are out there for some reason there may be some more politics possibly involved?

Judge Reyes: I don't know about that Mr. Mayor, but I do know that having been a police officer for all these years and working in that quasi-military organization, when a supervisor comes and talks to you there is a certain weight that that person carries, you know when he or she is investigation the incident, as opposed to a ranking officer, an officer without rank. So I think that's part of the idea behind it, that it is a supervisor who's conducting this investigation. Of course there is a chain of command, like there is in any other department, and the chain goes all the way up to the Chief who ultimately makes the decision when the investigation and the type of discipline, if any, that's reviewed when that reaches the end game, so to speak.

Mayor Cason: Regardless of the rank it seems to me that the critical thing is that IA Division be independent, separate from pressures not to investigate/to investigate, within the department.

Judge Reyes: Yes.

Mayor Cason: And do we know that whatever they come up with, there are not going to be reprisals for it.

Judge Reyes: Right. And when we met with Director Fernandez, he raised a very good point, which I'm in total agreement with, is it's a no-win situation if you investigate your own Commissioners. If you exonerate them, then the talk is that you exonerated them or the perception is because they work for you. If you don't exonerate them and you do something and find that there was some wrong-doing, potentially it could hurt you now as an employee that's the perception. I know that when I was with Miami-Dade Police, I was one of the original members or one of the first members of the Public Corruption Squad, and our mandate was that we could investigate any corruption except the Commissioner, any of the Dade County Commissioners or County Manager, we could not conduct those investigations, we had to give those to someone else, whether it be the FBI or the State Attorney's Office and I think Director Fernandez raised a very good point with that, it's a no-win situation.

Vice Mayor Quesada: Judge Reyes, I have a few questions for you. And this is really going into a few different areas where the legality of it and if you have an answer – great, if you don't, I would ask that you either research it or the City Attorney research it. So this is an undocumented investigation and pursuant to your findings it was at the request of the former Police Chief?

Judge Reyes: Correct.

Vice Mayor Quesada: Chief Weiner.

Judge Reyes: Well that's what we know, we didn't interview anyone, but that's the way it was written by, I'm sorry to interrupt you...

Vice Mayor Quesada: No, no, that's fine.

Judge Reyes: That's the way it was written in that one paragraph, I guess report or statement that Lieutenant Tastet wrote.

Vice Mayor Quesada: OK. So the way I see that is when – the way I see internal investigations department it has to be the cleanest, most well respected group of officers or employees in the City, because if they don't have any credibility then you run into some major, major problems throughout the entire organization. So what is an undocumented investigation? We are using that summarized word, I guess for the benefit for the residents watching at home. In other words the

Chief asked that the internal investigation's officer start conducting an investigation into the Chief of Police and the Commissioners based on no reason whatsoever, I want to know if they are talking. In other words what they are supposed to do is only if there is reasonable, what is it...criminal activity is afoot, or some sort of violation is potentially occurring, that's when it would be valid. Are there any criminal implications for having a police officer conduct an unwarranted investigation or undocumented investigation? Are there any criminal repercussions? If you don't know the answer that's fine, I would like you to research it.

Judge Reyes: I don't know the answer. I'm not comfortable giving an answer now because whatever answers I give would be incomplete because I don't have it in front of me. So potentially yes, potentially no, I know that's a standard lawyer answer, but I'm uncomfortable now saying it either way.

Vice Mayor Quesada: And I realize you may not know the answer to that and that's fine. So if you can just look into that.

Judge Reyes: And the Mayor is looking into it.

Vice Mayor Quesada: Of course because if there is some sort of exposure, I mean we need to report it. I want to make sure we report it. The second question for you is a chain of command question. You said that you were a para-military organization, you were with Miami-Dade County, you were with the State Attorney's Office, you were a Judge for a long period of time. In this kind of situation is a Lieutenant who is asked or an internal investigation's officer, who is asked to perform an undocumented investigation, are they allowed saying no?

Judge Reyes: Any subordinate receiving an unlawful order can refuse to obey the order.

Vice Mayor Quesada: Which...to the question whether the order was unlawful?

Judge Reyes: That's the key.

Vice Mayor Quesada: Improper yes, unethical yes.

City Attorney Leen: There is a distinction though. There could be something that is a violation or not lawful, but not be criminally illegal.

Vice Mayor Quesada: But it's still unethical.

City Attorney Leen: It could be. I could be.

Vice Mayor Quesada: It could be. I think you are being generous. It is.

City Attorney Leen: I want to specifically say my thought, which is that there has to be a violation of an ordinance or a statute. The IA procedures are clear. There are certain things that can be investigated...

Vice Mayor Quesada: None of which were present here.

City Attorney Leen: This was not. I want to be clear. I've given this opinion many times that the police officers and the Commission can speak to each other and that was all that was being investigated according to the information we have. So that was not proper in my opinion.

Commissioner Lago: But there is a sub-story behind this. I mean obviously as you are probably aware. I imagine everybody else here is aware also. During that timeframe where this investigation was happening there was a problem in the City in reference to the City Manager and the Police Chief and some accidents that were occurring on Ponce, which was intensely attempting with every ability that I had to get to the bottom of. At that point, I was given some documents by staff, which were doctored documents, and in an effort to understand those documents because I'm not a professional when it comes to crime statistics or accident statistics. I contacted the Major and the Major acknowledged that those were not the exact documents that he had provided to staff. So at that point, obviously one and one equal two, which I was able to find out the simple fact that the documents had been doctored to obviously throw me off the chase. Now, I'm not an attorney, so when I hear the Vice Mayor speaks in legal terms I understand to a certain degree, but what we are looking at here is basically an undocumented investigation in reference to an individual who in turn was speaking with me. Since the moment I took office two years ago, and I've said it on the dais on a multitude of occasions, any employee that wants to speak to a Commissioner, or wants to come and speak to me, my door will always be open, no matter what anybody tells you. Our City Attorney has stated clearly that I cannot under any circumstances provide or give an order, but I can speak to any employee of the 800

plus, and what we had here was a City Manager, again, this is my opinion, a City Manager who had given an order to then Acting Chief in an effort to find out how I was able to ascertain the correct four pages of information that had been doctored by staff. So my question to you is this, knowing all this information which is clear as day, what is the next step for an individual like myself? Should I move in the direction of having these documents reviewed by the State Attorney and getting to the bottom of it, because I think that a law was clearly broken? An investigation was conducted without any grounds. Again, I'm not an attorney, so I would ask for your opinion, especially with your legal expertise on multiple levels from being a police officer to being an attorney to being a judge.

Judge Reyes: There is absolutely nothing wrong and it might be a good idea to have the State Attorney look at it, because then you'll get a thumbs up or thumbs down. There is nothing criminal here or it is criminal, but we can't prove it, or it is criminal and we are going to go forward and you'll get it straight from the "horse's mouth," so-to-speak, the prosecuting entity from Miami-Dade County. So I don't think that would be a bad idea.

Mayor Cason: The question in terms of the procedures to appoint the individuals to the IA's office, is part of that procedure that complete background check that there is nothing in their record, getting back to one of the earlier questions, that they are squeaky clean when they are put in that job, is that one of the recommendations?

Judge Reyes: Mr. Mayor, the investigators who are going to be assigned there?

Mayor Cason: The Internal Affairs office.

Judge Reyes: Yes. Yes.

Mayor Cason: And who conducts that?

Judge Reyes: Well the Chief...

Vice Mayor Quesada: Are you saying in the past or moving forward?

Mayor Cason: The past.

Judge Reyes: Oh, the past. Oh, I don't know how it was done in the past, that's not one of the things we looked at.

Mayor Cason: One of the recommendations moving forward that zero, nothing...

Judge Reyes: Absolutely because if you have someone that's always, not always, there is no absolutes, but if you have someone who has problems, you know whatever the problem may be, they violate polices, they have been accused of violating the law, they have accused of lying under oath, for example, that's the last person you want in Internal Affairs where the process has to be transparent, it has to be open, and it has to be done in a such a complete manner that when that investigator turns in that report there is no question that, that investigator and the supervising investigator is there, has any ulterior motives or agenda, so absolutely. I remember back in, I think it was the 80's when the City started what was called the Pride Unit, the City of Miami, the Pride Unit. I don't know if the Director was there and they had a lot of issues even with some of the Internal Affairs investigators, so they created this Pride Unit. It was like a Super Internal Affairs Unit and they had to undergo extensive background investigations to be able to be part of this Pride Unit. So yes, you always want to have that and there are plenty of officers in this department having worked there now with them for the time I've been the Police Legal Advisor that would fit that bill and would be great investigators and have the type of background that would fit what you are trying...

City Manager Swanson-Rivenbark: And Mr. Mayor just so that you know, the City Attorney, the Chief, the Public Safety Director and I had specific conversations regarding Internal Affairs moving forward, and you are going to see it will be beyond reproach.

Mayor Cason: Because I think in the past there were some concerns that maybe it hadn't been, not for this incident, but back years.

Vice Mayor Quesada: So this occurred October of last year?

Judge Reyes: Actually May – the report, the section there of that, I wouldn't call it a report, but whatever Lieutenant Tastet wrote there, she dated it May 30, 2014.

Vice Mayor Quesada: You also wrote in there that she changed the date on it. She backdated the document.

Judge Reyes: The audit trail showed that it was not created May 30th, it was created afterwards.

Vice Mayor Quesada: It was created October 21st.

Commissioner Lago: When did the previous Chief and the previous City Manager resign?- what were the dates?

Judge Reyes: The previous Chief resign?

Commissioner Keon: A year ago.

Commissioner Lago: A year ago?

Commissioner Keon: It was just a year ago, the beginning of September?- yes the beginning of September.

City Attorney Leen: September 10th.

Commissioner Lago: Again, I didn't clarify my previous statement. All these issues pertain to the previous City Manager and the previous Police Chief who resigned. I'm moving forward from this issue. Again, no one's going to stop me or this Commission from managing and providing legislation that benefits the City, so it didn't stop us in the past and we've moved on from that. And this type of situation is an embarrassing situation for the City, it's an embarrassing situation for our police force, but I'm moving on from that. My next and final issue and I want to discuss this with you and I want to discuss this with staff is how I was able to get my hands on this document? I was able to get my hands on this document, not through a public records request or being provided through the City Manager, I was able to get my hands on this document by a knock on my door by a resident who provided me with the document exactly nine days ago prior to our last Commission meeting. To me, again, when a Commissioner is notified not by staff or by the City Manager that this type of audit exist where my name is on it, even I'm exonerated, as you clearly stated. I did nothing wrong. All I did was have a conversation with then Major Hudak in reference to trying to get to the bottom of major accidents that were occurring on

Ponce where staff was intentionally leading in the wrong way. To me that's mind-boggling because what if I had been confronted by the Herald or would have been confronted by a media outlet asking me in reference to an IA audit that I was not privy to. Again, this is not directed at you, you are an outside consultant to the City of Coral Gables. I read it, I'm happy with what it says, but I want to have an answer from staff in reference to what protocols are we going to enact moving forward to make sure that at least this Commission and the City Manager and the City Attorney and the Clerk are properly notified when these type of documents are disseminated.

City Attorney Leen: I'd like to respond to that and if I could I'd like to say two things. So first, based on the discussion today, I'm going to take the audit and I'm going to send it to the State Attorney's Office.

Commissioner Lago: OK.

City Attorney Leen: I don't think – the reason why you may hear a little bit of equivocation or hypotheticals is because the person involved in the audit does have due process, so I want to make sure we are not pre-judging it. Like Izzy said, like Judge Reyes said, this is not a full investigation. We've looked at documents. Now in my view, hypothetically, if someone investigated a Commissioner for no reason and then hypothetically created a document to cover that up in some way, I think there could have been a crime there and I want to be clear about that. I don't think that's right. But I want to make sure that the person that is mentioned in here is able to be investigated, that person may have a different view what occurred and may testify differently. So that's the first thing I wanted to say, but this will be turned over to the State Attorney's Office. Second...

Commissioner Lago: If I may interrupt you there. I think that we as a City should be ready to provide the State Attorney with any additional information in regards to the documents that were doctored, those accident statistics on Ponce, you know which ones I'm talking about?

City Attorney Leen: Yes.

Commissioner Lago: I think we should be ready, we should be ready to proffer that information once it's requested, because at that point when those documents came to light nothing transpired,

it was just left at that. Two individuals resigned, they walked away; one got a severance package for five months and continues to drive around the City with a free parking decal. I think again, I will do whatever my Commissioners decide as a body, but I think that when you are named in an internal audit for having simple communications with staff in an effort to do my job as an elected official, I'm perturbed. Have you, who've been a judge, a police officer, and an attorney, have you ever seen anything quite like this?

Judge Reyes: Like this type of investigation?

Commissioner Lago: Yes.

Judge Reyes: No.

Commissioner Lago: Again...

Judge Reyes: That's why it stood out for us.

City Attorney Leen: The second thing I wanted to say. I just want to speak a little bit about the audit and answer your question about why you weren't informed. My goal with this audit was for it to be independent, for it to be thoughtful, and for it to be acted on. Now I did call each Commissioner to let you know that we had received information. This was a while back and you may even have forgotten it, and maybe I needed to make it more significant or bring it up in a meeting.

Commissioner Lago: I remember.

City Attorney Leen: But I did mention that we were looking into an allegation that Ed Hudak's communications with the Commissioners was being looked at, was being investigated, and I asked Izzy Reyes to handle the investigation. When we got the audit report, I did forward it, I received it first of all, I want to be clear about that, I had the audit report. I did send it to the City Manager and Director of Public Safety and the City Manager deferred basically to the Director of Public Safety to look at the report. And we met with the Director of Public Safety, he gave us some very good feedback, remember he wasn't involved with the audit itself, but he did give us some feedback. One of the points that he raised, which I thought was a good one was, the report

originally proposed that if a Commissioner was going to be investigated, my recollection, it would have to be approved by either the City Attorney or City Manager. And I remember he had told us, you know, I don't think that we should ever be in the business of investigating Commissioners at all, even with the approval of appointed official, and I agreed with him. And he said that instead that should always be sent to the Ethics Commission or the State Attorney's Office. And I remembered we had that discussion, we all agreed, and so the report was amended, that was the main principle amendment to the report. At that point, I got the revised report, I sent it back, and a few weeks past and I was waiting for it to be implemented and then I was going to release it, the documentation.

Commissioner Lago: When was that? Prior to obtaining the revised report, give me a date, a month.

City Attorney Leen: OK. I'll just go through them. On June 2, 2015, I requested that Izzy Reyes send Director Fernandez a copy of the report, and I asked Izzy to prepare this for me, in case you asked. On June 2, 2015, I forwarded to Director Fernandez and the City Manager. On June 8th at approximately 10 a.m., I met with Director Fernandez and Manny and Izzy to go over the report. The meeting was about an hour and forty-five minutes. On June 9th the hard copy was provided to the Director. He gave us that comment, which I thought was a very good one. So, I asked him to revise the report. On June 16th there was revised language concerning the investigation of elected or appointed officials by the IA section, it was sent to Director Fernandez myself for review. On July 21st a revised report was sent to me and Director Fernandez. On August 3rd an e-mail was sent to me. I had asked that it be sent to Interim Chief Hudak, because he had made the complaint, so he could take a look at it. On August 14th I sent it to Elsa Jaramillo-Velez and on August 21st Assistant City Attorney Yaneris Figueroa, in compliance with standard practice at the time sent the IA audit report to an individual requested in response to a public records request.

Commissioner Lago: What day was that?

City Attorney Leen: That was on August 21st.

Commissioner Lago: So you have an individual who has an IA audit on August 21st who has a document before I even read it.

City Attorney Leen: Yes.

Commissioner Lago: And my name is in that document. Let me just give you one last thing.

City Attorney Leen: I need to apologize.

Commissioner Lago: No, no, no. No need to apologize.

City Attorney Leen: But I wanted to.

Commissioner Lago: Listen, there is no need to apologize.

City Attorney Leen: I want to explain it, so it's placed on the record.

Commissioner Lago: I understand. Don't worry about that. The Commission should have been notified clearly, not via e-mail, in personal communication on June 8th after this document was looked over by staff immediately, and I wasn't notified. So I don't know if any of my other colleagues were notified, I was not notified and I didn't get the privilege to be notified and to me that's disturbing because I got notified after August 21st at a knock on my door at 10:30 at night, which to me I think is a lack of professionalism on behalf of the City, especially when I'm being named in an IA audit, which again like you stated, states that I did nothing wrong except communicate with an employee which I'm completely allowed to as per the Charter. This gives me a bad taste in my mouth as if information was withheld from me. I don't know if my colleagues disagree, or they think I'm being a little bit too emotional, but that's the way that I see it, and I think it's disturbing when at the end of the day we all ran for public office to benefit the City and to push the City forward and to represent the residents of this community to the best of our...and I feel that not finding out about a document for four months is again, has nothing to do with you, you are just doing your job and you've done your job incredibly well. I think that we should at least provide the common courtesy and decency that I provide to every single person in this building with that. And that's the end of my two minute rant.

City Attorney Leen: If I could just continue, and I understand what you are saying, Commissioner, I agree with you. I just wanted to explain the rest. So, I didn't know that the record had been released as a public record. We get a lot of public record requests, they go through Yaneris. I don't think she appreciated that it was a record that had not been released to the Commission.

Commissioner Lago: What has always been my comment when it comes to public records requests?- what have I told you?

City Attorney Leen: To respond to them properly and fully.

Commissioner Lago: And give them every bit of information, be as transparent as possible. There is nothing to hide. This looks like we have something to hide.

City Attorney Leen: So what I would have preferred at the time is when it was released, obviously I would have preferred it was released to the Commission earlier, and I'm going to talk about that in a second, but I certainly would have preferred that it be released to you at least at the same time as it was released as a public records request.

Commissioner Lago: Of course.

City Attorney Leen: It had not been – there had been no action taken on it yet. I know that IA is looking at it and they are suggesting some IOP changes to address it. I just want to explain it in context and I'm just going to speak for myself. From my own thinking, I had thought that I had told each of you about it, not the report but the initial charge.

Commissioner Lago: Craig and I told you. You gave me the courtesy of a phone call, you said that you were entering into a conversation or a contract with Mr. Reyes to proffer an audit that would be forthcoming due to an issue that Mr. Hudak or another police officer had brought to light.

City Attorney Leen: So I felt that you were aware of it, at least of the claim, not the report, not that there was a document...

Vice Mayor Quesada: Put yourself in our shoes.

Commissioner Lago: I was aware of it, I was aware about it four months ago. You know how many e-mails and things I deal with on a daily basis.

City Attorney Leen: I hear you. I just want to give my explanation out.

Commissioner Lago: I don't want you to feel that you have to explain it to me.

City Attorney Leen: No, I just want to explain it to the public since we are in public. So what happened was, I wanted this IA report to be effective, I wanted to actually implement, be implemented, and I wanted it to be completely analytical. So since you knew about the initial charge, I didn't think when it was given to me in the first draft and we were still revising it. Even when it came back and we sent it, so that we could get an implementation strategy, which would eventually be given to the Commission, it didn't occur to me, Oh, I should send it now in sort of a preliminary form to the Commission, and I'm sorry about that. I wish in retrospect I sent it to you at the time I initially received it.

Mayor Cason: Are drafts subject to deliberative documents?-I mean in the federal government they are not.

City Attorney Leen: Well, the thing is, with Internal Affairs sometimes it is. There are things that may have to be redacted. In fact, there are things that have to be redacted with this report if we end up, not this particular report, but all of the background documents, there are some things that need to be redacted if those are released because I asked that I get a copy of all those for this meeting and they are telling me that some of it has to be redacted. So all I can do is give you the pledge of my office in that in the future and this is why you've been seeing a lot of e-mails from me of late, I want to make sure you receive everything. It was not my intent to keep it from you. In fact, my intent was to protect the Commission. My goal here was to change the policy, so this would never happen again and I believe I've succeeded.

Mayor Cason: Moving forward is there anything else that needs to be implemented, I think we've discussed a few things about squeaky clean and...

Vice Mayor Quesada: I have two quick questions on this wrap it up for me. Number one, I just want to piggyback on Commissioner Lago's statement. From my perspective the way I see it, it's

appalling. I consider it to be incredibly appalling for us to find out intricacies or details of a department when it doesn't come from staff, it comes from another source. It's unacceptable. If we are here to legislate, if we are here to make decisions for the benefit of the City, overseeing the departments, especially something as important as the Police Department, it's appalling that we have to find things out through anonymous knocks on our door, documents dropped off at our table or running into a resident at Publix and then telling you something. You say no that's not...they haven't told me anything, I don't know anything about that. And you are telling them the truth you don't know, and then you find out what they are telling you is true, especially something as important as this Police Department, as important as a potentially illegal investigation. So I agree with Commissioner Lago and I can even see how it's even more personal for him because his name is all over, and it's almost like the former Chief of Police and former Manager didn't like that we found out that they were misrepresenting to us. So they were trying to make it look or try to dig up some sort of dirt on us, to try to hold us hostage over something. So, Craig you've got to put yourself in our shoes when something like this happens. You experience it. You go to Publix, you go to the park, there are residents that come up to you, especially an item as important as the Police Department. So again, I just want to reiterate to all staff members, when there is something as serious an issue as what we've had here with this one, it's completely unacceptable for us to find out through a source that is not our direct staff. That's what I have to say on that; and then one final question for Judge Reyes on the report. I have a feeling on the facial expressions that Manny has been giving me; he was very involved in creating this document.

Judge Reyes: Yes, I was going to mention him.

Vice Mayor Quesada: I can see him nodding yes and no to some of the things I'm saying.

Judge Reyes: He thinks he runs the firm too, but that's for another day.

[Laughter]

Commissioner Lago: He represents you very well by the way.

Vice Mayor Quesada: The internal investigation officer that's written about in the report, in your opinion, did that officer misrepresent the creation of the subject document that's in there? What I infer from the language that's typed in there the answer is yes, but again, when you are reading on a piece of paper its static, you don't get all the information.

Judge Reyes: Right. Let me tell you, I think the fact that the date was different than the date above that report, let's use that term for the sake of our discussion today, May 30th that date is different than the date that's showing on the audit trail. I think something should have been generated that said, this was the date that I got this information and then of course you always write on the bottom, report dated such-and-such date to show that it was another day.

Vice Mayor Quesada: Is it proper for an internal investigation's officer to revise a report or create a report after they've been moved out of the department?

Judge Reyes: No, I don't think that's the proper way to do it. When someone is out of Internal Affairs they should have no other access to any internal affairs databases or records or software or computer programs, whatever term you want to use.

Commissioner Slesnick: But that's my concern with this. That person still had access to internal affairs.

City Manager Swanson-Rivenbark: Excuse me though. Here's the e-mail trail that I believe exists. That Lieutenant Tastet asked her supervisor, Major Pedroso, may she continue to close out the cases that she was working on. Major Pedroso sent it to Interim Chief Hudak, all of this remember, happened not with me, not with Director of Public Safety, and he said yes, she could continue to close out her cases. Pedroso then passed to her yes, and so she continued to close out the cases. I don't know if you were provided those e-mails or not.

Judge Reyes: I was not provided with those e-mails. Remember I was not conducting an investigation.

City Manager Swanson-Rivenbark: I know. I just think out of clarity that, that's a fair piece of information.

Commissioner Lago: But let me ask you a question. Since that's been brought up right now, since we are going to discuss that, even with the go ahead from Major Pedroso is that still inappropriate behavior?- even if your boss gave you the go ahead? You are no longer involved in IA.

Judge Reyes: Here's my answer. The person, the supervisor in charge of IA is the Chief, not Major Pedroso, so that discussion should have been with whomever the Interim Chief.

City Manager Swanson-Rivenbark: I'm sorry. So it did go up to Chief Hudak?

Judge Reyes: I don't know. I don't know.

City Manager Swanson-Rivenbark: We have e-mails that show that.

City Attorney Leen: But his recommendation is that that should not be allowed in the future.

Commissioner Lago: That individual is no longer working in the IA department, correct?

Judge Reyes: Correct.

Commissioner Lago: Now that person is under Mr. Fernandez, the Public Safety Director.

Judge Reyes: My understanding is that....

Commissioner Lago: Again, since we are discussing that, that's another issue that I have, you have an individual who personally investigated a police officer who in turn basically investigated me, along with this Commission, working under the Public Safety Director taking orders from a Chief and we have an incomplete internal affairs audit where the paper trail ends. Do you understand what I'm saying?

Judge Reyes: I think so.

Commissioner Lago: I have a little bit of an issue with that and I don't know if my colleagues also have an issue with that.

Commissioner Keon: Well you know, I think part of what started the whole discussion with regard to the Police Department is, and I applaud the Manager for being willing to publicly say

that we had a dysfunctional Police Department. Now there are a lot of issues that were going on within the Police Department that apparently were not always as we saw them. To begin with, this issue of an internal audit is covered under state statute, it's very clear under state statute, what can be investigated?- what they are supposed to be doing?- the whole process and everything else is. So whoever was doing from the very top, from the very top that was OK-ing it, or was allowing it to happen, to the actual person that was doing it, either doesn't know state statutes concerning internal affairs, which is very, very problematic that we have a department that doesn't know the state statutes that cover the work that they are supposed to be doing, and that the people doing internal affairs don't know that they, if there is a problem – if a request is made to them to investigate that is not in compliance with state statute that you have a City Attorney and that is the role and the purpose of the City Attorney and that every single one of those police officers. So my concern going forward is that every police officer or anyone who works in IA know and have knowledge of the state statutes governing internal affairs, that they meet with the City Attorney, so that they know that if they are requested to do something that is not in accordance with state statute that they should go to the City Attorney. They should not be concerned about reprisal or retribution for not doing something that is not in compliance. You know when the lines of communication are not so clear and when the practices are sloppy these things happen, these things happen, and that's why it's happened, and I applaud the Manager for addressing the issues with regard to the Police Department as a whole. That doesn't mean that it's any one person. Our Police Department has been without real leadership for quite some time, since Mike Hammerschmidt passed away, how long ago was that?

Commissioner Slesnick: Four years?

City Attorney Leen: More than that.

City Manager Swanson-Rivenbark: He passed away when I was still here.

Commissioner Keon: Right. So it's probably six years ago that we've had interim, fill-in, could be, plus a City Manager that was a bit dysfunctional also. So you know, when there is that vacuum in leadership good things don't happen, it isn't good. This is hierarchal, it's a paramilitary organization where very clear reporting lines and rules and regulations are followed.

These are people that carry guns and can take away your civil rights. It is really important, very important that rules are followed to the letter of the law and that they know them, that they know them and that they abide by them. And I think all we need to do is ensure that the people in the Police Department know and understand the state statutes and that they follow them, and that anyone who works in Internal Affairs is well aware that they should never follow or do any direction that is in conflict with the state statute. And if they felt free to do that, they would immediately go to the City Attorney and that they should go to the City Attorney and I think at that point the City Attorney would very quickly tell anyone who is involved that there was an illegal investigation or an unauthorized, it's illegal. If it's against state statute it's illegal – yes there is an illegal investigation that was requested and the internal affairs officer has sought advice from the City Attorney, and it was stopped and we are dealing with those issues. So, I really think what we need is some real leadership and I hope that Chief Hudak will rise, and I'm certain that he will rise to the occasion and provide the leadership that has been lacking for a period of time, and that anyone involved is well aware of what the statutes are and that the City Attorney is the person that they should go to if there is any concern about the legality of anything they are asked to do in this realm.

City Manager Swanson-Rivenbark: Mr. Mayor this has been a very worthwhile conversation, we've learned from it, we appreciate that. We have also said to every employee in this organization, if there is any time when you feel that someone is asking you to do something that may not be illegal, but may feel unethical, that's why we have the City Attorney's office, that's why we have not only Craig, but we have Miriam. They don't need to come to me, they go directly to them, and I fully support it. So one of the conversations I had with Chief Hudak and it was a very positive conversation was, the concept of taking a good organization and we do have a good Police Department and making it that great one. What steps are necessary and these are the kinds of pieces that help make us a better organization. So I do appreciate it being brought up. We are moving forward and we are excited about the future.

Commissioner Keon: Thank you.

Mayor Cason: And I think there are very good recommendations in here. I think the training component should be another one that everybody should be trained as Commissioner Keon

mentioned, and also make sure that nobody in the IA has any personal relationships or family relationships with anybody else in the Police Department, if they are going to be in there.

Commissioner Slesnick: I'd like to say something on behalf of Commissioner Lago, I don't remember how many nights ago this was, but I did get a knock on my door and I found this on my doorstep, just like I find all the other files that come in from the City on my doorstep; and I started reading it, because the Commission meeting was the next day and I was just stunned that your name would be mentioned in here, and that a Commissioner was being investigated, and I was just shocked and I apologize on my own behalf that I didn't even know anything about this and I came in the next day and I don't think you'd known that until the night before; and I immediately text the City Attorney because he was here when this happened, to find out what was going on. So, I'm just shocked and I apologize on my behalf and whoever else was doing it that you would be mentioned in here.

Commissioner Lago: I appreciate that.

City Attorney Leen: I'd like to add just one final word. I feel this is an important document. I think this is an important report, and I'm sorry for the way it came to you. I didn't intend for it to come to you that way, but to me this document moves us forward from a prior era and the goal of this is that everyone had good and bad things about them, so I'm not trying to attack anyone, but this sort of investigation should never have been directly ordered, it should never have been conducted, and the goal of this report, although it's been caught up in a lot of other things was to stop that, and I just wanted to be clear about that. It should stop and I hope that it's fully implemented and I want to see in the future that this would never happen again; and I also wanted to assure you that I've talked to my staff and in the future you should not be receiving these on your doorstep, and I'm sorry about that as well.

Vice Mayor Quesada: One procedure I'd like to suggest you consider or the Chief consider is for internal investigations, if they ever get a request that is out of order, that is improper or undocumented in any kind of way, the fall back is that they can confidentially go to the City Attorney to say yes or no, because it's a clear abuse of power and we want to prevent in every kind of way; and that fall back, I think, is an added protection – a thought.

Commissioner Keon: I would think when anyone if someone is assigned to the IA, people are assigned they should have, I mean it should be that they could talk to, the formal – yes.

Vice Mayor Quesada: Just think about it.

Commissioner Keon: Yes, they need to meet with the City Attorney and

Mayor Cason: As soon as they are assigned before they need to meet with you on...

Vice Mayor Quesada: Yes, but if you do it for every investigation it could become...

Commissioner Keon: No, no, no, for every person that is in that role.

Vice Mayor Quesada: Let staff figure that out. I just want to bring that up as a suggestion.

Commissioner Keon: Yes.

Commissioner Lago: And again, on the last point, I mean the Manager mentioned about some e-mails in regards to Major Pedroso and who gave who the go ahead in reference to continuing with Lt. Tastet, in reference so she could continue to explore this, finish off her case. If she did postdate some e-mails or some documents, what would that – to me that's just reeks of inappropriate behavior. Where does that leave her?- where does that leave her situation?

Judge Reyes: The answer is I don't know, since we did not conduct an investigation, she hasn't been given her due process and she hasn't been interviewed, and I never interviewed her, and I never intended to interview her, because I wasn't conducting an investigation nor should I because I'm not an internal affairs investigator. I think that all needs to be explored, I think some hard questions need to be asked and it's up to her whether or not she wants to answer them. It could be that everything that she did was appropriate, it could be that it's not appropriate, or it could be somewhere in between. None of us know until a proper investigation is conducted and she deserves due process rights like anyone of us would want to have, and that's why I like the idea of the State Attorney's Office looking into this and maybe even...

City Attorney Leen: Izzy could you turn it over to the State Attorney's Office?

Judge Reyes: Sure. I'll send it to them with...

Commissioner Lago: Thank you.

Mayor Cason: Alright. Anything else?- no.

Judge Reyes: Thank you for allowing me to serve the City that I love and I have adopted. So thank you very much.

Commissioner Keon: Thank you.

[End: 3:50:05 p.m.]