

Coral Gables Police Department Internal Affairs Section Case Audit

Report of Findings

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Prepared by:

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The following is an audit of the Coral Gables Police Department Internal Affairs Section cases and procedures between 2011 and 2014.

INTRODUCTION

The City Attorney and Chief of Police have requested that The Reyes Law Firm, P.A., as Legal Advisors for the Coral Gables Police Department, conduct an audit of the Internal Affairs Section's cases and procedures for the period beginning January 1, 2011, and ending December 31, 2014. The impetus for this audit stems from concerns that undocumented, unauthorized, or otherwise inappropriate investigations may have been conducted by the Internal Affairs Section during the aforementioned time period and/or the desire to utilize a more transparent and accountable process for internal affairs investigations.¹ This report also addresses additional concerns regarding the documentation of complaints and the processing of same. In conducting this audit, this Firm also confirmed that all Commission on Accreditation for Law Enforcement Agencies (CALEA)² Standards related to Internal Affairs as described in CALEA Chapter 52 are being met.

In order to conduct the instant audit, this office requested the preparation of and subsequently obtained Excel spreadsheets detailing the matters that are reflected in the IA Pro Software for each relevant year. Also requested and obtained was a copy of the Internal Affairs hard drive with folders containing documents for each relevant year and spreadsheets describing the documents therein.

Accordingly, this Report will address the case creation process, including various issues related to the intake and classification of complaints, the assignment of case numbers, and classification

¹ It must be noted that this audit is solely for informational purposes and not intended to be a recommendation for discipline concerning any officers assigned to the Internal Affairs Section during the relevant period.

² The Commission on Accreditation for Law Enforcement Agencies, Inc., (CALEA[®]) was created in 1979 as a credentialing authority through the joint efforts of law enforcement's major executive associations: International Association of Chiefs of Police (IACP); National Organization of Black Law Enforcement Executives (NOBLE); National Sheriffs' Association (NSA); and the Police Executive Research Forum (PERF). The purpose of CALEA's Accreditation Programs is to improve the delivery of public safety services, primarily by maintaining a body of standards developed by public safety practitioners which covers a wide range of up-to-date public safety initiatives; establishing and administering an accreditation process; and recognizing professional excellence. The CALEA Accreditation Process is a proven modern management model; once implemented, it presents the Chief Executive Officer (CEO), on a continuing basis, with a blueprint that promotes the efficient use of resources and improves service delivery—regardless of the size, geographic location, or functional responsibilities of the agency. This accreditation program provides public safety agencies an opportunity to voluntarily demonstrate that they meet an established set of professional standards which require an agency to develop a comprehensive, well-thought-out, uniform set of written directives. This is one of the most successful methods for reaching administrative and operational goals, while also providing direction to personnel. CALEA provides the necessary reports and analyses a CEO needs to make fact-based, informed management decisions; requires a preparedness program be put in place so an agency is ready to address natural or man-made critical incidents; are a means for developing or improving upon an agency's relationship with the community; strengthens an agency's accountability, both within the agency and the community, through a continuum of standards that clearly define authority, performance, and responsibilities; can limit an agency's liability and risk exposure because it demonstrates that internationally recognized standards for law enforcement have been met, as verified by a team of independent outside CALEA-trained assessors; and facilitates an agency's pursuit of professional excellence. <http://www.calea.org/content/commission>.

of findings. Additionally, this report will address records issues related to record retention and access and responses to public records requests. Finally, the report addresses the existence of undocumented and/or unauthorized investigations.

I. THE AUTHORITY, FUNCTION AND DUTIES OF INTERNAL AFFAIRS:

BACKGROUND

Pursuant to Florida State Statutes Section 112.533(1)(a) (2014):

Every law enforcement agency and correctional agency shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such agency from any person, which shall be the procedure for investigating a complaint against a law enforcement and correctional officer and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary.

Id. In accordance with the above statute, Internal Affairs Investigations – SOP #114 (IA SOP) states, “[t]he function of the IA Section is to investigate, or cause to be investigated, matters involving Department personnel *who are alleged to have violated Florida State Statutes (FSS), City Ordinances, City and/or Department rules, regulations, and/or orders.*” (Emphasis added.) In addition, “[t]he internal affairs function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of the agency depends on the personal integrity and discipline of each employee. To a large degree, the public image of the agency is determined by the quality of the internal affairs function in responding to allegations of misconduct by the agency or its employees.” CALEA Standards, Chapter 52 Introduction.

Therefore, the Internal Affairs Section, by policy, is not intended to be a general investigatory arm of the Chief of Police, but rather, is intended to investigate those specific matters delineated in the policy. One of the tenants of the CALEA Standards relating to Internal Affairs matters is that a written directive be in place specifying both “the type of complaints to be investigated by line supervisors” and “the type of complaints that require investigation by the internal affairs function.” According to CALEA, “[t]he intent of this standard is to provide guidelines regarding which categories of complaints are to be handled by the internal affairs function and which are part of routine discipline.” CALEA Standard 52.2.1.

II. CASE CREATION

BACKGROUND

“It is the policy of the Coral Gables Police Department (CGPD) . . . that all complaints against the agency, and/or its Department personnel, will be recorded and investigated, to include anonymous complaints.” Internal Affairs Investigations – SOP #114. Pursuant to the IA SOP, the Internal Affairs Section “[r]eceive[s] orders directly from, and report[s] directly to, the Chief of Police.”

INTAKE OF COMPLAINTS

For Telephone Call Complaints or Walk-in Complaints at the Department, “[d]uring normal business hours if the complainant wishes to file a formal complaint, and/or a complaint of a serious nature as stated in Section III. B. 1, they will be referred to [the] IA Section immediately.” However, “in cases where a complainant does not wish to pursue a formal investigation, or the complaint alleged does not amount to misconduct on the part of the Department personnel, the Supervisor will complete the Internal Affairs Contact Report (IA016) and forward to the IA Section via chain of command.”³

COMPLAINT CLASSIFICATION

Internal Affairs Complaints are presently classified into four (4) categories:

1. **Information Report:** Any allegation not resulting in a conclusion due to lack of information, or evidence.
2. **Personnel Complaint:** The IA Section may investigate cases where allegations do not involve moral or ethical issues or refer them to the Division Commander of the affected Department personnel.
3. **Shooting Incident Complaint:** Any incident where Department personnel discharge an authorized firearm on or off duty, except for hunting, practice, or training purposes. Pursuant to SOP #022 – Discharge of Firearms, the IA Section will investigate these cases. The IA Section will notify the CGPD Shooting Team when appropriate.
4. **Internal Affairs Complaint:** The IA Section will investigate all cases where allegations of a serious nature might result in written reprimand, suspension, demotion or termination.

IA SOP (internal citations omitted).

Once a Complaint is received, the Internal Affairs Commander or designee reviews all complaints against the Department or its personnel, including anonymous complaints. The IA Commander then classifies the complaint in question and determines whether IA will investigate the matter or it will be referred to the concerned division for investigation. IA SOP.⁴ In accordance with Department Policy,

³ A “Contact Report” is generated in cases where a complainant does not wish to pursue a formal investigation, or the complaint alleged does not amount to misconduct on the part of the Department personnel. The Supervisor completes the Internal Affairs Contact Report (IA016) and forwards it to the IA Section via the chain of command.

⁴ This process complies with CALEA Standards S.52.1.1.

IA will immediately notify the Chief of Police in all cases alleging serious misconduct or alleged criminal wrongdoing. For all other complaints, the Chief of Police is notified by the IA Section within seventy-two (72) hours of receipt of such complaint. If the complaint involves a University of Miami officer, the Chief of the University of Miami Police will also be notified.

CLASSIFICATION OF FINDINGS

When an Internal Affairs investigation is completed, a panel, consisting of the Chief of Police, Assistant Chief of Police, and the affected Assistant Chief of Administrative Services – PSD or Division Commander (unless excused by the Chief of Police), review the findings and determine a disposition utilizing one (1) of the following five (5) classifications:

1. **UNFOUNDED:** The allegation is false or not factual.
2. **EXONERATED:** The incident complained of occurred, but was lawful and proper.
3. **NOT SUSTAINED:** Insufficient evidence to either prove or disprove the allegation.
4. **SUSTAINED:** The allegation is supported by sufficient evidence.
5. **POLICY FAILURE:** The allegation is true but the employee was acting in a manner consistent with agency policy, necessitating a review and revision of the policy as written; or no policy exists covering their action.⁵

IA SOP Section XIII (A).

ISSUE

During the period examined, the Department has classified certain cases as “Information Reports” However, the case classification presently known as “Information Report” is in reality, neither a type of case nor an investigation. Rather, a matter is classified as an “Information Report” at the conclusion of a preliminary investigation, rather than the outset of the investigation. In addition to leading to the creation of multiple cases with the same IA Case Number, the usage of this classification has led to records retention issues because such a classification does not have a directly correlated document retention class and correlated retention schedule under GS2.⁶ Additionally, the use of this classification has resulted in a

⁵ This process complies with CALEA Standards S.52.2.8.

⁶ Florida Statutes requires the Department to conform to the records retention schedule described in General Records Schedule GS2 for Law Enforcement, Correctional Facilities, and District Medical Examiners. The General Records Schedule GS2 is issued by the Department of State, Division of Library and Information Services, in accordance with the statutory provisions of Chapters 119 and 257, Florida Statutes. The GS2 General Records Schedule for Law Enforcement, Correctional Facilities, and District Medical Examiners covers records documenting law enforcement and related functions and activities, including records created and/or maintained by state law

patchwork of information being contained in the IA Servers that is not contained in the IA Pro database as discussed *infra*.

RECOMMENDATION

It is the recommendation of this Firm that the case classification presently known as “Information Report” be eliminated. If, following an investigation as required by policy, it is determined that a case cannot be brought to a “conclusion due to lack of information, or evidence” the complaint result will logically be determined by the appropriate personnel to be “NOT SUSTAINED.”⁷ The removal of this classification category will remove discretion from the investigating officer and insure that all complaints are resolved by the appropriate supervisory personnel and in a transparent uniform manner consistent with objective, recognized and transparent IA principles. Therefore, it is this Firm’s recommendation that every Internal Affairs Section investigation be assigned a unique global uniform and sequential identifying case number.

III. ASSIGNMENT OF CASE NUMBERS

BACKGROUND

The IA SOP provides that “[a]ll documents relating to investigations will be maintained in a file identified by an IA Section case number.”

Additionally, the Internal Affairs Contact Report (IA016) requires that the IA Section include for each report, an Internal Affairs Tracking [number]. Form IA016 p.3. The same requirement for the listing/assignment of an internal affairs case number is present on the Complaint Intake Form (Form IA019). This Form is used in cases where a complainant wishes to pursue a formal investigation “outside of normal business hours or in the event an IA Investigator is not immediately available,” in which case, the Complainant is “referred to the highest ranking available Uniform Patrol Division (UPD) shift supervisor for processing.”

ISSUE

Actions not rising to the level of a serious nature that nonetheless violate City or Departmental policies and procedures are documented on the Disciplinary Action Report (DAR) Form (Form

enforcement agencies, county sheriff’s offices, local police departments, campus police departments, local and state jails, prisons, other correctional and detention facilities, and district medical examiner’s offices. The retention periods set forth in the general records schedules are based on federal and state laws and regulations, general administrative practices, and fiscal management principles. They outline minimum retention periods, and public agencies may retain their records longer at their discretion. However, a public agency is not permitted to reduce the retention periods stated in a general records schedule.

⁷ NOT SUSTAINED is defined by policy as an investigation result where there is “[i]nsufficient evidence to either prove or disprove the allegation.” IA SOP.

IA020). However, the documentation of DAR's do not require the recording of the Internal Affairs Number as do the other forms in use at this time. *See* Disciplinary Action Report (DAR) Form (IA020) attached as Appendix "A."

RECOMMENDATION

As noted above, it is the recommendation of this Firm that every matter or potential case, brought to the attention of the Internal Affairs Section by e-mail, be assigned a unique global uniform and sequential identifying case number. Thus, it is recommended that Form IA020 be amended to require the use of one global numbering convention to be used as the Internal Affairs Case Number, upon initial intake, regardless of whether the DAR is handled at the supervisory level or otherwise. In those instances in which a matter is handled at the division level in the form of a DAR, the matter should be sent contemporaneously to the Internal Affairs Section for documentation under the aforementioned Internal Affairs Case Number.

IV. RECORD RETENTION ISSUES:

BACKGROUND

In conformance with the GS2, the City of Coral Gables has adopted, as one of eight long-term records management goals, the "timely destruction of records at the end of their retention period." City of Coral Gables Records Management Training Manual, p. 5-6. Therefore, the City has determined that "[r]ecords should be destroyed as soon as legally possible." *Id* at 13.

As it relates to record retention and maintenance, the IA SOP provides, in relevant part,

RECORD MAINTENANCE:

- A. All documents relating to investigations will be maintained in a file identified by an IA Section case number.
- B. The IA Section will maintain records of all complaints in accordance with the State of Florida General Records Schedule for Law Enforcement Agencies and per the CBA between the Fraternal Order of Police Lodge 7 and the City of Coral Gables.
- C. The IA Section is responsible for maintaining and securing all IA records and for ensuring that the appropriate master logs and files are maintained. All IA files, open and closed, will be kept secured in the IA Section.

Id. (internal citations omitted).

Further, Section XVI of the IA SOP, provides,

- C. Internal Affairs Case Files consist of completed investigative files. The files are stored and retained by the IA Section. The IA case file retention periods are classified in accordance with the State of Florida General Records Schedule GS2.

1. **Not Sustained/Unfounded:** Cases classified as unfounded, exonerated, not sustained, or policy failure, are eligible for purging after one (1) year from final disposition.

2. **Sustained Informal:** Sustained cases where discipline was a written or verbal reprimand are eligible for purging after three (3) years from final disposition.

3. **Sustained Formal:** Sustained cases where discipline was suspension, demotion or termination are eligible for purging after five (5) years from final disposition.

D. A copy of the Disciplinary Action Report will be kept by the IA Section in accordance with the State of Florida General Records Schedule GS2.

E. Internal Affairs Information Reports are kept by the IA Section for one calendar year from date of closure in accordance with the State of Florida General Records Schedule GS2.

F. Contact Reports are kept by the IA Section for one (1) calendar year from date of closure in accordance with the State of Florida General Records Schedule GS2.

The following GS2 provisions apply to the records generated and/or maintained by the Internal Affairs Section:

INTERNAL INVESTIGATION RECORDS
FINAL ACTION SUMMARY
ITEM #59⁸

This record series serves as the final action summary of investigations of allegations of employee or officer misconduct and/or violation of law enforcement agency regulations or orders, state or federal statutes, or local ordinances. Investigations may also cover discharge of firearms or other use of physical force. The completed investigation file is scheduled separately based on the nature of the outcome (sustained formal, sustained informal, or not sustained/unfounded/exonerated). The statement of final action may take many forms, including a memorandum, correspondence, logs, or reports. . . .

RETENTION:

- a) Record copy. Retain as long as the Personnel File.
- b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

⁸ The GS2 assigns item numbers for each series of records.

GS2, p. 14.⁹

INTERNAL INVESTIGATION RECORDS
NOT SUSTAINED/UNFOUNDED/EXONERATED
ITEM #136

This record series documents the investigation of allegations of employee or officer misconduct and/or violation of law enforcement agency regulations or orders, state or federal statutes, or local ordinances. Investigations may also cover discharge of firearms or other use of physical force. These records document cases in which the charges were determined to be un-sustained or unfounded or the employee or officer was exonerated. The series may include, but is not limited to, statements by the employee, witnesses, and the person filing the complaint. . . .

RETENTION:

- a) Record copy. 1 anniversary year after final disposition.
- b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

GS2, p. 14-15.¹⁰

INTERNAL INVESTIGATION RECORDS
SUSTAINED FORMAL
ITEM #134

This record series documents the investigation of allegations of employee or officer misconduct and/or violation of law enforcement agency regulations or orders, state or federal statutes, or local ordinances. Investigations may also cover discharge of firearms or other use of physical force. These records document cases in which the charges were sustained and formal discipline administered. “Formal discipline” shall be defined as including demotions, removals, suspensions, or similar action. The series may include, but is not limited to, statements by the employee, witnesses, and the person filing the complaint.

See also Internal Investigation Records: Final Action Summary, Not Sustained/Unfounded/Exonerated, Sustained Informal, and Physical Force Records.

⁹ This item is not relevant to the instant analysis as the retention period exceeds the scope of this audit.

¹⁰ None of the cases from the 2014 period are ready for disposition in accordance with the State Records Retention Schedule and City Records Retention policy.

For investigative records of the Office of Inspector General, see General Records Schedule GS1-SL for State and Local Government Agencies, Item #351, “INVESTIGATIVE RECORDS.”

RETENTION:

- a) Record copy. 5 anniversary years after final disposition.
- b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

*Id.*¹¹

INTERNAL INVESTIGATION RECORDS
SUSTAINED INFORMAL
ITEM #135

This record series documents the investigation of allegations of employee or officer misconduct and/or violation of law enforcement agency regulations or orders, state or federal statutes, or local ordinances. Investigations may also cover discharge of firearms or other use of physical force. These records document cases in which the charges were sustained and informal discipline administered. “Informal discipline” shall be defined as including written or verbal reprimands, memoranda, or similar action. The series may include, but is not limited to, statements by the employee, witnesses, and the person filing the complaint.

See also Internal Investigation Records: Final Action Summary, Not Sustained/Unfounded/Exonerated, Sustained Informal, and Physical Force Records

For investigative records of the Office of Inspector General, see General Records Schedule GS1-SL for State and Local Government Agencies, Item #351, INVESTIGATIVE RECORDS.

RETENTION:

- a) Record copy. 3 anniversary years after final disposition.
- b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

*Id.*¹²

¹¹ For the Internal Affairs investigations for 2011 onward, which have resulted in a Sustained finding and where formal discipline was administered, records retention is presently being complied with as the GS2 requires retention for five (5) years, and the relevant period examined herein does not exceed the five (5) year retention period for any case examined.

ISSUE1

While the IA SOP refers to and purports to rely on the GS2 for guidance concerning the retention of Internal Affairs Records, three of the categories of documents described in Section XVI have no explicit corresponding class or record series within the GS2. Specifically, there is no item explicitly applicable to Disciplinary Action Reports, Internal Affairs Information Reports, and Contact Reports.

RECOMMENDATION 1

As to Disciplinary Action Reports (DAR), a review of the relevant records series category in the GS2 reveals that DAR's fall under item #135, Internal Investigation Records: Sustained Informal. These records document cases in which the charges were sustained and informal discipline administered.¹³ As to Internal Affairs Information Reports and Contact Reports, a review of the relevant records series categories in the GS2 reveals that the most appropriate record series is item #136, Internal Investigation Records: Not Sustained/Unfounded/Exonerated. These records document cases in which the charges were determined to be un-sustained or unfounded or the employee or officer was exonerated. Therefore, the IA SOP should be amended to clarify that DAR's will be retained in accordance with GS2 Item #135, Internal Investigation Records: Sustained Informal, and that Information Reports¹⁴ be retained in accordance with GS2 Item #136, Internal Investigation Records: Not Sustained/Unfounded/Exonerated.

ISSUE2

The second issue discovered during this review is that a large number of documents and files have been retained in excess of the applicable retention periods described above, including those retention periods prescribed within the IA SOP. For example, it appears that none of the "Information Reports" for 2011, 2012, and 2013 were disposed of, despite having met retention requirements for those matters determined to be "Not Sustained." Further, the information reports have not been disposed of in accordance with the IA SOP, which provides, "Internal Affairs Information Reports are kept by the IA Section for one calendar year from date of closure in accordance with the State of Florida General Records Schedule GS2." Additionally, it appears that for the year 2013, there remain several Contact Reports which are ready for disposition in accordance with the State Records Retention Schedule and City Records Retention policy.

¹² For the Internal Affairs investigations for 2011 onward, which resulted in a Sustained finding and where informal discipline was administered, records retention is presently being complied with as the GS2 requires retention for three (3) years from the conclusion of the investigation, as no case examined regarding Departmental personnel was concluded within three years of the end date for this analysis.

¹³ "Informal discipline" is defined as including written or verbal reprimands, memoranda, or similar action.

¹⁴ If continued to be used as an investigation category going forward.

RECOMMENDATION 2

While it is not presently possible to ascribe any particular motivation to the inconsistent retention of documents, it is the recommendation of this Firm, that to avoid the appearance of impropriety and to maintain a transparent process, records be maintained in strict accordance with the applicable schedule and record retention and disposition policy of the City of Coral Gables provided that the policy comports with GS2. In accordance with the City's stated policy, the Department should insure the "timely destruction of records at the end of their retention period" thereby allowing the records to "be destroyed as soon as legally possible," unless it is determined that particular records retained in excess of the aforementioned periods hold administrative value justifying their continued maintenance.

V. INTERNAL AFFAIRS CASE MAINTENANCE

BACKGROUND

The Internal Affairs section uses two main methods for storing information, IA Pro and the Internal Affairs server on the Coral Gables Police Department network. Access to each is maintained by a unique login for the actual computer terminal and a unique login and password for the IA Pro software.

ISSUE

A review of the documents maintained in the Internal Affairs Server as compared to those matters memorialized in the IA Pro Software reveals that over the period in question, there have been inconsistent case creation and file maintenance procedures. As Appendix "B" illustrates, various items were maintained in the Internal Affairs Section server, yet not in IA Pro. Additionally, other items as described in Appendix "B" exist in the IA Server without reference to any case number, or other identifying information. Additionally, Appendix "B" shows that numerous items that exist in IA Pro and the IA Server simultaneously despite the informal process in place that removes items from the IA Server once they are placed in IA Pro. However, this process does not appear to have been uniformly adhered to as some cases remained in the IA Server while simultaneously existing in IA Pro. Generally, it appears that the problems have arisen due to the lack of a uniform process concerning file creation and maintenance.

RECOMMENDATION

As stated earlier, it is the recommendation of this Firm that every matter or potential case, brought to the attention of the Internal Affairs Section by e-mail, be assigned a unique identifying case number using one global numbering convention/procedure. It is further recommended that all information, correspondence, and related records be maintained in a single

location under the aforementioned file number. If it is necessary to maintain this centralized database outside of the IA Pro Software while investigations are active, it is recommended that all relevant information be transferred into the IA Pro database upon conclusion of the matter. This centralized record keeping procedure will prevent disorganization, and the existence of matters which are not fully pursued. Additionally, doing so will insure that all investigations of any type are formally documented.

VI. UNAUTHORIZED/UNDOCUMENTED INVESTIGATION(S)

BACKGROUND

As noted earlier, the Internal Affairs Section, by policy, is not intended to be a general investigatory arm of the Chief of Police. Rather it is the system established pursuant to Section 112.533, Florida Statutes (2014), for the receipt, investigation, and determination of complaints received by the agency from any person, as well as the investigation of those matters delineated in the policy.

Following certain allegations regarding the existence of an investigation into Interim Chief Hudak, this office was provided a CD with various files concerning Chief Hudak maintained in a file within the IA Server.

This review was conducted at the behest of City Attorney Craig Leen following the revelation that an undocumented Internal Affairs investigation was conducted by Lt. Rene Tastet at the direction of former Chief of Police Dennis Weiner, into communications between former Major and current Interim Chief of Police Edward J. Hudak, Jr., and certain Commissioners for the City of Coral Gables.

A CD with various files concerning Chief Hudak was provided to this office as Police Legal Advisors, pursuant to an Audit of the Internal Affairs Section. The documents provided on the CD concerning the alleged investigation into Major Hudak's communications with Commissioners during Commission meetings, and more particularly, Commissioner Lago, consist of the following;

- att mobility number.xlsx
- Copy of Hudak Feb and March data.xlsx
- Copy of Hudak Feb and March voice.xlsx
- Copy of Hudak Jan and Feb data.xlsx
- Copy of Hudak Jan and Feb voice.xlsx
- Copy of Hudak March and April data.xlsx
- Copy of Hudak March and April voice.xlsx
- Hudak IR.docx

- Hudak May data.xlsx
- Hudak May voice.xlsx
- information requested.msg
- Partial month of May.msg
- RE information requested.msg

In sum, the file titled “IR hudak” contained Microsoft Excel Spreadsheets containing Voice and Text (SMH-Messages) Records for then Major Edward Hudak’s City of Coral Gables issued cellular phone for the entire months of January 2014 through April 2014 and partial records for May 2014. Additionally, the file contained 3 e-mail messages regarding the aforementioned records and a Microsoft Word document regarding the investigation dated May 30, 2014, though as discussed herein, this date does not appear to be accurate.

The January - April records were obtained by Lt. Rene Tastet from Alejandro Gamundi (Information Technology Analyst) on May 30, 2014, via e-mail (information requested.msg). On May 30, 2014, Lt. Tastet requested from Alejandro Gamundi records for May 2014 via e-mail (RE information requested.msg). In the aforementioned e-mail string, on June 2, 2014, Lt. Tastet indicates that she was scheduled to meet with then Chief Weiner regarding this matter. The partial records for the month of May 2014 were obtained by Lt. Tastet from Ayanes Apolinar (Senior Information Technology Analyst) on June 4, 2014, via e-mail (Partial month of May.msg).

Finally, as to the Microsoft Word document contained within the file titled “IR hudak.” According to the Document Properties, the document was authored by “Tastet, Rene” and was last modified by “Tastet, Rene.”

As the document is relatively short, the entirety of the substance is found below:

May 30, 2014

At the request of Chief Weiner, I initiated an investigation of Major Hudak. Chief Weiner was concerned that Major Hudak was communicating with Commissioner’s via text during the last commission meeting, specifically Commissioner Vince Lago.

Chief Weiner advised me to contact IT and request a copy of Major Hudak’s city cell phone and text records. IT provided me with cell phone and text messaging records from February 2014 to May 2014. Some texts and numerous calls were made to Commissioner Lago during this time period. I provide Chief Weiner with copies of phone and text records. No further action was asked of me by Chief Weiner.

The file in its text purports to have originated on May 30, 2014. While the aforementioned Microsoft Word document has an internal date of May 30, 2014, a review of the metadata for the document, through the properties function, lists the following relevant information;

- Last Modified: 10/21/2014 -- 9:19 AM
- Created: 10/21/2014 -- 9:00 AM
- Total Editing Time: 18 Minutes

Following the review of the above information, all e-mails exchanged between Lt. Tastet and former Chief Weiner during Lt. Tastet's tenure in the Internal Affairs Section were obtained by this office to determine when the aforementioned investigation was initiated and to determine what if any legitimate purpose the investigation may have served and the result of the investigation.

A review of the e-mails obtained does not reveal any communications between former Chief Weiner and Lt. Tastet regarding any investigation into then Major Hudak.

From the review of the aforementioned files, it is not clear when the aforementioned investigation into communications between then Major Hudak and Commissioner Lago was initiated, or what violation of law, ordinance, or policy was being investigated, and why no formal documentation was initiated concerning same. If there was an ongoing investigation of any sort, as stated earlier, it should have been documented using an internal affairs case number. The failure to do so raises questions concerning the legitimacy of the investigation and the motivations for same.

In addition, during the course of the review of this particular matter, another issue came to light concerning the Internal Affairs Section. Specifically, an issue related to access to the Internal Affairs records. Lt. Tastet was reassigned from the Internal Affairs Section to the Uniform Patrol Bureau on October 20, 2014. Lieutenant Tastet's responsibilities related to the Internal Affairs Section ceased on said date.

It appears based upon a review of the IA Pro software access log that Lt. Tastet accessed the Internal Affairs records stored on IA Pro on October 20, 2014, to view the following items;

- 2006-GR-0005 - Grievance by Detective Ivan Cabrera
- 2013-GR-008 - Grievance by Detective Robert Brown
- 2014GR-004 - Grievance by Sergeant Janette Frevola
- 2014GR-002 - Unknown Grievance
- 2014GR-001 - Unknown Grievance
- 2012GR-010 - Unknown Grievance
- 2012GR-012 - Unknown Grievance
- 2007-GR-001- Grievance by Sergeant Janette Frevola

Additionally, it appears based upon a review of the IA Pro software access log that Lt. Tastet accessed the Internal Affairs records stored on IA Pro on October 21, 2014, the date following her reassignment from the Internal Affairs Section to view the following items;

2004-IA-0016 - Formal IA Case related to Lt. Alexander Roffe

2005-IA-0010 - Formal IA Case related to Lt. Alexander Roffe

2006-IA-0008 - Formal IA Case related to Lt. Alexander Roffe

It further appears that Lt. Tastet chose to display incidents within IA Pro related to then recently-appointed Interim Chief Edward Hudak, including the following;

2014COU0003

2011DAR-005

2010IA-013

The records accessed by Lt. Tastet do not appear to have been related to any active investigations, and all appear to have been finally disposed of at the time of viewing. It is not immediately clear what the purpose of Lt. Tastet's access of the records was; however, the mere fact that personnel which had been reassigned was able to access the Internal Affairs records database following reassignment highlights an issue of concern.

ISSUE NUMBER 1

The first issue raised by the investigation into then Major Hudak is that it was initiated simply because "Chief Weiner was concerned that Major Hudak was communicating with Commissioner's via text" during a commission meeting. In accordance with the IA SOP, "[t]he function of the IA Section is to investigate, or cause to be investigated, matters involving Department personnel who are alleged to have violated Florida State Statutes (FSS), City Ordinances, City and/or Department rules, regulations, and/or orders." Based upon the description of the investigation as created by Lt. Tastet in the file titled "IR hudak" there was no allegation of violations of Florida State Statutes, City Ordinances, City and/or Department rules, regulations, and/or orders" against Major Hudak justifying the commencement of the investigation.

RECOMMENDATION

This Firm recommends that, in order to insure that unauthorized investigations are avoided, and to insure that there remains some form of accountability, while also avoiding any potentially politically motivated investigations, the IA SOP should be amended to authorize the IA Lieutenant to inform the Director of Public Safety, the City Attorney and/or his designee, and the Police Legal Advisor of the existence and basis for the investigation which has been ordered

when the Lieutenant is concerned that an investigation has been improperly commenced by the Office of the Chief of Police.

ISSUE NUMBER 2

Records of active Internal Affairs investigations are confidential under state law. Specifically, Florida Statutes Section 112.532(4)(b) (2014) provides,

Notwithstanding s. 112.533(2), whenever a law enforcement officer or correctional officer is subject to disciplinary action consisting of suspension with loss of pay, demotion, or dismissal, the officer or the officer's representative shall, upon request, be provided with a complete copy of the investigative file, including the final investigative report and all evidence, and with the opportunity to address the findings in the report with the employing law enforcement agency before imposing disciplinary action consisting of suspension with loss of pay, demotion, or dismissal. **The contents of the complaint and investigation shall remain confidential until such time as the employing law enforcement agency makes a final determination whether or not to issue a notice of disciplinary action consisting of suspension with loss of pay, demotion, or dismissal.**

Id. (emphasis added).

Similarly, the commentary to CALEA Chapter 52, Section 1, Standard 2, provides, “[t]he confidentiality of internal affairs records is important, and proper security precautions should be taken.”

In accordance with the aforementioned provisions, Section V. of the IA SOP provides the following as it relates to the confidentiality of Internal Affairs records,

Complaints... will be confidential in nature, and governed under provisions of appropriate and current applicable state law... The IA Section will maintain the required records concerning an investigation in a secure area and ensure the investigation’s confidentiality.

The second issue discovered as a result of the review of the above records is that there was a situation allowed to exist where a potential breach of the confidentiality requirements for Internal Affairs investigations may have occurred. Specifically, Lt. Tastet was able to access the IAPro Software after having been reassigned out of the IA Section.

RECOMMENDATION

It is the recommendation of this office that access to the Internal Affairs database be strictly controlled and that the access provided via the IA Pro software be maintained strictly in accordance with the duties of the assigned personnel. Once an individual’s tenure with IA is

ended, that individual's access, whether by password or other electronic means, be immediately restricted.

ISSUE NUMBER 3

Another potential issue raised by the undocumented investigation outlined above relates to the intertwined investigation into a City Commissioner. Not only does there not appear to have been any formalized, documented communications between the then Chief of Police and Lt. Tastet, it also appears that neither the City Manager, Assistant City Manager, or City Attorney's Office were informed that an investigation potentially involving a City Commissioner was underway. Further, none of the other members¹⁵ of the Internal Affairs Section were made aware of the ongoing investigation, nor was Interim Chief of Police Hudak briefed by Lieutenant Tastet as to the ongoing investigation upon his appointment as Interim Chief.

RECOMMENDATION

This Firm recommends that, in order avoid unauthorized or undocumented investigations while also avoiding any potentially politically motivated investigations, the Internal Affairs Section be prohibited from investigating any elected or appointed city officials. In the event there is a suspicion that any such individual has committed a violation of the law, the matter should be investigated by the appropriate members of the Criminal Investigative Division.

VII. PUBLIC RECORD REQUESTS

BACKGROUND

The IA SOP provides, with regard to the satisfaction of Public Records Requests directed to personnel files or internal affairs records, as follows,

All Florida Statutes Chapter 119 public records request for copies of files maintained by the IA Section *will be processed on a City of Coral Gables Public Record Request form through the City Attorney's Office*. IA Section will maintain a copy of the request and forward the original request along with two copies of the information requested to the City Attorney's Office. Confidentiality rules apply in accordance with "Public Record - A Guide for Law Enforcement Agencies" published by the State of Florida Attorney General.

ISSUE

A public agency may not condition the satisfaction of a public record request on the request being made in writing by the requestor. Florida Statutes Chapter 119 does not authorize an agency to require that requests for records be in writing. *See Dade Aviation Consultants v.*

¹⁵ The IA Section at the time was comprised of a lieutenant, two detectives, and a staff assistant, none of whom were informed of the alleged investigation, contrary to the normal practice within the section.

Knight Ridder, Inc., 800 So. 2d 302, 305 n.1 (Fla. 3d DCA 2001) (“There is no requirement in the Public Records Act that requests for records must be in writing”).

RECOMMENDATION

The IA SOP should be revised to clarify that the completion of the City of Coral Gables Public Record Request form is not a prerequisite to the satisfaction of a public records request. If the Department believes that it is necessary to provide written documentation of a request for public records, the agency may require that the custodian complete an appropriate form or document; however, the person requesting the records cannot be required to provide such documentation as a precondition to the granting of the request. *See Sullivan v. City of New Port Richey*, No. 86-1129CA (Fla. 6th Cir. Ct. May 22, 2987), *per curiam affirmed*, 529 So. 2d 1124 (Fla. 2d DCA 1988), noting that a requestor’s failure to complete a city form required for access to documents did not authorize the custodian to refuse to honor the request to inspect or copy public records. It must also be noted that the agency may not require a person requesting access to or copies of public records to disclose his or her name, address, telephone number or the like to the custodian, unless the custodian is required by law to obtain this information prior to releasing the records. *See Bevan v. Wanicka*, 505 So. 2d 1116 (Fla. 2d DCA 1987) (production of public records may not be conditioned upon requirement that the person seeking inspection disclose background information about himself or herself).

VIII. CALEA COMPLIANCE

The Department recently was reaccredited under the gold standard assessment process and was awarded advanced accreditation with excellence. This included a review of the IA procedures. However, it is imperative that performance of the Internal Affairs Section in conformity with the SOP be insured in order to obtain full and complete compliance with and adherence to the CALEA Standards and IA SOP.

IX. INVESTIGATIONS INVOLVING NON-AGENCY MEMBERS

BACKGROUND

Pursuant to the IA SOP, the Internal Affairs Section is authorized to conduct independent investigations of complaints or allegations of possible misconduct by other City employees at the direction of the City Manager through the Office of the Chief of Police. IA SOP.

Further, as stated above, Section 112.533(1)(a), Florida Statutes (2014), provides:

Every law enforcement agency and correctional agency shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such agency from any person, which shall be the

procedure for investigating a complaint against a law enforcement and correctional officer and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary.

Id. In accordance with the above statute, Internal Affairs Investigations – SOP #114 (IA SOP) states, “[t]he function of the IA Section is to investigate, or cause to be investigated, matters involving *Department personnel* who are alleged to have violated Florida State Statutes (FSS), City Ordinances, City and/or Department rules, regulations, and/or orders.” (Emphasis added.) In addition, “[t]he internal affairs function is important for the maintenance of professional conduct *in a law enforcement agency*. The integrity of the agency depends on the personal integrity and discipline of each employee.” CALEA Standards, Chapter 52 Introduction.

ISSUE

Florida Statutes Section 112.532, known as the Law Enforcement Officer’s Bill of Rights sets forth certain protections afforded to members of law enforcement agencies when being investigated by members of their agency and subject to interrogation as part of same. The LEO Bill of Rights does not, by its terms, afford any such protections to civilian personnel. However, it appears from discussions with members of the IA Section that confusion has arisen on several occasions regarding the rights and protections afforded civilian personnel during investigations of their actions by members of the Internal Affairs Section.

RECOMMENDATION

It is the recommendation of this Firm that the responsibility to investigate violations of city policies and procedures and other misconduct, by civilian city employees, be removed from the ambit of the Internal Affairs Section. However, in the event that the alleged conduct amounts to a violation of state or local law, the Police Department should investigate the allegations just as they would any criminal complaint within the Department’s jurisdiction.

**CORAL GABLES POLICE DEPARTMENT
DISCIPLINARY ACTION REPORT**

Employee name / ID #: _____ Date: _____

Rank: _____

Division: _____

YOU ARE HEREBY CHARGED WITH VIOLATING:

(Attach additional sheets as necessary)

FACTS:

Supervisor Signature/Date

(Attach additional sheets as necessary)

Print or type Supervisor's name/ID #

In signing this report I acknowledge that I have received a copy. I understand that I may respond in writing and that such response will be made a part of this Report and taken into consideration prior to a final determination being made.

Employee Signature/Date

RECOMMENDED ACTION

- Written Reprimand Day (s) Suspension Demotion
- Dismissal Effective Date (s) _____
- No Action

(Attach additional sheets as necessary)

Supervisor Signature/Date

FINAL ACTION

FINAL APPROVAL

Chief Signature/Date

The original document is to be forwarded to the Internal Affairs Office, with the affected member/employee receiving a copy. NO OTHER COPIES OF THIS DOCUMENT WILL BE MADE.

**CORAL GABLES POLICE DEPARTMENT
DISCIPLINARY ACTION REPORT CONTINUATION**

Employee name: _____ ID #: _____

Date: _____

Page Two

The original document is to be forwarded to the Internal Affairs Office, with the affected member/employee receiving a copy. NO OTHER COPIES OF THIS DOCUMENT WILL BE MADE.

APPENDIX "B"

The following items were found in the IA Server and not in IA Pro;

2011 Cases:

Main Folder	Subfolder(s)	Description
DAR's	Cordero - DAR - ref Clute	Possible DAR that appears to have been referred to UPD Major for handling
DAR's	Hudak - DAR - CR ref Chavez	Not in IAPro - documents reference possible undocumented DAR
DAR's	Hudak - DAR - CR ref Clute-Cordero	Not in IAPro - documents reference possible DAR.
Hudak	Multiple folders - documents/emails/pdf. document called outside employment form	Possible complaint about Major Hudak/conflict of interest/UM received via email. Not in IAPro - unknown resolution. Appears that City attorney instructed IA not to investigate, though there is no documentation of this. No case number of any type was ever assigned. This was an undocumented investigation for purposes of IA SOP.
James Skinner	emails, pdf documents, and Lt. Silverio's notes word doc	Not in IAPro - letter received by City Manager Pat Salerno from "allegedly" James Skinner - unknown of resolution. No officer was named in letter that was eventually determined to be forgery from Chief Skinner. Should have been deemed unfounded.
Lawrence	documents/email	Not in IAPro - possible investigation - anonymous ltr. sent to the city - alleging Lt. Lawrence using work computer and time to complete FIU studies - unknown resolution. No case number or follow-up appears to have been done following receipt of 90 page report from IT.
Magdalena Bravo	Multiple folders - DSS/Photos/WAV/email/Lt. Silverio's Notes word doc/pdf. Documents	Not in IAPro - ongoing dispute/matter between Ms. Bravo and Lt. Claughton, case was supposed to be documented as an "Information" only. According to Lt. Silverio's notes, it was provided case no.: 2010NA-012, however, the transcribed statement of Complainant has 2010-IA-___.
O.E. Lopez Fernandez	emails	Not in IAPro - e-mails do not involve CGPD Officers.
Officer Hazoury	Docs	Not in IAPro - folder includes a Doral PD report and FHP accident report - unknown action taken.
Officer Manny Medina - UM	Multiple documents (pdf's, word, and email)	Not in IAPro - UM equalities complaint, information was forwarded to UM HR Department.
phantom sp vehicle	Word document titled Lt. Siverio's notes	Not in IAPro - possible accident involving a city marked unit, unknown vehicle # or tag - unknown action taken. Does not appear that any follow-up occurred. Matter not

		resolved or disposed of.
Email - Complaint Reverend Shafer	N/A	Not in IAPro. Allegation that officer St. Amand unlawfully stopped individual and frisked him (per e-mail). Does not appear to have gone further as complainant did not contact CGPD, it was through third party. Should have been concluded.
Word Document - Michael Russel Cuciak	N/A	Not in IAPro - document created by vperez. Unclear what this is regarding.

The following items were found in IA Pro and not in the IA Server;

2011IA-003 - Sustained
2011IA-005 - Sustained¹
2011IA-008 - Sustained²
2011NA-028 - Inquiry

The following items were found in the IA Server and not in IA Pro;

2012 Cases:

Main Folder	Subfolder(s)	Description
DAR's	Cordero	Not in IA Pro - documents reference possible DAR without any case number.
Detective Cuervo	emails	Not in IA Pro - ongoing issue also documented under 2011NA-025. There are three e-mails, saved in two separate locations that relate to bullying by Lt. Ellenport against Detective Cuervo. There appears to have been a previous issue, though it is not clear if this was separate event. It appears so, but that it was not assigned new IA#.
IA Cases	2012IA-005	Not all emails in IA Pro - emails are part of the case file - Sustained, but not met retention. All records should be included in IA Pro when done.
IA Cases	2012IA-007	Not all docs in IA Pro - this is part of case file. Sustained, but not met retention. All records should be included in IA Pro when done.
IA Cases	2012IA-011	Not all docs in IA Pro - this is part of case file
IA Cases	Ellinport and Cuervo	Not in IA Pro - ongoing issue also documented under 2011NA-025. There are three e-mails, saved in two separate locations that relate to bullying by Lt. Ellenport against Detective Cuervo. There appears to have been a

¹ This items presence in the IA Server may be attributable to its relation to a pending criminal investigation.

² *Id.*

		previous issue, though it is not clear if this was separate event. It appears so, but that it was not assigned new IA#.
IA Cases	Lt. Lawrence Adjusted Shift	Not in IAPro. Not clear if related to an investigation; there is information regarding "Shift Adjustment."
IA Cases	Alcazaba Off-Duty	Incident was handled via a contact report - records have met retention and most were purged. However, there remain documents in the server related to this matter. Further, the documents do not contain the related CR#.
Information Reports	2012IR-011	In IA Pro - some emails and audio recordings are not attached in IA Pro
Information Reports	Palermo Stolen Vehicle Complaint	Not in IA Pro - file only contains dispatch audio. No follow-up or information on investigation. Unclear why this is in IA Files.
Information Reports	Sweetwater Officer	Not in IA Pro - documents reference a traffic stop in our jurisdiction of a Sweetwater Officer. Unclear why this is in IA Files.
misc - Campos	Holian	Not in IA Pro. Folder contains e-mail, possibly related to complaint regarding response time. Not apparently related to IA matter.
misc - Campos	Word document - Alexander Jorva	Related to 2012IA-012. Case was determined to be Not Sustained and purged 4/18/14. This document should have been purged also.
misc - Campos	Word document - Amy Licea	Not in IA Pro - investigator notes, related to the information in the subfolder by the name of Holian
misc - Campos	Word document - Bill Barrow	Related to 2011NA-029. Not in IA Pro - investigator notes indicate it was a Crime Stopper Tip from someone with potential cognitive issues. Not enough information for IA to proceed.
misc - Campos	PDF document - IZACK P BRANDLER	Not in IA Pro - scanned copy of a letter sent to Chief Dennis Weiner from an individual. No apparent information on officers.
misc - Campos	Word document - Karina Knauseder	Not in IA Pro - investigator notes. Documenting conversation with individual, unrelated to IA matter.
misc - Campos	Word document - Officer in Silver 90's Corvette	Not in IA Pro - blank document
misc - Campos	Word document - Ubaldo Mirand	Not in IA Pro - investigator notes of a possible complaint. Complainant was contacted but apparently did not reply - No IA Case Number created to document same.
South Miami Hit and Run	Photos folder and email	Apparently a potential case involving hit & run with CGPD Unit at south Miami hospital. No IA# or investigator notes. Only an e-mail and photographs. Unclear if follow-up investigation occurred.
Spam Text to	email and pdf	Not in IA Pro - information only

Chief Masington	document	
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The following items were found in the IA Server and not in IA Pro;

2013 Cases:

Main Folder	Subfolder(s)	Description
IA Cases	Julio Suarez Laptop	Not in IA Pro - documents reference possible missing property, complainant failed to respond after 5 day letter was sent. No case # assigned, appears there was no follow up by complainant.
IR Cases	Baena	Unclear why IA Section is involved, it relates to CGPD Case No.: 13-001129. Not in IA Pro - information only reference verbal threats made to Detective.
IR Cases	Del Castillo, Robert	Letter to complainant regarding Closed Criminal cases. No case number as IR or IA created. Not in IA Pro.
IR Cases	PDF document - Complaint Intake Ms. Denni Florian	Not in IA Pro - Blank intake form and no IA number.
Misc-Campos	Escobar	Not in IA Pro - complainant (Sgt. Escobar) withdrew allegation. No IA Case Number Assigned.
Misc-Campos	Merlo	Not in IA Pro - information only. Documentation of potential false IA complaint that was threatened in relation to domestic violence case. No case number of any type assigned.
Nancy Wilson	Emails	Lt. Lemon instructed call takers not to transfer this individuals call and take messages. Same for Chief's office. Not in IA Pro - emails reference a caller by the name of Nancy Wilson.
Word Document	The Office of the Chief of Police received information that Officers are deliberately ridiculing the department	Not in IA Pro - possible allegation of Officers deliberately ridiculing the department's zone assignment and personnel allocation to citizens within the City of Coral Gables. Document details possible subject officers and potential offenses but does not relay any follow-up, other than addressing same at roll-call, without reason for same.

The following items were found in the IA Server and not in IA Pro;

2014 Cases:

DARs	2014DAR-004 - Lt. Michael Frevola - issued on 06.26.2014	2014DAR-004	As of 10/30/14, this information and case were not yet entered in IA Pro - but a number was issued. A process for immediate entry of cases into IA Pro should be formulated.
DARs	2014DAR-004 - Lt. Michael Frevola - issued on 06.26.2014	2014DAR-005	Not yet entered in IA Pro - but number was issued. A process for immediate entry of cases into IA Pro should be formulated.
FREVOLA GRIEVANCES	MULTIPLE SUBFOLDERS	Various	In IA Pro - according to Ms. Dantin, this folder was created on behalf of Lt. Tastet. Seems to be a folder compiling various issues involving the Frevola's. Not clear what the purpose is.
IA Cases	2014IA-xxxx-[Active]	2014IA-007	Not yet entered in IA Pro - but number was issued - active IA investigation
IA Cases	[Active]	2014IA-009	Not yet entered in IA Pro - but number was issued - active IA investigation.
IA Cases	[Active]	2014IA-008	Not yet entered in IA Pro - but number was issued - active IA investigation.
IA Contacts	Dewhurst Complaint	No CR#.	Not yet entered in IA Pro - handled via a contact report.
IA Contacts	Nelson Quintana contact report	No CR#.	Not yet entered in IA Pro - handled via a contact report.
IA Contacts	Weidenfeld Complaint	No CR#.	Not yet entered in IA Pro - handled via a contact report
IR Cases	IR hudak	None	Not in IA Pro. See analysis below.
IR Cases	IR-Janette Frevola	None	Not in IA Pro.
IR Cases	IR-Robert Thomson	None	Not in IA Pro and no case number has been assigned.
MOLINA	Two Folders (Public Corruption 2014 & Video - Channel 10 News)	None	Not in IA Pro. This folders purpose is not clear.
IA Contacts	Officer Nelson Rodriguez		No IA Case Number and little information re: follow-up. Does not appear to be in IA Pro.