

REPORT

This office has received a number of complaints from various individuals alleging possible violations of the Florida Public Records Law by the City of Pensacola. As a result of these complaints, we have conducted a thorough investigation lasting several months. During the course of this investigation, we have interviewed numerous witnesses, reviewed e-mails and other documents and researched the applicable law. Based on our investigation, we have determined that the City has failed to adequately or timely respond to public records requests. In this report, we make certain recommendations to the City to avoid these problems in the future. We have met with various City officials to discuss these recommendations. They have indicated that they accept these recommendations and are in the process of implementing these changes. In addition, we have determined that the filing of non-criminal infractions against two City employees for failing to provide public records is appropriate.

FAILURE TO TIMELY RESPOND TO PUBLIC RECORDS REQUESTS

Several of the complaints we have received allege that the City has failed to timely respond to public records request. The Florida Public Records Law requires that all requests be responded to in good faith. The Florida Supreme Court has interpreted this to require that records must be produced within a reasonable time. No set time is established but is determined by the extent and nature of each individual request. The City, like other governmental agencies, receives numerous public records requests. These requests come from the media, private citizens, as well as City officials. These requests are made through the City Clerk who then forwards them to the appropriate employees. If the request involves e-mails or other computer documents, the request is also sent to the IT Department. Once the records are located, individual employees are responsible for reviewing these documents to remove exempt materials. In one case we reviewed, 82 different city employees were required to review e-mails to remove exempt materials. By its very nature, this leads to unreasonable delays in responding to public records request.

Our investigation also indicates that inadequate resources are provided to the City Clerk to respond to public records request in a timely manner. It is also clear that City employees need additional training in the area of public records law. Finally, a better tracking system should be implemented to insure that public records requests are being handled in an appropriate manner.

For these reasons, we make the following recommendations to the City of Pensacola:

1. That outside training be brought in to train city employees regarding the Florida Public Records Law.
2. That the City Clerk be provided adequate resources to timely respond to public records requests.

3. That current policies dealing with public records be reviewed and changed or amended to ensure full compliance with the public record laws.
4. That adequate tracking procedures be developed to see that public records requests are responded to in a timely manner.

FAILURE TO PROVIDE PUBLIC RECORDS

On June 28, 2012 at 9:55 a.m. Diane Mack sent an e-mail request to Ericka Burnett requesting certain public records regarding The Zimmerman Agency. At that time, The Zimmerman Agency had been retained by the City of Pensacola to develop new branding and logos for the City and its various agencies. In her request, she asked for a copy of the new logos for the City of Pensacola, Energy Services of Pensacola, the airport, and the port. On that same date at 11:07 a.m. the request was forwarded to City employees Derek Cosson and Bill Reynolds. Two minutes later Cosson responded that the City had not yet taken delivery of the requested logos. At the apparent same time, Reynolds also responded that the City had not received the logos. On July 5, 2012 at 3:11 p.m. Ms. Burnett responded to Ms. Mack that the requested information had not been received. At no time did Ms. Mack receive the requested logos.

Our investigation reveals that both Bill Reynolds and Derek Cosson received e-mails that contained proposed logos. On May 8, 2012 Reynolds received an e-mail from the airport director, Melinda Crawford, that contained the new logo for Pensacola International Airport. Likewise, on June 10, 2012 at 7:11 p.m. Derek Cosson sent an e-mail to Jill Reading of The Zimmerman Agency requesting a copy of the new City logo. Within minutes of this request, Ms. Reading sent Cosson a copy of the logo which Cosson acknowledged receiving. In addition, numerous other City employees had received or sent images of the various new logos.

Based upon the failure of both Reynolds and Cosson to provide the requested information, or to make any effort to locate copies of the logos in the City's possession, we have determined that it is appropriate to charge them with a non-criminal violation of the public records law.

RELEASE OF EXEMPT INFORMATION

On Sunday, March 3, 2013 a city employee sent an e-mail to the City's human resources department raising employment issues. The following day a copy of this e-mail was sent to both Bill Reynolds and Jim Messer. The City treated this e-mail as a discrimination complaint and viewed it as either exempt or confidential. On March 5, 2013, Bill Reynolds gave a copy of this document together with a copy of his response to Maren DeWeese while at World of Beer. These documents were not provided

pursuant to any public records request and were not solicited by Ms. DeWeese. The documents provided to Ms. DeWeese were in an envelope and unredacted in any way. Ms. DeWeese later published a redacted version of these documents on her blog. Section 119.071(2)(g)1.a., Florida Statutes, provides that all complaints regarding employment discrimination are exempt from the public records law until such time as a probable cause determination is made, the investigation of the complaints becomes inactive, or the complaint becomes part of the official record of any hearing or court proceeding. Section 119.071(2)(g)2., goes on to state that where the alleged victim chooses not to file a complaint and request that records of the complaint remain confidential, all records relating to the allegation of discrimination are both confidential and exempt from the public records law. In this case, the complainant made such a request on March 7, 2013, two days after the release of the complaint.

Based upon our review, we have determined that the release of the discrimination complaint does not rise to the level of a criminal violation. All criminal statutes are to be strictly construed in favor of the defendant. In applying that standard, we have determined that at the time the document was released it was exempt and not confidential. Therefore, the release of the complaint, while under the circumstances as described inappropriate, does not constitute a crime.

While this report concludes our investigation regarding the City of Pensacola and public records, we will continue to monitor the situation to insure that the recommendations are enacted and that public records requests are responded to in a manner consistent with Florida Law.