

**COMPOSITE**

**EXHIBIT 5**



Denise M. Nieman  
County Attorney

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**Palm Beach County  
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**County Administrator**

Robert Weisman

"An Equal Opportunity  
Affirmative Action Employer"

MEMORANDUM

DATE: October 25, 2012  
TO: Peter Antonacci, State Attorney  
THRU: Denise M. Nieman, County Attorney  
FROM: Leonard Berger, Chief Assistant County Attorney  
RE: Response to Request for Grand Jury

You have requested a written response to the Inspector General's (IG) assertion that the "policy and practice memoranda implemented by the County on August 15, 2012 unduly interfere with her duties to conduct investigations and therefore 'transgressed the ordinance in letter and spirit.'" For ease of reference, this response will address points raised by the IG in the order in which they are raised in her correspondence to you.

First, your request suggests that multiple policy and procedure memoranda were implemented on August 15, 2012. In fact, only one, PPM CW-O-086, has been adopted, and should be properly identified as a policy and procedure memorandum (PPM), not a policy and practice memorandum. I understand that these inaccuracies were imported from the IG's correspondence to you, but regardless of its source, this exchange should at least begin by properly identifying the issue.

**Background**

The background statement provided in the IG's correspondence to you begins in August of 2011. For more complete background, I have attached as Exhibit A the original PPM CW-O-086, which was prepared by the IG alone and adopted by the County Administrator in September of 2010. The IG's original PPM remained in effect until superseded by the current version on August 15, 2012.

**Following Release of the Grand Jury Status Report:**

The IG asserts that the County's PPM eliminated the section covering staff cooperation. It is misleading to suggest that the PPM adopted by the County eliminated this requirement. You will find the requirement for staff cooperation in Section 3 of the PPM, which is attached as Exhibit B. The document prepared by the IG and delivered to the County on October 28, 2011, was not a "revision" of the County's document as the IG characterizes it in her correspondence to you; it is a complete replacement. The IG's document is included as Exhibit C, and you will find, interestingly, that this document does not include a section on staff cooperation. A prior attempt to actually engage the IG in a revision process was met with the same sort of response: a wholesale rejection of the County's proposal and the introduction of an entirely different document. The correspondence documenting that attempted exchange was already provided to you through Paul Zacks, Assistant Chief State Attorney. The IG insists that we failed to work in coordination with her office. Coordinate is not synonymous with capitulate.

**Issues:**

**Issue 1.**

The County PPM requires an employee who learns of a possible occurrence of a reportable incident to promptly report it to their department head, who in turn confirms it and passes it along to the IG. This requirement is found at Section 2 of the PPM (Exhibit B). The applicable law, Section 2-423(4) of the Palm Beach County Code, provides in pertinent part:

The county administrator and each municipal manager, or administrator, or mayor where the mayor serves as chief executive officer, shall promptly notify the inspector general of possible mismanagement of a contract (misuse or loss exceeding \$5,000 in public funds), fraud, theft, bribery, or other violation of law which appears to fall within the jurisdiction of the inspector general, and may notify the inspector general of any other conduct which may fall within the inspector general's jurisdiction. The county administrator and each municipal manager, or administrator, or mayor where the mayor serves as chief executive officer, shall coordinate with the inspector general to develop reporting procedures for notification to the inspector general.

The law requires reporting of incidents to flow through the chief administrative officer. Our PPM delegates this responsibility to the numerous department heads to speed the reporting process. It is difficult to see how anyone could argue that this process fails to meet the letter of the law. As to the spirit of the law, here are the fundamental problems the IG has with this reporting process along with the County's responses:

The IG argues that this will provide a deterrent to employees to report incidents, and further argues that the PPM violates the spirit of the law by limiting the stream of tips provided to the IG. The IG adds that the PPM needs to include a provision on the Whistle-Blower Act. These assertions are based on a failure to understand the function of PPMs generally and this PPM in particular.

Specifically, this PPM established reporting procedures to satisfy the Ordinance requirement that the County Administrator promptly report incidents to the IG and nothing more. Nothing in this PPM suggests that it is inappropriate to contact the IG directly, either through the "Hot Line" or by any other means. And our PPM provides that it is certainly appropriate to do so in Section 2. Moreover, it is widely understood that anyone is free to contact the IG directly. This fact is confirmed by the IG's most recent six-month report which documented that the IG received 1,111 calls and 251 pieces of correspondence, from January 1, 2012 through June 30, 2012 (or roughly 10.8 contacts per business day). Indeed, the IG reports that employees have directly complained to the IG about this PPM. Apparently, these employees do not see the deterrent impacts of this PPM either. This PPM does not specifically point out the existence of the Hot Line, as it is not related to its purpose of providing a means to pass information to the IG through the County Administrator. On the other hand, had the IG simply called to recommend including mention of the Hot Line, the County Administrator would certainly have done so, even though it is not directly related to the purpose of this PPM.

Similarly, including a single provision of the Whistle-Blower Act is beyond the scope of this PPM, as specifically required by the Ordinance. It is also misleading to suggest, as the IG does in her correspondence to you, that employees are required to report qualifying incidents directly to the IG as

she is the designated “appropriate local official” under the Ordinance. The IG is not the only “appropriate local official” in Palm Beach County government. And the “appropriate local official’s” protective power is only to hold certain information relating to the report confidential. The meat of whistle-blower regulation is the protection from retaliatory actions against an employee and that power resides with the judiciary, not the IG. In any event, it is certainly beyond the scope of this countywide PPM to include detailed analysis of this Act. Countywide PPMs, such as this one, apply equally to the six thousand or so county employees who work in the numerous departments and divisions of county government. County employees include individuals with vastly different backgrounds and skill sets. Countywide PPMs establish rights and responsibilities for all of them—employees can be disciplined or even dismissed for violating a PPM. It is critical, therefore, that these PPMs are clear and understandable to each employee. Mere mention of one aspect of the Whistle-Blower Act in the context of this reporting PPM would be misleading as to the full protections afforded under the law.

The IG also criticizes the PPM’s general language stating that the reporting requirements do not prohibit or excuse an employee from reporting certain incidents under any other requirements, procedures, laws, regulations or policies. This paragraph accomplishes two things: First, as already noted, this refers to any employee’s right to contact the IG directly. Second, understanding that this PPM is countywide in application, this paragraph recognizes that individual county departments or divisions may have other specific reporting requirements by law or policy. For example, the Division of Victim Services promulgates mandatory state reporting requirements through its own policies and procedures which should not be confused with or supplanted by the PPM at issue here.

## **Issue 2.**

The IG criticizes the PPM for allowing the supervisor who receives a report of an incident to confirm whether it is a reportable incident. The purpose of this confirmation is to prevent the IG from being inundated with spurious calls, not to obstruct the intention of the Ordinance. As already explained, any employee is free to circumvent the process and make any report directly to the IG. This PPM does not obstruct the free flow of information to the IG. The PPM follows the letter of the law, which calls for the establishment of a process by which reportable incidents flow through county administration to the IG. Including a step to confirm an incident does not violate the letter of this law. If the Ordinance drafters meant for reports to simply flow directly to the IG, there would be no reason for this Ordinance to require this information to flow through the chief administrator as it does.

## **Issue 3.a.**

The IG criticizes Section 1.d. of the PPM for limiting contract mismanagement to incidents of non-compliance with the terms of the contract itself. Incidents relating to contract mismanagement will be linked to non-compliance with the terms of the contracts. Incidents where items purchased under a contract are not needed, or purchased at exorbitant prices, constitutes the crime of procurement fraud, as explained by the IG in a training session to County employees in August of 2010. Those acts would not fall under the category of contract mismanagement, but instead under one of two categories outlined in Sections 1.a. or 1.e. of the PPM. Any other incident that could possibly fall outside the scope of the PPM, whether real or imagined, can be reported directly to the IG.



**Issue 3.b.**

The IG criticizes the County's definition of "theft" as being narrower than the statutory definition. As already explained, one goal of countywide PPMs is to try to convey its requirements in clear and simple terms without requiring county employees to resort to statutory construction. The definition of "theft" provided by the IG in her original PPM provided the following: "'Theft' means to take the property of another without right or permission." (Exhibit A). We thought this was a good start, but felt it important to add the element of intent (Exhibit B). You are obviously the experts here, but beyond the concept of attempted theft, we felt that our definition covers nearly all of what is commonly understood as theft. Frankly, it is unusual to respond to the IG's complaint that a term needs to be better defined, because the IG has opposed the use of any defined terms in this PPM, at least since the adoption of her original version in September 2010. The IG's proposed PPM defines no terms at all (Exhibit C).

**Issues 3.c. and d.**

The IG criticizes the PPM's use of a definition to better describe, "any other violation of law which appears to fall within the jurisdiction of the inspector general," and for failing instead to simply require all employees to report "any other conduct which may fall within the inspector general's jurisdiction." This language is found in the Ordinance excerpt quoted above and follows the phrase which provides that employees "may notify the inspector general of any other conduct...." Use of the word "may" in this context means this instruction is permissive, not mandatory. More importantly, our PPM uses a definition to better define this provision because, as written, it is too vague to be of any use in an enforceable policy document. The IG's jurisdiction and what sort of conduct may or may not fall within it is, of course, undefined. The County Commission adopted the IG Ordinance with no definitions, which gives the IG unfettered discretion to determine whether a particular act or event falls within the IG's jurisdiction. This PPM does nothing to limit the IG's concept of jurisdiction, whatever it may be, and does nothing to alter the relationship between the IG and the other County Departments, except for the limited purpose of providing a process, as required by the Ordinance, for the County Administrator to report certain incidents to the IG. Like most other PPMs, this document is primarily concerned with the relationship between County management and its employees.

This PPM serves as a management tool to provide rules describing what is expected of County employees. County administration cannot possibly place itself in a position of disciplining or dismissing an employee for failing to report conduct that, "may fall within the jurisdiction of the inspector general," unless this very general notion is supplemented with defined terms. Providing clear, well defined rules is fundamental to good governance. Certainly the IG agrees with this principle and has on multiple occasions pointed out a lack of clear or well defined terms in her reports to various government entities. For a few examples, view IG report numbers 2011-O-0002, 2011-O-0004 and 2012-O-0001, available on the IG's website. Other reports also recommend use of the American Bar Association's Model Procurement Code which itself includes well over fifty defined terms.

We will not respond to the remainder of the IG's complaint to you as it concerns a County PPM that was never adopted and policies adopted by Delray Beach and Boca Raton.

## Conclusion

The PPM follows the letter of the Ordinance. Questions of spirit could generate interesting conversations about the intent behind an ordinance when the department created by ordinance and charged with implementing that ordinance is dictating the "spirit" of it to the department that drafted the ordinance in the first place. Suffice to say for the purposes of this response that if the "spirit" of the law calls for free flow of information to the IG, this PPM does nothing to impede it. This PPM was not created to cover all means of communication with the IG. On the contrary, the PPM was created to establish reporting procedures to satisfy the Ordinance requirement that the County Administrator promptly report incidents to the IG.

Finally, in considering whether it is appropriate to convene a Grand Jury for the purpose of addressing this limited issue, please do not forget our proposal to convene a meeting between the affected parties to discuss these issues in a public forum. The IG was created as part of a sweeping ethics reform program, painstakingly created, developed, and refined with participation from numerous government agencies, public interest groups, and other stakeholders, with expansive opportunities for all members of the public to participate in numerous public meetings, all for the purpose of bringing about more transparency in local government operations. Is it not more appropriate to discuss issues related to the ongoing development of this ethics reform program in public rather than in the secrecy of a Grand Jury?

Thank you for the opportunity to respond.

LB/DMN/jg  
enclosures

cc: Robert Weisman, County Administrator

TO: ALL COUNTY PERSONNEL

FROM: ROBERT WEISMAN  
COUNTY ADMINISTRATOR

PREPARED BY: OFFICE OF INSPECTOR GENERAL

SUBJECT: REPORTING PROCEDURES TO THE OFFICE OF  
INSPECTOR GENERAL

PPM #: CW-O-086

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ISSUE DATE  
September 21, 2010

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EFFECTIVE DATE  
September 21, 2010

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**PURPOSE:**

This operating procedure describes the procedure for reporting to the Office of Inspector General (OIG) suspected or confirmed allegations concerning employees or contractors of the County. This operating procedure also defines the procedure and types of incidents to be reported and the timeframes for reporting.

**UPDATES:**

Future updates to PPM CW-O-086 will be the responsibility of Office of the Inspector General.

**AUTHORITY:**

Palm Beach County Ordinance 2009-0049 requires the OIG to receive and conduct inquiries, investigations, audits, or management reviews.

**DEFINITIONS:**

As used in this operating procedure:

- a. "Allegation" means an assertion of wrongdoing that may or may not be supported with evidence.
- b. "Wrongdoing" means an act, which, if proven true, would be a violation of statute, rule, regulation or policy, excluding job performance and related deficiencies.
- c. "Fraud" means to commit an intentional violation of law or a deliberate misrepresentation or concealment so as to secure unfair or unlawful financial or personal gain.
- d. "Theft" means to take the property of another without right or permission.

## POLICY:

County employees are to report to the OIG all incidents of confirmed or alleged wrongdoing by County employees or contractors. Upon receipt of the information, the OIG will take appropriate action, including but not limited to: initiation of investigation/review of the allegations; referral to management for action; or any other action as deemed appropriate by the OIG.

## PROCEDURE:

### 1. Method(s) of Reporting:

Notification of reportable incidents may be made by emailing ([inspector@pbcgov.org](mailto:inspector@pbcgov.org)) the information to the OIG. The information can also be faxed to the Office of Inspector, at (561) 233-0735.

### 2. Reportable Incidents:

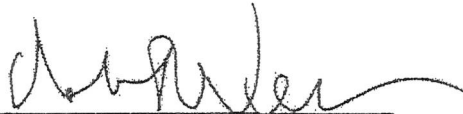
- a. Fraud;
- b. Theft;
- c. Breaches of confidentiality by an employee, unless inadvertent and self-reported;
- d. Falsification of official records (e.g., intentional alteration of county documents, misrepresentation of information during an official proceeding, intentional falsification of case records, case notes, creating false and fictitious files, etc.);
- e. Misuse of position or county property, employees, equipment or supplies for personal gain or profit (e.g., misuse of telephonic and communication devices, use of staff for personal services, soliciting on county time and county property, conspiracy to conceal missing county property, misuse of the internet as defined by policy, etc.);
- f. Improper expenditure or commitment of public funds;
- g. Contract mismanagement by a County department employee or by a contractor, subcontractor, or employee of either (e.g., misuse, waste, or loss of a significant amount of public funds, evidence of egregious lack of judgment in the use of public funds, evidence that county, state or federal laws, or county code, state rules or federal regulations have been violated, etc.);
- h. Computer related misconduct (e.g., accessing County systems when there is no direct business involvement, accessing inappropriate or pornographic web sites, sending threatening or harassing messages, etc.);
- i. Any other wrongdoing that would be a violation of statute, rule, ordinance, code, County Merit Rules, regulation or policy, excluding job performance and related deficiencies.

3. Timeframe:

Suspected or confirmed allegations as outlined in this operating procedure should be reported within two business (2) days of discovery.

4. Staff Cooperation:

All County Departmental Employees are expected to fully cooperate with any investigation or audit conducted by the OIG. This includes adherence to the reporting requirements of this operating procedure, as well as submitting to interviews, and providing requested documentation and sworn testimony. Refusal to fully cooperate with an investigation or audit conducted by the OIG is a violation of Palm Beach County Ordinance 2009-0049 and shall constitute employee misconduct pursuant to Merit Rule 7, Palm Beach County's Merit Rules and Regulations, and may result in disciplinary action, up to and including dismissal.



**ROBERT WEISMAN**  
**COUNTY ADMINISTRATOR**

TO: ALL COUNTY PERSONNEL  
FROM: ROBERT WEISMAN  
COUNTY ADMINISTRATOR  
PREPARED BY: COUNTY ATTORNEY  
SUBJECT: REPORTING PROCEDURES TO THE OFFICE OF  
INSPECTOR GENERAL  
PPM #: CW-O-086

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ISSUE DATE  
August 15, 2012

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EFFECTIVE DATE  
August 15, 2012

PURPOSE:

This PPM describes the operating procedures for reporting to the Office of Inspector General (OIG) confirmed or alleged reportable incidents.

UPDATES:

Future updates to PPM CW-O-086 will be the responsibility of the County Administrator after coordination with the OIG.

AUTHORITY:

Office of Inspector General, Palm Beach County, Florida, Ordinance, as amended.

POLICY:

County employees are to report all confirmed or alleged "Reportable Incidents" in accordance with the procedures set forth below.

1. Reportable Incidents – The following are Reportable Incidents if related to County business:

- a. Fraud, which means an intentional misrepresentation or concealment to secure unfair or unlawful financial or personal gain.
- b. Theft, which means to intentionally take the property of another without right or permission.
- c. Bribery, which means offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of a County official or employee in the discharge of his or her public duties.

- d. Contract mismanagement, which means non-compliance with contract terms or acceptance of contractor's non-compliance with contract terms that may result in significant waste or loss of County funds (at least \$5,000) or a violation of law that could significantly increase the County's liability exposure.
- e. Other violations of law, which means a continuous pattern of abuse or an intentional egregious misuse of County position, office, property, personnel, contractual relationship, equipment or supplies, for financial or personal gain or in violation of federal, state or local law, excluding job performance and related deficiencies.

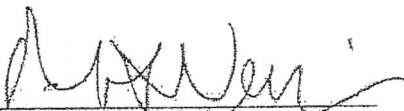
2. Reporting Procedures:

In the event an employee learns of a possible occurrence of a Reportable Incident, such incident shall promptly be reported to the employee's department head. The department head shall promptly refer the incident to the OIG upon confirmation that the incident is a reportable incident as defined herein and, as soon as practical following the OIG report, provide notification to his/her supervisor. This may be an Assistant County Administrator, the Deputy County Administrator or the County Administrator. In the event the incident implicates the department head, the employee shall report the incident to the department head's supervisor, and the supervisor shall promptly refer the incident to the OIG upon confirmation that the incident is a reportable incident as defined herein.

This Policy shall not prohibit or excuse an employee from reporting a Reportable Incident in accordance with any other applicable reporting requirements, procedures, laws, regulations or policies.

3. Staff Cooperation:

All employees are expected to fully cooperate with the OIG in the exercise of the OIG's functions, authority and powers. Such cooperation shall include, but not be limited to providing statements, documents, records and other information, during the course of an investigation, audit or review.

  
ROBERT WEISMAN  
COUNTY ADMINISTRATOR



TO: ALL COUNTY PERSONNEL

FROM: ROBERT WEISMAN  
COUNTY ADMINISTRATOR

PREPARED BY: COUNTY ADMINISTRATION

SUBJECT: REPORTING POSSIBLE WRONGDOING TO THE OFFICE OF  
INSPECTOR GENERAL

PPM #: CW-O-086

<u>ISSUE DATE</u>	<u>EFFECTIVE DATE</u>
November 1, 2011	November 1, 2011

PURPOSE:

The Office of Inspector General Palm Beach County, Florida, Ordinance contains certain provisions regarding reporting to the Office of Inspector General (OIG). It requires that the County Administrator report certain specified acts or omissions to the Inspector General. It also designates the Inspector General as "an appropriate local official" for purposes of whistleblower reporting and protection under Florida law. Furthermore, it makes it a crime for any person to attempt to retaliate, punish, harass, or penalize anyone for communicating with or cooperating with the Inspector General. This PPM explains the procedures for County employees to report possible wrongdoing to the Office of Inspector General (OIG).

UPDATES:

Future updates to PPM CW-O-086 will be the responsibility of the County Administrator in coordination with the Inspector General.

AUTHORITY:

The Office of the Inspector General, Palm Beach County, Florida Ordinance  
Sec. 112.3187 – 112.31895, Florida Statutes

POLICY:

The OIG has responsibility for investigating certain alleged acts or omissions involving the operation of County government.

1. When an employee suspects any of the following, he or she shall *promptly* report it either to the OIG or to his/her department head:
  - a. Possible mismanagement of a contract (misuse or loss exceeding \$5,000 in public funds),
  - b. Fraud,
  - c. Theft,

- d. Bribery, or
- e. Any other violation of law which appears to fall within the jurisdiction of the Inspector General.

If the matter appears to involve the department head, the employee may *promptly* report it to County Administration. An employee may make his or her report to either the OIG or County management orally or in writing. If a department head receives such a report from an employee, or otherwise becomes aware of such a situation, the department head shall *promptly* report the situation in writing to the OIG, with a copy to County Administration.

- 2. In addition to the above, an employee may directly report to the OIG any other conduct which may fall within the Inspector General's jurisdiction.
- 3. Whistle-blower Allegations - In accordance with this Ordinance and the Florida Whistle-blower Act, if a County employee reports any of the following directly and in writing to the Inspector General, he or she *may* be granted "whistle-blower" protection by the Inspector General:
  - a. Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.
  - b. Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

**Employees should note that reporting a matter to the Inspector General pursuant to the Whistle-blower Act does not guarantee the employee "whistle-blower" protection under that Act. That is a determination which will only be made by the Inspector General after evaluation of the complaint.**

#### Methods(s) of Reporting

The OIG reporting form can be found at: <http://www.pbcgov.com/OIG/rwfa.htm>

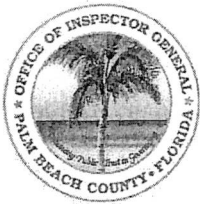
An employee can file a report by:

- 1. Email to the OIG at ([inspector@pbcgov.org](mailto:inspector@pbcgov.org));
- 2. Fax to the OIG at (561) 233-0735;
- 3. U.S. mail to the OIG at P.O. Box 16568, West Palm Beach, Fl 33416; or
- 4. OIG Hotline toll free at (877) 283-7068 or (561) 233-2350.

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ROBERT WEISMAN  
COUNTY ADMINISTRATOR

# **EXHIBIT 6**



## OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

Sheryl G. Steckler  
Inspector General

October 30, 2012

Peter Antonacci, State Attorney  
Office of the State Attorney  
15th Judicial Circuit  
401 North Dixie Highway  
West Palm Beach, Florida 33401

Dear Mr. Antonacci:

After reviewing the County Attorney office's reply to our concerns regarding PPM CW-O-086, we offer the following response. Our main concern is that the *PPM fails to focus on procedures for reporting to the Inspector General (IG), but focuses instead on attempting to limit what will be reported to us.*

### Issue 1:

The PPM is a formal policy, binding on all county employees. It requires that any "reportable incident" be reported to the employee's supervisor, rather than to the IG. *This is of great concern. The County deleted the following from the original PPM: "County employees are to report to the IG all incidents of alleged wrongdoing by County employees or contractors." The natural interpretation of this change is that employees may no longer directly report to the IG. This therefore introduces fear of retribution and deters employees from reporting wrong-doing. Although the County Attorney's office denies any intention to prohibit direct contact with the IG, the cover email accompanying delivery of the policy to employees directly contradicts that representation.*

### Issue 2:

The new PPM contains a requirement that the matter only be passed onto us after management has "confirmed" that the incident occurred and that it fits within their new definitions. *This limits what will be reported to our office by ignoring the Ordinance's requirement that all "possible" incidents be "promptly" reported to the IG. The County Attorney's office does not deny that this will limit what is brought to our office but claims it is for our benefit, so we don't receive "spurious" calls. But this is a favor that we specifically rejected. The Ordinance requires that we receive and evaluate reports of all "possible" incidents, not merely reports of those incidents which management has prescreened and decided to pass on to us. Further, management's involvement can taint any evidence we will need to thoroughly investigate.*

### Issue 3:

The policy further limits what will be reported to us by narrowly redefining the matters required to be reported. *The ordinance requires the following to be reported to the IG: "possible mismanagement of a contract (misuse or loss exceeding five thousand dollars (\$5,000.00) in public funds), fraud, theft, bribery, or other violation of*

*"Enhancing Public Trust in Government"*

law which appears to fall within the jurisdiction of the inspector general." The County's redefinition of these terms is objectionable for a number of reasons:

1. This Ordinance and these requirements apply to 42 entities within the County. As a matter of law, its provisions have a uniform meaning in each jurisdiction. It is therefore presumptuous and contrary to the requirements of law for the County Administrator to unilaterally define them as he prefers. This is one reason that the Ordinance requires management of each entity to "coordinate" with the IG in developing these policies.
2. During the process of developing this ordinance, a proposal to add narrow definitions of the terms "fraud, waste, mismanagement, misconduct, and other abuses," in section 2-422 of the Ordinance, which establishes the scope of the IG's jurisdiction was advanced and rejected in a public forum. The terms "fraud" and "mismanagement" are also included in the list of incidents which must be reported to our office. There is no legal basis for the County Attorney to assign a different meaning to these words in section 2-423, than their meaning in section 2-422.
3. The County's definitions narrow the scope of each term defined, and therefore narrow what will be reported. My initial letter outlines why each definition is deficient. The most egregious change is to the requirement that I am to receive reports of *any* "other violation of law which appears to fall within [my] ... jurisdiction..." The County Attorney's office has redefined this to include *only* those violations which contain the additional elements of "a continuous pattern of abuse or an intentional egregious misuse of..."

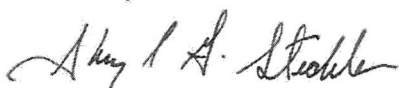
Issue 4:

The County Attorney's office now claims that they attempted to "coordinate with" me to develop these reporting procedures. The County Administrator without discussion or notice since October 2011 implemented this policy on August 15, 2012, unchanged in any respect from its August 2011 draft; despite a lengthy meeting in which our concerns were clearly explained and despite the grand jury's criticism of the draft. The County Attorney's office now claims that if we had merely used the words "Hot Line" in our communications with them, they would have altered their policy to alleviate our concerns. But our concerns were clear to them then and they still are not offering to amend the policy. Instead, the County Attorney's office attempts to deny the true effect by illogically claiming that the number of calls which the IG received between January and June proves that this policy, announced in August, had no effect. In fact, after the policy was announced, we immediately received a complaint regarding the new policy requiring them to go through their supervisor in lieu of inspector general.

County Administrator Robert Weisman is quoted in the Sun Sentinel on October 26, 2012, as stating that my request for a grand jury is "ridiculous," and that "the Inspector General's Office has "total access" to documents and employees." Mr. Weisman misses the point. The issue is not our access to his employees, but rather their access to us.

We appreciate and thank you for your consideration of reconvening the Grand Jury for an annual review of county governance and public corruption.

Sincerely,



Sheryl G. Steckler  
Inspector General  
Palm Beach County

**COMPOSITE**

**EXHIBIT 7**

## Paul Zacks

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**From:** Robert Weisman <RWeisman@pbcgov.org>  
**Sent:** Friday, November 16, 2012 4:41 PM  
**To:** Paul Zacks  
**Cc:** Leonard W. Berger; Robert Weisman; Peter Antonacci  
**Subject:** PPM  
**Attachments:** CW-O-086 revision11-16markup2.docx; CW-O-086 revision11-16finalw-omark3.docx

Paul, per the request of the Grand Jury, attached please find a marked up and clean version of a proposed updated PPM on reporting requirements to the Inspector General. While I think it would be preferable to have this occur thru direct contact with the IG, I am satisfied with this outcome if this language is positively received by the Grand Jury.

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Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

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Please note: Florida has a very broad public records law. Most written communications to or from state officials regarding state business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.



TO: ALL COUNTY PERSONNEL

FROM: ROBERT WEISMAN  
COUNTY ADMINISTRATOR

PREPARED BY: COUNTY ADMINISTRATOR

SUBJECT: REPORTING PROCEDURES TO THE OFFICE OF  
INSPECTOR GENERAL

PPM#: CW-0-086

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ISSUE DATE

December 10,  
,2012

EFFECTIVE DATE,

December 10,, 2012

PURPOSE:

This PPM describes the operating procedures for reporting to the Office of Inspector General (OIG) confirmed or alleged reportable incidents.

UPDATES:

Future updates to PPM CW-O-086 will be the responsibility of the County Administrator after coordination with the OIG.

AUTHORITY:

Office of Inspector General, Palm Beach County, Florida, Ordinance, as amended.

POLICY:

County employees are to report all confirmed or alleged "Reportable Incidents" in accordance with the procedures set forth below.

1. Reportable Incidents – The following are Reportable Incidents if related to County business:
  - a. Fraud, which means an intentional misrepresentation or concealment to secure unfair or unlawful financial or personal gain.
  - b. Theft, which means to intentionally take the property of another without right or permission.
  - c. Bribery, which means offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of a County official or employee in the discharge of his or her public duties.

- d. Contract mismanagement, which means non-compliance with contract terms or acceptance of contractor's non-compliance with contract terms that may result in significant waste or loss of County funds (at least \$5,000) or a violation of law that could significantly increase the County's liability exposure.
- e. Other violations of law, which means a continuous pattern of abuse or an intentional egregious misuse of County position, office, property, personnel, contractual relationship, equipment or supplies, for financial or personal gain or in violation of federal, state or local law, excluding job performance and related deficiencies.

2. Reporting Procedures:

In the event an employee learns of a possible occurrence of a Reportable Incident, such incident shall promptly be reported in any of the following ways: 1) to the employee's department head, or 2) to a supervisor in the department's chain of command, which supervisor shall then be responsible for further informing department management, or 3) directly to the Office of Inspector General, or 4) by any combination of the preceding. . The preceding choice is at the discretion of the employee, based on their perception of the possible incident and the process they think most appropriate and/or comfortable in following. Any incident that is reported to departmental management shall be referred to the OIG promptly upon confirmation that the incident is a reportable incident as defined herein. County Administration shall be informed of Reportable Incidents by department management.

This Policy shall not prohibit or excuse an employee from reporting a Reportable Incident in accordance with any other applicable reporting requirements, laws, or regulations.

3. Staff Cooperation:

All employees are expected to fully cooperate with the OIG in the exercise of the OIG's functions, authority and powers. Such cooperation shall include, but not be limited to providing statements, documents, records and other information, during the course of an investigation, audit or review.

TO: ALL COUNTY PERSONNEL

FROM: ROBERT WEISMAN  
COUNTY ADMINISTRATOR

PREPARED BY: COUNTY ATTORNEY ADMINISTRATOR

SUBJECT: REPORTING PROCEDURES TO THE OFFICE OF  
INSPECTOR GENERAL

PPM#: CW-0-086

ISSUE DATE  
~~December~~  
~~10, August~~  
15, 2012

EFFECTIVE DATE,  
~~December 10, August~~  
15, 2012

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County Administration shall be informed of significant Reportable Incidents by department management.

This Policy shall not prohibit or excuse an employee from reporting a Reportable Incident in accordance with any other applicable reporting requirements, procedures, laws, or regulations or policies.

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**COMPOSITE**

**EXHIBIT 8**

## Paul Zacks

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**From:** Sheryl Steckler <SSteckler@pbcgov.org>  
**Sent:** Tuesday, November 20, 2012 10:33 AM  
**To:** Paul Zacks  
**Subject:** Grand Jury  
**Attachments:** IG Response to Definitions.pdf.pdf

Paul,  
It is encouraging that County Administrator Robert Weisman is offering a revision to his PPM. It begins to cure the impediment of employees' access to our office.

As you are aware, we have three other concerns with the PPM which remain unaddressed:

- 1) Whistle-blower
- 2) Definitions
- 3) "Confirmed" Reportable Incidents

With respect to Whistle-blower, in lieu of placing into policy, we will work with the County in an educational outreach. A good starting place is our on-line training video for employees (at present time not mandatory by County).

As a matter of law the definitions in the PPM are illegal. The Ordinance provides no authority for the County Administrator or any other entity to redefine what must be reported. I also refer back to the four month drafting committee where definitions were discussed in great detail in the public domain and rejected by the majority. For specifics as to why the definitions are detrimental to the independence of the Office of Inspector General, please see Association of Inspectors General letter dated April 1, 2011; previous State Attorney Michael McAuliffe's letter dated February 24, 2011; my letter to the Drafting Committee dated April 5, 2011 (attached); the September 26, 2011 Grand Jury Report (pages 11-13); and page 3 of my letter requesting the Grand Jury dated September 18, 2012.

Regarding Reportable Incidents, the Ordinance requires the reporting of all "possible" instances, not merely "confirmed" incidents. The County Attorney's Office has indicated that the intent is to require supervisors to determine whether the incidents actually occurred and whether they rise to the level required by the new definitions. This does not comply with the requirements of the Ordinance, and will likely result in tainted evidence and witnesses and fewer incidents ever being reported.

I am extremely appreciative that the Grand Jury is reviewing this critical matter. The initial results are quite promising and we are hopeful that the abovementioned concerns will also be addressed. This will assist in our ability to carry out the mandates of the Inspector General Ordinance.

Sheryl G. Steckler  
Office of Inspector General  
Palm Beach County  
P.O. Box 16568  
West Palm Beach, FL 33416  
Office: 561-233-2350  
Hotline: 877-283-7068  
Fax: 561-233-2370

*"Enhancing Public Trust in Government"*

To report waste, fraud or abuse, please send to: [inspector@pbcgov.org](mailto:inspector@pbcgov.org)  
Please visit our website at: <http://www.pbcgov.com/OIG>



## OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

Sheryl G. Steckler  
Inspector General

*"Enhancing Public Trust in Public Government"*

### MEMORANDUM

TO: The Inspector General Ordinance Drafting Committee

FROM: Sheryl G. Steckler, Inspector General *JS*

DATE: April 5, 2011

RE: Response to Effect of Definitions

I have been asked by this committee to brief on the impact of defining "fraud," "waste," "abuse," "mismanagement," and "misconduct" as it relates to detection, deterrence, prevention and eradication of same. Historically, and for good reason, elected government bodies who are subject to the oversight of an Inspector General, the Association of Inspectors General (green book), the U.S. Government Accounting Office (yellow book) and the Institute for Internal Auditors (red book) have not defined these terms that this committee is considering.

This ordinance is not enacting standards of conduct for municipal and county officials and employees. Those standards of conduct are set out elsewhere, for example: Florida Statutes, administrative rules, and personnel rules. Therefore, adding these definitions to this ordinance would not serve to better inform county and municipal officials and employees as to what conduct is prohibited or what conduct is permitted. Nor would it impact whether county and municipal officials and employees may or may not engage in certain conduct.

The purpose of this ordinance is to empower an Inspector General to promote economy, efficiency and effectiveness in the administration of programs and operations administered or financed by the county or municipal agencies, and to detect, deter, prevent and eradicate fraud, waste, mismanagement, misconduct and other abuses. This office's responsibility to accomplish this hinges on our ability to examine, evaluate and recommend with independence and autonomy. Defining these terms limits the ability and authority of the Inspector General to do its job.

Despite the effort that has gone into drafting, revising, and re-revising each of these definitions, each still has various deficiencies and will unnecessarily limit the authority of the Inspector General to perform as the public expects. I will now address each proposed definition in the order presented in Ms. Ashton's memo.



## **Abuse:**

The proposed definition of "Abuse" is:

**...the use of rank, position, or authority by elected and appointed county and municipal officials and employees that results in the loss or misuse of county or municipal funds or resources, an adverse affect on the rights of any person, or the achievement of personal gain or advantage for himself/herself or for any other persons.**

In Ms. Ashton's discussion, she cites the following dictionary definitions:

"...the American Heritage Dictionary defines 'to abuse' as 'to use wrongly or improperly; misuse.' The Merriam-Webster Dictionary defines 'abuse' as a 'corrupt practice or custom' or an "improper or excessive use."

Each of these definitions quoted by Ms. Ashton is significantly broader than the actual definition proposed by her for this ordinance. As one example, under the proposed definition, in order to establish that "abuse" occurred to serve as a basis for the Inspector General jurisdiction, it would have to be shown that a specific person's rights were impacted as opposed to the public at large. Clearly, the result of this proposed definition narrows the jurisdiction of the Inspector General.

## **Fraud:**

The proposed definition of "Fraud" is:

**...any intentional deception (including attempts and conspiracies to effect such deception) for the purpose of: inducing county or municipal action, inaction, or reliance on that deception; depriving the county or municipality of something of value, securing from the county or municipality a benefit, privilege, or consideration to which the party is not entitled. Such practices include, but are not limited to: offer of payment; acceptance of bribes or gratuities; making false statements; submission of false claims; use of false weights or measures; evasion or corruption of inspectors and other officials; deceit by suppression of the truth or misrepresentation of a material fact; adulteration or substitution of materials; falsification of records and books of account; arrangements for secret profits, kickbacks, or commissions; and conspiracy to use any of these devices.**

Ms. Ashton's memo notes: "I do not agree to remove the intent component from this definition. Intent is inherent in fraud. The dictionary definitions I reviewed confirm that fraud must have intent."

However, the online resource, dictionary.com, under the term "fraud" also mentions "constructive fraud," which it explains as "conduct that is considered fraud under the law despite an absence of an intent to deceive because it has the same consequences as an actual fraud would have and is against public interests (as because of the violation of a public or private trust or confidence, the breach of a fiduciary duty, or the use of undue influence) called also *legal fraud*..."

(Emphasis added)

This point is repeated in the definition of "constructive fraud" in Wikipedia, and in its definition in CriminalDefenseLawyer.com.

Do we actually intend to limit the Inspector General's jurisdiction to exclude investigations and reports on constructive fraud?

Moreover, the specific proposed definition appears to focus on fraud committed by vendors and not on fraud that may be committed by governmental officials and employees, and may prove deficient in actual application to the latter in some cases, depending on the facts of situations that we do not yet know or have not yet been revealed.

#### **Misconduct:**

The proposed the definition of "Misconduct" is:

**... conduct (acts or omissions) that violates a standard such as (an identifiable directive, instruction, policy, regulation, rule, statute, or other standard).**

As was the case with the proposed definition of the word "abuse," the Ms. Ashton sets out dictionary definitions including:

"...Black's Law Dictionary defines 'misconduct' as 'a dereliction of duty; unlawful or improper behavior.'... The American Heritage Dictionary defines 'misconduct' as 'behavior not conforming to prevailing standards and laws; impropriety' and as 'dishonest or bad management'..."  
(Emphasis added)

I suggest that a careful reading of these examples reveals that violation of a specific statute or policy is not required in every instance. Thus, once again the specific proposed definition is less inclusive, and would allow the Inspector General much narrower jurisdiction, than the dictionary definitions that would otherwise be used to construe this ordinance.

#### **Mismanagement:**

The proposed definition of "Mismanagement" is:

**...a continuous pattern of management in such a manner as to create or perpetuate waste, abuse or to contribute to acts of fraud.**

For this definition, Ms. Ashton candidly admits that she did not use any published definition of the word "mismanagement," but instead derived her proposed definition from the definition of the term "gross mismanagement" in section 112.3187, Florida Statutes (Whistle-blower Act). These are entirely different terms with entirely different standards, and therefore use of this definition for the term "mismanagement" is entirely inappropriate.

Clearly, a more straightforward path to this same result would be to change the language of ordinance from allowing the Inspector General to report on "mismanagement" in local governments to only allowing the Inspector General to investigate and report on "gross mismanagement," which, irrespective of the degree of resulting harm to the public, requires multiple incidents to even trigger initial Inspector General jurisdiction.

**Waste:** The proposed definition of "Waste" is:

**...the extravagant, careless, or needless expenditure of county or municipal funds or consumption of county or municipal property that results from deficient practices, systems controls or decisions.**

Once again, the dictionary definitions cited by Ms. Ashton fail to support the actual proposed definition, as none require that the waste be the result of “deficient practices, systems controls or decisions” in order to constitute “waste,” as required by the proposed definition.

If these proposed definitions do not add to or delete from commonly understood and accepted dictionary definitions of these terms, there seems to be no benefit from attempting to define them in this ordinance, and much harm could result. That is why similar statutes, ordinances and inspector general and auditing standards rarely, if ever, attempt to define these terms.

When a business adds lights to their parking lot for nighttime vision, do they prescribe everything that they expect to find as a result of those lights? The answer is no, because they do not know what the lights will reveal once they are in place. This analogy is no different from an Inspector General office. We do not know what we will find once we begin to shine the light on government. Regardless of what is revealed, this office does not and cannot change policy of the covered entities, nor can we hire, fire or discipline any employee or vendor. Simply stated, our role is to shine the light on government.

Once you define what some might call “common sense terminology”, attempts will be made to carve out exceptions, and as a result, the light begins to fade. There are many different situations where defining these terms would limit our ability. A few examples include:

- If employees who would normally file a complaint have to be concerned about whether their complaint fits within one specific definition, they may elect not to file for fear of retaliation and/or their complaint not being resolved. Moreover, should complaints from the public not fit within a defined term and their complaints go unanswered, are they then victimized by the effects of these proposed definitions?
- An employee chooses not to report because as far as he/she knows, all the rules – as adopted by the governing body – are being followed. However, if the rules are ineffective, the opportunity for improvement, minimizing risk or prevention of unacceptable behavior goes undetected.
- When exceptions to definitions are argued by entities, the burden shifts to the Inspector General to justify why we are looking there, which contradicts the intent of this ordinance to create an independent Inspector General.

In the end, defining those terms diminishes the potential effectiveness of this office by limiting the ability of the Inspector General to evaluate, report, and make recommendations that bring value-added improvements to government and cost savings to its citizens. Is the goal to provide less protection for the public than what they voted for; thereby placing government at risk of not detecting “fraud”, “waste”, “abuse”, “mismanagement” and “misconduct”?

Thank you for the opportunity to respond to this committee and to the public for which I serve.