

## Exhibits

- 1 Proposed Palm Beach County Policy & Practice Memorandum (PPM)  
CW-O-086 (undated, 2011)
- 2 Excerpt from the Final Presentment from the Spring 2011 Term  
(September 23, 2011)
- 3 Palm Beach County Policy & Practice Memorandum (PPM) CW-O-086  
(August 15, 2012)
- 4 Request from the Inspector General to Reconvene the Grand Jury  
(September 18, 2012)
- Composite  
5 County Administrator's Reply to Inspector General's Request  
(October 25, 2012)
- 6 Inspector General's Response (October 30, 2012)
- Composite  
7 County Administrator's Proposed Revisions to PPM CW-O-086  
(November 16, 2012)
- Composite  
8 Inspector General's Response to Proposed Revisions  
(November 20, 2012)

# **EXHIBIT 1**

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  
XXXXXX, 2011

EFFECTIVE DATE  
XXXXXXXXX, 2011

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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. Employees shall refer to PPM CW-O-xxx for direction regarding interaction with the OIG, including all responses to OIG requests for county records.

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ROBERT WEISMAN  
COUNTY ADMINISTRATOR

# **EXHIBIT 2**

authority performing the auditing (IG) is in the best position to determine the definitions of the terms it intends to employ in its evaluation. This position is consistent with the position taken by the Association of Inspectors General. *See Exhibit 13 – Letter from Association of Inspectors General dated April 1, 2011.*

**The Grand Jury finds that municipal attempts to define terms found in the County IG ordinance pose a serious risk to the operational independence of the IG. Such attempts run contrary to the intent of the ethics reforms for effective, transparent and independent review of local governmental activity. The IG should not be forced to rely on or accept municipality created term definitions. The Grand Jury recommends that covered entities not adopt or attempt to impose any individual (and potentially different) definitions of waste, fraud, abuse, etc., as these terms already are contained in the County ordinance and are not difficult to understand.**

Further, some covered entities, including the County, are drafting policy and procedures (PPM) for their employees to follow when responding to the IG's interview or information requests. Some subject agencies are also seeking to create internal policies and procedures (PPM) for employees to follow in response to IG inquiries. These PPMs carry a high risk of discouraging open and honest communication and cooperation with IG reviews and investigations. Both Palm Beach Gardens and Palm Beach County have drafted proposed policies for employees to follow when contacted by the IG. These draft policies require the IG to announce its intention to meet with an employee, permit the employee to determine the reason for the contact, and require the IG to make an appointment through the employee's supervisor. *See Composite Exhibit 14 – PBC PPM Draft Procedures for Responding to Inquiries from the Inspector General; PBC PPM Draft Reporting Procedures to the Office of Inspector General.* Furthermore, the County's draft PPM permits the employee to have a representative, co-worker, or attorney present during the interview, emphasizes that employees should have any interaction with the IG recorded or

transcribed, and reminds the employees that they have a right to refuse to answer questions which may criminally incriminate themselves.

Further, if a lower-level employee wishes to meet with the IG to report malfeasance of a supervisor, the draft PPM would require the employee to schedule the meeting *through the individual being reported*. This would chill, if not completely eliminate, reporting of potential improper behavior of supervisors by subordinate employees. The IG's office performs an independent auditing and oversight function. The PPM's advice regarding representation during an IG interview and its affirmative steering regarding the circumstances of any IG interview conveys a clear and misleading message to the employee that the IG is conducting a criminal investigation.

If covered entities want PPMs in place to coordinate with the IG's office, the PPM should be created in full partnership with the IG's office to provide appropriate information for the employee while maintaining the effectiveness of the IG's investigative authority. Indeed, the IG's office has already created written materials to distribute to covered entities to assist them with educating their employees as to what to expect during meetings with the IG. *See Composite Exhibit 15 – What to Expect When You are Contacted by a Member of the Office of Inspector General Palm Beach County Investigative Staff; What to Expect When You are Contacted by a Member of the Office of Inspector General Palm Beach County Audit Staff; What to Expect When You are Contacted by a Member of the Office of Inspector General Palm Beach County Contract Oversight Staff Member.*

**The Grand Jury finds that the draft PPMs developed by the covered entities - in their present form - are counter-productive and risk thwarting the IG's appropriate investigatory and audit authority. The Grand Jury recommends that any policy or practice memoranda (PPM) drafted by the County or municipality regarding IG interviews or requests mirror the substance and approach of the IG documents.**

# **EXHIBIT 3**



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

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:

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  - 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.

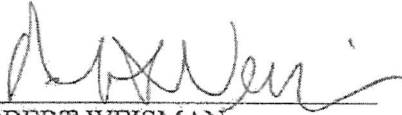
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This Policy shall not prohibit or excuse an employee from reporting a Reportable Incident in accordance with any other applicable reporting requirements, procedures, laws, regulations or policies.

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

# **EXHIBIT 4**



**OFFICE OF INSPECTOR GENERAL  
PALM BEACH COUNTY**

Sheryl G. Steckler  
Inspector General

September 18, 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:

In 2009, a Palm Beach County Grand Jury was convened to address the issue of public corruption and then recommend creation of an independent Office of Inspector General (OIG). The Grand Jury reconvened in 2010 and 2011 to provide status reports on the implementation of their recommendations. The September 26, 2011 Status Report, the Grand Jury reported that it should periodically measure the implementation of their recommendations to "suggest necessary course corrections to ensure that the reforms continue to effect positive change in the community". It also addressed a number of issues, including two policy and practice memoranda (PPMs) relating to the Inspector General that had been proposed by the County Administrator. The Grand Jury was extremely critical of those PPMs. As to these proposed PPMs, the Grand Jury concluded:

**"The Grand Jury finds that the draft PPMs developed by the covered entities- in their present form - are counter-productive and risk thwarting the IG's appropriate investigatory and audit authority. The Grand Jury recommends that any policy or practice memoranda (PPM) drafted by the County or municipality regarding IG interviews or requests mirror the substance and approach of the IG documents."**

**Background:**

In August 2011, after the amended Ordinance went into effect in May 2011, the County staff developed and provided two draft PPMs relating to employee reporting procedures to the OIG. OIG staff met with representatives of both the County Administrator and the County Attorney explaining the reasons that each of these policies would conflict and interfere with both the specific requirements and the spirit of the Inspector General Ordinance.

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

On October 24, 2011, the County Administrator sent a draft PPM (CW-O-086: Reporting Procedures to the OIG) proposal for the OIG review. The draft eliminated the section covering Staff Cooperation from the August 2011 draft. On October 28, 2011, the OIG offered a revision to the County Administrator's draft PPM proposal.

*"Enhancing Public Trust in Government"*

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The County Administrator did not implement the Inspector General's proposed draft nor did he or his staff further coordinate with the OIG. Suddenly without coordination, on August 15, 2012, the County Administrator announced and implemented PPM CW-O-086: Reporting Procedures to the OIG. The enacted PPM was identical to the proposal that had been previously criticized by the Grand Jury, except for deleting the final sentence which referenced a second draft PPM.

No amendments were made to accommodate the Grand Jury's or the Inspector General's concerns about the free, unobstructed flow of information from employees to the OIG.

**Issues:**

There are a number of fundamental problems with this PPM, including:

1. It requires employees to report these matters to their department head, rather than to the Inspector General. If the department head is implicated, the employee must report the matter to the department head's supervisor.

It will be a deterrent to many employees reporting to anyone a situation that should be brought to the attention of the Inspector General.

It violates the spirit of the Charter and Ordinance provisions establishing the IG, and will significantly limit the stream of tips provided to the IG.

It does not acknowledge the provisions of Florida's "Whistle-Blower" Act, under which the employee must report a qualifying incident directly to an "appropriate local official," which the IG has been designated under the Ordinance.

Although the PPM contains general language stating that it does not prohibit an employee "from reporting a Reportable Incident in accordance with" [other requirements or laws], it fails to mention for employees what those requirements or laws may be.

It should be noted that shortly after this PPM was distributed, the OIG received complaints from employees regarding being forced to sign this particular PPM and the deterrent effect this has on employees reporting.

2. The PPM also requires that the supervisor refer the situation to the IG only after "confirming" that the situation is a "reportable incident" as defined in the PPM.

Depending on how this is construed, it could require the supervisor to undertake his or her own investigation, and only report the matter to the IG after he or she decides (or "confirms") that the facts support a finding. This would obstruct the intention of the Ordinance that "possible" issues be reported to the IG for the IG to investigate and make the appropriate determination.

3. The PPM also improperly narrows the scope of what the Ordinance requires be reported to the IG. For example:

a. The Ordinance requires the reporting of “possible mismanagement of a contract (misuse or loss exceeding five thousand dollars (\$5,000.00) in public funds).” The PPM defines this to include only incidents where there is non-compliance with the terms of the contract.

But a contract can be “mismanaged” adding addendums to purchase items not needed or at exorbitant prices. Such conduct would not violate the terms of the contract, and therefore need not be reported under the PPM, contrary to the requirements of the Ordinance.

b. The Ordinance requires that all possible incidents of “theft” be reported. “Theft “is a crime in Florida. It is defined in section 812.014, Florida Statutes.

But the PPM attempts to define “theft” in a manner contrary to the statute, and therefore does not require the reporting of certain incidents which may in fact constitute theft under Florida law.

c. The Ordinance requires the reporting of any “other violation of law which appears to fall within the jurisdiction of the inspector general.”

But the PPM narrows this requirement to include only violations of law which constitute “a continuous pattern of abuse or an intentional egregious misuse of County position, office, personnel, contractual relationship, equipment or supplies...”

d. The Ordinance authorizes the reporting of “any other conduct which may fall within the inspector general's jurisdiction.”

The PPM evades this matter entirely.

The Grand Jury was also extremely critical of the second draft PPM proposed by the County Administrator during the summer of 2011, which would have unduly hampered the OIG’s access to public employees and documents. While that PPM has not yet been enacted by the County Administrator, certain municipalities have recently announced similar policies. Specifically:

1. The IG recently initiated an audit of certain purchasing methodologies in Boca Raton. Shortly thereafter, the City advised the OIG that it would not permit the IG staff to interview any City employee unless the interview was set in advance to include the City Attorney and Finance Director. This issue is still not resolved. As of this date, Boca Raton officials are still insisting on requiring the chilling effect of supervisors being present during employee interviews.

2. The OIG also has an active Investigation/Management Review in the City of Delray Beach. We were attempting to meet with the City's IT staff to obtain access to a specific and limited set of electronic records. The City has suddenly announced a policy under which the OIG would be prohibited from meeting with any City employee unless a specific request is made in advance to the City Manager, and prohibited the OIG from reviewing any document or record unless a specific request for same is first made through the City Clerk.

We believe that these policies offend certain requirements of the IG Ordinance. For instance:

- A. "The inspector general shall conduct investigations and audits in accordance with applicable laws, rules, regulations, policies and past practices."
- B. The Inspector General's audits and investigations shall be conducted pursuant to the standards and procedures applicable to the IG profession.
- C. The Inspector General shall "receive full and unrestricted access to" municipal records.
- D. The Inspector General can require municipal employees "to provide statements."
- E. Municipal officials shall "fully cooperate with" the IG in the performance of her duties.
- F. "The inspector general may exercise any of the powers contained in this article upon his or her own initiative."

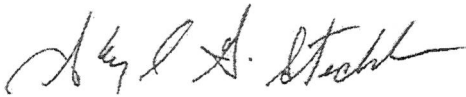
These policies transgress the Ordinance in letter and spirit.

Under the current climate, the proposed PPM and the municipal managerial demands would require the OIG to perform investigations and audits, not in accordance with OIG policies and procedures, accreditation and the professional standards, but under arbitrary policies dictated individually by each of the 42 governmental entities which the IG is responsible to "oversee." Such management interference with finding the facts causes significant, needless delay and costs for the taxpayers and it hampers the OIG's ability to do what is required under the Ordinance.

I therefore, respectfully request your Office consider reconvening the Grand Jury for an annual review of county governance and public corruption.

Thank you, in advance, for your consideration in this critical matter.

Sincerely,



Sheryl G. Steckler  
Inspector General  
Palm Beach County