

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST



REPORT OF INVESTIGATION

K #: 12-010

Date Opened: 1/11/12

Date Closed: 2/22/12

Name of Investigator: Manuel W. Diaz

Historical:

The Village of Palmetto Bay (VPB) issued an RFP #2011-PR-002, Management and Operations of the Coral Reef Park Tennis Center (RFP) on August 1, 2011. Responses to the RFP were to be returned to the Village Clerk by August 16, 2011. The responses were reviewed by a selection committee appointed by the Village Manager. Three respondents were evaluated by the selection committee. Friends of Miami Tennis Inc. (FOMT) was rated most qualified and referred to the manager.

At the VPB Council Meeting of September 12, 2011, the Manager recommended the award of the contract to FOMT. After discussion the VBP Council voted against the Manager's recommendation.

Carey Sochin (Sochin) filed Commission of Ethics (COE) complaint C11-037 alleging that the Village Manager violated Sec. 2-138 Code of Silence of the Palmetto Code of Ordinances. Sochin was a principal for one of the three corporations that responded to the RFP (Don Pertrine, Jr. & Cary Sochin d/b/a Palmetto Bay Community Tennis Program (PBCTP)).

During an interview with the Village Manager and the Village Attorney (see report of investigation C11-037) they referred to the Council Meeting of September 12, 2011, where

Sochin, an RFP respondent, addressed the Council and advised that he had contacted and spoke to Council Members discussing the RFP.

Allegation:

An investigation was initiated to determine if Sochin contacted any Council Members prior to the meeting of September 12, 2012, and to determine the context of their conversations. Sochin, as a potential vendor, may have been required to register as a lobbyist, in addition, any conversations between Sochin and Council Members may have violated the Village's Cone of Silence.

Applicable Legislation:

Village of Palmetto Bay Code of Ordinances, Sec. 2-138. – Cone of silence

“(a) *Contracts for the provision of goods and services*

(1) Cone of silence (Cone) is hereby defined to mean a prohibition on:

a. Any communication regarding a particular RFP, RFQ, or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the village's professional staff, including, but not limited to, the village manger and his or her staff.

(2) Procedure

a. A cone of silence shall be imposed upon each RFP, RFQ and bid after the advertisement of the RFP, RFQ or bid....

b. the cone of silence shall terminate at the time the village manager makes his or her written recommendation to the village council...”

Village of Palmetto Bay Code of Ordinances, Sec. 6-20 - Lobbying

“As used in this section “Lobbyist” means all employees, persons, firms, consultants, entities, or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of;

(1) any ordinance, resolution, action or decision of the village council;

(3) ...The term lobbyist shall include all consultants, as defined under this subsection (b) below. The term “lobbyist” specifically excludes the following persons:

Any principal of a local business who appears without compensation or reimbursement, whether direct, indirect or contingent, to express support of or opposition to any item; provided, however, that the principal shall sign in-in with the village clerk each time he or she meets wit the villager personnel, as provided below...”

Investigation:

1. Public Records Requests,

A Public Records Request was made to the VPB City Clerk for an audio copy of the Council meeting for September 12, 2011. A CD containing three sectors (1084, 1085, and 1086) was provided. Each sector provided a portion of the meeting. At 1085/26:30 in the recording Sochin, while addressing the Council, acknowledges that he met with Council Members to discuss the RFP. He stated, "I met with four of you, individually, pointing out numerous disturbing issues regarding this RFP." Sochin was not specific as to the dates that he contacted any of the Council members.

A copy of the VPB 2011 Lobbyist Registration Log was requested and obtained. The log does not list Sochin.

2. Interviews:

Joan Lindsay (Lindsay), Council Person, VPB.

Lindsay was interviewed. She advised that she was contacted by Sochin between Tuesday September 6, 2011 and September 12, 2011. Lindsay could not specify the date, but recalled that their meeting occurred after she received the agenda package for the meeting September 12, 2011 meeting. She advised that the agenda package was delivered on Tuesday, September 6, 2011, because of the municipal holiday on September 5, 2011. Their discussion dealt with the RFP responses.

Lindsay advised that she was familiar with the provisions of the "Cone". She advised that any discussion with Sochin were conducted after the "Cone" has been lifted. She referred to the VPB Municipal Code. According to Lindsay, it was her understanding that the "Cone" was lifted when the Manager's recommendation was made to the Council. Lindsay explained that the

“Cone” was lifted when she received the agenda package on September 6, 2011. A memorandum containing the Manager’s recommendation was contained in the agenda package.

Patrick Fiore (Fiore), Council Person, VPB.

Fiore was interviewed via telephone. Fiore advised that he was contacted by Sochin concerning the RFP. When contacted, he advised Sochin that he could not speak to him because of the “Cone” for the RFP was in effect. He was not sure as to the date of the contact.

Howard J. Tendrich (Tendrich), Council Person, VPB. Tendrich advised that he was called by Sochin to discuss the RFP. He advised Sochin that he could not speak to him because of the “Cone” being in effect. Tendrich advised that he did not initially return Sochin’s calls. He contacted the Village Attorney to verify that the “Cone” was in effect. After speaking to the Village Attorney, he returned Sochin’s call and advised that he could not discuss the RFP.

Tendrich could not recall the date of the contact.

Shelly Stanczyk (Stanczyk), Mayor, VPB, was interviewed via telephone. Stanczyk advised that she was contacted by Sochin regarding the management of the tennis courts. She advised that the conversation took place before the RFP was issued. Sochin was critical of the existing VPB tennis program managers and the program in general. The Mayor believed that Sochin was attempting to secure a job with the Village to run the tennis program. She did not speak to him after the RFP was issued.

Brian W. Parisner (Parisner), Vice Mayor, VPB. Parisner was interviewed via telephone. He advised that Sochin contacted him after the RFP had been issued by the VPB. He refused to speak to him and advised Sochin that the “Cone” was in effect and that he could not discuss matter with him. Parisner did not have a date of the contact. He did recall Sochin contacted him sometime prior to the September 12, 2011 Council meeting.

Cary Sochin

Sochin was contacted. He was advised as to the COE's decision in C11-037. Sochin was advised that the investigation had found that his actions, when speaking to Council Members may have constituted lobbying. He was advised that he needed to register as a lobbyist with the VPB. Sochin disagreed with the term lobbying and insisted that he was merely giving council members critical information so they could come to an informed decision prior to voting on the award of the RFP.

A meeting was scheduled with Sochin on February 22, 2012, in the offices of the COE to discuss his lobbying activities and his need to register as a lobbyist. Present at the meeting was Michael Murawski, COE Advocate and this writer. After discussion, Sochin conceded that his actions may have constituted lobbying under the Ethics Code. Sochin agreed to inquire with the VPB to determine the cost of registering and stated that if the cost exceeds fifty dollars (\$50.00) he probably will not register. Murawski recommended that if he (Sochin) was to continue to contact officials in the Village he may open himself up to an ethics complaint being filed against him.

Summary of Findings:

1. The VPB issued the RFP on August 11, 2011.
2. The Manager's recommendation to the VPB Council was made on September 12, 2011.
3. The "Cone" was in effect between August 11, 2011 and September 12, 2011.
4. Sochin is a principal in a corporation that responded to the RFP.

5. During the VPB meeting of September 12, 2011, Sochin addressed the Council and acknowledged that he had contacted four (4) members of the Council individually to discuss the RFP.
6. The Mayor, Vice Mayor and three Council Members were interviewed. Each acknowledged that they had been contacted by Sochin.
7. The Mayor, Vice Mayor and two Council Members advised that they had refused to speak to Sochin due to the “Cone” being in effect.
8. One Councilperson, Lindsay, acknowledged that she spoke to Sochin and discussed the award of the RFP. When interviewed she advised that she believed that the “Cone” had been lifted.
9. The conversations concerning the RFP between Lindsay and Sochin took place while the “Cone” was still in place.
10. A copy of the VPB Lobbyist Log for 2011 was obtained.
11. Sochin was not registered as a lobbyist.
12. Sochin met with Murawski, at the meeting Sochin conceded that he met with Village officials but only to inform them of the many flaws and irregularities in their procurement process. Murawski advised Sochin that if he had future contact with officials in the Village to discuss RFP’s or bids that he can be considered a “lobbyist” and he should register as a lobbyist with the VPB.

CONCLUSION:

Sochin was given notice that prior to continuing any lobbying efforts he must register with the VPB as a lobbyist. The case is closed with no further action.