



Miami-Dade Commission on Ethics & Public Trust

Report of Investigation

Investigator: Robert Steinback and Susannah Nesmith

Case: PI16-044	Case Name: WASD Hiring	Date Open: Sept. 15, 2018	Date Closed:
Complainant(s): Anonymous	Subject(s): Subjects: (a) David Brown, (b) Karina Aguirre, (c) Olga Portugues, (d) Tina Nessler	CASE CLOSED	

Date: 4/2/18

Allegation(s):

Anonymous complainant alleged:

(a) Miami-Dade Water and Sewer Department (WASD) meter technicians Christopher Brown and David Brown were hired because their father, subject David Brown, is a supervisor with WASD.

(b) WASD Meter Technician Oliver Aguirre “benefited” from having his sister, subject Karen Aguirre, and his brother-law-law, Victor del Salto, working at WASD.

(c), (d) WASD Meter Division Acting Chief Juan Pelay, the person who allegedly prepares the interview questions for Meter Division applicants, provided those questions in advance to Meter Repair Supervisor Andrey Marin, who in turn provided the questions in advance to his “personal friend” Meter Technician Yadiel Torres – who then excelled during the interview and was hired by the County. Complainant alleges that Pelay’s administrative secretary, Olga Portugues, and Administrative Officer Tina Nessler, provided the interview questions to Aguirre.

Complainant alleged employees of the Meter Division are hired and/or promoted based on relationships, bypassing the interview process by giving the interview questions to preferred candidates ahead of time and hiring relatives of other WASD employees. Specifically Division Chief Juan Pelay is alleged to have given the questions to Repair Supervisor Andrey Marin; Marin is alleged to have given interview questions to Senior Technician Yadiel Torres; Pelay’s administrative assistant, Olga Portugues, is alleged to have given questions to Accountant

Karina Aguirre, to help her brother, Technician Oliver Aguirre; and Administrator Tina Nessl is alleged to also have given Karina Aguirre the questions. Additionally, the complainant alleged Meter Technicians Randall and Christopher Brown were hired because their father, David Brown, works in another division of WASD. The complaint was first received by the Office of Inspector General, which forwarded it to the COE.

Relevant Law:

Miami-Dade County Code of Ethics, Sec. 2-11.1. (g) Exploitation of official position and (h) Prohibition on use of Confidential Information

Investigation:

Interviews:

September 20, 2016 – Spoke by telephone to **anonymous informant** who works within WASD.

Informant asserts that family members, fathers, friends are being hired, and also that lower-seniority people are getting promoted or hired over others with more seniority.

The informant alleged that certain individuals are being given interview panel questions beforehand and “acing” the questions, a practice that supposedly has been going on for years. I asked the informant if there was objective evidence of this, and was told no.

The informant brought two other people into the phone call, also unnamed. (The original informant did most of the talking.) Callers said David Brown and his sons Randall and Christopher don’t work in the same section of the department, and the father didn’t do the hiring.

The conversation shifted to the interview panels. These callers believe some candidates who were interviewing for promotions were fed the questions and answers in advance, given that they basically aced the test despite very little field experience. They believe the original perpetrator was Andrey Marin, who worked his way up to the interview panel (and may have been given answers by the chief at the time). They believe he, in turn, fed questions and answers to Yadiel Torres.

They base much of their view on comments made by another interview panel member, James Murphy of WASD, who they say was astonished that Marin and/or Torres managed to give verbatim correct answers.

They mentioned a lawsuit filed and won by two now-former employees, Wendell Stirrup and Arthur Horne. They say the pair won their lawsuit and retired.

November 16, 2016 – Spoke with **Cecilia Brewer-McDuffie**, chief of the Human Resources section of WASD.

Brewer said internal scoring sheets would be available for each candidate. Typically, candidates for hire or promotion would face a three-member panel, one of whom would be the hiring manager. In most cases, the hiring manager would be aware of some of the questions, though probably not all. The other panelists would generally not know the selected questions in advance, though this cannot be guaranteed 100 percent. Also, each panel would have an internal observer in place to insure that the questions are utilized properly and to make sure the division is preparing an internal log, Brewer said. She said the questions should be dated and initialized. Scoresheets are available. Brewer said an effort is made not to re-use questions; they are often restructured, but “there are only so many questions that are asked.”

All interviewees for a particular position are asked the same questions.

To get to the panel interview, aspirants must apply. In the application, they must affirm that they have the minimum qualifications for the job. Brewer said that it doesn't take long for applicants to realize that they must answer “yes” to have any hope at all of making the interview stage. But the department can decide on its own that a particular candidate lacks the necessary minimum skills for the job. These applications are in the file.

Furthermore, panelists have to sign a form stating that there was no relationship [according to nepotism rules] with a candidate. If there is, it must be disclosed.

Asked how someone might tilt the process in someone's favor, Brewer said there is some discretion in hiring applicants who fall within “bands” in the evaluation. The department can exercise some discretion in choosing from among those who fall into similar bands. If someone within a band is deemed unsuitable for promotion, and someone from a lower band is selected instead, paperwork is generated that supports that.

Brewer acknowledged that it's possible for applicants to figure out that if they don't answer "yes" to the minimum standards questions, they are likely to be disqualified. So, some simply say yes in an attempt to get to the next stage.

On Jan. 4, 2018, Investigators Nesmith and Steinback interviewed **Yadiel Torres**, a senior meter technician in the Water and Sewer Department.

Torres explained that he worked for WASD before, starting as a laborer. (See documents section for the dates of his employment.)

"When I got the job here, I was breaking up sidewalks," he said.

He left the County to work in the private sector for four years, still in the water and sewer industry.

He said that he applied for the promotion to be a senior technician because he already knew how to do the job, which he said entails working on large pipes used by commercial buildings. He said that when he was a laborer, he was assigned to work on the large pipe with a meter technician, Victor Yanta.

"I knew the job because I did it before," he said.

Torres said no one gave him the questions before the interview and that he didn't know who created the questions.

On Jan. 9, 2018, Investigator Nesmith interviewed **Andrey Marin**, a water meter repair supervisor in the Water and Sewer Department. Marin said he was promoted to his current position in the summer of 2016. He applied for the job after two supervisors retired because he met the minimum requirements, which were having a high school diploma and being licensed and having a water distribution systems license.

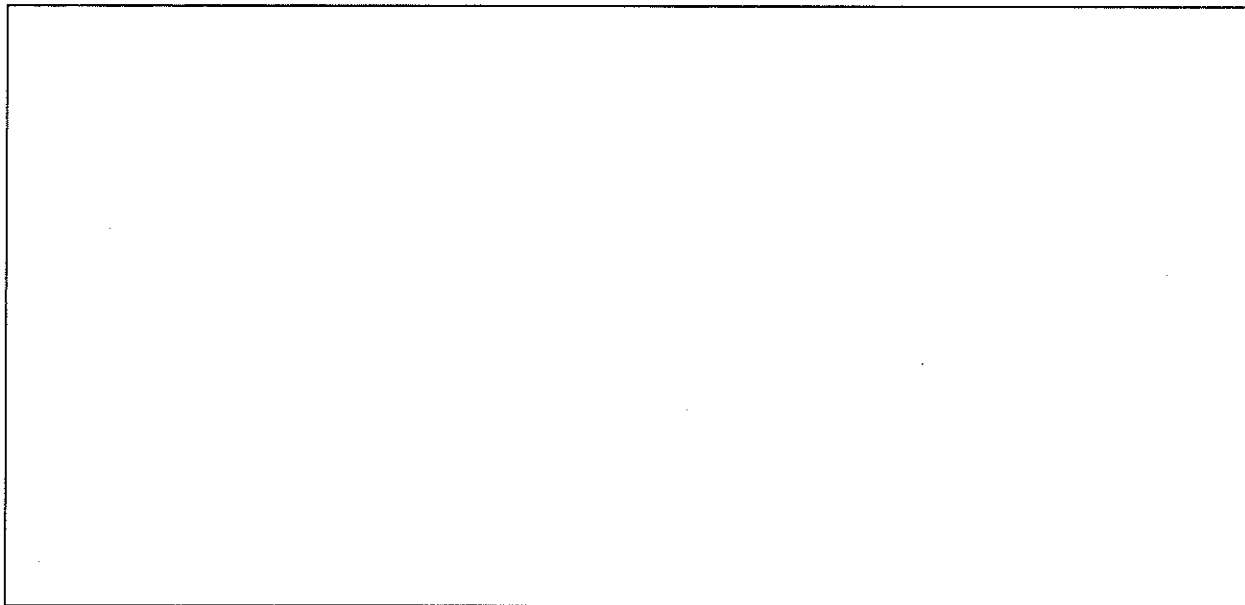
Marin said that though the county paid for him to get his water distribution level 1 license, he also got his backflow device tester license, though he had to pay the costs of that course.

"I try to get all the certifications I can," Marin explained. "I'm trying to make the county a career."

Marin said no one gave him the interview questions before he interviewed for the job. He also said he didn't know who prepared the interview questions. He said he suspected whoever complained about him did so because he is the youngest supervisor at the moment.

"I've never had a complaint," he said. "I strive to be better."

Marin said no one gave him the interview questions before the interview and that he didn't know who created the questions in the first place.



On Jan. 9, 2018, Investigator Nesmith spoke with **Juan Pelay**, Chief of the Meter Installation Division. Pelay said he prepares the interview questions and then sends them to HR for approval. He said his assistant, Olga Portugues, doesn't have access to them and could not pass them to anyone before the interviews. Nessler also has no access to the questions.

"Honestly, I don't think anyone's stupid enough to pass the questions to someone," he said.

Pelay said that he had not expected Marin to do so well in the interview process for promotion to supervisor and had actually expected to promote two other employees, but both "choked" during the interviews, while Marin did quite well.

Regarding the allegation that hiring and promotions are racially biased, Pelay pointed out that he has recently hired an assistant chief who is African-American, someone he recruited from outside of the department.

Document(s) Reviewed:

Emails to and from Juan Pelay, Tina Nessler and Olga Portugues that mention testing during the three months prior to the May 2016, June 2016 and August 2016 interview dates.

Investigator Susannah Nesmith reviewed thousands of emails mentioning testing – the Meter Division conducts several types of testing unrelated to promotions and hiring – and found that Pelay, Nessler and Portugues never emailed anyone test questions or discussed sharing test questions with anyone.

The Aug. 11, 2016 list of job applicants for the senior meter technician position. Yadiel Torres is listed as number 10, with both of the job requirements. Christopher Brown is listed as number 5, with both of the job requirements. Oliver Aguirre is listed as number 3, with both of the job requirements.

The April 13, 2015 list of applicants for the Meter Technician position. Yadiel Torres is listed as number 45. However, his experience may not have been properly accounted for on this list because his personnel file (detailed below) shows he was a rehire but his prior WASD experience is not reflected. Additionally, during his interview he told these investigators that he worked in the water and sewer industry when he was in the private sector, though this doesn't seem to be reflected in his score.

The April 22, 2016 list of applicants for the Repair Supervisor position. Andrey Marin is listed at number three. The document notes he has both job requirements, as well as a Water Distribution License, which is considered a preferred qualification. Additionally, the document notes that the successful applicant must obtain certification as a Backflow Prevention Device Tester. In his interview, Marin explained that he obtained that certification on his own before he was promoted.

The WASD Meter Installation Division Table of Organization for FY16.

The interview scoresheet for the May 12 and 13, 2016 interviews for the Repair Supervisor position. Marin achieved the highest score.

The interview scoresheet for the Aug. 30, 2016 interviews for the Senior Technician position. Torres achieved the highest score. Aguirre achieved the second highest score.

The interview scoresheet for the June 11 and 12, 2015 interviews for the Meter Technician position. Torres achieved the highest score.

The personnel file of Oliver Aguirre, which shows that he was promoted to Senior Technician on Nov. 7, 2016. The file also includes the May 2016 evaluation of Aguirre, which rated him "above satisfactory" and noted that he is "always willing to take on special projects." He was hired in 2011, beyond the statute of limitations for COE investigations.

The personnel file of Yadiel Torres, which shows that he was promoted to Senior Technician on Nov. 7, 2016. The file also shows that he was a rehire, having worked in the Meter Division from 2006 to 2011 before taking a job in the private sector for four years. He was rehired in 2015. Torres' August 2016 evaluation rated him as above satisfactory and noted that his experience "helps to achieve difficult tasks in sometimes difficult assignments."

The personnel file of Andrey Marin, which shows that he was promoted to Repair Supervisor on June 9, 2016. His file also contains evaluations showing his work was rated above average" and pointing out that he "continually tries to gain more knowledge and training to better his ability to perform his job." The file also contains a certificate for a recent leadership development workshop he attended at FIU.

The personnel file of Randall F. Brown, who resigned from as a Meter Technician in November of 2016. Because he was not promoted while working for WASD, his evaluations were not reviewed. He was hired in 2013, beyond the statute of limitations for COE investigations.

The personnel file of Christopher Brown, a Meter Technician. Because he has not been promoted while working for WASD, his evaluations were not reviewed. He was hired in 2012, beyond the statute of limitations for COE investigations.

Conclusion:

After consultation with the Ethics Advocate it was determined that no evidence to substantiate the allegations was found and the case should be closed.

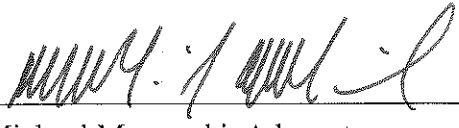


Robert Stenback, COE Investigator

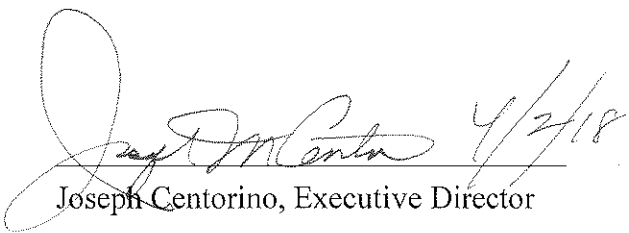


Susannah Nesmith, COE Investigator

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