



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case: K18-025	Case Name: Mayra Lindsay Sunshine Meeting Issue	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s): Donald Elisburg	Subject(s): Mayra Lindsay, Mayor of Key Biscayne Village	April 23, 2018	CASE CLOSED

Allegation(s):

Date: 11/28/18

It was alleged that on or about March 1, 2018, Mayor Mayra Lindsay improperly prevented a citizen – Donald Elisburg – from attending a Sunshine Meeting regarding the Village’s pension plan in possible violation of state open meetings laws and the Citizen’s Bill of Rights.

Specifically, it was alleged that Lindsay closed a duly noticed public meeting in order to restrict Mr Elisburg from attending and knowingly and willfully misrepresented advice from the Village Attorney to the contrary, instructing her the meeting should remain open or be canceled.

The meeting in question was noticed by the Village Clerk as a Sunshine Meeting and the topic was identified as the Village’s pension plan. Mayor Lindsay and two other councilmembers (Katie Petros and Luis de la Cruz) were expected to attend.

The COE does not have jurisdiction to enforce the Sunshine Law, however, we referred the matter to the SAO and worked on the case under their instruction.

Relevant Ordinances:

F.S. 286.011 Public meetings and records; public inspection; criminal and civil penalties.—
(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are

to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

The Miami-Dade County Citizen's Bill of Rights states in applicable part, Subsection (2)(A) titled *Truth in Government*, that "No County or municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public."

Investigation:

Interviews

On May 4, 2018, Councilwoman Petros consented to an interview regarding the events of March 1, 2018, during a Sunshine Meeting regarding the pension plan.

She advised that sometime after the meeting began or was about to begin, she observed Mr. Elisburg outside the Village Hall, at which point Mayor Lindsay decided to consult the Village Attorney as to whether it would be appropriate for Elisburg to attend the meeting.

Petros stated that because Elisburg was a stroke victim and had difficulty walking, she went outside to inform him that the Mayor was seeking legal guidance as to whether he could attend the meeting. She said she did not want him to climb the stairs needlessly. She said that Elisburg went up the stairs all the same and that upon his arrival at the Council Office, he was advised by Mayor Lindsay that he would not be allowed to attend the meeting.

Petros said she was not present when Mayor Lindsay called for legal advice, but believed she spoke to the main Village Attorney, Stephen Helfman of Weiss, Serrota. She said she relied on the Mayor's representation of the conversation but was not privy to it. She said that Councilman Luis de la Cruz was also in attendance at the meeting.

Asked what exactly the Mayor said to Elisburg, Petros stated: "She just said he wasn't going to be allowed to attend the meeting." Petros said the Mayor did not elaborate beyond that. She said she felt "confused" by the decision to prevent his attendance.

Petros said she left the meeting feeling “terrible” about the incident, adding that she had never attended another meeting in which the Mayor or another councilmember had called for an “executive session” to close the meeting from the public.

Stephen Helfman, Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Blvd #700, Coral Gables, FL 33134
Coral Gables, FL
May 4, 2018

“I was not at the meeting, so I don’t know precisely what happened. What I understood was the Mayor was talking about an upcoming meeting I had no idea it was ongoing ...

“I got a call from the Mayor telling me there was going to be a Sunshine meeting to talk about labor- employment-related issue, and she said to me something to effect that, ‘Can we hold that as an executive session because it deals with labor-related issues?’

“And I said, ‘No. You can’t do that.’

“The council can meet out of the Sunshine to talk about collective bargaining agreement. That’s the only exception. That and pending litigation. I told her if you don’t want to discuss this in front of Don Elisburg, just call off the meeting ... or to leave the meeting.

“I subsequently learned that she called me at the meeting or just outside the meeting, which she did not tell me (at the time) ... I thought it was an upcoming event. Then I heard that she went into the meeting and I heard that she said, ‘Don these are labor-employment issues that the public is not allowed to participate in’ and she asked him to leave. ... I was shocked ...

Recounting a later conversation with the Mayor: “She said, ‘I really didn’t ask him to leave, I told him that these were sensitive meetings and he graciously agreed to leave.’

“I said, ‘Mayor, I don’t know why you told him that but he was entitled to be there.

“She said, ‘I know and I thought it was all a misunderstanding.’ I said, ‘Ok, but that’s not what’s been recounted to me’ ... and she took no exception to that ...

“I don’t think she would in any way controvert that ... There was no misunderstanding ... She clearly gave improper direction to his person, based upon what I heard ... The other two people called me and said, Steve is that what you told her? And I said, ‘Absolutely not’

There are these Sunshine meetings ... Councilmembers feel they can have them whenever they want with minimal notice and no oversight. There’s dozens of them. And they take marginal minutes if at all ... This thing is fraught with problems, it really is ... This process needs to really be curtailed ... These serial meetings ... it’s not right.

Mr. Helfman said the practice of having Sunshine meetings has been going on for at least four or five years, but that the practice has gotten “completely out of control” over the past two years, and that he has tried to impress this upon the elected officials. “What it’s become is a smokescreen for having private conversations” and figuring out each member’s votes.

He said he knew of no reason why the Mayor would have an objection to Elisburg attending the pension meeting. He said that the only issue she was aware of where Elisburg and the Mayor had clashed, was over a proposal to allow kiteboarding on the beach behind Elisburg’s apartment complex. He said Elisburg was the leader of opposition to the proposal. “There might have been some lingering resentment (on the Mayor’s part) over his intractability ... The Mayor got frustrated with him because he was unwilling to compromise.”

Note: Mr. Helfman provided a formal sworn statement on June 4, 2018, at the office of the Miami-Dade State Attorney to ASA Isis Perez. Investigator Ross was also present.

In his statement, Helfman reiterated many of the statements he made during the above-referenced interview as it relates to his conversation with Mayor Lindsay on or about March 1, 2018.

In summary, Helfman stated that he did receive a call from Mayor Lindsay on the morning in question and returned her call. He said he was not aware, at the time, that the meeting was actually taking place or about to take place and that he advised her not to close the meeting. He said that a Sunshine meeting, once advertised, should not be closed. He said that if the Mayor wanted to discuss the contract talks in an executive session or “shade” meeting, that she should have canceled the Sunshine meeting and had it re-advertised as an executive session. He said that he felt it was improper for the Mayor to advise Elisburg that he could not attend the Sunshine meeting, and that he never instructed her to turn anybody away. “I told her that she should not exclude any member of the public – Mr. Elisburg in particular.”

Helfman said that had it been an executive session, he would have been advised of this in advance and that executive meetings are normally held in the afternoons. He said he learned that, contrary to his advice, Mr. Elisburg had been turned away later that day. He said he first received a call from Melissa White, executive director of the Key Biscayne Foundation, and later from Councilmembers de La Cruz and Petros who asked if what the Mayor had told them regarding his counsel was correct – that he had told her to close the meeting. “I was troubled to hear from other people that I gave advice that I did not give,” he said.

Helfman said he later contacted Mayor Lindsay and discussed the matter with her, noting his concern about her portrayal of the conversation he had with her on March 1. He said that she did not dispute the accounts, but was dismissive of the matter as to whether the meeting was improperly closed, saying that it was really “not a big deal” and that after she explained to Elisburg the sensitive nature of the meeting, that he “graciously left” and did not protest.

Note: Copies of phone records – four screen shots – were provided to investigators, and were added to the file. The records indicate Helfman received messages from Mayor Lindsay at 3:20 p.m. on Feb. 28, the day prior to the Sunshine meeting, and twice again on March 1 (the day of the meeting) at 11:38 a.m. and 1:24 p.m. The messages lasted three, six and nine

seconds respectively. Partial transcripts of the messages are provided. The records also show that Councilwoman Petros left a message at 2:43 p.m. on March 1, and a partial transcription of that message references her concerns about the Sunshine meeting.

During a phone conversation on Oct. 3, 2018, Helfman provided his home office phone number. He said the Mayor sometimes calls him at that number, though he could not recall if that was the number used to contact him on March 1. He was aware of the recent public records request for an Actuarial Study concerning the Village's pension, and he said that citing this as the reason for closing the March 1 meeting was "a total red herring." He said the purpose at all times was to discuss the proposed hiring of an outside expert. He said that the Mayor, when she called him, made it clear that the issue was preventing Elisburg from attending the meeting to discuss the pension: "She called me to say I don't want him to attend the meeting. I don't want him to be a part of the conversation ..." He said he advised her she could not exclude him from the meeting and stated that, in his view, she violated the Sunshine Law by failing to heed his advice and closing but not canceling the meeting.

Donald Elisburg, resident of Key Biscayne
177 Ocean Lane Drive, Key Biscayne, FL
May 4, 2018

Elisburg was contacted by email in connection with the Sunshine meeting on March 1, 2018.

He was subsequently asked to provide a written account of what happened, and advised as follows in an email dated May 7, 2018:

"Mr. Ross,

"On Thursday, March 1, 2018, I went to City Hall with the expectation of attending a posted Sunshine meeting between Mayor Lindsay, Councilmember Petros and Councilmember de La Cruz. [See attached Village Calendar with the posted meeting]. As I was entering the Community Parking Garage I met Councilmember Petros and told her I would be joining them at the meeting as soon as I parked. She said great. After parking, I came across the street and was on my way upstairs with Councilmember de la Cruz to the meeting when I met Councilmember Petros coming back down to tell me that there was some problem attending as it was, according to Mayor Lindsay, a closed meeting. I proceeded up the stairs to the meeting room. I entered and sat down along with the two councilmembers. I was informed by the Mayor that this was an executive meeting {I believe she said an executive Sunshine meeting but I cannot be sure} and that she had talked to the Village Attorney who apparently said she could have a closed meeting because the content had to do with "negotiations." I asked the Mayor why they had posted it as a Sunshine meeting if it was some kind of Executive meeting. She reiterated that the substance was such that it required an executive meeting. I expressed my concern over the process but I also stated that if this were the purpose I would leave so they could get their business done. Neither of the Councilmembers seemed sure about the Mayor's view but were prepared to abide by the Village Attorney ruling. I left.

"I subsequently inquired of the Village Clerk what the rules were for Sunshine meetings as well as Executive Sunshine meetings and suggested if there were such meetings they should be posted as such.

"I am not an expert in the Sunshine process and I believe that the meeting in question may have been the very first I attended as a resident of Key Biscayne.

"Please let me know if you have any additional questions.

"Donald Elisburg"

Key Biscayne Councilman Luis de la Cruz was contacted via email by this investigator on May 10, 2018, and a written account of the events of March 1 was requested. Councilman de la Cruz replied on May 11, and advised as follows:

"Karl,

"Responding to your request below:

"On March 1, 2018, I attended a Sunshine Meeting scheduled to discuss the process of the negotiations of our pensions with our police and fire departments.

"Present were our Mayor, Mayra Lindsay, Councilmember Katie Petros and Don Elisburg, the executive director of a local condominium group.

"After we all greeted each other and sat down for the meeting, Mayra proceeded to tell the rest of us that Don Elisburg could not stay for our meeting because the matters to be discussed were in the nature of an executive session. Both Katie and I protested that it was a Sunshine meeting and that Mayra's reasoning did not seem correct and Don sat while we tried to make sense of the issue. Mayra then told us that she had already consulted the matter with our lawyer, Steve Helfman, and that she was right and that Don had to go. At that point, Don got up and left. Shortly thereafter, somewhat uncomfortable with the whole scenario, we proceeded to discuss that we should consider hiring an expert to advise us with respect to the pensions and that we would bring it up at a scheduled executive session the following week. We agreed to try to find names to suggest to the rest of the Council at the meeting. I don't remember anything else being discussed.

"Councilmember Brett Moss showed up at some point I believe after Don had left and we filled him in with what had transpired. Brett did not participate in the discussion.

"Please call me to discuss anything else you might want to know regarding this incident.

"Thanks for what you do.

"Luis F. de la Cruz
Councilmember
Village of Key Biscayne"

During a formal statement at the Miami-Dade State Attorney's Office on August 1, Councilman de la Cruz re-affirmed his written statement dated May 11, 2018. He said the written statement, provided to Investigator Ross via email, recounted events "to the best of my recollection" and that, in his view, no changes or additions were needed.

During a pre-statement interview, he advised as follows:

- That he thought the purpose of the Sunshine meeting was to discuss his proposal that the Village hire an expert to assist with the pension negotiations.
- He expected the meeting to be a short meeting to address this topic.
- He felt the Sunshine meeting was justified because the issue was time sensitive.
- Both he and Councilwoman Petros welcomed Elisburg's presence. "I didn't want him to leave. Katie (Petros) didn't want him to leave."
- "There's no question he was asked to leave (by the Mayor)."
- Neither felt there was a need to close the meeting, but relied on the Mayor's assurance that she was acting on advice from the City Attorney.
- That he was not aware of any animus between the Mayor and Elisburg, but that the Mayor was sometimes difficult to get along with.
- That he could not imagine the Mayor would intentionally mislead her colleagues.
- That in retrospect, he would not have relied on the Mayor's assurances she had spoken to the City Attorney but would have sought guidance on the matter directly.

Donald Elisburg, resident of Key Biscayne
July 26, 2018

Elisburg met with ASA Isis Perez and COE Investigator Ross on the above date at the Miami-Dade County State Attorney's Office. He provided a voluntary sworn statement in which he affirmed that the written statement he previously supplied by email on May 7 accurately reflected his knowledge of the incident occurring on March 1, 2018. He re-affirmed that Mayor Mayra Lindsay prevented him from attending the posted Sunshine meeting, and that the explanation or pretext for doing so was that she was acting on the advice of the City Attorney and that it was necessary to do this because of ongoing labor negotiations. He said he told her that he did not agree with her decision but that he would leave as directed.

During a pre-statement interview, Elisburg advised that he is 79 and would turn 80 the following week. He said that has lived in Key Biscayne off and on since 1996. He said he has lived there permanently since 2011, and that he helped found the Key Biscayne Condominium Presidents' Council. He said he serves as an unpaid executive director of the Council, which is comprised of the presidents of about 35 to 40 local condominium boards. He said that because of this role, he follows Key Biscayne municipal government closely, frequently attends council and board meetings and serves on Village advisory boards, as well.

By way of background, Elisburg said that he served as an attorney with the U.S. Department of Labor and later the U.S. Senate Committee on Labor and Human Relations for 18 years before entering into private practice in Washington, D.C., where he specialized in labor law. He said he frequently represented both labor unions and management in this capacity.

He said he had never attended a Village Sunshine meeting before, but saw that one was being held and that the topic was "the pension" and that he decided to attend. He advised that he was recovering from a serious infection in his leg and had difficulty walking. He said he had no idea what specific issues would be discussed, but was aware that there was a dispute between Mayor Lindsay and Village Manager John Gilbert with respect to his pension.

Elisburg noted that as the Village's former fire chief, Gilbert was entitled to a pension but agreed to defer his pension to serve as Village Manager. He said that due to what was in his opinion a poorly drafted agreement, it had since been called into question by Mayor Lindsay whether Gilbert had relinquished his right to a pension at the time he accepted the Manager's position. Elisburg said he felt this was being done vindictively by the Mayor.

Elisburg said that he has a cordial relationship with Mayor Lindsay and other members of the Village Council, adding that he "has no ax to grind" with the Mayor or any other Village official. He said he has disagreed publicly with the Mayor on a handful of issues, including kite boarding (behind his condominium), budgetary issues, police, as well as the issue as to whether Village Manager Gilbert is entitled to his firefighter's pension. He noted that he has a background in labor law, unions, pension issues, and helped draft the federal law regulating pension plans known as the Employee Retirement Income Security Act of 1974 (ERISA).

Elisburg suggested that because he is "somewhat knowledgeable about pensions," that perhaps this was a cause for concern on the part of Mayor Lindsay and that she may have felt "insecure" because of his presence at the Sunshine meeting. He said that when he walked into the meeting room on March 1 that he sensed that Mayor Lindsey "got nervous ... She did get uptight. She did get uptight because I was there ...". He said Lindsay advised him that she had consulted the City Attorney and that she was going to exclude him from the meeting. He said that he sensed Councilmembers Petros and de la Cruz were not comfortable about this but deferred to Lindsay because she claimed to have spoken to the City Attorney.

During a telephone interview on Oct. 29, 2018, Elisburg said that the issue of greatest controversy, as it related to the Village's pension, was whether now former Manager Gilbert was entitled to an additional accrual in his pension because of his service as Village Manager. He said Gilbert's position was that by virtue of not taking his pension at the time he left the Police Department, he was entitled to the accrual, whereas Mayor Lindsay, who negotiated the terms of his employment, felt that he was not entitled to the increase.

Elisburg said it was well known that he supported the Manager's position and opposed the Mayor's interpretation of the matter. He said he had expressed as much during pension board meetings. "Clearly I was one of the residents who had an opinion about it. Nobody could debate that." He said that the Mayor and another pension board member, former board Secretary Servando Parapar, were of the position the Manager's forfeited or waived his rights to any accrual for his time served as Village Manager. Elisburg said it was also widely acknowledged that Mayor Lindsay and the former Manager openly disagreed on many issues and that because of this, she was not supportive of him and may have felt animosity.

Kathleen "Katie" Petros, councilwoman
Village of Key Biscayne, FL
Aug. 15, 2018

Councilwoman Petros appeared for a voluntary sworn statement before Assistant State Attorney Isis Perez. She was accompanied by her husband William Petros, acting as her attorney. Also present was COE investigator Karl Ross.

Councilwoman Petros advised that she took office as a Councilmember on or about November 2016, and that it was her first time holding public office. She said she has received Sunshine Law training twice since then through the League of Cities. She said she has a cordial relationship with Mayor Lindsay, and is not aware of any problems between her and Donald Elisburg. She said she knows and respects Elisburg as a citizen and activist.

With respect to the Sunshine meeting on March 1, she said that Councilman Luis de la Cruz had been "pushing" to have the meeting to discuss hiring an outside expert to assist with the Village's ongoing pension negotiations with the police and firefighters' unions. She said that she agreed this would be a good idea and found later – after the meeting took place – that she had been identified by the Village Clerk as the requestor of the meeting. She said that she had been advised that no more than three councilmembers could attend, including the Mayor.

Councilwoman Petros stated that, until that time, all prior meetings concerning the pension had been held in executive session because they involved discussions of the actual negotiations, and that the Village Manager, Village Attorney and other senior management (the police and fire chiefs) were on-hand to discuss negotiation strategies. She said that the March 1 Sunshine meeting was different in that no management was present, and the scope of said meeting was limited to the issue about whether to hire an outside consultant.

Petros further stated that as she arrived at Village Hall that day, she saw Elisburg drive by in his golf cart and he informed her that he was on his way to the Sunshine meeting. She said that when she entered the meeting room, she found Mayor Lindsay and mentioned to her that Elisburg was planning to attend. She said that Lindsay expressed concern about whether Elisburg could attend and indicated she was going to consult the City Attorney.

Petros stated she left the meeting so that she could inform Elisburg that he may not be allowed to attend the meeting and that she did so "as a courtesy because he was an elderly gentleman and had trouble walking" and didn't want him to have to walk up the stairs to the meeting room. She said that he said he would climb the stairs and go to the meeting room anyway. She said that when she returned to the room along with Elisburg two to three minutes later, Councilman de la Cruz was present along with Mayor Lindsay.

Petros said that at that time, Mayor Lindsay "addressed Don, telling him he can't attend the meeting because we were going to discuss pension issues." She said that Elisburg did not protest and agreed to leave, stating he would speak to the elected officials individually at a later time. She said they proceeded to discuss whether to hire a consultant, adding that the Village ultimately did hire a consultant and that the pension negotiations have since been concluded with police and firefighters seeing increased benefits.

Petros said she did not actually see or hear Mayor Lindsay on the phone with the City Attorney but seemed to recall her reaching for her phone after she stated that she was going to seek advice as to whether Elisburg could remain for the meeting. She said she later prepared the minutes for the meeting about an hour after it concluded.

Mayra Pena Lindsay, Mayor
Village of Key Biscayne, FL
Nov. 2, 2018

Mayor Lindsay reported to the Miami-Dade County State Attorney's Office for a voluntary sworn statement on the above date. She was accompanied by attorney David Rothman. The interview was led by Assistant State Attorney Isis Perez.

Mayor Lindsay stated that she had lived in Key Biscayne for the past 25 years, and that she previously served four years as a Councilwoman, and four years as Mayor. She said her term as Mayor would conclude on Nov. 15 when the new Mayor is installed.

She said she has a law degree from the University of Miami and handles special projects for the Miami-Dade Public Defender's Office, but does not practice law.

Mayor Lindsay said the March 1 meeting resulted from a request by Councilwoman Katie Petros to hold a meeting to discuss the pension plan prior to an upcoming executive session. She said it was her assumption that Petros and another Councilmember, Luis de la Cruz, wanted to discuss a recently distributed actuarial study that was marked "confidential." She said that she assumed this because Petros is a number's person and that Petros remarked that "there's a lot of preparation that needs to be done" to get ready for negotiations.

Mayor Lindsay said that neither Petros nor de la Cruz specifically mentioned the study, but that this is what she assumed they wanted to meet to review and discuss. She said she was not aware that Petros and de la Cruz believed the purpose of the meeting was to discuss hiring an outside consultant with expertise in pension matters to advise the council during negotiations. "The Sunshine meeting was about ... What I thought it was about was the pension negotiations and the actuarial study, which was a confidential document."

She said the conversation about scheduling a meeting to discuss the pension plan occurred at the end of the February 27th special meeting to discuss the Parkland shootings and gun control policy. She said she did not know if the conversation was captured by the audio system. She said that after having this conversation, they notified the Village Clerk who was standing nearby. (Note: The online recording of the meeting does not capture this exchange.)

Mayor Lindsay described Don Elisburg as 'a nice, involved resident.' She noted that she had appointed him to the Village's Underground Utilities Task Force.

On the date of the March 1 meeting, Lindsay said she was arriving late to the meeting room when she crossed paths with Councilwoman Petros on the stairs. She said Petros told her "we have a problem," and that the problem was Don Elisburg was planning on attending the

meeting. She said she responded by calling Village Attorney Steve Helfman for guidance.

"I told him (Helfman) we were discussing pension negotiations. He tells me [the meeting] was not noticed correctly and that we should probably not have the meeting. ... He confirmed to my mind that the meeting was improperly noticed and that we should not have the meeting." She said the conversation was brief, lasting no more than 1 to 2 minutes.

"So I walked into the room, and I said, 'Guys, I think we have a problem. ... We're discussing pension negotiations, and is improperly noticed and we can't have the meeting. ... I was just trying to regurgitate what Steve had told me ...'" She said she advised Elisburg that he would have to leave and he said that if he had known he wouldn't have woken up so early, or that he would have gotten breakfast. "At that point I thought we were done" with the meeting.

"Don asked if he should leave, and I said, 'yes.' ... We started discussing how the meeting wasn't noticed properly, and we should avoid repeating this ..." She said she and her colleagues then went on to discuss their respective families, noting that Councilman de la Cruz mentioned he was going to miss an upcoming meeting because he would be visiting his son in Colorado. She said de la Cruz stated he was relieved to miss the meeting because he was having difficulty understanding the pension and thought we needed an outside consultant. She said they then picked up on the topic of hiring an outside consultant. She said that de la Cruz and Petros had stated during a previous executive session they wanted to hire a consultant. Under questioning from ASA Perez, Lindsay admitted she made a mistake by staying in the room and discussing Village business, in particular the question as to whether to hire an outside consultant. "I made a mistake by not leaving the room" as soon as she announced that Elisburg could not attend. She said she did not intend to re-open the meeting afterwards.

Mayor Lindsay maintained she believed the meeting was not about the issue of hiring a consultant but the findings of the actuarial study. She said Petros had a copy in front of her that day, so she believed that Petros was also expecting to discuss the study. She said she felt bad for the way Elisburg was treated, and that she has since apologized to him.

Lindsay assumed responsibility: "It's a cloud and a tarnish on my reputation," she said. "It's devastating to me that there's a perception we don't operate in the Sunshine. It's eroded the public trust, but we try to do things correctly ... Perception is everything. It's absolutely my fault. I could have prevented it. I just didn't think quickly enough ..."

Document/Audio/Video Review:

A copy of the meeting notice for the March 1, 2018, Sunshine Meeting regarding the Village of Key Biscayne's pension plan was retrieved from the Village's official website at the following address:

<http://keybiscayne.fl.gov/index.php?src=events&srctype=detail&category=Council%20Meetin>

g&refno=7501

The text, as it appears on the notice, appears as follows (my highlight):

PUBLIC NOTICE

Notice is hereby given that

Councilmember Katie Petros, Mayor Mayra Peña Lindsay
and Councilmember Luis de la Cruz
will meet regarding the Pension

on Thursday, March 1, 2018

at 9:00 a.m.

The meeting is open to the public.

Council Office, Suite 200
Village Hall

Review of AT&T records for Mayor Lindsay and City Attorney Helfman

Phone records obtained pursuant to a state subpoena were analyzed and reviewed (see file).

Public records requests to Key Biscayne City Clerk Jennifer Medina

On Oct. 3, 2018, COE issued a public records request to Clerk Medina, as follows: *Pursuant to F.S. 119, we would like to request a copy of the Actuarial Study commissioned on or about June 2017 regarding the City's pension and released on or about February 16, 2018, along with a copy of any emails or written communication to elected officials regarding said study.*

An additional records request was made to Clerk Medina that same day, as follows: *In addition to my public records request form earlier today, please also include a request for a copy of the hourly billing statement from City Attorney Helfman for the period from March 1 to 15 of this year.*

On Oct. 23, 2018, COE downloaded and reviewed several DVDs provided by Key Biscayne Clerk Jennifer containing numerous email records and other electronic files responsive to the initial request for records made on Oct. 3, 2018.

Among the items of possible relevance were the following:

- Email from Assistant Village Attorney Brett Schneider dated Feb. 20, 2018, to Mayor Lindsay and other elected officials containing a copy of the Feb. 16, 2018, actuarial study prepared by GRS Retirement Consulting. In the email, Schneider states that: "I

understand that we are scheduled for executive session on Monday, February 26 at 6:00 pm and we can discuss collectively at that meeting.”

- A copy of the actuarial study dated Feb. 16, 2018, regarding the “Village of Key Biscayne Police Officers and Firefighters Retirement Plan.” (Note: The study is marked as “CONFIDENTIAL.”)
- An email exchange between Councilwoman Petros and GRS Consulting’s actuary Peter Strong regarding the scheduling of a meeting to discuss the findings of the actuarial report. In response to Petros’ initial email on Feb. 28, 2018, Mr. Strong proposes meeting the following day (March 1) between 10 a.m. and 12 noon. The councilwoman responds at 9:33 a.m. on March 1, saying that 11 to 11:15 “is fine.” (Note: This reply would have occurred at or about the same time the March 1st Sunshine meeting was in session, and the agreed upon time of 11 to 11:15 a.m., would have taken place after the anticipated conclusion of the Sunshine meeting.)
- A summary agenda for the Jan. 25, 2018, pension board meeting (Key Biscayne Police Officers’ & Firefighters’ Retirement Plan) was also included among the response items, and stated in item 9 (b.) regarding former Manager John Gilbert that, based on calculations provided by GRS Consulting, a proposed ordinance to allow “in-service and retroactive payments” to Mr. Gilbert would increase the Village’s “unfunded actuarial liability” (UAL) as of Oct. 1, 2017, in the amount of \$626,900.
- Note: While there were several emails from Pension Board Member Servando M. Parapar to Mayor Lindsay, there were no emails containing “sidebar” discussions of the impact of the former manager’s pension between Parapar and Lindsay. Among the return items were no email replies from the Mayor to Mr. Parapar.

On October 29, billing records for Village Attorney Steve Helfman were reviewed for the month of March 2018, and they indicated the following relevant entries:

- On 2/28/18 he had an entry (0.20 hrs), “Review Sunshine Notice On Pension Meeting.”
- On 3/1/18 he had an entry (0.70 hrs), “Follow Up On Ellisburg [sic] Sunshine Issue.”
- On 3/2/18 he had an entry (0.60 hrs), “Follow Up With Various Council Members Regarding Sunshine Issues and Small Meetings.”


The records had been obtained pursuant to a records request, and serve to memorialize that an issue did arise on March 1 relating to Mr. Elisburg’s attendance at the Sunshine meeting.

Video of the February 27, 2018, special meeting regarding the Parkland school shooting was reviewed. The meeting lasted approximately 1 hour and 5 minutes. The video concluded as soon as the meeting was adjourned and did not show the subsequent interaction between Mayor Lindsay and councilmembers Petros and de la Cruz, as previously described.

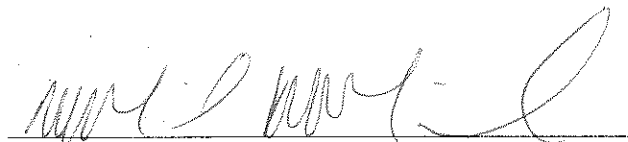
Conclusion(s):

At the instruction of the Independent Ethics Advocate, Michael P. Murawski, the findings contained in this report were referred on May 11, 2018, to the Miami-Dade State Attorney's Public Corruption Task Force for review, and possible criminal prosecution. SAO indicated on or about Nov. 2, 2018, that it did not intend to prosecute the mayor criminally, though the matter remains before the Ethics Advocate as to whether further action is warranted.

After further review by the Advocate, it was determined that this matter would be closed with no further action as the evidence does not support the conclusion that the Mayor intentionally violated any matters within the jurisdiction of the Ethics Commission.


Karl Ross, COE Investigator

Approved by:


Michael Murawski, Advocate


Jose Arrojo, Executive Director