



Miami-Dade Commission on Ethics & Public Trust
Investigative Report

**CASE
CLOSED**

Investigator: Susannah Nesmith
Complainant: Richard Weiner

Case No.: K19-08

Date: 3/18/19

Subject/Case Name: Chief William Hernandez

Date Opened: 2/12/19

Date Submitted: 3/1/19

Allegation(s):

The Police Chief of the North Miami Beach Police Department, William Hernandez (Chief Hernandez) responded to a public record request by stating that there were no documents responsive to the request; subsequently documents were provided to complainant by the City Attorney.

Relevant Law:

119.01 General state policy on public records.

(1) It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.

CITIZENS' BILL OF RIGHTS

(A) This government has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administrative management, to make government more accountable, and to insure to all persons fair and equitable treatment, the following rights are guaranteed:

2. Truth in Government. 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.

3. Public Records. All audits, reports, minutes, documents and other public records of the County and the municipalities and their boards, agencies, departments and authorities shall be open for inspection at reasonable times and places convenient to the public.

Investigation:

Timeline of events:

- November 19 – Sgt. Robert Williams (Williams) was informed that he has been taken off the midnight shift. (Two other officers were also taken off midnights, but they are not relevant to this investigation and have been left out of this timeline.)
- November 20 – Complainant Weiner files a grievance on behalf of Williams.
- November 29 – Maj. Stuart Nichols (Nichols) prints out a stack of e-mails to give to Chief Hernandez.
- December 6 – Grievance hearing is held in front of Chief Hernandez. Complainant Weiner asks Chief Hernandez if he has a file regarding issues that prompted Williams to be taken off the midnight shift. Chief Hernandez denies that he had any paperwork to provide.
- December 10 – Chief Hernandez denies the grievance of Williams.
- December 27 – In preparation for an appeal of Chief Hernandez's decision, Complainant Weiner e-mails the director of Human Resources again asking for any notes, memos and records produced by Capt. Rodriguez, Nichols or Chief Hernandez regarding the decision to take Williams off the midnight shift.
- December 28 – Chief Hernandez responds that no such documents exist.
- December 31 – Williams wins the grievance hearing and is allowed to go back on the midnight shift. He meets with Nichols, who shows him the stacks of e-mails during a discussion of whether Nichols was "keeping a file" on Williams.
- January 17 – Complainant Weiner again requests the same records, this time including an Assistant City Attorney in the e-mailed request, because the Human Resources Director has left the City. Weiner makes it clear he is asking for these records under Chapter 119.
- January 23 – City Attorney Sarah Johnston sends a scanned copy of the stack of e-mails Nichols printed out before the December 6 grievance hearing to Weiner in response to his public record request.

On February 26, 2019, this investigator took a sworn statement from Williams. Williams said that on New Year's Eve he met with Nichols after the grievance hearing in front of Human Resources Director Elsa Jaramillo-Velez that morning. He was accompanied by Det. Edward Garcia, a member of the union board, at this meeting.

Williams said he had heard about a file Nichols had compiled on him and asked Nichols about it. Williams said Nichols pulled a stack of papers out of his desk drawer. The papers were held together by a black binder clip.

Williams said he told Nichols that the packet of papers is what the union attorney was requesting when he made a public records request. Williams said Nichols told him that Chief Hernandez had told him not to release the papers. "He told us the Chief told him he was not allowed to release the file," Williams said.

Williams said he was told by Rebecca Hastings, the union president, that Nichols told her that he had given the file to the Chief.

Williams said he still hasn't seen the file, but that he understands it has been provided to his attorney.

On February 26, 2018, this investigator took a sworn statement from Det. Edward Garcia (Garcia), a member of the North Miami Beach Police union board. Garcia said he was contacted on New Year's Eve by both Williams and Nichols, to attend a meeting as a witness.

Garcia said Nichols had a stack of papers. He said Williams asked Nichols if he had released these documents when the union asked for the file on Williams and Nichols said he had not. Garcia said that Nichols said the Chief instructed him not to.

On February 26, 2018, this investigator took a sworn statement from Nichols, who was accompanied by Valerie Vicente, Senior Assistant City Attorney.

Nichols said that when he met with Williams on Dec. 31, 2018, Williams confronted him about "keeping a file" on him, saying that he (Williams) had never kept a file on Nichols.

Nichols said he had a stack of e-mails that he had printed out, though he didn't consider that "keeping a file" on someone, since the e-mails were kept in his Sent folder, just like all the other e-mails he had sent.

"I printed them out for the Chief to have as reference during the grievance process," he said.

(In a follow-up via e-mail Nichols clarified that he printed the e-mails, as well as a document from the department's internal personnel management system, after the grievance was filed. The personnel document indicates it was printed on Nov. 29, 2018.)

He said he included two e-mails sent by Maj. Ochoa in the stack of printed e-mails. They were not in a file folder, but were secured with a black binder clip. The e-mails were all regarding problems with Williams' completion of paperwork or other required duties.

Nichols said Williams accused him of withholding the e-mails, but he said no one at the City or from the union ever asked him specifically for the records.

"When it came down to the 119 request, the Chief responded with his own e-mail and copied the City Attorney," he said. He said he was also copied on that e-mail, so he knew what the Chief's response had been.

Nichols said he didn't ever deny access to public records, because he was not asked for any public records.

He said he explained to Williams that the Chief told him not to turn over anything to the union, but he understood that was because there were official channels the union had to go through to get information.

He also said there never was a performance plan for Williams.

On February 27, 2019, this investigator took a sworn statement from Chief Hernandez. Chief Hernandez said his initial response to the public records request he received in this case was that there were no records related to his decision to take Sgt. Williams off the midnight shift.

"I do recall that I had not generated anything," he said. He explained that the move to take Williams off midnights was done pursuant to "Article 12, Administrative Rights."

He said the article allows him to move four people per shift, every single shift bid, "so I was making the decision to move this one sergeant from the midnight shift to the day shift." He said no formal investigation had to be done to justify that type of move, and none was done in this case.

After he moved Williams off midnights, the union filed a grievance. Prior to the first grievance hearing, at which he presided, Chief Hernandez said Nichols gave him a stack of e-mails between Williams and Nichols. Chief Hernandez said he flipped through them and gave them back to Nichols.

"They [the union] have a belief I guess that there were memos generated, there was performance plan. Nothing like that was generated," he said. "We hadn't even got anywhere near that with Williams."

Chief Hernandez denied Williams' grievance. Williams appealed that decision to the City Manager's designee, the Human Resources Director. Again, the union attorney asked for the public records that resulted in Williams being taken off midnights. Again, Chief Hernandez said there were none. (The Human Resources Director granted Williams' grievance and he is back on midnights.)

Chief Hernandez also said that because the stack of e-mails that he flipped through were all available to Williams in his own e-mail inbox or sent folder, he didn't think that's what the union was looking for.

When the January 17 public records request was filed, Chief Hernandez said City Attorney Sarah Johnston asked him if there was any file on Williams, because the union kept asking for the same thing. He told her that Nichols had a stack of e-mails to and from Williams. He said she requested those to turn over to the union, even though they were not the basis of his decision to take Williams off midnights.

Documents/Exhibit Review:

On February 13, 2019, this investigator met with Sgt. Rick Silberman, of North Miami Beach Police Internal Affairs. Sgt. Silberman turned over the following documents:

- A Citizen Complaint Affidavit filled out and signed by Richard Weiner.
- A December 27, 2018 e-mail from Weiner to Elsa Jaramillo-Velez with a subject line of "Records required for Grievance Hearing to be conducted on December 31, 2018. It is copied to William Hernandez, Stuart Nichols, Sandy Rodriguez, Rafael Florencio, Michael

Acevedo, Shaunetta Durham, Eddie Garcia, Eric Rivera, Dukens Sanon, Rick Gomes and Robert Williams, all of North Miami Beach PD. Also copied are Robert L. Norton and Robert Palmacci. In the e-mail, Weiner requests, in part, "any and all notes, memos and records generated by Captain Rodriguez, Major Nichols and Chief Hernandez in connection with the actions taken by the police department resulting in Sgt. Robert Williams being prohibited from rebidding his current midnight shift."

- A December 28, 2018 e-mail from Chief William Hernandez to Ms. Jaramillo-Velez with a subject line of "Robert Williams." In it, Chief Hernandez says "As per Article 12, the decision to place Sergeant Robert Williams was management rights and within my sole discretion. Therefore no documents."
- A December 28, 2018 e-mail from Ms. Jaramillo-Velez, replying to all the people copied on the December 27 e-mail, and relaying that there were no responsive documents.
- A January 17, 2019 e-mail from Weiner to Chief Hernandez with a subject line of "North Miami Beach IUPA Local 6005 – Restated Request for Public Records (F.S.S. 119.07) and for Necessary Information (Chapter 447, Florida Statutes). This e-mail is copied to Assistant City Attorney Giovanni Denis. In the body of the e-mail, Weiner explains that he is copying the Assistant City Attorney because the Human Resources Director he had been corresponding with had left the City and he was unsure who would be responsible for retrieving the records for him. This e-mail asks for the same records requested on December 27, along with "the analysis provided by Captain Rodriguez to Sgt. Williams regarding his shift's productivity levels, or the purported 'performance plan' that was implemented for Sgt. Williams – which does and did not exist." The e-mail also requests information pursuant to Chapter 447, which is beyond the scope of this investigation.
- A January 23, 2019 e-mail from Robert Norton at Allen Norton & Blue addressed to Richard Weiner. This e-mail refers to the information requested under Chapter 447 and is therefore beyond the scope of this investigation.
- A January 23, 2019 e-mail from North Miami Beach City Attorney Sarah Johnston to Richard Weiner, responding to the January 17 records request, with 51 pages of e-mails attached.

Conclusion:

After consultation with the Ethics Advocate, it was determined that this matter would be closed with no further action. No violation of an ordinance within the jurisdiction of the Ethics Commission was violated. Chief Hernandez' position was that he did not rely on the e-mails in making his determination to move Williams off the midnight shift. That was why he responded to the original request that there were no documents responsive. From the Chief's perspective, this was an accurate statement. The City Attorney took a broader view of the public record request and turned over the e-mails, however, as he stated, Chief Hernandez did not use those e-mails in his decision process to move Williams off the midnight shift.



COE Investigator

Approved by:



Michael Murawski, Advocate



José Arrojo, Executive Director

