

## Frigo, Victoria (COE)

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**From:** Frigo, Victoria (COE)  
**Sent:** Monday, April 22, 2013 12:52 PM  
**To:** 'Pepe, Thomas F.'  
**Cc:** Centorino, Joseph (COE)  
**Subject:** RE: Cone of Silence not applicable to City Manager (INQ 13-91)

No, the solicitation process is not governed by the Cone of Silence when the City searches for potential candidates for the City Manager position.

### VICTORIA FRIGO, SENIOR STAFF ATTORNEY

Direct Phone: 305 350-0601  
Main Number: 305 579-2594  
Fax: 305 579-0273



19 West Flagler St., Suite 820  
Miami, FL 33130

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**From:** Pepe, Thomas F. [mailto:TPepe@southmiamifl.gov]  
**Sent:** Monday, April 22, 2013 12:48 PM  
**To:** Frigo, Victoria (COE)  
**Cc:** Centorino, Joseph (COE)  
**Subject:** RE: Cone of Silence not applicable to City Manager (INQ 13-91)

The situation we are in presently is that we have an interim City Manager and we have been advertising for a permanent City Manager. The Commission is in the process of selecting three candidates. The commission will then begin negotiating with their first choice. My question concerns the selection process in which the City is searching for qualified candidates for the office of City Manager.

Is the solicitation process, in which the City searches for 3 potential candidates, governed by the Cone of Silence, as it would be if the City were to search for a consultant?

Very truly yours,

*Thomas F. Pepe*

City Attorney  
City of South Miami  
1450 Madruga Avenue, Ste 202,  
Coral Gables, Florida 33146  
Tel: (305) 667-2564  
Fax: (305) 341-0584  
E-mail: [tpepe@southmiamifl.gov](mailto:tpepe@southmiamifl.gov)

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**From:** Frigo, Victoria (COE) [FRIGOV@miamidade.gov]  
**Sent:** Monday, April 22, 2013 11:53 AM  
**To:** Pepe, Thomas F.  
**Cc:** Centorino, Joseph (COE)  
**Subject:** [BULK] RE: Cone of Silence not applicable to City Manager (INQ 13-91)

Mr. Pepe,

In consultation with Mr. Centorino, we read the Cone of Silence to apply to an RFP, RFQ, or some form of a bid. The Cone of Silence does not apply to contracting for your city manager.

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**From:** Pepe, Thomas F. [mailto:TPepe@southmiamifl.gov]  
**Sent:** Monday, April 22, 2013 11:43 AM  
**To:** Frigo, Victoria (COE)  
**Cc:** Centorino, Joseph (COE)  
**Subject:** RE: Cone of Silence not applicable to City Manager (INQ 13-91)

Dear Ms. Frigo:

The City Manager is a Chartered "Officer", as are the City Clerk and the City Attorney. He is not hired as an employee. An employee is someone whose services are overseen by another and who is told how to perform his or her labor. No one controls how the City Manager performs his services and the City Charter specifically prohibits the City Commission from interfering with how he performs his services. If they do not like it, the Commission can fire him. He is an independent contractor and he has a written, negotiated contract with the City for his services which spells out his duties and compensation. The contract includes benefits, means of termination, term of office, etc. He is not an "at will" employee.

It may be that our city charter is different from the one that was addressed previously by the MDC Commission on Ethics. Does this change your opinion as to whether the Cone of Silence applies to the solicitation of our City Manager? If not, how is this different from the hiring of a consultant since our City Manager has a "contract" with the City?

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**Sent:** Monday, April 22, 2013 11:07 AM  
**To:** Pepe, Thomas F.  
**Cc:** Centorino, Joseph (COE)  
**Subject:** [BULK] RE: Cone of Silence not applicable to City Manager (INQ 13-91)

Mr. Pepe,

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This means that the Cone of Silence *applies* when the city is *procuring* goods and services, such as the services of a consultant who is contract worker (not a city employee). The Cone does *not* apply when the city is *hiring a city employee* (e.g., the city manager).

Please feel free to contact me if you need further clarification.

Sincerely,

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**From:** Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]  
**Sent:** Thursday, April 18, 2013 5:31 PM  
**To:** Frigo, Victoria (COE)

**Cc:** Centorino, Joseph (COE)

**Subject:** RE: Cone of Silence not applicable to City Manager (INQ 13-91)

Since the City Manager is required to provide the City with numerous reports, does this mean that the Cone of Silence does not apply to any solicitation when the contract is merely for services, such as that of a consultant? If not, what is the distinction so that I may know when a solicitation of services would be governed by the Cone of Silence ordinance and when it would not?

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**From:** Frigo, Victoria (COE) [FRIGOV@miamidade.gov]  
**Sent:** Thursday, April 11, 2013 4:04 PM  
**To:** Pepe, Thomas F.  
**Cc:** Centorino, Joseph (COE)  
**Subject:** [BULK] Cone of Silence not applicable to City Manager (INQ 13-91)

Mr. Pepe,

We have interpreted the Cone of Silence at Sec. 2-11.1 (t) of the County Code to apply to procurement contracts for goods and services. The selection process for hiring a City Manager would *not* fall within the Cone.

Sincerely,

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**From:** Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]  
**Sent:** Wednesday, April 10, 2013 8:13 PM  
**To:** Frigo, Victoria (COE)  
**Subject:** Cone of Silence applicable to City Manager

Does the Cone of Silence apply to the competitive selection of a city manager?

Very truly yours,

*Thomas F. Pepe*

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## Frigo, Victoria (COE)

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**From:** Frigo, Victoria (COE)  
**Sent:** Monday, April 22, 2013 11:54 AM  
**To:** 'Pepe, Thomas F.'  
**Cc:** Centorino, Joseph (COE)  
**Subject:** RE: Cone of Silence not applicable to City Manager (INQ 13-91)

Mr. Pepe,

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**Sent:** Monday, April 22, 2013 11:43 AM  
**To:** Frigo, Victoria (COE)  
**Cc:** Centorino, Joseph (COE)  
**Subject:** RE: Cone of Silence not applicable to City Manager (INQ 13-91)

Dear Ms. Frigo:

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**Subject:** [BULK] RE: Cone of Silence not applicable to City Manager (INQ 13-91)

Mr. Pepe,

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Please feel free to contact me if you need further clarification.

Sincerely,

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**Subject:** RE: Cone of Silence not applicable to City Manager (INQ 13-91)

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**Cc:** Centorino, Joseph (COE)  
**Subject:** [BULK] Cone of Silence not applicable to City Manager (INQ 13-91)

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**Sent:** Wednesday, April 10, 2013 8:13 PM  
**To:** Frigo, Victoria (COE)  
**Subject:** Cone of Silence applicable to City Manager



Does the Cone of Silence apply to the competitive selection of a city manager?

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## Frigo, Victoria (COE)

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**From:** Frigo, Victoria (COE)  
**Sent:** Monday, April 22, 2013 11:08 AM  
**To:** 'Pepe, Thomas F.'  
**Cc:** Centorino, Joseph (COE)  
**Subject:** RE: Cone of Silence not applicable to City Manager (INQ 13-91)

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**Subject:** [BULK] Cone of Silence not applicable to City Manager (INQ 13-91)

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