



BROWARD OFFICE OF THE INSPECTOR GENERAL

MEMORANDUM

To: Honorable Lynn Stoner, Mayor,
and Council Members, City of Plantation

From: John W. Scott, Inspector General

Date: April 15, 2022

Subject: **OIG Closing Memorandum Re: *City of Plantation's Loss of Public Records, Ref. OIG 21-011-M***

INTRODUCTION

The Broward Office of the Inspector General (OIG) closes its investigation into an allegation that employees of the City of Plantation failed to abide by Florida's public records laws when a staff member destroyed an employment applicant's paperwork.

The specific allegation was that certain city staff prematurely disposed of a professional portfolio of documents that a job applicant had submitted to the city when applying for its city clerk position. The OIG's investigation substantiated the allegation that the city failed to retain the documents in violation of Florida's public records law.

We did not ascertain that there was a systemic issue in this isolated and apparently unintentional incident.¹

We now memorialize our findings in this matter.

INVESTIGATION

In the course of its investigation, the OIG reviewed numerous documents, including a job advertisement, job applications and related supporting documents, the city's Public Records Request Policy, and the city's public records requests database. The OIG also interviewed current and former town employees, officials, and others with information relevant to the investigation.

¹ Considering the nature and source of the failures outlined below, this office has not determined that a report in this matter would assist the county or any municipality in preventing similar future misconduct. Broward County Charter Sec. 10.01 D.

A Brief Discussion of Relevant Public Records Law

The state's public records laws declare, "Providing access to public records is a duty of each agency" of the state.²

"Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.³

Florida statutes authorize the Florida Department of State's Division of Library and Information Services (the Division) to adopt rules to establish retention schedules and a disposal process for public records with which each agency must comply.⁴ A public record may be disposed of only in accordance with the Division's retention schedules and procedures, which are binding on each agency.⁵

The Division's General Records Schedule GS1-SL for State and Local Government Agencies effective August 2020 specifies that local government agencies must retain original employment application and selection records for a minimum of four anniversary years after the personnel action.⁶

That schedule also specifies that local government agencies must properly document any public records disposition. Such documentation would include a record of the retention schedule number, the retention schedule item number, the record series title, inclusive dates, the volume in cubic feet of paper records or number of bytes of electronic records disposed, the manner of disposition, and the date of disposition. An agency must permanently maintain this record of the destruction of records.⁷

A violation of Chapter 119, Florida Statutes, by a public officer is a noncriminal infraction and punishable by a fine not exceeding \$500, and a willful and knowing violation of Chapter 119 by any person is a misdemeanor of the first degree.⁸

The Submission of Applications for City Clerk and a Request for the Return of a Portfolio

On February 4, 2021, the city advertised for individuals to apply for the position of city clerk. On February 16, 2021, an individual (Candidate) applied for the job via the city's online application software, NeoGov.

The application deadline was February 24, 2021, by which time there were 73 applicants for the job.

² Fla. Stat. Sec. 119.01(1).

³ Fla. Stat. Sec. 119.011(12).

⁴ Fla. Stat. Sec. 119.021(2).

⁵ Fla. Stat. Secs. 119.021(2), 257.36(6).

⁶ Item #24 of GS1-SL, titled, "Employment Application and Selection Records" includes "all records that document the selection process and justify the selection decision, including but not limited to" "applications and resumes for employment," "correspondence," and "credential documentation."

⁷ GS1-SL (Aug. 2020), at p. v.

⁸ Fla. Stat. Sec. 119.10.

All of them, including Candidate, completed and submitted the required online job application form and answered the online “Agency-Wide Questions” and “Job Specific Supplemental Questions.” Additionally, 41 of the applicants provided resumes, 13 provided cover letters, and 17 provided other records, including copies of training certificates and academic transcripts. All the applicants who submitted additional records submitted them electronically—except for Candidate, who hand-delivered her professional portfolio of original documents to city hall. Candidate’s portfolio included a resume, cover letter, performance evaluations, and proof of work that she had done in the past, including copies of grant applications that she had worked on. Some of the records were originals.

Between March 1, 2021, and March 9, 2021, the city interviewed 12 applicants, including Candidate. On March 24, 2021, the city council passed a resolution appointing another applicant as the city clerk. On March 26, 2021, the city’s employment manager sent an email to Candidate informing her that the city had filled the position.

On March 27, 2021, Candidate telephoned the HR coordinator, who had worked as the HR department’s public records liaison for about ten years. During this telephone call, Candidate requested the city return her portfolio, but the coordinator told her the portfolio was “now a public record” and referred her to the city clerk’s office. Candidate then made her request to the assistant city clerk. Four days later, she received an email that the assistant city clerk caused to be generated through GovQA, the software the city used to document and manage public records requests. The email stated that Candidate’s request for records would be forwarded to the relevant departments to locate the information sought and to determine the volume of records and any associated costs with satisfying the request. It also provided a link to where Candidate could monitor the request’s progress. And it stated that Candidate would be contacted when the request was completed.⁹

The Portfolio’s Disappearance

On April 6, 2021, an administrative assistant within the human resources (HR) department emailed Candidate, apologizing, and explaining, “My sincere apologies, the information you provided was accidentally [sic] prematurely destroyed.” In response to Candidate’s follow-up inquiry the following day, the HR director wrote an email stating the following:

I apologize for the situation. The destruction of the information was an oversight and as such was not authorized or approved. No other records were destroyed as no other candidates provided information in a paper format, all information was

⁹ The OIG obtained and reviewed the city’s “Public Records Requests Policy,” which the city attorney had reviewed in December 2019. The policy provided guidance to city staff on how to respond to public records requests to comply with state law. It did not address the retention or destruction of public records. It correctly defined a public record, correctly stated that a public records request could be verbal or in writing, and correctly said that it was improper to ask the identity of requestors or to ask why they were making a request. It required that “All Records requests . . . received by any Department are to be immediately sent to the City Clerk” and that the clerk “will enter into GovQA any requests . . . for tracking and assignment purposes.” It provided for the public records liaisons in each department, in addition to the department head. The OIG reviewed records from the GovQA database for the period of January 2, 2021, to August 3, 2021, during which time the city received 2,927 requests—2,405 were for police department records, and 495 were for other city records. The review did not identify that the city had any systemic issues in handling public records requests. Thus, although arguably it was not correct for the HR coordinator to fail to accept Candidate’s public records request and to impose the condition of speaking directly with the assistant city clerk (see [Florida Attorney General Informal Opinion of May 27, 2011](#)), the city otherwise processed Candidate’s request in accordance with the city’s policy and state law.

uploaded into NeoGov and as such is still in that system. This was not done maliciously, but was an honest mistake as the individual who did this believed we already had the record and it was a duplicate.

With regard to your original call, the individual you spoke to was unaware that the documents were not available as the employee who inadvertently destroyed the document was on vacation. Therefore, she provided you with the appropriate response for requesting a public record based on her knowledge.

Among the city records that the OIG reviewed were job applications and related documents from 73 applicants. With regards to Candidate, the city only provided the completed online application form she had submitted and an unsigned note that stated in whole,

March 2021 – City Clerk applicant [Candidate’s name]
Information provided by applicant was accidentally [sic] prematurely destroyed.

When the OIG inquired about the matter, none of the city staff admitted to the portfolio’s destruction. Specifically, the HR administrative assistant and the HR director both informed Candidate that staff had destroyed the hard copy because they thought the city already had an electronic copy, but they told the OIG merely that they could not locate it and “assumed” it had been “disposed.”

The administrative assistant told the OIG that she was the employee who received the portfolio from Candidate at city hall, and when Candidate requested it be returned, she could not locate it. She did not know what happened to it but “assumed it was disposed of,” although she had no recollection of disposing of it. She said that after she told Candidate that the portfolio had been disposed of, she informed the HR director what she told Candidate.

The HR director told the OIG that after Candidate requested the portfolio be returned to her, HR staff “looked for it, [but] it appears we did not keep it” and that the administrative assistant could not recall what she did with it. According to the HR director, the administrative assistant believed the hard copy documents were duplicates of what Candidate had submitted electronically and that may have been the reason the administrative assistant did not keep the portfolio.¹⁰

The OIG requested the city clerk to provide records of the disposition of Candidate’s portfolio, but she informed us that such records did not exist.

Regardless of whether the public record was destroyed or lost, the city did not retain it or destroy it as Florida law required.

¹⁰ The assistant city clerk told the OIG that she telephoned the Florida Department of State in Tallahassee sometime between March 31, 2021, and April 5, 2021, to inquire what “fine” the city would have to pay for losing a public record. She said she was told the city was not liable if the staff was certain the binder was lost and that staff “didn’t intentionally destroy or lose” it. The assistant city clerk said that her communication with the state employee was by phone and that they exchanged no emails. She said she could not recall the state employee’s name.

The City Did Not Provide Public Records Training

Seeking to understand the source of the failure to retain Candidate's portfolio or to document its disposition, the OIG looked into the city's training on the retention and destruction of public records and determined that it did not provide training on any facet of public records requirements.

Section IV of the city's Public Records Request Policy stated, "Each City Department must have at least one employee, in addition to the Department Director, trained on the proper fulfillment of public records requests in accordance with Florida Statutes and City policy. Each such employee must remain updated on the provisions of Florida Statute Chapter 119."

The assistant city clerk informed us that the only public records training to the department liaisons was about the functional use of the GovQA platform, and the new city clerk confirmed the lack of public records training materials. Moreover, the HR director told the OIG that she was not aware of any public records training the city provided to staff.

In practice, the only training the city gave any employees was on how to operate the GovQA system. The city did not even follow its own policy to provide department liaisons with the training that the policy required.

The HR director noted that following the loss of the applicant's portfolio, she spoke to all her staff "to ensure that they know what the requirements are," but, according to her, this was not a "formal training" and was just a discussion with each member of HR's staff. The assistant city clerk noted that the clerk's office and the city attorney's office have discussed providing public records training to all city staff and all that was left to do was for the city clerk's office to schedule the dates and times of the training. She noted that staff may be split into smaller groups and that the training would be a collaboration between the city clerk's office and the city attorney's office. But as of April 8, 2022, the city had not provided the discussed training.

CONCLUSION

We conclude that the city staff responsible for the unfortunate loss of Candidate's portfolio had no apparent motive to and did not intentionally fail to retain this single record. We also observe that, without management's guidance on the maintenance and disposition of public records, staff would not know the standards of conduct to which they are held accountable.

It would behoove the city to draft and implement a policy and provide training on basic public records maintenance and disposition for all staff who handle city records, in addition to implementing its currently unenforced policy to provide training on public records law to departmental liaisons who are designated to process public records requests.

We appreciate the cooperation of city staff and management during this investigation.

cc: Kerry Ezrol, City Attorney