

# Florida Department of Law Enforcement

**Case Number: FM-14-0074**

*Twentieth Judicial Circuit*

201N 100002



## *Investigative Summary:*

City of Cape Coral Public Integrity

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Case Agent: Special Agent John P. King  
FDLE Sebring Field Office  
3760 US 27 South  
Sebring, Florida 33780  
863-386-6085

### **Subject(s)**

Subject: Joseph Coviello, Mayor City of Cape Coral  
Date of Birth: 02/05/1955  
Race / Sex: White/Male  
Address: Cape Coral City Hall  
1015 Cultural Pak Blvd.  
Cape Coral, Florida 33990

Subject: Anthony John Szerlag, City Manager City of Cape Coral  
Date of Birth: 02/16/1951  
Race / Sex: White/Male  
Address: Cape Coral City Hall  
1015 Cultural Pak Blvd.  
Cape Coral, Florida 33990

Subject: Bernard "Jay" Murphy Jr., Business Manager City of Cape Coral  
Date of Birth: 05/15/1955  
Race / Sex: White/Male  
Address: Cape Coral City Hall  
1015 Cultural Pak Blvd.  
Cape Coral, Florida 33990

Name: Chris Phillips Budget Administrator, City of Cape Coral  
Date of Birth: 01/29/1971  
Race/Gender: White/Male  
Address: Cape Coral City Hall  
1015 Cultural Pak Blvd.  
Cape Coral, Florida 33990

**Violated Florida State Statute (Alleged) Considered**

**838.015 Bribery. —**

(1) "Bribery" means to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

(2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that the public servant had assumed office, that the matter was properly pending before him or her or might by law properly be brought before him or her, that the public servant possessed jurisdiction over the matter, or that his or her official action was necessary to achieve the person's purpose.

(3) Any person who commits bribery commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**838.016 Unlawful compensation or reward for official behavior. —**

(1) It is unlawful for any person to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law, for the past, present, or future performance, nonperformance, or violation of any act or omission which the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty. This section does not preclude a public servant from accepting rewards for services performed in apprehending any criminal.

(2) It is unlawful for any person to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law for the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission which the person believes to have been, or which is represented to him or her as having been, either within the official discretion of the other public servant, in violation of a public duty, or in performance of a public duty.

(3) Prosecution under this section shall not require that the exercise of influence or official discretion, or violation of a public duty or performance of a public duty, for which a pecuniary or other benefit was given, offered, promised, requested, or solicited was accomplished or was within the influence, official discretion, or public duty of the public servant whose action or omission was sought to be rewarded or compensated.

(4) Whoever violates the provisions of this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**838.22 Bid tampering. —**

(1) It is unlawful for a public servant or a public contractor who has contracted with a governmental entity to assist in a competitive procurement to knowingly and intentionally influence or attempt to influence the competitive solicitation undertaken by any governmental entity for the procurement of commodities or services, by:

(a) Disclosing, except as authorized by law, material information concerning a vendor's response, any evaluation results, or other aspects of the competitive solicitation when such information is not publicly disclosed.

(b) Altering or amending a submitted response, documents or other materials supporting a submitted response, or any evaluation results relating to the competitive solicitation for the purpose of intentionally providing a competitive advantage to any person who submits a response.

(2) It is unlawful for a public servant or a public contractor who has contracted with a governmental entity to assist in a competitive procurement to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another by circumventing a competitive solicitation process required by law or rule through the use of a sole-source contract for commodities or services.

(3) It is unlawful for any person to knowingly agree, conspire, combine, or confederate, directly or indirectly, with a public servant or a public contractor who has contracted with a governmental entity to assist in a competitive procurement to violate subsection (1) or subsection (2).

(4) It is unlawful for any person to knowingly enter into a contract for commodities or services which was secured by a public servant or a public contractor who has contracted with a governmental entity to assist in a competitive procurement acting in violation of subsection (1) or subsection (2).

(5) Any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**255.20 Local bids and contracts for public construction works. —**

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$300,000.

**287.057 Procurement of commodities or contractual services. —**

The competitive solicitation processes authorized in this section shall be used for procurement of commodities or contractual services in excess of the threshold amount provided for CATEGORY TWO in s. 287.017. Any competitive solicitation shall be made available simultaneously to all vendors, must include the time and date for the receipt of bids, proposals, or replies and of the public opening, and must include all contractual terms and conditions applicable to the procurement, including the criteria to be used in determining acceptability and relative merit of the bid, proposal, or reply. The CATEGORY TWO threshold amount was identified as \$35,000.00.

***Victim***

**State of Florida and City of Cape Coral.**

***Investigative Summary***

This investigation surrounded four (4) specific areas of inquiry. The quid-pro-quo allegations involving Cape Coral Mayor Joseph "Joe" Coviello; the criminal allegations made by Cape Coral Finance Director Victoria Bateman pertaining to the procurement practices of Cape Coral City Manager, John Szerlag, and Cape Coral Business Manager, Bernard "Jay" Murphy; the allegation that Bernard "Jay" Murphy was paid under the table to steer contracts to particular vendors; and the allegation that Cape Coral Budget Administrator Chris Phillips filed a fraudulent insurance claim with the City of Cape Coral.

On December 10, 2019, Councilwoman Marilyn Stout sent an email to Cape Coral Police Chief David Newlan and City Manager John Szerlag asking to meet with them. In a subsequent meeting Stout told them that she had been approached by Mayor Coviello recently about voting in favor of the termination of City Manager John Szerlag, should the matter come before the council. In exchange for her vote, Mayor Coviello offered to get funding from a private source for a charitable foundation (Uncommon Friends). Councilwoman Stout was the President of this foundation and described it as having financial problems. They were preparing to lay off staff members because they couldn't make payroll. One of the staff members was identified as Cape Coral Councilwoman Jennifer Nelson who served as the Executive Director for the foundation.

The day after Mayor Coviello and Councilwoman Stout had their conversation, Stout had the occasion to be in the City Offices and was called into the Mayor's office by the Mayor. The Mayor apologized to Stout for putting her on the spot, realizing that he had made a mistake.

On December 13, 2019, Cape Coral Chief of Police David Newlan, and Assistant City Manager Connie Barron met with Special Agent John P. King regarding the allegations made by Councilwoman Stout.

Chief Newlan went on to describe that there were potentially other quid-pro-quo allegations involving Mayor Coviello. It was alleged that Councilwoman Jessica Cosden had been approached by Mayor Coviello and asked to support the appointment of Lois Welsh to fill a vacant spot on the Council. If she agreed the Mayor would see that Cosden was appointed Mayor-pro-tem. Councilwoman Cosden also confided in Chief Newlan that she had suspected Mayor Coviello of committing a number of un-named criminal acts.

The last quid-pro-quo allegation surrounded a conversation between Cape Coral Fire Chief Ryan Lamb and Mayor Coviello. It was reported that Chief Lamb received a telephone call from Mayor Coviello in which a discussion was had about the Chief's wife running for the vacant council seat, and that the Mayor would support her bid in doing so if the Chief would support hiring Councilman John Carioscia's grandson as a firefighter. A second call was made to the Chief by the Mayor on the following day, during which the Mayor told the Chief to disregard their conversation as Councilman Carioscia was no longer "cooperating with him".

The Case Agent interviewed Councilwoman Stout and obtained a sworn statement from her detailing her allegations. Subsequent to her interview Councilwoman Stout was asked to make a controlled phone call to Mayor Coviello. Councilwoman Stout declined, citing that she believed that making such a call would constitute "entrapment". Councilwoman Stout couldn't believe that the Florida Department of Law Enforcement would "waste time and resources" on this issue in light of the fact that the Mayor admitted that he had made a mistake and apologized.

Mayor Coviello was interviewed by the Case Agent in the presence of his attorney and acknowledged that he had met with Councilwoman Stout, and discussed assisting her in finding funding for the Uncommon Friends foundation. The Mayor denied that his offer was made in exchange for her support in getting rid of the City Manager.

The Case Agent investigated the quid-pro-quo allegations made by Councilwoman Stout and determined that the described conversations likely took place. The two participants have different interpretations of what was said.

Councilwoman Jessica Cosden was interviewed by the Case Agent, and acknowledged that she had in fact discussed with Mayor Coviello about assuming the Mayor pro-tem position. There was no exchange of favors discussed during the conversation. Mayor Coviello was merely suggesting that she should consider applying for the position as it would be a "feather in her cap", if she ever wanted to run for the Mayoral seat. Councilwoman Cosden confirmed that by Charter the Mayor did not have the singular authority to appoint her as Mayor pro-tem. The appointment required a majority vote of the Council. Councilwoman Cosden was in fact elected to the Mayor-pro-tem position by a majority Council vote.

When asked if she had suspected Mayor Coviello of having committed other crimes, as described by Police Chief David Newlan, Councilwoman Cosden replied that she "could see herself" as having made such a comment prior to becoming the Mayor pro-tem. At the time, she and the Mayor weren't getting along. Councilwoman Cosden denied having any evidence of Mayor Coviello committing any crime(s). Since she was appointed Mayor pro-tem, and has been working closer with the Mayor, she has developed a more favorable opinion of the Mayor.

Fire Chief Ryan Lamb was interviewed regarding his conversations with Mayor Coviello. Subsequent to the Council seat vacancy opening up, he received a phone call from Mayor Coviello wherein the Mayor discussed the importance of making sure that the right person fills the vacancy to keep the City progressive and moving forward. The Mayor wanted to "have some discussions" with the Fire Union about getting their help in picking the right candidate. At the end of the conversation the Mayor asked the Chief what district he lived in. The Chief responded District Five. The Mayor asked if he (Chief Lamb) thought that his wife might be interested in filling the vacancy. If she were interested, it might be a "good opportunity" for her to experience it, and if she liked it to seek re-election. The Chief responded that he would need to discuss the matter with his wife, as he had some concerns about the "legalities" of his

employment as a Director with the City of Cape Coral, should his wife get appointed to the Council seat.

A day or two later, the Mayor called Chief Lamb and stated that he had a conversation with the City Attorney and that there wouldn't be any legal implications if his wife were to become a City Council member. During the same conversation the Mayor brought up the topic of Councilman Carioscia's grandson making application to the Fire Department. Apparently, the grandson was unsuccessful in his first bid to become a Cape Coral firefighter. The Mayor asked Chief Lamb if they were getting ready to advertise a firefighter position, and would he be willing to call Councilman Carioscia to discuss that with him. The Chief replied that he was willing to call the Councilman to notice him of the vacancy, as he would with anyone else that was interested in the position.

After discussing the matter with his wife, and subsequent to an unanswered call to Councilman Carioscia, Chief Lamb and his wife called Mayor Coviello and told him that the timing was not right for his wife due to other family commitments. During the same conversation Chief Lamb told the Mayor that he had called Carioscia, but had not heard back from him. The Mayor replied that Carioscia was "potentially looking at somebody else for the seat, you don't have to worry about following up on that phone call, if you don't want to".

Chief Lamb did follow-up with Councilman Carioscia to let him know about the job posting. Chief Lamb was not sure if Carioscia's grandson applied or not. The grandson's name (Kyle Eberwine) was not on the final listing of new hires.

Chief Lamb was asked for his impression of the phone conversations with the Mayor, and if he had any concern about the Mayor's intent. Chief Lamb replied that while there had been no actual quid-pro-quo conversations or promises made, "the connection could definitely be made in that situation".

On December, 23, 2019, Cape Coral Finance Director Victoria Bateman sent a three-page letter to Mayor Coviello via email while she was on paid administrative leave pending the outcome of an internal administrative investigation. A separate hardcopy of the letter was also sent to the Mayor by Certified mail.

Bateman made several allegations in her letter against City Manager John Szerlag, and Cape Coral Business Manager Bernard "Jay" Murphy. The allegations were separated into two categories, administrative and criminal. The administrative allegations are currently under investigation by the City of Cape Coral, and will not be discussed in this summary.

The criminal allegations made by Bateman surrounded two procurement processes, the outsourcing of the Coral Oaks Golf Course maintenance, and the establishment of an Employee Health Clinic that were spearheaded by Murphy at the direction of the City Manager. Bateman further alleged in her interview with the Case Agent that Murphy had received money under the table for steering the contract(s) to a particular vendor. While she didn't have any evidence to support that Murphy had been paid, Bateman identified other City employees as her source of information.

Bateman's concerns with the outsourcing of the Coral Oaks Golf Course maintenance was that she disagreed with savings that was calculated by Murphy, and that she had been asked to "falsify" the numbers in a memorandum to the City Manager, by Murphy. She further alleged

that Murphy had not followed the procurement processes mandated by Florida Statutes and the City's charter in obtaining competitive bids.

The Case Agent focused on the applicable Florida Statutes, the Cape Coral City Charter, and their Procurement Ordinances pertaining to the procurement process. While the mandates of the City's Charter and Procurement Ordinances are important, a violation of them in and of itself does not constitute a criminal law violation.

Florida Statute 287.057(1), titled Procurement of commodities or contractual services reads in part, the competitive solicitation processes authorized in this section shall be used for procurement of commodities or contractual services in excess of the threshold amount provided for CATEGORY TWO in s. 287.017. Any competitive solicitation shall be made available simultaneously to all vendors, must include the time and date for the receipt of bids, proposals, or replies and of the public opening, and must include all contractual terms and conditions applicable to the procurement, including the criteria to be used in determining acceptability and relative merit of the bid, proposal, or reply. The CATEGORY TWO threshold amount was identified as \$35,000.00.

It was established that the City of Cape Coral has owned the Coral Oaks Golf Course for several years, and that it has rarely made a profit. The City Council has long since been concerned about the subsidy that it has paid over the years to keep the golf course operational. The City Manager was tasked by the Council with lowering or eliminating the financial burden to City and its taxpayers. The City Manager tasked Business Manager Bernard "Jay" Murphy with exploring the outsourcing of the maintenance operations.

This process began back in 2018 when Murphy contacted other Florida Cities, that operated Golf Courses, in an effort to explore piggybacking on an existing government contract. Piggybacking was lawful by both Florida Statutes (F.S. 287.057 5b), and City Ordinance (Ord. 11-11, 3-28-2011). The piggyback option ultimately fell through for a number of reasons, at which point the City Manager's office decided to send out a Request for Proposals (RFP) and accept sealed bids.

This investigation revealed that an RFP was in fact prepared, offered for bidding, and was responded to by seven (7) vendors. The City accepted the bids, and had convened an evaluation committee to choose a vendor for presentation to the Council. Five of the vendors were selected and scheduled to provide presentations to the committee, but were postponed by the City Manager due to the allegations levied in Bateman's letter. The outsourcing procurement remains open.

Bateman's allegations surrounding the establishment of the Employee Health Clinic were that a source of funding had not been identified prior to going out for sealed bids (RFP), as mandated by Florida Statute and City Ordinance; that she had refused to "sign off and endorse" the proposal to establish the Employee Health Clinic; that the City Manager and Murphy went around her and the City's internal controls (procurement process) and proceeded with the procurement process; and that she had been told by Human Resources that "they assumed Jay was paid to award the contract to the selected vendor".

Contrary to Bateman's allegations, this investigation revealed the following. The source of the funding for the Health Clinic had been identified early on as coming from the City's Self-insurance Fund. This fund had been established by the City as a means to pay employee health

care claims. The Self-insurance Fund is funded through general revenue and vorem tax dollars, and pre-taxed employee contributions.

A memorandum dated August 9, 2019, to the City Manager from Connie Barron (Assistant City Manager), Victoria Bateman, Lisa Sonogo (Human Resources Director), and Jay Murphy titled "Employee Health Care Services contract" with "My Health Onsite" is evidence that the source of funding was identified, and that Bateman had in fact signed off/endorsed the proposal contrary to her current claim that she had refused to do so.

The memorandum bears the initials of each of the named parties, including Bateman's. A chart in the memorandum depicts what the startup costs would be, and that all costs associated with the clinic "will be funded within the City's self-insured health plan fund".

Bateman would offer later in her interview with the Case Agent, that use of the Self-insurance Fund was improper if not illegal. The Case Agent contacted the Florida Office of Insurance Regulation and asked for a determination on whether the use of the Self-insurance Fund was permissible or not.

The Office of Insurance Regulation (OIR) responded that "no state agency has authority over a city government's self-insured health plan and how it spends monies collected through employee contributions. Cities who are self-insured must file information with the Office of Insurance Regulation (OIR) under s. 112.08, Florida Statutes, but the OIR's role is to only confirm the actuarial soundness of the plan. The OIR performs a one-time approval process when a new plan is formed and then the cities file each year attesting to their reserve levels". The OIR does not record or track how monies are invested or spent.

The City's Self-insurance Fund is commonly called a "Cafeteria Plan", and is subject to limitations governed by the Internal Revenue Services, Title 26 U.S. Code, Section 125. It was not clear to the Case Agent upon reviewing the code, whether or not the use of the fund as such was proper or not. Documentation was found within the City's files that indicate that the City Attorney had been involved in this procurement process and raised no objection/concern to the use of the funds as such.

Additionally, the City's Charter allows for the City Manager to "transfer, within a department part or all of any unencumbered appropriation balance among programs within a department, office or agency".

The investigation revealed that the establishment of the Employee Health Clinic did in fact go through a procurement process even though statutorily they were not required to do so. Florida Statute 287.057(3)(e)(5) states that health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration are not subject to the competitive-solicitation requirements.

Rather than use its own Procurement Department, the City elected to have the Gehring Group administer the procurement process. The Gehring Group was the City's contracted health benefits consultant and was considered to have more experience in the health care arena than the City's own Procurement Department.

City records established further that the Gehring Group completed the competitive bidding process and the City ultimately selected MRS, Inc. d/b/a My Health Onsite as their care

provider. The matter was brought before the City Council, who voted in favor of establishing the Employee Health Clinic.

The Case Agent interviewed the two sources that Bateman attributed as having information on the kickback allegations. Both of the sources, Human Resources Director Lisa Sonogo and Benefits Manager Jill Ramirez denied having any direct evidence of Murphy receiving any remuneration as described by Bateman.

Director Sonogo did not recall having had any such conversations with Bateman. Sonogo, who sat on the selection committee for the establishment of the Employee Health Clinic stated to the Case Agent that on the occasions(s) that the committee met with the vendors, she did not see anyone that Murphy appeared to have known. Murphy wasn't "chummy" with anyone as they walked into the presentation(s). The panel (4-5) members voted and selected a vendor to recommend to the Council. Murphy's vote did not carry any more weight or less than any of the other members on the panel.

Manager Ramirez stated that she found that it was odd that both she and Director Sonogo had been cut out of the Employee Health Clinic procurement process when they oversaw the day to day employee benefits. She added that Murphy had become very close with the Gehring Group representative (Dustin Khune). The Gehring Group had been tasked with the Employee Health Clinic procurement process, as the City's long-term health benefits consultant. Once the procurement process started, the Gehring Group representative stopped communicating with her. Ramirez found the lack of communication to be odd as well, when prior to this she and the representative communicated frequently.

After the Health Clinic vendor was selected, Ramirez took Cape Coral Risk Manager, Cindy LeRoy out to lunch to discuss the Employee Health Clinic. During their conversation LeRoy told her that she felt that "Jay Murphy was, had independently selected this My Health on Site provider, and he was taking cash under the table". Ramirez replied to LeRoy that she "really didn't get that feeling", as she had sat on the selection committee herself. Ramirez stressed that she had heard this second hand, from LeRoy and that she had no direct evidence of Murphy getting paid under the table. Ramirez shared with Bateman what she had been told by LeRoy.

The Case Agent interviewed Risk Manager Cindy LeRoy. LeRoy stated that she had not said that Murphy had been paid. What she said to Ramirez was that the procurement process for the Health Care Clinic "was not completely above board". LeRoy denied having any direct evidence that Murphy had been paid under the table. If anyone other than Jay Murphy had been involved in the procurement process, she would not have had these concerns.

The Case Agent investigated Bateman's reference to Budget Administrator Chris Phillips being accused of filing a fraudulent insurance claim, and revealed that the circumstances surrounding the damage to his personal vehicle in the City's parking lot had previously been investigated by the City of Cape Coral.

A review of the City's report and interviews conducted by the Case Agent revealed that Phillips had never been accused of filing a fraudulent insurance claim. The focus of the City's investigation was administrative in nature to determine by what authority Phillips' claim had been paid, and if the City's policy (Ordinances) and procedures had been followed.

In an interview with the Case Agent, Bateman described that she felt the inquiries into Phillips' claim was another example of the continued harassment of her and her staff by the City Manager's Office.

The Case Agent interviewed Business Manager Bernard "Jay" Murphy regarding the allegations referenced in this Investigative Summary. Murphy denied each of the allegations, and offered reasonable explanations for the procurement processes that were followed.

City Manager John Szerlag acknowledged that he had assigned Contract Business Manager Bernard "Jay" Murphy to facilitate the two projects mentioned in Finance Director Bateman's three-page letter.

While he was not involved in the day to day specifics of the projects, he was kept up to speed on their progress. It was Szerlag's recollection and position that procurement processes were followed on both projects. The criminal allegations made by Bateman in her three-page letter were never conveyed to Szerlag by any other person, much less by Bateman. The first that Szerlag had heard of them was in the letter.

**Witnesses**

Name: Lisa Sonogo  
Position: Human Resources Director, City of Cape Coral  
Race/Gender: White/Female  
Address: Cape Coral City Hall  
1015 Cultural Pak Blvd.  
Cape Coral, Florida 33990  
Date of Birth: 08/27/1964

Name: Jill Ramirez  
Position: Benefits Manager, City of Cape Coral  
Race/Gender: White/Female  
Address: Cape Coral City Hall  
1015 Cultural Pak Blvd.  
Cape Coral, Florida 33990  
Date of Birth: 12/24/1969

Name: Wanda Roop  
Position: Procurement Manager, City of Cape Coral  
Race/Gender: White/Female  
Address: Cape Coral City Hall  
1015 Cultural Pak Blvd.  
Cape Coral, Florida 33990  
Date of Birth: 11/03/1966

Name: Victoria Bateman  
Position: Director of Financial Services, City of Cape Coral  
Race/Gender: White/Female  
Address: Cape Coral City Hall  
1015 Cultural Pak Blvd.

Cape Coral, Florida 33990  
Date of Birth: 07/24/1953

Name: Lois Welsh  
Position Councilwoman, City of Cape Coral  
Race/Gender: White/Female  
Address: Cape Coral City Hall  
1015 Cultural Pak Blvd.  
Cape Coral, Florida 33990  
Date of Birth: 08/13/1960

Name: John Carioscia  
Position Councilman, City of Cape Coral  
Race/Gender: White/Male  
Address: Cape Coral City Hall  
1015 Cultural Pak Blvd.  
Cape Coral, Florida 33990  
Date of Birth: 11/16/1947

Name: Jennifer Nelson  
Position Councilwoman, City of Cape Coral  
Race/Gender: White/Female  
Address: Cape Coral City Hall  
1015 Cultural Pak Blvd.  
Cape Coral, Florida 33990  
Date of Birth: 07/25/1970

Name: Richard Williams  
Position Councilman, City of Cape Coral  
Race/Gender: White/Male  
Address: Cape Coral City Hall  
1015 Cultural Pak Blvd.  
Cape Coral, Florida 33990  
Date of Birth: 01/11/1945

Name: Jessica Cosden  
Position Councilwoman, City of Cape Coral  
Race/Gender: White/Female  
Address: Cape Coral City Hall  
1015 Cultural Pak Blvd.  
Cape Coral, Florida 33990  
Date of Birth: 01/10/1984

Name: Marilyn Stout  
Position Councilwoman, City of Cape Coral  
Race/Gender: White/Female  
Address: Cape Coral City Hall  
1015 Cultural Pak Blvd.  
Cape Coral, Florida 33990  
Date of Birth: 10/26/1936

Name: Ryan Lamb  
 Position Chief of Fire Department, City of Cape Coral  
 Race/Gender: White/Male  
 Address: Cape Coral City Hall  
 1015 Cultural Pak Blvd.  
 Cape Coral, Florida 33990  
 Date of Birth: 08/16/1985

Name: Cindy LeRoy  
 Position Risk Manager, City of Cape Coral  
 Race/Gender: White/Female  
 Address: Cape Coral City Hall  
 1015 Cultural Pak Blvd.  
 Cape Coral, Florida 33990  
 Date of Birth: 03/01/1959

Name: Dave Newlan  
 Position Chief of Police, City of Cape Coral  
 Race/Gender: White/Male  
 Address: Cape Coral City Hall  
 1015 Cultural Pak Blvd.  
 Cape Coral, Florida 33990

**Related Items**

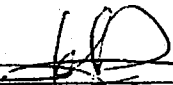
Related Items Number	Description of Related Items
INV-1	CD- Sworn Statement of Councilwoman Marilyn Stout
INV-2	CD - City Council and Mayoral Email records
INV-3	City Council and Mayoral Cellphone Records
INV-4	Cape Coral Florida City Charter
INV-5	City of Cape Coral Purchasing of Goods and Services Procedures.
INV-6	Draft Minutes of January 2, 2020 Special City Council Meeting.
INV-7	Bateman Letter Sent to Mayor Coviello.
INV-8	CD- Councilwomen Lois Welsh Interview
INV-9	CD - Sworn Statement of Councilman John Carioscia.
INV-10	CD- Interview with Fire Chief Ryan Lamb.
INV-11	Bateman- Letter to Mayor Coviello
INV-12	CD- Sworn Statement of Victoria Bateman
INV-13	Documents from Bateman: Explanation of Attachments Concerning Retaliation Discrimination
INV-14	CD - Interview of Councilman Richard "Rick" Williams.
INV-15	CD- Interview of Mayor Joseph Coviello.
INV-16	CD - Interview of Councilwoman Jessica Cosden.
INV-17	CD- Procurement Documents
INV-18	CD - Interview of Councilwoman Jennifer Nelson.
INV-19	Office of Insurance Regulation Email

INV-20	Title 26 U.S. Code, Section 125
INV-21	CD - Sworn Statement of Jill Ramirez
INV-22	CD- Sworn Statement of Wanda Roop, Procurement Manager.
INV-23	CD- Interview of Budget Administrator Chris Phillips
INV-24	CD - Sworn Statement of Risk Manager Cynthia LeRoy.
INV-25	CD- Interview of Lisa Sonogo.
INV-26	CD-Interview of Administrative Assistant Tracey Gore
INV-27	CD- Sworn Statement of Cape Coral Business Manager Bernard "Jay" Murphy.
INV-28	FW Concurrence on final numbers
INV-29	FW Coral Oaks Cost Savings Analysis
INV-30	Copy of FY 19 Golf Course backup
INV-31	Combined emails.
INV-32	08/12/2019 Resolution 278-19 Memo (signed by Bateman)
INV-33	Email exchange between King and Murphy 03.23.2020
INV-34	Sunshine Workforce Letter
INV-35	FW Sunshine Proposal Email
INV-36	Brightview Golf Letter
INV-37	03/11/2020 Health Plan Fund Adopted Budget FY20 - FY22
INV-38	08/12/2019 Resolution 278-19 Signed w-Contract
INV-39	Gehring Group RFP-HR17-52KS
INV-40	CD- Sworn Statement of Cape Coral City Auditor Andrea Russell.

**Notarization**

**State of Florida  
County of Lee**

Before me this day personally appeared Special Agent John P. King who, being duly sworn, deposes and says that aforementioned Investigative Summary, authored by Special Agent John P. King, is true and correct to the best of his knowledge.

Special Agent   
John P. King

Sworn to and subscribed before me this 3 day of April, 2020.

Law Enforcement Notary/Special Agent SA  #1265



Florida Department of  
Law Enforcement

Richard L. Swearingen  
Commissioner


Criminal Investigations and Forensic Science  
Ft. Myers Regional Operations Center  
4700 Terminal Drive, Suite 1  
Ft. Myers, FL 33907  
1-800-407-4880  
www.fdle.state.fl.us

Ron DeSantis, Governor  
Ashley Moody, Attorney General  
Jimmy Patronis, Chief Financial Officer  
Nikki Fried, Commissioner of Agriculture

**MEMORANDUM**

DATE: June 9, 2020

TO: ASA Andrew Van Sickle  
Office of the State Attorney  
12<sup>th</sup> Judicial Circuit

FROM: Special Agent John P. King 

SUBJECT: Potential Sunshine Law Violations Involving Cape Coral Mayor Joseph Coviello  
FM-14-0074

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Pursuant to our last conversation we have considered the potential Sunshine Law violations uncovered during our investigation of City of Cape Coral Mayor, Joseph Coviello. Two separate instances were identified.

The first being described by Cape Coral City Councilwoman Marilyn Stout as detailed in Investigative Report 1. Stout recalled that subsequent to the Council meeting on December 9, 2019, she had several phone calls with Mayor Coviello concerning the city Manager, John Szerlag and how the Mayor thought that the City Manager was "negligent" in not reporting ongoing internal investigations to him.

Following these phone calls, Stout was called into the Mayor's office and met with the Mayor to discuss City matters. Councilwoman Stout told the Mayor that she had too many things on her plate to deal with all of the issues; that she was having real problems of her own with the Uncommon Friends Foundation; how they were going to make payroll, and how were they going to pay their bills.

The Mayor responded that he thought that he could help her raise some funds for Uncommon Friends from the Gunterberg Foundation, and that there were possibly other developers in the community that might come forward if he were to ask them. The Mayor continued that if she was willing to support him when he brought "information forward on John Szerlag, maybe we could help each other". Stout responded to the Mayor that she couldn't do that, that she couldn't base her vote on anything but the facts.

Following this meeting she needed to see the Mayor's assistant Pearl Taylor over an issue with the "Military Ball". While she was speaking with Pearl, the Mayor called her into his office. The Mayor stated to her that he had "made a mistake", and that he "should have never said to her what he said" the previous day, and that this was his "apology" and that he hoped she would accept it.

The second instance was described as the Mayor having offered the "Mayor-pro-tem" position to Councilwoman Jessica Cosden by phone, in exchange for her vote in favor of Lois Welsh assuming the vacant City Council position that had recently been vacated.

In an interview with Councilwoman Cosden, as described in Investigative Report 12, she was asked if she had received such a call from Mayor Coviello during which they discussed, that for her support in electing Lois Welsh to the vacant Council seat, that he would support her or make her the Mayor pro-tem. Cosden remarked that half of that statement was true. She had in fact received a phone call from Mayor Coviello about Welsh, but there was no quid-pro-quo offering. They did discuss her applying for the Mayor pro-tem position, and how it would be good for her if she were to run for re-election.

On February 6, 2020, Mayor Coviello was interviewed in the presence of his attorney, as detailed in Investigative Report 11. Coviello denied having had any quid-pro-quo conversation with Councilwoman Stout, and was surprised to hear that allegation had been made.

Coviello admitted that he had a conversation with Stout about getting funding for uncommon friends. According to Coviello, Stout came to him and told him that she was the "chairperson" for a charity named Uncommon Friends, and that the charity was deeply in the red, and asked him if he could help, because he knows "a lot of influential people" that potentially could help. Coviello recalled that they had a lengthy conversation about it. Coviello believed that there had been two conversations, one in person at his office and the other over the phone. Coviello did recall having a separate conversation with Stout about calling a special meeting to discuss the City Manager's performance, but it had nothing to do with funding for the charity. Coviello made no attempts to secure any funding for the charity.

Mayor Coviello denied having a quid-pro-quo conversation with Councilwoman Jessica Cosden pertaining to her appointment as Mayor pro-tem. He acknowledged that it was not within his power to make such an appointment, and that as a rule the appointment was done via a Council vote. Coviello added that he did have a conversation with Cosden to see if she would be interested in the Mayor pro-tem position, because he thought it was a good idea as Cosden was going to run for office next year. That "it would be a feather in her cap". Coviello recalled that Cosden received a majority vote (8-0) and was appointed the Mayor pro-tem by the Council.

It has been established that the areas of discussion had during these conversations, the City Manager's job performance, the vacant City Council seat, and the Mayor-pro-tem position were all matters to be heard by the Council. In fact, all of these matters have subsequently come before the Council and were voted on. While there are different interpretations of the conversations, they do appear to have occurred.

Under the provisions of the Sunshine Law, these conversation(s) should have been, (1) open to the public; (2) reasonable notice of the meeting(s) should have been given, and

(3) minutes of the meeting(s) should have been taken and promptly recorded. None of these provisions were followed for the described conversation(s).

There are no exemptions or exceptions of organizational meetings, briefing sessions, workshops, informal discussions, or other meetings no matter what they may be called, in following the provisions of the statute.

According to the Government-In-The-Sunshine Manual, if the Mayor is a member of the council or has a voice in decision-making through the power to break tie votes, meetings between the Mayor and a member of the City Council to discuss some matter which foreseeably will come before the City Council are subject to the Sunshine Law. (AGOs 83-70 and 75-210). Mayor Coviello does have voting rights.

As it pertains to the City Manager's performance discussions, the Manual indicates that in the absence of a specific statutory exemption, meetings of a public board or commission to discuss personnel matters are subject to the Sunshine Law. *Times Publishing Company v. Williams*, 222 So. 2d 470 (Fla. 2d DCA 1969), disapproved in part on other grounds, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985).

Similarly, meetings of a board or commission in conducting disciplinary proceedings are subject to the Sunshine Law. See, e.g., AGO 92-65 (employee termination hearing conducted by housing authority commission). And see *News-Press Publishing Company v. Wisher*, 345 So. 2d 646, 647648 (Fla. 1977), in which the Court disapproved of a county's use of "pseudonyms or cloaked references" during a county commission meeting held to reprimand an unnamed department head.

As it relates to telephone conversations between Council Members, the manual dictates that private telephone conversations between board members to discuss matters which foreseeably will come before that board for action violate the Sunshine Law. See *State v. Childers*, No. 02-21939-MMC; 02-21940-MMB (Escambia Co. Ct. June 5, 2003), per curiam affirmed, 886 So. 2d 229 (Fla. 1st DCA 2004).

Florida Statute 112.3142(1)(b) mandates that all elected municipal officers must complete 4 hours of ethics training each calendar year which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.

A review of Mayor Coviello's Statement of Financial Interests, form 1 for the years of 2018 and 2019, filed with the Lee County Supervisor of Elections revealed that the Mayor certified that he had completed the required training for these years, as demonstrated in the below excerpts from the forms.

2019

**PART G — TRAINING**

For elected municipal officers required to complete annual ethics training pursuant to section 112.3142, F.S.

**I CERTIFY THAT I HAVE COMPLETED THE REQUIRED TRAINING.**

2018

**PART G — TRAINING**

For elected municipal officers required to complete annual ethics training pursuant to section 112.3142, F.S.

**I CERTIFY THAT I HAVE COMPLETED THE REQUIRED TRAINING.**

There are noncriminal and criminal penalties for violation(s) of the Sunshine Law. The difference between the two, is in the *knowing violation* of the statute. The pattern of activity by Mayor Coviello suggests a knowing violation of the criminal statute.

The Government-In-The-Sunshine Manual explains the importance of the Sunshine Law. "It is the how and the why officials decided to so act which interests the public, not merely the final decision. Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his/her official duties, is a matter of public concern; and it is the entire decision-making process that the legislature intended to affect by the enactment of the statute".

"[T]he Sunshine Law does not provide that cases be treated differently based upon their level of public importance." *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 868 (Fla. 3d DCA 1994).

We ask that the State Attorney's Office consider these factors when making a charging decision in this matter.