

CITY OF CORAL GABLES

-MEMORANDUM-

TO: Edward J. Hudak, Jr.  
Chief of Police

DATE: March 26, 2018

FROM: Cathy Swanson-Rivenbark  
City Manager

SUBJECT: Reprimand -  
Administrative Investigation

I reviewed in detail the Administrative Investigation Report (the "Report") dated February 9, 2018, prepared by Investigator Major (Ret.) Charles Skurkis of Transparency Matters, LLC, and I also followed up with Major (Ret.) Skurkis directly via telephone for clarification and observations because of his more than 1300 administrative investigations around the country. Transparency Matters, LLC, was retained by the City to conduct an independent investigation into accusations raised in a 2-page anonymous complaint, with an accompanying photograph and video, mailed to my office via U.S. Post Office and received on August 3, 2017. The complaint alleged that you acted inappropriately at a pool party attended by female subordinates on July 19, 2017.

Major (Ret.) Skurkis conducted a thorough investigation interviewing all of the City employees that attended the pool party as well as several others, reviewing over 30 different documents, and writing a detailed Report (over 90 pages in length). Major (Ret.) Skurkis applied the "preponderance of evidence" standard of proof, which applies to internal administrative investigations such as this one, and applying that standard concluded that the investigation "failed to identify any conduct at the pool party expressly prohibited by CGPD rules and regulations." Notwithstanding the foregoing, Major (Ret.) Skurkis concluded that "there are several areas of concern" and that "each of the following five issues be closely evaluated and addressed as deemed appropriate."

1. Rules of Conduct Section 1.09 Improper Conduct Offenses, subsection vv. Conduct Unbecoming

*It is necessary to the goals and objectives of the Department for its personnel to conduct themselves in a manner consistent with the Department's Rules and Regulations which garners public support and confidence. Conduct unbecoming is defined as any conduct or act by personnel which has an adverse impact upon the operation of the Department and diminishes public respect and confidence in the Department and its personnel. Such conduct may include, but is not limited to, participation in any immoral, indecent, or disorderly conduct, or conduct which causes substantial doubt concerning each member's honesty, fairness, or respect for the rights of other, or the laws of the state or nation, regardless of whether such act or conduct constitutes a crime. **(Bold/underline added)***

2. Rules of Conduct, Section 01.10 Supervisor Responsibilities, subsection a. Supervisory Accountability

*Supervisors are accountable for the performance of their immediate subordinates, and will by their kindness, courtesy and careful attention to duty set an example to personnel under their command. **(Bold/underline added)**.*

3. Rules of Conduct, Section 01.09 Improper Conduct Offenses, subsection oo. Misrepresentation and Falsification

*Agency personnel will speak truthfully and **will not knowingly misrepresent** or falsify any matter, either verbally or **in writing**, or knowingly omit **information when requested**. **(Bold/underline added)**.*

4. Assigned Vehicle Program
5. Anonymous Complaint

On March 1, 2018, I provided you a complete copy of the Report, with attachments. When I provided you your copy, I said I would schedule a meeting with you after you had a chance to review the materials. I explained that I wanted to make sure that prior to me making any decision you had an opportunity to review the Report in detail and provide me with any information that you felt I should have related to your conduct, the areas of concern raised in the Report, or how the investigation was handled. I scheduled the follow-up meeting for March 5, 2018. You then requested additional time so your attorney, Michael Cornely, could also review the Report and accompany you to the meeting. The meeting was rescheduled for March 22, 2018. Also present at the meeting were Frank Fernandez, Assistant City Manager/Director of Public Safety, and Raquel Elejabarrieta, Director of Labor Relations & Risk Management. During the meeting, you failed to provide me with any information and simply stated that you had nothing to say and that you stood by your actions and your statements included in the Report.

I have evaluated each of the five concerns raised by Major (Ret.) Skurkis and will address them herein (the first two concerns will be addressed together as they relate to the same action). In assessing the concerns, I applied a reasonable person standard. Based on my assessment of the concerns raised by Major (Ret.) Skurkis as set forth below, of which I am in concurrence with, I have identified corrective measures that you are to immediately take.

**Rules of Conduct Section 1.09 Improper Conduct Offenses, subsection vv. Conduct Unbecoming & Section 01.10 Supervisor Responsibilities, subsection a. Supervisory Accountability**

On July 19, 2017, you chose to attend a pool party in full uniform where the attendees were female subordinates in bathing suits. You willingly posed for a photograph surrounded by the female officers. Although the investigator noted that there was no specific policy prohibiting your attendance at the pool party, as Chief of Police you should always remain cognizant that

your conduct will be closely scrutinized by subordinates, the media, and the citizens/residents that you serve. In applying the reasonable person standard, it is apparent that you failed to do that on July 19, 2017. Your failure to properly evaluate the appropriateness of your attendance at this pool party resulted in negative publicity for the Police Department (in both print and television media) thereby diminishing the public respect for the Police Department.

More troublesome than your failure to evaluate the appropriateness of your attendance at the pool party, is your failure, still to this day, to show any remorse or reflection on the situation, which caused a significant distraction for the City and the Police Department. At no point during any of the communications that you and Director Fernandez had before an investigation was initiated and during the investigation, did you come forward and acknowledge the fallout of your decision to attend the pool party. Further, the statement you provided Major (Ret.) Skurkis during the investigation that you would do it again if similar circumstances presented themselves proves that given the opportunity of hindsight your actions would be the same.

Based on the foregoing, your actions are in violation of Section 01.09, subsection vv. "Conduct Unbecoming" and 01.10 Subsection a. "Supervisory Accountability."

Even after reading the Report and having had ample time to consider the concerns raised in the Report, when we met on March 22, 2018, you still failed to recognize and take ownership of the fact that your actions created a significant distraction for the City and the Police Department. Your failure to recognize the adverse consequences that your actions had on the Police Department and the City (regardless of whether your attendance at the pool party was not prohibited by CGPD rules and regulations) shows immaturity as a leader and an inability to learn from an undesirable situation so that you are better prepared in the future. The fact is that on several occasions prior to, during and after the investigation while having the opportunity of hindsight, you failed to seize the opportunity and rise above your personal feelings and consider the position that you represent. As a Chief of Police, you must place deep consideration on how you react and respond to situations. I remain concerned that given months to reflect, you have not used the proper professional wisdom to learn from this situation.

As Chief of Police, I expect you to prudently reflect on your past decisions and the results of the decisions you made so that when similar situations arise that can have undesirable outcomes, you take a different course of action. Going forward you must evaluate more closely the possible ramifications of your actions prior to engaging in such actions and take into account your position and the City that you represent.

As with each of our other City Directors, I expect you to create and maintain the highest standard of professional excellence and to set an example by your actions and statements for all members of the Police department, sworn and civilian.

**Rules of Conduct, Section 01.09 Improper Conduct Offenses, subsection oo. Misrepresentation and Falsification**

In your August 25, 2017, memorandum to Director Fernandez in response to a question regarding how you took time to recognize the officers present at the party, you wrote "With

regards to the recognition, as the Chief of Police I am both the formal and informal leader of the Department. As I stated in my previous memorandum, one way to recognize this group of officers was merely attending their event which I believe was in and of itself a sign of support. While I was there, I did verbally recognize how proud that we as a Department are of all of them and how they are, the best of the best, or they would not have been hired or promoted as the case has been. I further stated to them that they needed to continue to employ their training to do this job as safely as possible and do it as compassionately as possible." During the statement you provided to Major (Ret.) Skurkis you again reiterated that you made the aforementioned remarks at the pool party. However, when asked individually none of the 14 police officers present at the pool party have any recollection of you making such a statement.

Since none of the 14 police officers present at the pool party recall such recognition, I must concur with Major (Ret.) Skurkis that the formal recognition you claim you made did not occur and that this information was provided by you during the inquiry phase of the complaint (prior to a formal investigation being initiated) in an attempt to justify your attendance at the pool party or embellish your action. Your misrepresentation of what occurred at that party is a violation of Rule 1.09, subsection oo.

When you are untruthful, you quickly lose the trust and respect of others, including mine. Such behavior cannot be tolerated in an organization that strives to "govern with integrity" as a core value. I expect that going forward you rebuild that trust through only truthful actions and words and that you maintain such trust once re-established. I expect you, and all members of our leadership team, to always speak and act in way that is genuine and authentic. If we require this from our subordinates, we must demand it from ourselves.

### **Assigned Vehicle Program**

Based on the information gathered during the investigation, it is clear that Sergeant Lauren Poole Eich utilized a City vehicle in a manner not supported by any SOP and/or City rule when she drove her City-issued vehicle to the pool party. You became aware of her use of her City-issued vehicle as you left the party and when she came to see you the following day. You then approved, after the fact, Sergeant Eich's use of her City-issued vehicle on the day in question. However, there appears to be no City rule that would allow you or anyone else to authorize the Sergeant's use of a City vehicle after the fact.

Furthermore, if such an authorization could have been made by you, such authorization should have been documented. I am not aware of any documents that were generated by you authorizing Sergeant Eich's use of her take-home vehicle in the manner she did on July 19, 2017. If such documents do exist, please provide me with a copy.

As Chief of Police, I expect you to adhere to all of the SOPs and apply them consistently throughout the department. If an exception needs to be made, you should document the exception. Documenting any exception increases the level of transparency in the Department. By being transparent, we develop a culture of engaged employees and create employee trust, which is strongly associated with an organization's resilient long-term development.

### Anonymous Complaint

Throughout the investigation, you stated that the CGPD does not investigate anonymous complaints unless they contain criminal allegations. This is an inaccurate and misleading statement. In fact, the following all state that anonymous complaints are to be investigated:

1. SOP#114 expressly states, "That all complaints against the agency, and/or its Departmental personnel, will be recorded and investigated to include anonymous complaints."
2. CALEA Standard 52.1.1. mandates "A written directive requires all complaints against the agency or its employees be investigated to include anonymous complaints."
3. On the City's website under "Police Department, Resident Resources, Internal Affairs" a page containing "Mission Statement" and "Complaint Process" appears and under the second entry under "Complaint Process" it reads "All complaints will be accepted by the Internal Affairs Section and can be received in person by telephone, or by email. Anonymous complaints are also accepted."

In addition to the above, it is common practice for police agencies to investigate anonymous complaints as well as a best practice promoted by the IACP (International Association of Chiefs of Police). As the Chief of Police, and having been an internal affairs investigator, I would have expected that you would have known this. Even if you were unaware of this prior to making such a blanket inaccurate statement, you should have researched the issue before making such statements.

You must refrain from further advancing such misrepresentation and ensure that the officers in the Police Department are fully apprised of SOP #114. Going forward you must ensure that you are fully apprised of the issues at hand before discussing them and not jump to conclusions or speak without a basis – you must be fact-driven. Your failure to adhere to that will have significant repercussions to your credibility.

In this reprimand, which is now part of your official personnel file, I have addressed in detail each of the areas of concern identified in Major (Ret.) Skurkis' Report. For the reasons I explained above and your past course of conduct for which you haven been apprised verbally and in writing, I have significant concerns in your ability to honorably and objectively lead the Police Department. It is essential that you fully and expeditiously take all of the corrective measures laid out in this reprimand, that you adhere to the professional expectations set forth above, that you follow and enforce the rules of conduct that govern your profession, and that you act in a professional manner, never misusing your authority. As with each member of the leadership team, I also expect and demand your full cooperation and support in carrying out my Administration's vision and mission as we introduce innovation, professionalism, and integrity at all levels of the organization.

Your conduct and decision-making and lack thereof related to the areas outlined above, fall below the standard of judgment and professionalism expected of you as Chief of Police and I expect you to exercise a higher level of judgment. Failure to take the necessary corrective action as laid out for you in this reprimand and failure to consistently practice more professional and mature judgement moving forward will result in further disciplinary action, including termination.

C: Frank Fernandez, Assistant City Manager/Director of Public Safety  
Personnel File  
Internal Affairs File