



Joseph M. Centorino, Inspector General

TO: Honorable Mayor and Members of the City Commission
FROM: Joseph Centorino, Inspector General

DATE: April 26, 2023

REVIEW: Review of Hiring Procedure/Outside Employment Conflict Issues
OIG No.: 23-07

Summary

This is a review of the City's hiring procedure in connection with the employment of the Division Director of Sanitation in the Department of Public Works, together with the City's handling of a related Outside Employment Conflict issue. The review concluded that the hiring apparently took place prior to the completion of a background investigation by the Human Resources Department; alleged misconduct supposedly leading to terminations in the Division Director's previous employments were unsubstantiated. An ancillary issue regarding Outside Employment engaged in by the Division Director found that the employment was duly approved by the former City Manager and other supervisors, but that the approval process failed to identify a possible conflict of interest.

Initial Inquiry

An initial inquiry was opened by the City of Miami Beach Office of the Inspector General (OIG) upon receipt of several documents provided to the OIG by former Assistant City Manager Lester Sola. Mr. Sola received a set of documents in his home mailbox from an anonymous source. The documents were apparently intended to cast aspersions on Mr. Bradford Kaine, who was then serving as Sanitation Division Director and who also was engaged in working at the time on a proposal to change the City of Miami Beach's waste hauling policy that was known to be opposed by some firms in that industry. The documents received by Mr. Sola presented an array of different factual situations involving Mr. Kaine's activities connected to his private consulting business, his prior employment with the City of Dania Beach, and his service as part of an evaluation committee for the City of North Miami Beach.

The documents included: (1) a partial transcript of a deposition of Mr. Kaine, related to his involvement as a consultant in a then pending lawsuit titled Southern Waste Systems LLC vs. Waste Management Inc. of FL; (2) a copy of a consulting agreement between Kaine's private consulting company, BLK Services LLC, and Bergeron Recycling LLC; (3) a letter dated 09/29/2020 alleging improper influence in connection with Mr. Kaine's prior participation on a City

of North Miami Beach evaluation committee, written by Mr. John Casagrande, the Vice President of Coastal Waste & Recycling, Inc. (Coastal), a competing firm under consideration by that committee, and addressed to a supervisor in the North Miami Beach Procurement Management Division; and (4) a *Sun-Sentinel* article dated May 6, 2019 that recounted an investigation by the Broward County OIG into Sunshine law and procedural issues raised by the deliberations of a City of Dania Beach bid review committee that had included Mr. Kaine.

The latter article commented that Mr. Kaine, the former Public Works Director for Dania Beach at the time of his involvement on the bid review committee, had lost his job in the City, along with the City Engineer who helped oversee the bid process. Although it did not explicitly say so, the article appeared to attempt to link Mr. Kaine's departure with the committee's alleged deficient performance, a connection which was later disproven.

The OIG reviewed City of Miami Beach records connected to Mr. Kaine's employment. These included his application for the Sanitation Division Director position and resume, the Background Investigation Log and Employment Verification conducted by the Department of Human Resources, his Miami Beach personnel file, and Mr. Kaine's Request for Outside Employment Form.

During the initial inquiry, further information was received from sources alleging that Mr. Kaine may have been terminated from prior employment at several previous positions in local government. Such allegations, by themselves, would not provide the predicate for a full-blown investigation; however, due to questions raised by the City's records and the *Sun-Sentinel* article about his Dania Beach employment and the fact that his resume showed prior employment with the following cities: Weston (Public Works Director), Parkland (Assistant Public Works Director), Deerfield Beach (Assistant to Public Works Director), a private company, Sun Bergeron (Director of Municipal Services), as well as Mr. Kaine's own private government consulting company, the OIG inquiry was extended to consideration of those employments and review of available personnel records from them, as well as a review of the City of Miami Beach's hiring procedure and its approval process for outside employment.

Human Resources Background Investigation

The City of Miami Beach Human Resources Department conducts background investigations of all prospective City employees. Brenda Garrison, Human Resources Specialist, conducted the background on Mr. Kaine. The OIG interviewed Ms. Garrison, and documents received or completed in her review were examined. Ms. Garrison explained that she conducted her usual process of contacting prior employers for employment verification. She also explained that she received records regarding employment verification from Weston, Parkland, Deerfield Beach, Dania Beach, and the private employer, Sun Bergeron. None of them indicated that Mr. Kaine had been fired or contained any negative information about Mr. Kaine. It appeared that Ms. Garrison had properly completed her review.

However, a concern was raised by an entry in the HR Background Investigation Log, a form which is generally signed off on by the HR Specialist, HR Administrator, and HR Director before the final hiring decision is made. The Background Investigation Log contains checkoff boxes for Personnel Action Form/Memo, Conditional Offer Letter, Medical, VECHS Report (Volunteer and Employee Criminal History System), and Previous Employment, all duly checked. The signatures of HR Specialist Garrison and then HR Administrator Ramón Suarez appeared next to boxes labeled

“Hire” and “Do not hire,” with the “Hire” box duly checked by each. However, the form did not contain the signature of then HR Director Michael Smith, and no checkmark appeared in either of those boxes. There was an asterisk on the Director’s signature line referencing a note at the bottom of the page stating, “APPROVED PRIOR TO REVIEW BY HR.” That note appeared to be followed by Mr. Smith’s initials and was dated 01/23/2020.

OIG Interviews

Michael Smith

The OIG conducted two telephone interviews with Mr. Smith, who is retired and living outside of Miami-Dade County. Mr. Smith confirmed that he had intentionally not checked off either the “Hire” or “Do not hire” box on the HR form and had initialed the form under the note written at the bottom. Mr. Smith stated that he had conducted his own limited review of Mr. Kaine’s background, based on the fact of Mr. Kaine’s having left his employment with the cities of Dania Beach, Weston, and Deerfield Beach under the terms of Separation Agreements, reflecting a mutually agreed parting of the ways on an amicable basis by all parties, copies of which he obtained. Mr. Smith, a Human Resources professional, opined that the execution of this type of agreement is not the usual manner in which most public employees would leave a public position.

Mr. Smith stated that he did not have any personal knowledge concerning Mr. Kaine’s performance in his previous positions, but said the number of separation agreements gave him cause for concern, and he felt that the City should exercise special care before deciding to hire Mr. Kaine. He stated that he provided the documents showing the respective separation agreements to Assistant City Manager Mark Taxis, who oversaw Human Resources at that time, and suggested that Taxis advise then City Manager Jimmy Morales of his concerns regarding Mr. Kaine’s background in order to avoid possible embarrassment. When Mr. Smith became aware that the hiring decision had been made by the City Administration prior to the final completion of the HR review and the HR Director’s sign-off, he elected not to sign the HR form.

Mark Taxis

The OIG conducted an in-person interview with Assistant City Manager Mark Taxis, who recalled that he had a conversation with Mr. Smith regarding concerns about something that had come up in Smith’s review of Mr. Kaine’s candidacy. Taxis said he had only a limited recollection of information provided by Mr. Smith, but did recall possibly reading a newspaper article he provided. Mr. Taxis said he believed that he had brought it to the attention of City Manager Morales, which would have been his standard operating procedure, but did not have specific recollection of having a related conversation with him. Mr. Taxis said he did not interview Mr. Kaine and that he had no firsthand knowledge of who was involved in the decision to hire Mr. Kaine, but that the City Manager would typically have to give the ultimate approval to hire a department or division head. He said that then Assistant City Manager Eric Carpenter (now Deputy City Manager) oversaw the Sanitation Division at that time.

Eric Carpenter

The OIG conducted an in-person interview with Deputy City Manager Eric Carpenter, who was familiar with the hiring of Mr. Kaine. He indicated that, when former Public Works Department Director Roy Coley asked if there were people that might be fit for that role, he would have

mentioned that Brad was available and was looking for opportunities at the time. He recalled the long process of finding someone to fill the position following a vacancy being created after the short tenure of the previous Sanitation Division Director. Mr. Carpenter was acquainted with Mr. Kaine through their both having served on the board of the South Florida branch of the American Public Works Association. He recalled that Mr. Kaine had made him aware of his availability to be considered for the position, as a result of a new City Manager being appointed in Dania Beach, where he was serving as Public Works Director. He said that Mr. Kaine felt like he was being frozen out by the change and would probably not be serving there much longer.

Mr. Carpenter said he was familiar with Mr. Kaine's work in Dania Beach and Weston. He mentioned that when the whole situation regarding the Broward County OIG report came up, people asked him what his thoughts were about that. He then researched the matter and read the full OIG report.

Mr. Carpenter said that the report had to do with the way the ranking was done on a particular procurement in Dania Beach. Mr. Carpenter said that after he had reviewed the report and spoken with Mr. Kaine about it, he did not have any concerns about the hiring of Mr. Kaine. He also recalled discussing it with Mr. Coley and that he had passed the information on to former City Manager Morales, who made the final hiring decision.

Carpenter said he was also aware of the negative information that had been received by Mr. Sola and noted that the information had surfaced during a period when Mr. Kaine, the City's expert on commercial waste hauling, had been involved in a proposal to change the City's waste hauling arrangement, and that some parties were displeased with the proposal.

Jimmy Morales

The OIG interviewed former City Manager Jimmy Morales via a telephone conference. He recalled that there was some difficulty in filling the position of Sanitation Director due to turnover in the position. He did not know Mr. Kaine personally but believed that either Eric Carpenter or Roy Coley or both had likely spoken to him and recommended Mr. Kaine, and that he seemed to be a qualified local person for the position. Mr. Morales did not have a specific recollection of any negative information he may have received at that time. He said that if something of that nature had been mentioned it was deemed not to be any significant obstacle to his being hired.

John Casagrande

The information obtained by Lester Sola included a letter from John Casagrande of Coastal Waste & Recycling, who alleged that, in 2020 when Mr. Kaine was employed at Dania Beach but acting as a member of a City of North Miami Beach evaluation committee, he had attempted to improperly influence the committee's decision, in which Coastal was a competing firm. Mr. Casagrande had been previously associated with SWS/Sun Recycling and was also included as a defendant in Bergeron's lawsuit against Waste Management and Sun Recycling. He also stated in the letter that he had supervised Mr. Kaine while he was employed by Sun Bergeron and had terminated his services there.

OIG staff contacted Mr. Casagrande by telephone, who stated that he had not initiated the complaint or sent the anonymous information to the City of Miami Beach. When asked to explain the reasons for his statement that he had "terminated" Mr. Kaine's services in 2015, he responded that he did not want to discuss the issue further because the lawsuit would be starting soon. Mr.

Casagrande stated that, although his firm was not initially awarded the contract with the City of North Miami Beach, after the Evaluation Committee was re-formed with different membership, Coastal was awarded the contract. The OIG contacted the recipient of Mr. Casagrande's letter to the City of North Miami Beach, Meghan C. Bennett, Purchasing Supervisor, who oversaw the Evaluation Committee. Ms. Bennett said she did not recall any misconduct in Kaine's service on the committee.

Mr. Casagrande also expressed concern about the possibility of Mr. Kaine's participating in the City of Miami Beach Evaluation Committee concerning an upcoming request for proposal (RFP) related to companies wanting to provide sanitation services. He stated that some of the sanitation companies that bid for the project were involved in the lawsuit in which Kaine was an active participant, and he may not be impartial (see discussion below re: Conflict of Interest).

Bradford Kaine

Mr. Kaine was invited to be interviewed and did so voluntarily and cooperatively. He reviewed his relevant past work history with the OIG and the information contained in documents obtained by the OIG.

He served as Assistant to the Public Works Director at the City of Deerfield Beach from October 1999 to October 2003, where he said he had no problems and left for a better job at Parkland. He noted that his separation agreement with Deerfield Beach included an agreement for him to continue working as a consultant for the City for seven months based on his "dedicated service" with that municipality. This was confirmed by a review of the written agreement, which also provided that Kaine would receive favorable written and oral references from the City Manager following his departure. A review of Kaine's personnel file at Deerfield Beach did not reveal any information that would have affected his hiring by Miami Beach.

Mr. Kaine then worked as Assistant Public Works Director at the City of Parkland from November 2003 to May 2005, after which he resigned to accept a better position at the City of Weston. Notes of his exit interview there confirmed that he resigned to accept a better-paying and more prestigious position, as well as his own assessment of having had a favorable experience in Parkland. His personnel file reflected that he left Parkland in good standing.

Mr. Kaine worked as Director of Public Works for the City of Weston from May 2005 through January 2012. According to his employment agreement, he was an "at will" employee there and could be terminated at any time without cause. While employed at Weston, he received the Administrative Support Award from the American Public Works Association, South Florida Branch, for outstanding achievement in public works administration and the advancement of administrative management, an account of which he provided to the OIG. Mr. Kaine said his decision to leave Weston was prompted by an opportunity to work for a private waste company, Sun Bergeron. His separation agreement from Weston contained mutual promises waiving any claims, a covenant not to sue, and non-admission of any wrongdoing.

Mr. Kaine's employment at Sun Bergeron as Director of Municipal Services lasted from February 2012 to October 2015. Kaine said he decided to leave when Southern Waste Systems (SWS)/Sun Recycling, a partner of Bergeron in the Sun Bergeron joint venture while Kaine was employed there, decided to sell its assets to Waste Management, a competing firm. This led to a lawsuit by Bergeron (now known as Bergeron Environmental Recycling Inc. or BERI) against Waste Management and Sun Bergeron's former partners at SWS/Sun Recycling. Even after Mr. Kaine

became employed next at the City of Dania Beach, he was retained by Bergeron as a consultant in its business for its work on city contracts as well as assistance on the lawsuit, the latter of which created a possible conflict issue in the City of Miami Beach covered below in this report.

Regarding the terms under which Mr. Kaine left Bergeron Environmental, Mr. Kaine related that he worked together with Mr. Casagrande while at Bergeron but was not under his supervision nor was he terminated by him. The fact of Kaine's continued employment as a consultant by Bergeron, in connection with the lawsuit following his separation from that firm, indicates that he remained on good professional terms with the firm after he left for Dania Beach.

Mr. Kaine was employed at Dania Beach as Public Services Director from October 2015 to April 2019. He related to the OIG that he worked well under City Manager Bob Baldwin, with whom he had a good relationship. When Baldwin retired, Kaine and another City employee both applied for the vacant Manager's position, but neither of them received a majority vote of the City Commission, which was deadlocked. Following the deadlock, an outside candidate, Ana Garcia, was appointed as the next City Manager, who, according to Kaine, was aware of his application for the position and wanted to hire her own management team. This led to a separation agreement between Kaine and Dania Beach indicating a mutual parting of the ways, including a mutual non-disparagement clause. Ms. Garcia was contacted by the OIG but declined to comment on the separation.

Bob Baldwin

The OIG interviewed Bob Baldwin, former City Manager and Mr. Kaine's direct supervisor at Dania Beach. Baldwin confirmed that the new City Manager brought in her own team, which led to the resignations of several individuals in upper management at the City including Kaine. This was also confirmed to the OIG by another individual employed in Dania Beach at that time. Baldwin said that Kaine performed well as Public Services Director and described him as "honest and forthright." He said that he would hire him again.

Broward OIG Report

As discussed above, one of the items in the materials and information forwarded to this office included information about an investigation conducted by the Broward OIG, which issued a final report on the investigation in May 2019 into possible misconduct by the Evaluation Committee formed for the City of Dania Beach's procurement (RFQ or Request For Qualifications) for engineering services.

The Broward OIG report was obtained and reviewed by OIG staff. It did show that there was inadequate notice of some meetings and a failure to record minutes of Evaluation Committee meetings on which Mr. Kaine served, and that state and local procedures and policies regarding the procurement of such projects were not followed. It also concluded that the committee's evaluation process became subjective and awarded contracts to respondents who scored lower than a higher-ranked firm.

Mr. Kaine was interviewed by the Broward OIG during its investigation. He defended the committee's decisions based on his assessment that certain firms were a better fit for the City. He also said that he relied on the City Engineer for technical advice concerning state and local procedures. While the investigative report was critical of the City's evaluation process, it did not

make specific findings against any individual for any legal or process violations but recommended that the City update and improve its procurement policies.

The information received by the OIG included a *Sun Sentinel* article on the Broward OIG investigation. The article referenced several individuals involved in the investigation, including Mr. Kaine. The article also noted that Mr. Kaine, as well as the former City Engineer, who was the person who managed the procurement and oversaw the bid process, had lost their jobs, although it did not specifically state that their leaving the City was connected to the investigation.

As noted above, Mr. Baldwin, Kaine's supervisor prior to his retirement from the City, said he believed that the new City Manager's decision to change her leadership team was the cause of the separation rather than that investigation. His assessment was supported by an email received by the Miami Beach Human Resources Department from Bendra Casaneuve, Dania Beach Human Resource Generalist, and included with Kaine's personnel records. The email stated that Mr. Kaine "voluntarily separated" from his position and that "he was not disciplined during the term of his employment and never received a negative performance evaluation."

Additionally, also noted above, then Miami Beach Assistant City Manager Eric Carpenter told this office that he had reviewed the Broward OIG report and had spoken with Mr. Kaine to get his version of the story before arriving at his conclusion that the City should hire Mr. Kaine. Mr. Carpenter also stated that he spoke to then City Manager Morales regarding the OIG report, telling Morales that he was not concerned about it, but didn't want him to be caught off guard.

Outside Employment and Conflict of Interest Issues

Following his employment at the City of Dania Beach, Mr. Kaine worked as a consultant in his own business, BLK Services, Inc. At the time of his hiring in the City of Miami Beach, he filed a Request For Approval Of Outside Employment Form requesting permission to continue his work as a consultant for his former private employer, Bergeron Environmental. His request stated that he would work nights to do the following: "Provide Consulting Services to former employer for legal case vs. Waste Management."

Mr. Kaine's request form was approved and signed by his direct supervisor, former Public Works Department Assistant Director, Jay Fink; former Public Works Department Director, Roy Coley; former Human Resources Director, Michael Smith; then Assistant City Manager, Eric Carpenter; and former City Manager, Jimmy Morales.

The outside employment of Mr. Kaine as a consultant was also referenced in the materials provided to the OIG by former Assistant City Manager Lester Sola. The OIG examined the issue of the outside employment in light of the fact that Waste Management, the defendant in the suit by Bergeron, is an authorized commercial waste hauler in Miami Beach and a party to a Non-Exclusive Franchise Waste Contractor Agreement with the City. The OIG had a concern that the City Sanitation Division Director, who is the City's authorized representative in the supervision of Waste Management's performance in the City, might experience a conflict in doing so when that person also serves as a consultant to a party in a lawsuit against Waste Management.

The OIG consulted with the Director of the Miami-Dade Commission on Ethics and Public Trust, Jose Arrojo, who opined in a written communication that he found the arrangement to be "problematic." Mr. Arrojo, while not specifically finding a violation without the benefit of an

independent review, pointed out that the arrangement could create a substantial conflict with the proper discharge of Kaine's duties under Miami Beach Code Section 2-446; might induce disclosure of confidential information under City Code Section 2-452 or County Ethics Code subsection 2-11.1(h); and might impair his independence of judgment under City Code Section 2-453.

The OIG did not deem it appropriate to request an investigation of the conflict due to the fact that Mr. Kaine's outside employment had been explicitly approved by five City administrators; the fact that the lawsuit in question was settled in 2022; and that present City Manager Alina Hudak later disapproved the outside employment arrangement. Former City Manager Morales, when interviewed, stated that he would have been primarily concerned about an arrangement in which Kaine held outside employment with Waste Management, a contractor over whom he had supervisory authority. He noted that no one from Waste Management ever raised any concerns about Mr. Kaine's hiring. He acknowledged in hindsight, however, that the OIG's assessment of the arrangement in question was "a good catch" and could raise an ethical problem.

Findings and Recommendations:

This review found no evidence to substantiate the allegations that Mr. Kaine was guilty of misconduct in his previous work history leading to any terminations, or that Mr. Kaine was less than qualified to assume the position of Sanitation Division Director. However, the fact that the hiring decision was made prior to HR Director Smith's signing off on the completion of the Human Resources background investigation, with his approval or non-approval of the hiring decision, raises a concern that a future hiring decision made without such a final assessment could lead to an inappropriate hire.

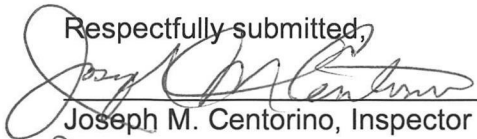
It is recommended that no City hiring decision be concluded until HR has completed its background investigation and all associated paperwork has been completed and submitted.

Furthermore, it is recommended that the City adopt an explicit requirement that, at a minimum, the background check should include a documented internet search. Any identified concerns should be documented and properly vetted prior to a final hiring decision.

In addition, it appears that the ethical concerns raised by the County Ethics Director about the requested outside employment, in which Mr. Kaine would be providing advice as a consultant to his former employer to be used in a lawsuit against a company operating under a City franchise contract overseen by him, were not identified in the decision to approve Mr. Kaine's private consulting arrangement. Senior level City administrators are generally cognizant of ethics requirements, but still may not recognize a possible conflict of interest as occurred here. While Mr. Kaine acted properly in requesting and receiving approval for the outside work, which was signed off on by five City administrators, closer scrutiny should have been given to the possible conflict raised by the consulting arrangement.

It is recommended that requests for outside employment from a City employee include at least one approval from an individual well-versed in ethical issues, preferably the City Attorney or his/her designee, whose sole purpose would be to consider the request in view of relevant ethics provisions.

Respectfully submitted,


Joseph M. Centorino, Inspector General

04/26/2023
Date


Mark Coolidge, Chief Auditor

04/26/2023
Date

cc: Alina Hudak, City Manager
Eric Carpenter, Deputy City Manager
Mark Taxis, Assistant City Manager
Rickelle Williams, Assistant City Manager
Marla Alpizar, Director of Human Resources
Joe Gomez, Director of Public Works
Rafael Paz, City Attorney
Bradford Kaine, Sanitation Division Director
Bendra Garrison, Human Resources Specialist
Jimmy Morales, former City Manager
Michael Smith, former Director of Human Resources
Bob Baldwin, former City Manager, Dania Beach
John Casagrande, Vice President at Coastal Waste & Recycling, Inc.
Bendra Casaneuve, Human Resources Generalist, City of Dania Beach
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