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INTER-OFFICE CORRESPONDENCE
MEMORANDUM NO. 2023-082

TO: Marlene D. Graham, City Clerk

CC: Frank C. Ortis, Mayor
Members of the City Commission
Charles F. Dodge, City Manager
Aner Gonzalez, Deputy City Manager
Marty Gayeski, Deputy City Manager

FROM: Samuel S. Goren, City Attorney *SSG*
Jacob G. Horowitz, Assistant City Attorney *SMS*
Paul B. Hernandez, Assistant City Attorney *PBH*

DATE: September 6, 2023

RE: City of Pembroke Pines (the "City") / Public Records Request No. W102114-081723

This memorandum shall serve as a response to your inquiry, as the City's public records custodian, regarding Public Records Request No. W102114-081723 regarding whether records requested are subject to Florida's public records disclosure statute. The intent of this memorandum is to examine whether data procured by a City Commissioner using surplus campaign funds deposited into an office account pursuant to Sec. 106.141(5), Fla. Stat., may constitute a public record pursuant to Chapter 119, Fla. Stat.

Florida Statutes provide a mechanism under Sec. 106.141(5) for candidates elected into office to transfer surplus campaign funds remaining at the time the candidate is elected to an office account pursuant to certain regulations. The statutory regulations on the disposition of surplus campaign funds that have been transferred into an office account include a maximum amount of surplus campaign funds that may be transferred into an office account depending on the office held, limits on the types of expenditures that may be made, and quarterly reporting of expenditures made by the office account.

A public record, as defined by Sec. 119.11(12), Fla. Stat., 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 an agency." Further, the Supreme Court of Florida has held that a public record is "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type." *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

Here, a City Commissioner utilized funds from an office account pursuant to Sec. 106.141(5), Fla. Stat. to procure a public opinion poll asking certain City-related

questions of City residents (the “Poll”), the results of which were provided to the Commissioner by the contracted vendor to conduct the Poll and have been referenced publicly by the Commissioner during the course of official business.

The Poll may be alleged to be a private or non-public document, not subject to disclosure under Florida’s public records law. While Chapter 119, Fla. Stat., makes no specific reference to items purchased using an office account under Sec. 106.141(5), Fla. Stat., courts have held that Florida’s public records law must be liberally construed in favor of access...” *Palm Beach County Sheriff’s Office v. Sun-Sentinel Co., LLC*, 226 So. 3d 969, 973 (Fla. 4th DCA 2017); and, further, that in analyzing whether a record is public, “the determining factor is the nature of the record...” *State v. City of Clearwater*, 863 So. 2d 149, 154 (Fla. 2003). The Office of the Attorney General of Florida has also provided context regarding public records. AGO 2004-33 provides that “the material issue is whether the record is made or received by the public agency in connection with the transaction of official business.”

Based on the foregoing information, including a review of Florida Statutes, case law, related Attorney General Opinions, and conversations with the Division of Elections and Patricia R. Gleason, Special Counsel for Open Government for the State’s Department of the Attorney General, it is our opinion that any portion of the Poll that was referenced on the dais at a public meeting or used by a commission member in furtherance of their current office is potentially subject to public records disclosure under Chapter 119, Fla. Stat. There is no requirement under Florida law for the Commissioner to submit the Poll to the City Clerk absent a public records request. However, a formal public records request for the disclosure of the Poll was made by another City Commissioner on behalf of residents at the Commission meeting held on August 16, 2023. Pursuant to the August 16th public records request, the City Clerk may request the Poll from the Commissioner and the Commissioner should provide any portion of the Poll which was made or received by the Commissioner during the course of official business with the intent to perpetuate, communicate, or formalize knowledge of some type.

Should you have any questions regarding this matter, please do not hesitate to contact our office.

SSG:JGH:PBH