

The City of Boynton Beach



OFFICE OF THE CITY MANAGER

100 East Ocean Avenue
Boynton Beach, FL 33435
(P): 561-742-6010 (F): 561-742-6011
www.boynton-beach.org

MEMORANDUM

TO: Mayor and City Commissioners

FROM: Lori LaVerriere, City Manager *LL*

DATE: January 25, 2022

SUBJECT: Questions from the 01/18/2022 Commission Meeting re: December 26, 2021 Crash

In response to the statements and questions posed at our last City Commission meeting, I felt it would be beneficial to address them via memorandum for you and the public as there is much information to convey. This memorandum is intended to assist the City Commission and all interested parties in understanding how this matter is being handled pursuant to state law, as well as the City Charter, and City policies and procedures. I have addressed the inquiries and statements in a Q&A format. The City Attorney has assisted by providing the legal references.

1. What authority do I, as City Manager, have in firing a Police Officer?

As City Manager, my ability to terminate a police officer is limited by (1) the Union contracts and (2) the Law Enforcement Officer's Bill of Rights (LEOBR), which is contained within Chapter 112, Florida Statutes:

Fla. Stat. §112.532(1)(d) states, "The law enforcement officer or correctional officer under investigation must be informed of the nature of the investigation before any interrogation begins, and he or she must be informed of the names of all complainants. All identifiable witnesses shall be interviewed, whenever possible, prior to the beginning of the investigative interview of the accused officer. The complaint, all witness statements, including all other existing subject officer statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to each officer who is the subject of the complaint before the beginning of any investigative interview of that officer. An officer, after being informed of the right to review witness statements, may voluntarily waive the provisions of this paragraph and provide a voluntary statement at any time."

Florida Law mandates that I, as City Manager, follow the above-described process. I cannot take any action until the relevant information is received and reviewed by all parties. An officer's internal investigation "is tolled [paused] during the time that any criminal investigation or prosecution is pending in connection with the act, omission, or other allegation of misconduct." Fla. Stat. §112.532(6)(a)2. After that, the City has 180 calendar days to complete its internal investigation and notify the officer of any proposed discipline.

As City Manager I am prohibited from interfering in any aspect of the Internal Affairs (IA) Investigation of a Law Enforcement Officer. Florida Law requires that the contents of a complaint against a law

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enforcement officer shall remain confidential until such time as there is a final determination whether or not to issue a notice of disciplinary action consisting of suspension with loss of pay, demotion, or dismissal. As a result, the public cannot be given access to records or confidential information that are subject to the investigation until that final disciplinary action is determined.

Until such time that the Internal Affairs Investigation is complete, I have no access to the confidential information obtained in the investigation. Once concluded, the Police Chief will report the findings of the investigation to me, and he will make a recommendation as to the discipline, if any, to be imposed. As City Manager, I will make the final decision whether or not to uphold the Police Chief's recommendation.

2. What is the estimated timeline by which these investigations will be completed?

There are three (3) separate investigations into this matter:

- 1) The Florida Highway Patrol (FHP) is conducting a crash investigation; and
- 2) The Palm Beach County Medical Examiner's Office is conducting a death investigation; and
- 3) After Items 1 and 2 above are completed, the Boynton Beach Police Department's Internal Affairs Unit will investigate whether any City policies or procedures have been violated.

We anticipate FHP's investigation may take approximately 60-90 days (2-3 months) to complete. The Internal Affairs Investigation is tolled (paused) until the conclusion of FHP's investigation, which is required by Fla. Stat. §112.532(6)(a)2. Once the FHP investigation is concluded, the Internal Affairs investigation will immediately resume, and according to LEOBR, it must be concluded within 180 days (6 months).

3. Are there dashcams in all police vehicles?

No. The Police Department had an outdated dash-camera system in its patrol cars until June 2019 when the last cameras stopped functioning. Due to the significant investment the department made in 2017 with a Body Worn Camera program, no dash-cameras were replaced (similar to the approach taken by the City of West Palm Beach and the City of Palm Beach Gardens). In 2020, a new dash-camera system was identified and installed only in a DUI Enforcement car used by the Traffic Unit and vehicles assigned to the K9 Unit. The marked police car that was being driven during the attempted traffic stop in this incident on December 26, 2021 is not assigned to either the K9 Unit or the Traffic Unit, and it is not equipped with a dash-camera.

4. How is the City handling the release of public records as requests are received?

The City is responding to public records requests and releasing any information that is **NOT** confidential, exempt, or otherwise determined to be protected by law pursuant to Fla. Stat. §119 and Fla. Stat. §768.28. Multiple public records requests have been and continue to be processed.

5. Why hasn't the City released the officer's name?

The City has not released the officer's name because the officer invoked rights to Marsy's Law as the officer and the officer's family are the victims of threats to their safety. There is an ongoing investigation into the threats.

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Marsy's Law states, in part:

. . . [E]very victim is entitled to the following rights, beginning at the time of his or her victimization:

...

(5) The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim.

6. What is the authority of the City Commission regarding hiring or terminating employees?

Per the City Charter, "The City Commission or its members shall deal with city officers and employees who are subject to the direction and supervision of the City Manager solely through the Manager."

This provision, which is commonly referred to as a "non-interference clause," prevents the City Commission from taking action against individual police officers or other employees who work under the authority of the City Manager.

7. Why shouldn't the City take disciplinary action prior to the conclusion of all ongoing investigations into this matter?

I completely understand the demands and desires from the public that the City act quickly in bringing this tragic matter to conclusion. As your City Manager, I will do everything within my authority to help expedite this matter. Until all necessary investigations are concluded, none of us has all of the facts surrounding this tragedy in order to make a fully-informed decision. I offer you the following statement our Legal Department provided from a Court opinion, albeit based on different circumstances, which provides guidance regarding the importance of completing the investigation prior to taking action:

As one judge has noted, speedy disposition is not to be equated with justice:

*To suggest that justice delayed is justice denied is not the answer. Justice delayed is not always justice denied, and speedy justice is not always justice obtained. Increased pressures on the judiciary resulting from increased litigation because of increased use of the courts by our society is an increased burden which must be met by the judiciary alone, without sacrificing the quality of the justice dispensed. The resulting pressures should and must be assumed by the judiciary without complaint.... **If justice delayed is justice denied, then justice without quality is also justice denied, a result for which the judiciary alone will be held accountable without reference to collateral pressures from whatever source.***

The City of Boynton Beach is committed to justice with quality, and will expedite those aspects of the investigation within its control.

With the assistance of the City Attorney's Office, I will continue to explore and implement all means of expediting the review of this matter and bringing it to a fair and just conclusion. I will keep the City Commission and the public up to date as the investigations of this matter proceed.

Thank you for your continued patience and understanding during this very difficult time.

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