

**FLORIDA DEPARTMENT OF LAW ENFORCEMENT  
INVESTIGATIVE REPORT**

On August 4, 2009, Inspector Brett Lycett and Special Agent Supervisor Robert LeFiles of the Florida Department of Law Enforcement's (FDLE) Office of Executive Investigations attended a meeting at the State Attorney's Office (SAO) of the Second Judicial Circuit. FDLE had previously been contacted by the SAO to assist in reviewing possible criminal violations conducted by members of Florida's Public Service Commission (PSC). Present during the meeting were the complainant, PSC Commissioner Nathan Skop, SAO Investigator Jim Anderson, and Assistant State Attorney (ASA) Eddie Evans.

Florida's Public Service Commission (PSC) is an organization that's purpose is to "facilitate the efficient provision of safe and reliable utility services at fair prices." The PSC completes this tasking through regulatory and economic oversight. The PSC consists of a five member Governor appointed panel who are assisted by support staff. Currently, the PSC is involved in negotiations with the electrical utility companies in Florida who have requested to increase utility rates for consumers.

The complainant expressed concerns regarding the activities of certain PSC members' aides. The complainant provided documentation that included multiple emails where aides were exchanging their Blackberry personal identification numbers (PIN) and the PINs of PSC Commissioners with Florida Power and Light (FPL) representatives. The complainant advised that this caused two concerns. First, it was against PSC policy for Commissioners to speak directly to utility representatives about any pending agenda issues. The exchange of the PINs created the appearance of impropriety between the PSC and the utility company. Second, if communication between aides, Commission members and utility company staff was occurring, there maybe possible violations of both Public Records and Sunshine Law.

Blackberry devices have assigned a unique personal identification number (PIN) which allows for the identification of each individual device. Blackberry devices support an application where communication can be sent using PIN to PIN messaging. This feature provides for the communication between the two users to bypass any network email server, thereby, allowing for communication which is not being recorded or stored, potentially violating Florida's Sunshine Law.

The complainant did not have or provide any specific information that identified a criminal act conducted by members of the PSC, but believed that the exchange of PIN numbers between Commission members and utility company staff raised concerns about the integrity of the PSC that needed to be addressed by the proper authorities.

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Approved By:LeFiles, Robert J.

Description:Public Service Commission

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### Commissioner Nancy Argenziano

On August 21, 2009, Inspector Tom Berlinger and Special Agent Supervisor Robert LeFiles assisted ASA Eddie Evans and SAO Investigator Jim Anderson in interviewing PSC Commissioner Nancy Argenziano, via telephone, regarding her knowledge of any ex-parte communication or Sunshine Law violations occurring at the PSC. Commissioner Argenziano expressed her concerns about communication between other commissioners but did not have any direct information that identified violations of either ex-parte communications or Sunshine Law.

### Chief Advisor William Gardner

On September 8, 2009, Inspector Brett Lycett assisted ASA Eddie Evans and SAO Investigator Jim Anderson in interviewing PSC Chief Advisor William Gardner, who was represented by attorney Robert Morris, regarding his knowledge or involvement in any ex-parte communication or Sunshine Law violations occurring within the PSC. Mr. Gardner advised that he frequently used PIN messaging to communicate with representatives of the regulated industries, but at no time did he ever discuss any information related to the merit of any cases that were to be brought before the PSC. Mr. Gardner stated he had no knowledge of any violations of ex-parte communications or Sunshine Law conducted by PSC Commissioners or staff.

### Chief Advisor Roberta Bass

On September 10, 2009, Inspector Brett Lycett assisted ASA Eddie Evans and SAO Investigator Jim Anderson in interviewing PSC Chief Advisor Roberta Bass, who was represented by attorney Pamela Marsh, regarding her knowledge or involvement in any ex-parte communication or Sunshine Law violations occurring within the PSC. Ms. Bass advised that she, on occasion, has used PIN messaging to communicate with representatives of the regulated industries, but at no time did she ever discuss any information related to the merit of any cases that were to be brought before the PSC. Ms. Bass stated she had no knowledge of any violations of ex-parte communications or Sunshine Law conducted by PSC Commissioners or staff.

### Whitney Ray Complaint

On September 11, 2009, Inspector Brett Lycett became aware of a complaint by Capitol News journalist, Whitney Ray regarding an allegation of assault/battery by PSC Public Information Officer, Cynthia Muir. During a recent PSC meeting, Mr. Ray attempted to interview PSC Chairman Mathew Carter when Ms. Muir apparently touched Mr. Ray inappropriately. Mr. Ray is heard in the available audio of the incident "Get your hands off me. That is assault."

Inspector Lycett contacted Mr. Ray after he contacted the Florida Governor's Office complaining about the actions of Ms. Muir. Mr. Ray was advised that any complaints regarding the incident with Ms. Muir would need to be addressed with local law enforcement, specifically the Tallahassee Police Department.

### Commissioner Mathew Carter

On September 28, 2009, Inspector Brett Lycett assisted ASA Eddie Evans and SAO Investigator Jim Anderson in interviewing PSC Commissioner Mathew Carter regarding his knowledge or involvement in any ex-parte communication or Sunshine Law violations occurring

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within the PSC. Mr. Carter advised that he was not very familiar with the PIN messaging application of his Blackberry and may have used it in response to a received PIN message. Mr. Carter stated he has at no time, ever discussed any information related to the merit of any cases that were to be brought before the PSC. Mr. Carter stated he had no knowledge of any violations of ex-parte communications or Sunshine Law conducted by PSC Commissioners or staff.

Commissioner Lisa Edgar

On October 7, 2009, Inspector Brett Lycett assisted ASA Eddie Evans and SAO Investigator Jim Anderson in interviewing PSC Commissioner Lisa Edgar, who was represented by attorney Mark Herron, regarding her knowledge or involvement in any ex-parte communication or Sunshine Law violations occurring within the PSC. Ms. Edgar advised that she was not aware of ever PIN messaging anyone until it was recently brought to her attention. Ms. Edgar believed that when she responded to messages she received, via her Blackberry, the information could be recovered, if requested; similar to the PSC email system. Ms. Edgar stated that at no time did she ever discuss any information related to the merit of any case that was to be brought before the PSC. Ms. Edgar stated she had no knowledge of any violations of ex-parte communications or Sunshine Law conducted by PSC Commissioners or staff.

During the course of the inquiry, SAO Investigator Anderson contacted the General Counsel of the PSC to request a review of any Blackberry messaging records of Commissioners and commissioner's aides currently retained by the PSC. Pursuant to that request, the PSC General Counsel's office provided the SAO with the following information: 1) PIN and text messaging data taken from backup files that were created from the PSC Blackberry devices when a service provider change was initiated in 2008 and 2) PIN and text messaging data collected pursuant to an unrelated public records request by Citizens for Sunshine, Inc. The data collected consisted of information recovered after September 10, 2009. Prior to that date, the PSC did not record or store Blackberry PIN messages. The PSC has subsequently disabled the PIN application for Blackberry users until a review of internal communication practices has been completed.

Upon review of the sworn testimony provided and Blackberry messaging records retrieved from the PSC, the SAO determined that there did not appear to be any criminal activity facilitated by Commissioners or Commission staff which violated Florida State Statute.

A copy of the memorandum and investigative report stating the SAO's findings will be placed electronically into the Related Items (1,2) section of this investigative file.