

From: [Rhode, Lynne C. \(City of Jacksonville\)](#)
To: [Gabriel, Jason](#)
Cc: [Hodges, Lawsikia](#)
Subject: RE: IMPORTANT. CONFIDENTIAL
Date: Thursday, December 12, 2019 12:42:13 PM

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Hi Jason and Lawsikia,

I would first like to note that I have excluded Ms. Miller from my response to her email to you both because I do not trust that she will not misuse any information exchanged during this process. The last time I engaged in email communications with Ms. Miller, she immediately sent those communications to the Times Union. Ms. Miller, after being expressly instructed by this office on multiple occasions that her consistent presence in key negotiation sessions with Respondents is essential to maintaining equity in the procurement process, skipped the first half of this morning's session with one of the Respondents while preparing and sending you the below email. Her suggestion in that email is plain wrong and based, I believe, on a personal and policy agenda rather than any legal basis. As all have agreed, she (unlike the Inspector General) has NO legal jurisdiction to be at JEA's exempt negotiation sessions. She continues to be included only at the insistence of the City Council president. She has on two prior occasions intentionally breached the confidentiality of the proceedings and the trust of this office and the JEA after agreeing not to do so (by releasing the names of negotiation team members and the location of these exempt meetings) and repeatedly sent unnecessary written communications regarding the conflicts review of the negotiation team in order to underscore her own relevance and suggest impropriety that never existed. She has made unhelpful and strategically damaging comments on the record during exempt meetings after being instructed not to. Twice this week she has been the only (of approximately 25) City/JEA employees/representatives who has not acknowledged receipt and signature of our confidentiality agreement and has had to be asked directly (in front of Respondents) to acknowledge. She now again is attempting to further her personal policy agenda by introducing written records suggesting (without basis) impropriety. As I have repeatedly stated, her behavior is a blatant and dangerous misuse of her position. *Politics and a personal policy agenda of the City's unelected, unaccountable administrator of the Office of Ethics should not be allowed to jeopardize the deliberative, lawful, and consequential public procurement the independent agency currently is undertaking at the direction of its Board in full cooperation with the Office of the Inspector General and the Office of General Counsel.* In accordance with FS 286.0113, negotiation sessions are exempt. ITN 127-19 Section 3.3.5, the governing document for this process in accordance with the JEA Procurement Code and the JEA Charter, provides that negotiations would include an "exchange of information" with Respondents and "discussions with JEA management during recorded negotiation sessions." Black's Law Dictionary defines "negotiations" in relevant part as "dealings conducted between two or more parties for the purpose of reaching an understanding; esp. official discussions between the representatives of opposing groups that are trying to reach an agreement, esp. in politics or business." The Law Dictionary defines a negotiation in relevant part as "preliminary communications between parties, which seek to determine whether the parties can make a mutually agreeable sale,

purchase, bargain, or contract.” Each of these is EXACTLY what is occurring during the negotiation sessions between the ITN 127-19 Negotiation Team and invited respondents. The portion of these negotiations that Ms. Miller has termed a “presentation” is, in large part, responding to written questions and topics that were solicited by the procurement representatives, at the Negotiation Team’s request, that the Respondents identified as questions and topics that they needed to see addressed. The fact that certain portions of these sessions include a number of interspersed questions/interruptions and certain portions do not in no way detracts from the totality of these meetings run by the Negotiation Team. As Ms. Miller stated to us in our last meeting between her, the OGC, and the OIG, she feels recordings and transcripts of the ITN 127-19 exempt meetings are too “DRY” for public consumption. Her motive to promote herself at the expense of the City is glaringly obvious; her actions already have resulted in an extraordinary waste of City resources to handle the information leaks and emergencies she has intentionally created and have the potential to sabotage the entire process. I believe they may be actionable as a misuse of her position in breach of the ethics code and criminally as bid tampering. I continue to defer to your decision as to her participation but firmly believe she should not be allowed to have access to exempt meetings or documents. As for her below suggestion that the negotiation sessions with Respondents are not fully exempt, it is without legal basis and blatantly wrong.

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From: Miller, Carla <CarlaM@coj.net>
Sent: Thursday, December 12, 2019 9:38 AM
To: Gabriel, Jason <JGabriel@coj.net>
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Subject: IMPORTANT. CONFIDENTIAL

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Hello,

As you know, I am up here in Atlanta at the JEA meetings. Portions of these meetings are exempt from the Sunshine law under FS286.0113. Portions that are exempt are:

1. Portion in which a negotiation is conducted;

2. Portion when a “vendor” makes a presentation;
3. Portion when a vendor answers questions;
4. Portion when negotiation strategies are discussed.

Those exempt portions are recorded.

Since the statute expressly talks about portions being exempt, that seems to mean that some parts of the meetings could not be exempt.

We have this occur in shade meetings for the Ethics Commission; only certain parts of the meeting are exempt from Sunshine law (the complaints) and if the members discuss anything outside that realm, it has to be in the sunshine.

I did not know how the meetings would be conducted up here, but I do now. The first half of each meeting is a “management presentation” from JEA. This covers basic information about JEA (powerpoint/several JEA staff talking about their departments). Then there is a break and then, the Respondents ask questions. I believe the second portion of the meeting is exempt, but I don’t know why the first part—the general management presentation is exempt. I need your guidance on the exemption that is being relied upon. Also, there is a print out of the presentation that includes basic information about JEA; I believe this document is a public record. (FS 119.071 exempts out proposals/replies from public records law; 286.0113 exempts out records presented at an exempt meeting.)

I also need the specific law that would exempt information about the names of the participants in these meetings. Can you give me the applicable exemption for this?

These are my legal questions that I need an opinion on as soon as possible. Perhaps Robert Hosay has already issued a memo on it. Because of my confidentiality agreements, I am only communicating about this with OGC and JEA’s legal team as noted in the above email copies (to/cc).

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