CITY OF FORT MYERS FIRE DEPARTMENT
INVESTIGATION REPORT

November 7, 2016

Prepared by

PSSi
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CITY OF FORT MYERS FIRE DEPARTMENT
INVESTIGATION REPORT

PHASE I: 11 MAY 2016

ALLEGATIONS MADE TO CITY MANAGER SAEED KAZEMI BY FORT
MYERS FIRE DEPARTMENT DIVISION CHIEF SCOTT WIRTH

1. SCOPE AND SUMMARY OF THE INVESTIGATION

The City Manager of the City of Fort Myers, Florida, retained the services of Public Safety Solutions, Inc. (PSSi), to investigate concerns made by Division Chief Scott Wirth regarding the administration of the Fort Myers Fire Department in a document submitted to the City Manager.

Allegations of misconduct present serious risks. When presented with an employee complaint, whether formal or apparent, a City will be judged by its response to the complaint as well as the steps taken to prevent future recurrence. A prompt, fair and thorough investigation is not only legally required, it is critical to instill confidence that the process was fair and trustworthy.

While the document submitted to the City Manager by Division Chief Wirth outlined many concerns, the document did not claim to be a formal complaint. Regardless, the City Manager considered the claims made in the document to be of a serious nature and ordered an investigation. PSSi was asked to review the document, identify the central issues, investigate all claims surrounding the central issues, and issue a report of our findings.

PSSi reviewed the complete document submitted to the City and the allegations outlined below were mutually agreed upon as the “scope of the investigation” by the City Manager and PSSi as the central issues to be examined.

1.1 Allegations investigated:

1. Denny Hejja, Workers Compensation Issues
2. John Trujillo, Leave Issues
3. Gary McCabe, EMS call performance
4. Professional Qualifications
5. Firearms possession
6. Financial Practices
7. Culture of Department (Blake Street Fire)
8. SAFER Grant

1.2 **Investigation Commenced**
The investigation into the allegations began on 11 May 2016.

1.3 **Investigators**
The PSSi investigation was conducted by PSSi Senior Consultant Chief J. Robert Brown, Jr. (Ret.), EFO, CFO.

1.4 **Investigation Process**
Every employee complaint presents a unique set of issues and concerns that will dictate the City’s options for a specific response. This investigative report is intended to provide practical guidance for the City by highlighting the various issues that should be considered when responding to the complaints of misconduct.

The investigative process used by PSSi included:

1.4(a) Identify and review applicable policies, rules and documents; become familiar with the issue(s) to be investigated.

1.4(b) Determine which witnesses should be interviewed and in what order.

1.4(c) Follow-up as needed and as new witnesses are identified in the course of the investigation; review documentation submitted by persons interviewed.

1.4(d) Issue final report.

As required by Florida Statutes, Title 10, Chapter 112, Section 82, Rights of firefighters, whenever a firefighter is subjected to an interrogation, such interrogation shall be conducted pursuant to the terms of this section and all uniformed fire personnel were advised of their rights, in writing, and acknowledge their rights by their signature on a document outlining their
rights. PSSi conducted the investigation and associated interviews per the rules of the Florida Firefighters Bill of Rights.

1.5 Investigation Summary

All persons interviewed were agreeable and forthcoming. City staff ensured that the investigator had unrestricted access to all documents and people needed to complete the investigation. During the course of the investigation, several findings were noted where best practices are not being implemented and subsequent recommendations for improvement were made.

The PSSi investigator found that some of the complaints outlined by Division Chief Wirth had occurred under former Fire Chief Kenneth Dobson and had occurred over four years prior.

In general, the investigator found that significant personality conflicts exist that must be immediately addressed to ensure the health and operation continuity of the Fort Myers Fire Department. Additionally, the investigator found a general practice of poor recordkeeping and documentation that, while no dishonest practice was intended, could lead to significant liability issues for the City and most certainly gives the impression of wrongdoing and poor management.

Additionally, during the course of the investigation, Division Chief Wirth and Deputy Chief Stevens each felt that the other was creating a hostile work environment. This issue is outside of the scope of this investigation and should be immediately investigated by the City.

2. DOCUMENTATION OF INTERVIEWS

Interviews of persons involved in the complaints and primary witnesses were conducted on site in Fort Myers, Florida, in the conference room at the Department of Human Resources, 1820 Hendry Street, Fort Myers, Florida. Preliminary, organizational and follow-up interviews and conversations were conducted by telephone.
2.1 People Interviewed

Audio recordings were made of all on-site interviews. All subjects agreed to the audio recording. Chief Bowen and Deputy Chief Stevens indicated that they would like a copy of the audio recording. They were directed by the PSSi investigator to make that request of the City.

In addition to the formal interviews above, the investigator had several informal telephone conversations related to fact-finding, documents, and City policy with City Manager Saeed Kazemi, Interim Human Resources Director Ellen Clyatt, Fire Chief Trenton Bowen, and Executive Administrator to the City Manager, Susan Balaun.

The PSSi investigator requested to meet with City Attorney Grant Alley regarding the investigation. However, Mr. Alley was unavailable. Interim Human Resources Director Ellen Clyatt provided Mr. Alley with my contact information, and PSSi was advised that he may set up a telephone conversation. The PSSi investigator has not been contacted by Mr. Alley.
The PSSi investigator was advised that Division Chief Vincent DiCristofalo was concerned that he was a bit overcome by the process and that he had several things he forgot to mention during the interview. He was provided the PSSi investigator’s email address by Interim Human Resources Director Ellen Clyatt to provide this information. However, no additional information was provided.

### 3. EVIDENCE

The PSSi investigator collected the following documents as evidence to aid in substantiating the complaints:

- 3.1 Division Chief Wirth Complaint Document
- 3.2 Florida Firefighters Bill of Rights
- 3.3 Fire Department Standard Operation Procedures (SOPs)
- 3.4 City of Fort Myers Employee Policies and Procedures Manual
- 3.5 Fire Department Labor Agreement
- 3.6 Blake Street Fire Firefighter Injury Report
- 3.7 Staffing for Adequate Fire and Emergency Response (SAFER) Grant application
- 3.8 All SAFER Correspondence with FEMA and Internally
- 3.9 Current Fort Myers Fire Department Organizational Chart
- 3.10 Current Fort Myers Fire Department Job Descriptions
- 3.11 Agreement (contract) with Fort Myers Fire Department Medical Director

The PSSi investigator was provided with several additional documents by Division Chief Wirth and Division Chief DiCristofalo during their interviews. Those documents were reviewed extensively and have been provided to the City for review with this report.

Additionally, the PSSi investigator was provided with several documents disputing claims made by Division Chief Wirth by Fire Chief Bowen and Deputy Chief Stevens. Those documents were also reviewed extensively and have been provided to the City for review with this report.
4. ALLEGATIONS, FINDINGS OF FACT AND RECOMMENDATIONS

4.1 Denny Hejja, Workers’ Compensation Issues

4.1(a) Allegation
Division Chief Wirth alleged in his complaint that Fire Chief Bowen and Deputy Chief Stevens offered Firefighter Denny Hejja light duty at full pay, but he was not in fact working full-time hours. It was further alleged that Firefighter Hejja was offered this option as a “member-in-good standing,” meaning a dues-paying union member.

4.1(b) Findings of Fact
1. Firefighter Hejja was injured on duty during a training exercise in November 2014.
2. Article 20 of the Collective Bargaining Agreement between the City and IAFF Local 1826 allows for an employee who is injured or disabled during the course of his/her duties to receive full regular salary during the first six months the employee is unable to work. After six months, the employee’s pay is reduced to two-thirds and the employee is subject to the Workers’ Compensation policy of the City.
3. The City did not provide any City policy regarding the assignment of light duty.
4. The Fire Department has a policy (200.8) regarding Temporary Assignment Duty (TAD) and a policy (200.7) regarding Restricted Duty. Policy 200.8 conflicts itself by stating in the policy that employees on employment-related injury or illness may be eligible for TAD. However, the discussion portion of the policy states “This policy does not include employment related injury/illness leave.”
5. Firefighter Hejja was offered “light duty” and was compensated at his normal, regular rate, instead of the two-thirds Workers’ compensation rate.
6. Firefighter Hejja performed specific duties assigned to him by Fire Chief Bowen and Deputy Chief Stevens related to the Fire Department boats, due to Firefighter Hejja’s expertise with boats.

7. Firefighter Hejja was allowed to perform his work at the location of his private business with little or no direct supervision.

8. Accurate records of Firefighter Hejja’s work and time were not kept. As such, the PSSi investigator could not substantiate that Firefighter Hejja performed the hours of work for which he was paid.

9. Division Chief Wirth makes the claim that had Firefighter Hejja been left on Workers’ Compensation, the cost to the City would have been zero. This is untrue. While the Workers’ Compensation insurance pays the two-thirds compensation, the Workers’ Compensation rates that the City pays is reflected in its use (experience), and thus does cost the City. While not properly executed, the offer of light duty is fiscally and operationally prudent and should be encouraged.

10. Firefighter Hejja was not placed on concurrent Family Medical Leave Act (FMLA) as required by City Employee Policy 705.

11. The term “member in good standing” has been used to describe union dues-paying members, as well as a “member” of the Department who is not on probation or in trouble with the Department. The PSSi investigator could not substantiate that the term “member in good standing” was meant to acknowledge favoritism for those who pay unions dues.

4.1(c) City Policy Infractions

1. Firefighter Hejja was not placed on concurrent Family Medical Leave Act (FMLA) as required by City Employee Policy 705.

2. Firefighter Hejja did not accurately complete an individual time record showing the daily hours worked as required by City Employee Policy 208.1.
4.1(d) Recommendations

1. City-wide policies must be developed to address the use of “light duty” assignments.
2. Fire Department policies and SOPs should be reviewed to ensure compliance with City policy and to ensure that conflicts do not exist.
3. Accurate records must be kept on all persons performing light duty to ensure actual time worked is recorded.
4. While the intention of having Firefighter Hejja perform work on the City’s fire boats at his boat shop business was good, and may have been advantageous in making repairs to the City’s fire boats, it exposed the City to several liabilities and must be avoided in the future. Firefighters performing light duty work on duty should only perform work under direct supervision at facilities operated by the City.
5. All personnel must understand and follow City policy.
6. While the PSSi investigator could not substantiate that the term “member in good standing” was meant to acknowledge favoritism for those who pay unions dues, the perception widely exists. Senior Fire Department officials should refrain from the use of the term “in good standing.”

4.2 John Trujillo, Leave Issues

4.2(a) Allegation
Division Chief Wirth alleged in his complaint that Deputy Chief Stevens authorized payment for time in which Driver/Engineer John Trujillo was compensated for hours that he did not actually work.

4.2(b) Findings of Fact
1. Driver/Engineer Trujillo was placed on TAD to assist with development of the new reporting system manuals and to perform other administrative duties as assigned.
2. Driver/Engineer Trujillo was recorded as “on duty,” when in fact, he was not at work.
3. Fire Department practice has been to extend the same “flex-time” benefit to those on TAD that are received by Fair Labor Standards Act (FLSA) exempt employees. As such, time is recorded irrespective of time actually worked to avoid rewarding “comp-time.” For example, a firefighter on TAD assigned to a 40-hour work week is often recorded as working “regular days” (such as 8 am to 5 pm), when, in fact, the person may be working irregular hours such as evenings and weekends.

4. Driver/Engineer Trujillo was authorized by Chief Bowen and Deputy Chief Stevens to take the time off in question in Chief Wirth’s complaint without taking vacation leave for additional hours worked on nights and weekends.

5. Employee Policy 208 (Hours of Work) allows Department Directors (Fire Chief) the discretion to schedule the “hours of work” and “to allow non-exempt employees to make up lost time during a given workweek.”

6. Employee Policy 208 (Hours of Work) states that employees are required to complete an individual time record showing “daily” hours worked. A special point is made in this policy insisting that “employees are to record their total hours worked for each workday.”

7. Employee Policy 208 (Hours of Work) states that “falsifying any time record is prohibited.”

8. Fire Department time sheets require the signature of the employee certifying that the time recorded is accurate and true. The time sheets presented in the complaint were signed by Driver/Engineer Trujillo and Deputy Chief Stevens.

4.2(c) City Policy Infractions

1. Firefighter Trujillo, at the direction of his supervisor, did not accurately complete an individual time record showing the daily hours worked as required by City Employee Policy 208.1.
4.2(d) Recommendations

1. The practice of allowing “flex hours” for non-exempt personnel, so long as the employee does not incur overtime or comp time, and has the approval of her/his supervisor, is allowed by City policy. However, accurate accounting of actual time worked is also required. The Department shall immediately begin accounting for actual hours worked instead of using a “general” time accounting for 40 hours regardless of actual hours worked.

2. Fire Department policies and SOPs should be reviewed to ensure compliance with City policy and to ensure that conflicts do not exist.

3. All personnel must understand and follow City policy.

4.3 Gary McCabe, EMS call performance

4.3(a) Allegation
Division Chief Wirth alleged in his complaint that then Deputy Chief Trenton Bowen affixed a lesser punishment that he (Wirth) felt was due Firefighter McCabe. Division Chief Wirth also asserted that then Deputy Chief Bowen’s lesser punishment was due to Firefighter McCabe being a “member in good standing” and that the Department’s Medical Director and State EMS officials should be notified.

4.3(b) Findings of Fact

1. The incident involving Firefighter McCabe occurred in 2012 (12 February 2012) while Kenneth Dobson was Fire Chief and Trenton Bowen was serving as Deputy Chief.

2. Firefighter McCabe was disciplined for his action and received 24 hours off without pay. Deputy Chief Bowen requested a more severe punishment, but was overturned by Fire Chief Dobson.

3. Discipline is the discretion of the Fire Chief. No requirement existed for the Fire Chief to enlist the advice of the Department Medical Director or notify State EMS officials.

4.3(c) City Policy Infractions

1. None
4.3(d) Recommendation
The Department should adopt a policy defining the difference between “Department” and “patient care” employee issues and outline the process for involving the Department’s Medical Director in issues involving patient care.

4.4 Professional Qualifications

4.4(a) Allegation
Division Chief Wirth alleged in his complaint that, upon appointment as Fire Chief, Trenton Bowen disposed of current professional qualifications for the position of Deputy Chief prior to the appointment of Deputy Chief Walt Stevens. Division Chief Wirth further complained that the position of Deputy Chief should have been posted for competitive selection. Additionally, Chief Wirth alleges that three personnel currently acting as Captains do not meet the current SOP with regards to professional qualifications.

4.4(b) Findings of Fact
1. The practice of not posting the Fire Chief, Deputy Chief and Division Chief for competitive recruitment and selection has long existed in the City of Fort Myers, well before Chief Bowen’s appointment.

2. Changes to professional qualifications for acting positions are made at the discretion of the Fire Chief.

3. Job (classification) descriptions are developed by Human Resources (Employee Policy 303). Job (classification) descriptions are unable to be changed without prior notification to the Firefighter’s Union per Article 39 of the Collective Bargaining Agreement.

4. Current class descriptions contain a disclaimer that can be interpreted by the Department Director as authority to appoint a person that does not possess all the requirements outlined in the job description.

5. The great recession during the latter part of the first decade of the 2000s created unimaginable organizational challenges that led to
numerous immediate retirements, layoffs and other significant events, necessitating immediate change in professional qualifications in order to field personnel in acting and permanent fire officer positions. These changes occurred under former Fire Chief Kenneth Dobson.

6. The City offers educational incentives for employees to include tuition, paid time to attend class, and increased pay. Agreements may be required for repayment of tuition for incomplete classes or early termination of employment.

7. In the past, repayment of educational expenses required by an agreement was decided on a case-by-case basis. The Fire Department does not have the authority to waive this policy. The PSSi investigator was provided evidence that the practice of arbitrary enforcement of this policy is no longer performed.

4.4(c) City Policy Infractions

1. None

4.4(d) Recommendations

1. The City and the Fire Department should review and update all job classifications in the Fire Department and ensure consistency of education, certification, and experience requirements. If Department Director flexibility in hiring is not desired, the Disclaimer that states “The intent of this class description is to provide a representative summary of the types of duties and responsibilities that would be performed by employees within this classification. It is not designed to contain or be interpreted as a comprehensive inventory of all duties and responsibilities required and shall not be construed as a declaration of specific duties, responsibilities and qualifications required of employees assigned to this classification”.

2. All openings for Fire Chief, Deputy Chief, and Division Chief should be posted for competitive recruitment and selection.

3. As the City is paying the cost of educational incentives to include tuition, paid time to attend class and increased pay, the City should
align professional development programs and related expenses to job classification requirements to make use of the education employees obtain at the City’s expense.

4.5 Firearms Possession

4.5(a) Allegation
Division Chief Wirth alleged in his complaint that Fire Chief Bowen had purchased firearms at a local pawn and gun shop while on duty and had carried firearms in his City-owned vehicle.

4.5(b) Findings of Fact
1. Fire Chief Bowen acknowledged that he had visited pawn and gun stores and purchased firearms and ammunition while in uniform, during the workday at lunch or on a break.
2. Fire Chief Bowen acknowledged that he had possession and carried firearms in his City-owned vehicle.
3. City Employee Policy 801(Behavior of Employees) states, in part, that “possessing firearms or other weapons on City property, in City facilities; and on City work sites” is prohibited and individuals engaged in this behavior will be subject to discipline, up to and including termination.
4. Fire Chief Bowen acknowledged that he was in violation of City policy and that he was solely responsible for knowing the City policy and abiding by it. When brought to his attention that he was violating City policy, he stopped the practice of shopping for firearms while on duty (in uniform) and stopped carrying firearms in the City vehicle. Chief Bowen does not recall the date on which he stopped this practice, but estimated it to be two years ago.
5. The violations that occurred were prior to Chief Bowen being appointed as Fire Chief.

4.5(c) City Policy Infractions
1. Chief Bowen violated City Employee Policy 801(Behavior of Employees) which states, in part, that “possessing firearms or other
weapons on City property, in City facilities; and on City work sites” is prohibited and individuals engaged in this behavior will be subject to discipline, up to and including termination.

4.5(d) Recommendations

1. The City should follow its own policies in regards to discipline for an infraction of this nature with respect to the timeframe in which this occurred and was reported.

2. The City should develop and implement a stand-alone policy regarding possession of all weapons in the workplace.

4.6 Financial Practices

4.6(a) Allegation
Division Chief Wirth alleged in his complaint that Deputy Chief Stevens made purchases without consulting the fiscal manager of the Department and ignored an employee committee recommendation to purchase a specific type of firefighter protective clothing.

4.6(b) Findings of Fact

1. With authorization from the Fire Chief, Deputy Chief Stevens is authorized to make purchases on behalf of the City in accordance with the City’s finance policies.

2. Deputy Chief Stevens is not required to obtain counsel or approval from the Department Fiscal Manager.

3. While a committee of the Fire Department may have recommended another type of purchase, the Fire Chief and Deputy have the authority to override the committee’s recommendation.

4. The PSSi investigator found no evidence of violations of City finance policy in the limited review of the purchase of firefighter protective clothing mentioned in the complaint.

4.6(c) City Policy Infractions

1. None
4.6(d) Recommendations

1. The Fire Chief should implement internal purchasing procedures that are inclusive of a formal fiscal manager review to ensure that the Department is following best financial practices.

2. The Fire Chief should outline employee committee procedures, expectations and decision making accountability in policy form to remove any questions regarding the process and authority.

4.7 Culture of Department (Blake Street Fire)

4.7(a) Allegation
Division Chief Wirth alleged in his complaint that Chief Bowen had created an environment of “isolationism” by insisting that the Department handle “things” internally, to include firefighter injuries (Blake Street Fire), personnel infractions (McCabe Trauma Alert incident), and mutual and automatic aid SOPs.

4.7(b) Findings of Fact

1. The injuries suffered by two firefighters at the Blake Street Fire were investigated internally, using procedures outlined by the Firefighter Line-of-Duty death (LODD) or the Serious Injury Investigation Manual, produced through a joint effort of the International Association of Fire Fighters (IAFF) and the International Association of Fire Chiefs (IAFC).

2. The Trauma Alert issue regarding a failed response by Firefighter McCabe was investigated internally. This action occurred in 2012 under the direction of Fire Chief Kenneth Dobson.

3. A general perception among the Division Chiefs is that the Department is closed to outside review.

4. Currently, a complete review of the Department is in process, being performed by PSSi. Both Chief Bowen and Deputy Chief Stevens stated that they welcomed the review and were looking forward to the recommendations.
4.7(c) City Policy Infractions

1. None

4.7(d) Recommendations

1. The Fire Chief should implement internal policy for the formation of an internal/external multiagency Serious Accident Review Team to investigate future incidents where a firefighter is either injured or killed.

2. The Fire Chief should encourage full, transparent participation in the PSSi Fire Department Master Planning process.

3. Carefully review the recommendations of the PSSi Fire Department Master Plan for implementation of attainable recommended best practices.

4.8 SAFER Grant

4.8(a) Allegation
Division Chief Wirth alleged in his complaint that Chief Bowen had inappropriately interpreted the rules regarding the assignment of personnel under the Federal SAFER Grant.

4.8(b) Findings of Fact

1. The City applied for a Federal Emergency Management Agency (FEMA) SAFER grant in March 2015 to retain firefighters who had been laid off. FEMA awarded the City a SAFER Grant in the amount of $4,152,441 for the performance period of 21 February 2016 – 20 February 2018.

2. In the grant application, the City certified to FEMA, as a condition of the award and continued funding, that the City would maintain an operational staffing maintenance number of 125 (104 Pre-SAFER and 21 SAFER).

3. During the period of the grant performance, two of the 125 personnel necessary to maintain the agreed upon personnel level with FEMA were detailed by Chief Bowen to TAD, offline of operational duties. A position is considered operational if it supports NFPA
1710 or NFPA 1720 compliance more than 50% of the time. For example, a Department may employ an inspector that is qualified as a firefighter, but his or her primary assignment is to conduct inspections. The inspector could respond to a large fire if called upon, but that is not his/her primary duty. If that is the case, that position is considered administrative and not operational.

4.8(c) City Policy Infractions
1. None

4.8(d) Recommendations
1. Based on the definition of “operational” above, the City should seek a written determination as to the legality of the change made. This determination should be sought in writing to FEMA, fully disclosing the move that is desired so that FEMA understands that the City desires to move two of the current 125 operational personnel to TAD “administrative” positions, until such time that the City budgets two additional personnel to fill these positions.

2. The City should refrain from making any assignment changes that may jeopardize the operation number of 125 until such time that FEMA allows for the change.

3. In the future, no change should be made to any Federal grant performance practice until requesting (in writing), and receiving (in writing), permission to do so.

5. GENERAL OBSERVATIONS

The general observation of the PSSi investigator is that much of the motive behind the complaint brought forward by Division Chief Wirth stems from the appointment of Deputy Chief Walt Stevens. The PSSi investigator noted throughout that deep-seated personality conflicts exist among the senior staff of the Department, which is having a detrimental effect of Fire Department operations.

Regardless of the opinion of Division Chief Wirth, Trent Bowen is the Fire Chief and he has discretion to make certain decisions that Division Chief Wirth is in disagreement.
General lack of strong direction and communicating, such direction in writing, is lacking. Past practices that run contrary to City policy, even if practiced to save the City money or better operational readiness, must cease. In doing so, the Fire Chief must communicate to the City Manager the ramifications of these changes.

The PSSi investigator reviewed documentation, in the course of the investigation, that demonstrates insubordination on the part of Division Chief Wirth. He has ignored direct orders. However, in Division Chief Wirth’s defense, the PSSi investigator could not codify who Division Chief Wirth actually reports to. While the organizational chart would suggest that Division Chief Wirth is over Operations and reports to Deputy Chief Stevens, interviews with Fire Chief Bowen and Deputy Chief Stevens do not support this.

When asked why incidents appearing to be insubordination by Division Chief Wirth have not been addressed, the PSSi investigator was told that Chief Bowen and Chief Stevens were advised not to address these issues. Regardless, the PSSi investigator identified that there is a general lack of issuing directives in writing throughout the administration.

The Fort Myers Fire Department must be operationally mission-ready 24/7. Command and control is vital to the safety of the public and the firefighters who serve. The City is advised to immediately engage in conflict resolution with the Fire Department’s administration staff (Fire Chief, Deputy Chief and Division Chief). All parties interviewed stated that they have the best of intentions in mind for the public, the City and the employees of the Fire Department. If this is the case, egos and past regressions must be set aside for the greater good.

Lastly, the PSSi investigator was given several documents during the course of the investigation that should be reviewed by the City to determine if further investigation is needed outside of the scope of this report, or if employee disciplinary action is warranted. As mention in the Summary above, both Division Chief Wirth and Deputy Chief Stevens each felt that the other was creating a hostile work environment. This issue is outside of the scope of this investigation and should be immediately investigated by the City.
6. CONCLUSION

While the PSSI investigator made several recommendations regarding issues in the complaint, the PSSI investigator found no malice aforethought or illegal intention on the part of Fire Chief Bowen.

The PSSI investigator found that significant personality conflicts exist that must be immediately addressed to ensure the health and operation continuity of the Fort Myers Fire Department.

The PSSI investigator found a general practice of poor recordkeeping and documentation that, while no dishonest practice was intended, could lead to significant liability issues for the City and most certainly gives the impression of wrongdoing and poor management.

Lastly, during the course of the investigation, Division Chief Wirth and Deputy Chief Stevens each felt that the other was creating a hostile work environment. This issue is outside the scope of this investigation, but should be immediately investigated by the City.
PHASE II: 18 AUGUST 2016

ALLEGATION MADE TO CITY MANAGER KAZEMI BY FORT MYERS FIRE DEPARTMENT DEPUTY CHIEF WALT STEVENS CONCERNING A HOSTILE WORK ENVIRONMENT

1. SCOPE AND SUMMARY OF THE INVESTIGATION

The City Manager of the City of Fort Myers, Florida, retained the services of Public Safety Solutions, Inc. (PSSI), to investigate allegations made by Deputy Chief Walt Stevens regarding the claim of Hostile Work Environment (HWE) in a document submitted to the City on Friday, 24 June 2016.

Allegations of misconduct present serious risks. When presented with an employee complaint, whether formal or apparent, a city will be judged by its response to the complaint as well as steps taken to prevent future recurrence. A prompt, fair and thorough investigation is both legally required and critical to instill confidence that the process was fair and trustworthy.

The document submitted to the City by Deputy Chief Stevens outlined many concerns, related examples, and made the specific claim that “I am in a hostile work environment, both professionally and personally.” However, Deputy Chief Stevens was not specific as to a specific person causing the HWE. Deputy Chief Stevens did, however, state that “It became very evident to me that Division Chief Wirth was trying to create a hostile work environment that doesn’t exist.” As such, it was appropriate for the City to investigate.

In the letter of 24 June 2016, Deputy Chief Stevens did not identify a specific remedy, but does ask that the city remove him from his perceived HWE until the city can resolve the complaint. The city denied his request on Monday, 27 June 2016 (Ellen Clyatt, Acting Human Resources Director)¹, citing fire department operational needs and that they would prefer to wait for a response on his complaint from City Attorney Grant Alley. The PSSI investigator was not provided with any documents indicating a response was issued by the City Attorney at any time prior to or during this investigation. To the PSSI investigator’s knowledge, no accommodations were made by the City for Deputy Chief Stevens at the time of his complaint.

¹ Email copied to Saeed Kazemi, City Manager; Grant Alley, City Attorney; and Trenton Bowen, City Fire Chief
On Thursday, 18 August 2016, Deputy Chief Stevens sent an email communication to the City (Ellen Clyatt, Acting Human Resources Director) indicating that the alleged HWE has continued and “continues to deteriorate.” In this communication, Deputy Chief Stevens asserts that “I am again, stating that the City is placing me in a Hostile Work Environment, both professionally and mentally.” This is either contrary, or in addition to the initial claim that the HWE was being allegedly caused by Division Chief Wirth.

PSSI reviewed the document submitted to the city and the allegation(s) made.

1.1 Allegations investigated:
Hostile Work Environment

1.2 Investigation Commenced:
The investigation into the allegations began on 18 August 2016.

1.3 Investigator:
The PSSI investigation was conducted by PSSI Senior Consultant Chief J. Robert Brown, Jr. (Ret.), EFO, CFO.

1.4 Investigation Process:
Every employee complaint presents a unique set of issues and concerns that will dictate the city’s options for a specific response. This investigative report is intended to provide practical guidance for the city by highlighting the various issues that should be considered when responding to the complaints of misconduct.

The investigative process used by PSSI included:

1.4(a) Identify and review applicable policies, rules and documents; become familiar with the issue(s) to be investigated

1.4(b) Determine which witnesses should be interviewed and in what order

1.4(c) Follow up as needed and as new witnesses are identified in the course of the investigation; review documentation submitted by persons interviewed

1.4(d) Issue of final report

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2 Email copied to Saeed Kazemi, City Manager; Grant Alley, City Attorney; and Trenton Bowen, City Fire Chief
1.5 Investigation Summary

All persons interviewed were agreeable and forthcoming. City staff ensured that the investigator had unrestricted access to all documents and people needed to complete the investigation.

In general, the investigator found that significant personality conflicts exist that must be immediately addressed. However, no finding of a Hostile Work Environment was substantiated.

2. DOCUMENTATION OF INTERVIEWS

Interviews of persons involved in the complaints and primary witnesses were conducted by video teleconference or telephone. Preliminary, organizational and follow-up interviews and conversations were conducted by telephone.

2.1 People interviewed:

Walt Stevens        Deputy Fire Chief (Complainant)
Saeed Kazemi        City Manager
Trenton Bowen       Fire Chief
Judith Hartwell     Fiscal Manager
Ellen Clyatt         Interim Human Resources Director
Lisa Kiminski       Office Manager
Scott Wirth          Division Fire Chief

While an attempt was made to record the Skype interviews, the device only recorded video – no audio. All subjects agreed to the recording. Chief Bowen and Deputy Chief Stevens indicated that they would like a copy of the Skype recording. They were directed by the PSSI investigator to make that request of the city. Telephone conversations were not recorded.

In addition to the formal interviews above, the investigator had several informal telephone conversations related to fact-finding, documents and city policy with City Manager Saeed Kazemi, Interim Human Resources Director Ellen Clyatt, Fire Chief Trenton Bowen and Executive Administrator to the City Manager Susan Balaun.

The PSSI investigator had formally interviewed Division Chief Wirth regarding the issues Walt Stevens alleged in his HWE complaint during the initial investigation of Division Chief Wirth’s complaint to the City regarding issues in the fire department. The
PSSI investigator did recontact Division Chief Wirth to verify information obtained in the earlier investigation.

Deputy Chief Stevens provided a potential list of witnesses, as did the city. The PSSI investigator contacted only those witnesses with direct knowledge of the complaint.

3. EVIDENCE

The PSSI investigator collected the following documents as evidence to aid in substantiating the complaints:

3.1 Deputy Chief Stevens Complaint Document
3.2 Witness List provided by Deputy Chief Stevens
3.3 Witness List provided by the city
3.4 Email correspondence
3.5 Current Fort Meyers personnel policies

The PSSI investigator was provided with several additional documents by Deputy Chief Stevens after the first interview. Those documents were reviewed and have been provided to the city for review with this report.

4. ALLEGATIONS, FINDINGS OF FACT AND RECOMMENDATIONS

4.1 Hostile Work Environment Complaint, Deputy Chief Walt Stevens

4.1(a) Allegation

1. The document submitted to the city by Deputy Chief Stevens states: “I am in a hostile work environment, both professionally and personally.” In a follow-up communication with the city regarding the status of his complaint, Deputy Chief Stevens states: “I am again, stating that the City is placing me in a hostile work environment, both professionally and mentally.”
4.1(b) Findings of Fact

1. Deputy Chief Walt Stevens is second-in-command of the Ft. Myers Fire Department.

2. Deputy Chief Stevens is Division Chief Scott Wirth’s direct supervisor.

3. Division Chief Wirth expressed a desire not to work for Walt Stevens if he was promoted Deputy Chief.

4. A contentious relationship developed between Deputy Chief Stevens and Division Chief Wirth.

5. Fire Chief Bowen assigned Division Chief Wirth to “other duties” to try and avoid conflict between Deputy Chief Stevens and Division Chief Wirth. However, there was no formal reassignment.

6. Several instances of potential insubordination on the part of Division Chief Wirth were noted, but not substantiated under the scope of this investigation. However, no formal disciplinary documentation or process was found. Fire Chief Bowen advised that he had informed Deputy Chief Walt Stevens that he had been advised by the city that Division Chief Wirth was “hands off” because of Division Chief Wirth’s complaint to the city. The city disputes this direction stating only that the Fire Chief and Deputy Chief Stevens were advised to “do your job,” but to ensure that they were not in any way seeking to retaliate against Division Chief Wirth for his complaint.

7. The legal requirements for a hostile work environment require:
   A. The actions or behavior must discriminate against a protected classification such as age, religion, disability, or race.
   B. The behavior or communication must be pervasive, lasting over time, and not limited to an off-color remark or two that a coworker found annoying.
C. The problem becomes significant and pervasive, continues over time, and is not investigated and addressed effectively enough by the organization to make the behavior stop.

D. The hostile behavior, actions, or communication must be severe. Not only is it pervasive over time, but the hostility must seriously disrupt the employee’s work. The second form of severity occurs if the hostile work environment interferes with an employee’s career progress. For example, the employee failed to receive a promotion or a job rotation as a result of the hostile behavior.

E. It is reasonable to assume that the employer knew about the actions or behavior and did not sufficiently intervene. Consequently, the employer can be liable for the creation of a hostile work environment.

In this case, Deputy Chief Stevens made no claim of discrimination of the nature of protected class; and, while Deputy Chief Stevens asserts that the behavior was pervasive, he was the supervisor and was not restricted by the city in taking action regarding Division Chief’s Wirth’s insubordinate behavior; and, the behavior did not affect Deputy Chief Stevens authority or career progress; and, finally, since the Deputy Chief Stevens clearly stated he felt the city was not the source of his complaint and the city is acting on his complaint, Deputy Chief Stevens has no claim that the city knew about the actions or behavior and did not sufficiently intervene.

8. While all witnesses indicated that the current environment was “toxic” between Deputy Chief Stevens and Division Chief Wirth and disruptive to progress of the department, none of the witnesses interviewed could corroborate, based on the definition, any evidence that a HWE existed against Deputy Chief Stevens.

9. While Deputy Chief Stevens inferred in his initial complaint that Division Chief Wirth was the source of his HWE complaint, in a subsequent complaint, he indicated that the “city” was causing his HWE. However, in a conversation with the PSSI investigator, Deputy Chief Stevens made it clear that he had no complaint
against the city, and that his issue with a HWE centered around Division Chief Wirth’s behavior towards him.

10. While Deputy Chief Stevens asks for no remedy in his complaint, he advised the PSSI investigator that he seeks termination of Division Chief Scott Wirth.

4.1(c) Final Finding

Based on the fact that Deputy Chief Stevens has admitted that he has no complaint that the city caused his HWE; and based on the fact that Deputy Chief Stevens is Division Chief Wirth’s supervisor and the city did not prohibit Deputy Chief Stevens from doing his job; and based on the fact that none of the formal criteria required under the law have been met; the PSSI investigator finds no incidence of HWE.

5. GENERAL OBSERVATIONS

Based on the Investigator’s general observations, the fire department attempts to resolve conflict through avoidance. For example, in the case of Deputy Chief Stevens and Division Chief Wirth, the Fire Chief attempted to resolve conflict between these two through informal means, such as informally reassigning Division Chief Wirth to projects under himself instead of Division Chief Stevens.

Additionally, when issues would arise with Division Chief’s Wirth’s performance, a “hands off” approach was taken instead of addressing the issue. Clearly, by the direction given to Chief Bowen by the City Manager, Human Resources and by city policy, retaliation is prohibited and not tolerated. However, this does not give an employee a “pass” when it comes to performance and abiding by city rules and policy and does not prevent the supervisor from taking action when bonafide performance issue arise.

Further training in employee supervision and employee relations is advised for all supervisory members of the fire department.
6. CONCLUSION

Allegations of lack of professionalism, managerial skills and a hostile work environment are never easy to investigate. They usually involve differing perceptions and discomfort on the part of witnesses, as well as the accused. It is the PSSi investigator’s task to separate perception from reality, fact from fiction, and to apply these findings of fact in determining a final finding.

This case involved a complaint by a supervisor against an employee under his supervision. As presented in 4.1(c) Final Finding above, the PSSi investigator found no incidence of a HWE created by Deputy Chief Steven’s subordinate, Division Fire Chief Wirth.