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**MARYANNE MORSE  
THE CLERK OF THE CIRCUIT COURT AND COMPTROLLER  
SEMINOLE COUNTY FLORIDA**

**INVESTIGATIVE REVIEW  
OF  
POSSIBLE HIPAA VIOLATION BY  
COUNTY MANAGER'S OFFICE**

**Report No. 031516**



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**MARYANNE MORSE**  
**Clerk of the Circuit Court and Comptroller**  
**Seminole County, Florida**

**TABLE OF CONTENTS**

	<b>Page</b>
<b>Background</b>	
Summary of Complaint	1
Evaluation – Audit	1
Interview No. 1	2
Interview No. 2	3
Interview No. 3	3
<b>Conclusion</b>	
Conclusion of Interviews	3
County Manager Policy References	4
Administrative Code References	5
Florida Statute	5
Management Response	6
Audit Comment	7
<b>Exhibit - Copy of Reasonable Suspicion Form</b>	<b>12</b>

## ***BACKGROUND***

### **Initial Hot-line Complaint**

On March 1, 2016, the Office of the Clerk of the Circuit Court and Comptroller received a complaint on the Seminole County Ethics Hotline. The complaint was as follows:

*“First, drug tests were given on the first floor of the Central Transfer Station directly across from two offices that house five employees. When the test was administered, the employee receiving the test was expected to answer personal medical questions in front of co-workers. Specifically, if an employee is on prescription medication this information was disclosed in front of other county employees with no regard to HIPAA requirements.*

*Second, the reason for the drug test was “reasonable suspicion”. It is my understanding that the county policy’s “reasonable suspicion” requires two supervisors to agree and documents that an employee is impaired and only then the suspected employee is required to submit to a drug test. In this instance, the entire SWMD was subjected to the test with no real explanation. I don’t believe this meets the requirements and/or intent of the county’s policy.”*

### **Internal Audit Evaluation**

Because of the sensitivity of the subject and the possibility that the County Manager’s Office was in flagrant violation of HIPAA laws, the Office of the Clerk of the Circuit Court interviewed employees who were in these work areas during the alleged violation of policy by the County Manager’s Office.

There were 3 confidential interviews conducted with employees from the Transfer Station on Rte. 415 in Longwood; and, the Landfill located in Geneva. The three interviewees were asked entirely procedural questions and discussions were not into any personalities of county staff. The interviews were conducted on March 3<sup>rd</sup>, 2016.

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### **Employee Interview No. 1**

This employee was asked to explain the process that was used during the day of the unannounced drug testing. This employee stated that they were informed by supervision that all employees had to stop what they are doing and come down to the Administrative Office for mandatory drug testing.

This employee stated that there were two representatives from Human Resources and two techs from the contracted lab company. Some employees, according to this employee, had asked why this was done and the Human Resources Manager stated that it was being performed because there was "reasonable suspicion".

According to this employee, when the two Human Resources employees and the two lab techs arrived at the Transfer Station they were informed that some employees were located at the Landfill in Geneva. One of the employees from Human Resources and one of the techs left the Transfer Station and went to the Landfill to do testing.

This employee stated that Human Resources Manager and one tech set up a table outside of the bathroom in the Transfer Station's Administrative Building. They used one of the bathrooms to do the testing. Each employee tested was asked to empty their pockets, wash their hands and urinate into a cup. The sinks were taped off to prevent use and blue dye was added to the toilet bowl to make sure the tests were administered properly.

There were two sets of test:

1. The employees who had a CDL driver's license were required to urinate into a small plastic cup and the cups were inventoried with a lab number and the employees were provided a receipt for the test.
2. The second group of employees were also provided a cup to urinate in and these employees (non CDL) were stick tested. A test stick was inserted into the cup of urine and the employees were notified immediately by verbal announcement if they passed the test.

Immediately outside of the bathroom area there are offices for 4 employees and down the hall (about 20 feet) is a receptionist. The interview confirmed that there were possibly some privacy issues violated as employees in the surrounding areas were able to hear the results of tests. The results of the tests for those employees who were "stick tested" were announced as the test was conducted.

## **Employee Interview No. 2**

This employee indicated that around 9:30 am, a Human Resources employee and 2 representatives from the lab company showed up at the Landfill on February 25th, 2016. One of the representatives was the owner of the lab. Employees working at this location were told that all personnel had to be available for drug testing.

This employee also confirmed that privacy issues were not adhered to as one employee in particular had to disclose that he had a medical condition that needed to be disclosed. This condition because of the environment got disclosed as he needed the assistance from another county employee. This issue would not have been disclosed to another county employee had the test been performed in a laboratory facility.

This interview confirmed the complaint submitted to the Hot-line and was also consistent with the other employee interviewed.

## **Employee Interview No. 3**

This employee's recollection of the events agrees with the other two interviews noted above. It was confirmed that the Human Resources rep and lab reps announced the results of the test performed verbally (for those stick tested) in front of several employees and privacy was not a consideration. He also confirmed that employees had to disclose private information to the lab techs. More details regarding this are available for discussion.

## **Conclusion**

1. Interview conducted of 3 employees is very consistent with the allegations that were made on the Hot-line and clearly in violation of employee protection laws. Seminole County might be in violation of HIPAA rules and regulations, the County Administrative Code, the County Manager Policy Manual, and Florida Statutes.
2. County Management is in direct violation of the Drug-Free Workplace Policy Section 13 – Seminole County Manager Policy, Florida Statute, Chapter 440.102, and the County Administrative Code Section 116.

According to the interviews conducted, employees were informed that the reason for the drug testing was due to the term "Reasonable Suspicion". There are definitions and rules that are clearly delineated in the County Manager Policy, Administrative Code, and Florida Statutes.

It appears that these rules are established to protect the employees' rights.

**Per Seminole County Manager Policy (13.D Reasonable Suspicion):**

“means a belief based on objective facts that the rational inferences that may be drawn from such facts, or based on direct or reported observations from a verifiable source that the particular employee is using or is impaired by drugs or alcohol.”

**Per Seminole County Manager Policy Section V B (2) Reasonable Suspicion Drug Testing:**

“If required, all County employees, including those in safety-sensitive and high-risk positions, will submit to a drug and/or alcohol test for reasonable suspicion of drug and /or alcohol use.

Reasonable-suspicion drug testing means drug testing based on a belief that an employee is using or has used drugs in violation of the Seminole County Drug-Free Workplace policy and this procedure. An employee may be drug/alcohol tested for reasonable suspicion based upon the following:

- a. Observable phenomena while at work, such as direct observation of drug/alcohol use or of the physical symptom or manifestations of being under the influence of a drug or alcohol.
- b. Abnormal conduct or erratic behavior while at work, which may include a significant deterioration in work performance.
- c. A report of drug or alcohol use while on duty, provided by a reliable and credible source (e.g. supervisors, co-workers, law enforcement), or illegal drug use off duty reported by credible source (e.g. law enforcement).
- d. Evidence that an employee has used, possessed, sold solicited, or transferred drugs while working or while on County premise, or while operation County vehicles, machine, or equipment.
- e. For a reasonable suspicion drug test on an employee, the supervisor must complete the following steps:
  1. Complete a Reasonable Suspicion Observation Form, detailing specific observation as described above. The form requires the name and signature of two supervisors observing the questionable behavior. **(\*An example of this form is included as an Attachment to this report)**
  2. Report the incident to the Department Director and the Human Resources Division.
  3. Remove the employee from the worksite immediately, and escort the employee to the designated specimen collection site for a drug/alcohol test.

4. Present a completed Reasonable Suspicion Drug Test Form to the designated specimen collection site at the time of the test and forward a copy to the Human Resources Division.
5. Place the employee on administration leave with pay status, until the confirmed test results are obtained.”

**Moreover, Per Seminole County Administrative Code 116.0 Drug and/or Alcohol Use/Consumption:**

(2) If it is determined, or there is reasonable grounds to suspect that, as a result of drug and/or alcohol use/consumption, a member’s work performance or, work habits, have declined; or, there is a concern for the safety of the member , other members, or the public at large; or, the member, upon reporting to work or while at work, appears to be under the influence of alcohol or controlled substances (illegal use of legal substances or use of illegal substances), any one of the following actions will be taken:

- (a) The member will immediately be relieved of duty;
- (b) The member will be transported to a County physician for a medical examination and/or appropriate drug and/or alcohol screening;
- (c) The member will be placed on paid time off leave or leave without pay until such time as a determination is made by the Department Director and Human Resources Division Manager as to disciplinary action up to an including termination and/or other appropriate action.

The Drug-Free Workplace Regulations are also addressed in Florida Statute 440.102 and employee protection provisions are included for reference to this report.

Per Florida Statute 440.102 (5):

5) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen collection and testing for drugs under this section shall be performed in accordance with the following procedures:

(a) A sample shall be collected with due regard to the privacy of the individual providing the sample, and in a manner reasonably calculated to prevent substitution or contamination of the sample.

(o) If drug testing is conducted based on reasonable suspicion, the employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the employer pursuant to subsection (8) and shall be retained by the employer for at least 1 year.”



Also, per Florida Statute Section 112.0455 (2) (t):

(t) "If testing is conducted based on reasonable suspicion, each employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential and exempt from the provisions of s. [119.07\(1\)](#) by the employer pursuant to subsection (11) and retained by the employer for at least 1 year."

Both Florida Statutes Section 440.102 and 112.045 clearly provides employee protection. As noted above, it appears that each employee tested has a legal right to ask for documentation to support management's claim of reasonable suspicion. The primary question is "did HR inform the employees of this right?"

BCC should consider appropriate action for non-compliance with county policy and Florida Statutes regulations.

*(Noted below is the management response that we received from the County Manager's Office on March 7<sup>th</sup>, 2016. It is included as part of the reporting and evaluation process.)*

## Management Response

We are in receipt of the document entitled "Investigative Review of Possible HIPPA Violation by County Manager's Office," which you transmitted, unsolicited, to Board of County Commissioner Chairman John Horan's personal e-mail address. The Chairman did not open the attachment and forwarded it to the undersigned as the appropriate County Management officials.

We find your involvement in this matter, your investigative approach, and your conclusion troubling for a variety of reasons. And, although your office has no authority by statute, charter, or any other mechanism to conduct an inquiry with respect to this subject matter, we feel an obligation to our employees and the taxpayers of Seminole County to respond to the multitude of deficiencies within your "Investigative Review" as follows:

- As noted above, review of the execution of Human Resource policies is outside the scope of the Clerk of the Circuit Court's authority, and is not a legitimate exercise of your office's role as "auditor" to the Board of County Commissioners. We are concerned that your interference in this matter may negatively impact the efficacy of our internal investigation and ultimately impede our ability to protect the safety of employees and citizens.
- We learned on March 1, 2016, that you had interrogated County staff regarding the unannounced testing. On that same date, the County Attorney contacted you to request a copy of the "written complaint" that precipitated your "Investigative Review." You emphatically refused to provide this public record to the County Attorney and also rejected his suggestions that you discuss this matter with the County Manager's office. Your unwillingness to be forthcoming with respect to the anonymous complaint and the results of the interrogations suggests a bias with respect to the execution of the "Investigative Review."
- Your "Conclusion" is based solely on an anonymous complaint and interviews with three hand-picked, undisclosed employees. Had you conducted a balanced investigation and consulted with

members of County Management or with the Medical Resource Officer (MRO) in the course of your investigation, you would have learned the following:

- The collection agency, Arc Point Labs, is HIPPA Certified, and has confirmed that all testing was conducted consistent with HIPPA guidelines;
  - The MRO is the final determinant of testing results, and is not on-site when the samples are collected. Furthermore, the collection agency is not able to determine test results, and as such there was no announcement of "pass" or "fail" during the administration of the tests; any assumptions on the part of staff subjected to testing are just that, assumptions ;
  - The County exceeded its obligations with respect to the due diligence required to conduct testing under the "Reasonable Suspicion" standard. Multiple members of supervisory staff were directly involved in the review of the justification and parameters for testing, including the County Manager, the Deputy County Manager, the County Attorney, the Human Resources Manager, and the Environmental Services Director;
  - The Seminole County Sheriff's Office was also consulted prior to testing;
  - The circumstances prompting Management's "Reasonable Suspicion" have been properly documented, and are consistent with one or more of the criteria outlined in the County Manager's Policies; the specific details relative to these circumstances will not be discussed here, as the County's inquiry is still on-going; and
  - The County has not received any requests for written documentation of the "Reasonable Suspicion" from any County employee involved in the recent testing.
- Neither you, nor anyone in your office, are HIPPA Certified; your lack of understanding of the regulations protecting patient information has been punctuated by the multiple requests we have received from your staff in the last several months for County employees' personal information protected by the HIPPA regulations. We are concerned that your office's involvement in this process potentially raises more HIPPA issues than it purports to report or remedy.
  - Finally, your "Review" is rife with factual errors and misinterpretations of procedure and policy to such a degree to render it without credibility or value.

We are disappointed to see taxpayer resources directed to an effort based on misinformation and erroneous assumptions. In the future, should you have concerns, we encourage you to voice them constructively through direct communication. In that regard, we are available at any time.

## **Audit Comment**

On March 7, 2016, the Office of the Clerk of the Circuit Court and Comptroller received from the County Manager's Office the response noted above. At best, this response by the County Manager's Office is extremely disappointing and demonstrates a "lack of common sense".

As the County Manager's Office is well aware, the Office of the Clerk of the Circuit Court and Comptroller has a Hot-line for all county employees, citizens, and vendors, who suspect there is any type of fraud, waste, or abuse. This hot-line is available 24 hours a day, 7 days a week. The telephone number that one can call to report an anonymous

report is 1-866-889-8808. This is a very convenient tool for anyone to report Fraud, Waste, or Abuse or unethical behavior. County employees can submit an anonymous complaint to the Clerk of the Circuit Court and Comptroller for consideration.

This program was fully endorsed by the BCC and it is a common program for County Clerks (with audit responsibilities) to administer this program. This is a very good program and is for the protection of the taxpayers from Fraud, Waste, and Abuse.

The Clerk has a responsibility for the confidentiality of information. In this particular case there were multiple Hot-Line calls that appeared to be violations of policy by the County Manager's Office. The County Manager's Office was basically cited for not complying with their own policies, and state and federal laws.

Because of the anonymity of the complainants, and the fact that the complaints were against the Policy of Seminole County and the County Manager's Policy, it would have been inappropriate to involve those directly involved as they were cited for violating their own policy.

Since you so eloquently in your response brought up the discussion of the Clerk's responsibilities, we will gladly discuss this subject with you so we are all on the same playing field.

First, as a starting point for this discussion, let us discuss what the County Manager's assigned duties and responsibilities, and then we will address the responsibilities of the Office of the Clerk of the Circuit Court and Comptroller's. We won't discuss the County Attorney's Office but it is duly noted that the County Manager and Deputy Manager have elected to hide behind the umbrella of the County Attorney by having him sign off on your so called management response dated March 7<sup>th</sup>, 2016.

According to the Home Charter Rule Section 2.3 A (c) the County Manager has a duty to "ensure that all ordinances, resolutions and orders of the Board of County Commissioners and all laws of the State which are subject to enforcement by Manager, or by officers who are subject under this Charter to the Manager's direction and supervision, are faithfully executed."

Unless I am misinterpreting the Home Rule Charter this means it is the responsibility of the County Manager to ensure that your county staff follows the policies and procedures and state and federal regulations.

In this particular situation, there were employees that stepped up and contacted the Hot-Line because there was concern that the Manager's Office was not following policy and there were privacy issues encountered.

When the Ethics/Fraud Hot-line was first established in February 2013, it was presented to the County Manager's Office as well as the BCC. There was complete acceptance of the program. The Commissioners accepted the value of having another watch dog mechanism in place to ensure that there were no ethics or fraud abuses by employees and/or vendors. It was designed as a vehicle to protect: (1) the citizens of Seminole County; (2) the employees, (3) the Board of County Commissioners (BCC); and, (4) management from Fraud, Waste, or Abuse.

Now, let's discuss the role of Clerk as the County Auditor. Under Article VIII, Section 1 (d), of the Constitution of the State of Florida, the Clerk of the Circuit Court serves as the custodian of all county funds to the Board of County Commissioners (BCC). The Clerk is also as an Elected Constitutional Officer, the County's Internal Auditor. It is our understanding that the Florida Court has ruled that the Clerk has the right to perform auditing functions, including financial and compliance auditing.

The Clerk Audit function is in place is to protect both the citizens and the BCC from financial exposure, provide for an objective process to preserve public trust and ascertain that policies, procedures, internal controls, and Florida Statutes are being complied with and followed.

This Office is responsible for auditing to ensure the County is in compliance with all federal and state laws, the BCC policies and procedures, and the County Manager Policies as well as verifying the internal controls are in place and effective for protecting the financial assets of the taxpayers of the county.

Some additional thoughts to add to this discussion:

1. So that we are all on the same playing field and can understand the importance of having a Hot-line, let's have a family discussion. At the start of a school year, a middle school child is provided a rule book. Also provided by the school principal is a Hot-line to call if the child is ever bullied or if the child has any issues that are confidential in nature.

The same scenario is true for the County's management of employees and staff. If an employee is aware of fraud or abuse or is afraid of reprisal they can call the Ethics Hotline at 1-866-889-8808 to discuss concerns in a safe and anonymous manner. This is what the Hot-Line is to be used for, and it is an effective tool for open and confidential discussions about non-compliance with rules and regulations or with possible financial improprieties. We believe that the BCC also has the desire to have its employees and vendors protected from management reprisal.

2. We do recognize that the County Manager Policy does establish a program for random drug testing program for those employees that are in Safety-Sensitive CDL (Commercial Driver's License) positions. We commend management for having such a program. However, this program has been designed to objectively select employees using a purely random method such as a computer generated random number table and each employee will have an equal chance of being tested each time selections are made. This program also is designed to have the Safety Officer provide a formal Notification for Random Drug and /or Alcohol Testing. With this program, the supervisor is emailed directions for the employee to go unescorted to the designated specimen collection site immediately. In this case of the unannounced drug testing at the Central Transfer Station and eventually the Landfill, the County Manager's office ordered all employees (70 plus individuals) be drug tested. This included those that do not have a CDL. Only those employees who occupy positions requiring a CDL should have been subjected to drug testing or those employee(s) that had two (2) supervisors complete the appropriate paper work for the "test". In this action, all employees, except for those five (5) not at either location on the day of the test were subjected to the drug/alcohol test. The action by the County Manager's Office appears to be in direct violation of County Policy as well as State Statutes.
3. Employees confidentially contacted the Ethics Hot-line because they were not comfortable discussing their concerns with management. They obviously do not have confidence that they will be protected from reprisal. In reality, this is the purpose of the "hot line". The County Manager's Office attacking the Office of the Clerk of the Circuit Court and also your employees by acting like they are fabricating is disappointing, sad, and appears to be bullying.
4. Both Florida Statute 112.0455(2)(t) and 440.102 (5) (o) stipulate that employee(s) may request a copy of the documentation stating reasonable suspicion. The bigger question is, did anyone advise the employees, they could get a copy of the documentation.
5. No employee was given information regarding medication or other items that could render a "false-positive". ( FS 112.0455(6)(b)(4)) Nor was any employee given the choice to "privately" disclose the drugs he/she were taking. This was done verbally and within hearing distance of other county employees.
6. The comment by the County Manager's Office regarding no one in the clerk's office being HIPPA certified is entirely false, ignorant and insulting. We do have HIPAA certified individuals.

In addition, not once did this office request the “results” of anyone tested. We merely queried regarding the procedure followed and verified that procedure against the policies of the Seminole County and the County Manager. This audit in no manner, suggestion, or innuendo has questioned the vendor under contract or their procedures.

Our office will continue to be the “Watch Dog” for the citizens of Seminole County and monitor for compliance with all regulatory rules and regulations, policies and procedures.

We appreciate the County Manager’s Office taking the time to provide a response to this report. We will continue to work with their office and staff on improving the county’s business processes.

**EXHIBIT A****Drug-Free Workplace***Seminole County Board of County Commissioners***Reasonable Suspicion Observation Form (STRICTLY CONFIDENTIAL)**\_\_\_\_\_  
Date/Time of Incident\_\_\_\_\_  
Print Employee's Name\_\_\_\_\_  
Print Supervisor #1's Name\_\_\_\_\_  
Print Supervisor #2's Name

This checklist is to be completed when documenting an incident that provides reasonable suspicion that an employee is under the influence of a prohibited drug, substance, or alcohol. The supervisor(s) will note all pertinent behavior and physical signs or symptoms that lead to the reasonable belief the employee has recently used, or is under the influence of, a prohibited substance.

**Check each applicable item on this form and provide any additional facts or circumstances.**

**Section A**

<b>Nature of the Incident/Cause for Suspicion</b>
<input type="checkbox"/> Observed or reported possession or use of a prohibited substance .
<input type="checkbox"/> Apparent drug or alcohol intoxication .
<input type="checkbox"/> Observed abnormal or erratic behavior .
<input type="checkbox"/> Arrest or conviction for drug-related offense .
<input type="checkbox"/> Evidence of tampering with a previous drug test .
<input type="checkbox"/> Other (e.g., flagrant violation of safety regulations, serious misconduct, fighting or argumentative/abusive language, refusal of supervisor instruction, insubordination or unauthorized absence on the job.) Please specify: _____ _____ _____

**Section B**

<b>Unusual Behavior</b>
<input type="checkbox"/> Verbal abusiveness.
<input type="checkbox"/> Physical abusiveness.
<input type="checkbox"/> Extreme aggressiveness or agitation.
<input type="checkbox"/> Withdrawal, depression, mood changes, or unresponsiveness.
<input type="checkbox"/> Inappropriate verbal response to questioning or instructions.
<input type="checkbox"/> Other erratic or inappropriate behavior (e.g., hallucinations, disorientation, excessive euphoria, or confusion.) Please specify: _____ _____ _____

**Section C**

<b>Physical Signs or Symptoms</b>
<input type="checkbox"/> Possessing, dispensing, or using controlled substance.
<input type="checkbox"/> Slurred or incoherent speech.
<input type="checkbox"/> Unsteady gait or other loss of physical control; poor coordination.
<input type="checkbox"/> Dilated or constricted pupils or unusual eye movement.
<input type="checkbox"/> Bloodshot or watery eyes.
<input type="checkbox"/> Extreme fatigue or sleeping on the job.
<input type="checkbox"/> Excessive sweating or clamminess to the skin.
<input type="checkbox"/> Flushed or very pale face.
<input type="checkbox"/> Nausea or vomiting.
<input type="checkbox"/> Odor of alcohol.
<input type="checkbox"/> Odor of marijuana.
<input type="checkbox"/> Dry mouth (frequent swallowing/lip wetting).
<input type="checkbox"/> Dizziness or fainting.
<input type="checkbox"/> Shaking hands or body tremors/twitching.
<input type="checkbox"/> Irregular or difficult breathing.
<input type="checkbox"/> Runny sores or sores around nostrils.
<input type="checkbox"/> Consistently wearing sunglasses indoors.
<input type="checkbox"/> Puncture marks or "tracks."
<input type="checkbox"/> Other. Please specify: _____ _____ _____

**Section D**

<b>Written Summary</b>
<input type="checkbox"/> Please summarize the facts and circumstances of the incident, employee response, supervisor actions, and any other pertinent information not previously noted. Attach additional sheets as needed: _____ _____ _____ _____ _____ _____

\_\_\_\_\_  
Supervisor #1's Signature

\_\_\_\_\_  
Date/Time

\_\_\_\_\_  
Supervisor #2's Signature

\_\_\_\_\_  
Date/Time

**Prepared by:**  
**The Office of the Clerk of the Circuit Court and Comptroller**