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MEMORANDUM

TO: Honorable Garrett Dennis, Chair, Redistricting Committee

**CC: Jason Gabriel, General Counsel
Margaret M. Sidman, Deputy General Counsel & Managing Deputy**

FROM: Paige H. Johnston, Chief, Legislative Affairs *PHJ*

RE: Information Gathering and Sunshine Law Requirements

DATE: January 12, 2021

Question. Whether certain City officials or employees can meet, individually or as a group, with individual members of the Council to gather information for dissemination at a noticed meeting of the Redistricting Committee, which is a special committee of the Council.

Answer. Yes, it is not a violation of the Sunshine Law for individuals or members of a group who have been designated by the governing body to act in a fact-finding capacity to meet individually with members of the governing body (i.e., here the City Council) and to report back to the governing body in a public meeting (i.e., the Redistricting Committee, which is a special committee of the Council) the information that they gather.

In this case, we understand that the Redistricting Committee, which is a special committee of the Council, would like to receive preliminary information from the various Council Members prior to the Redistricting Committee beginning its work. The Redistricting Committee would like Jerry Holland, the Duval County Property Appraiser, and Mike Hogan, the Duval County Supervisor of Elections, either individually or together, to meet with Council Members one-on-one to discuss issues that may be of importance to the Council Members related to the redistricting process and to gather feedback and information on the Council Districts by those who represent the Council District. Mr. Holland and Mr. Hogan would then report back to the Redistricting Committee the information that they receive from these interactions in a duly noticed and open to the public meeting of the Redistricting Committee.

The Sunshine Law does not ordinarily apply to staff committees or meetings. *See School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99, 101 (Fla. 1st DCA 1996).

Likewise, an individual or individuals meeting are not subject to the Sunshine Law they are delegated information-gathering or fact-finding authority so long as they have no decision-making authority, no recommending capacity and do not share information between members of the body. *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). It is axiomatic however, that it is the nature of the act performed and not the makeup of the committee or proximity of the act to the final decision, which determines whether a committee is subject to the Sunshine Law. *Wood v. Marson*, 442 So. 2d 934, 938 (Fla. 1938). Therefore, it is important to ensure that the fact-finding individuals (in this case Mr. Holland and Mr. Hogan) are not delegated any decision-making authority or the ability to make recommendations by the Redistricting Committee. Moreover, the Redistricting Committee should refrain from using the fact-finding individuals to act as a liaison between the Redistricting Committee and its members or other Council Members in order communicate ideas or opinions that should be shared by the Council Members in a noticed meeting. *See Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780, 784-785 (Fla. 4th DCA 2018)(Sunshine Law must be construed to “frustrate all evasive devices” implicated by a meeting between a board member and a non-board member who is being used as a liaison)(internal citations omitted).

In this instance, our understanding is that Mr. Holland and Mr. Hogan would be tasked by the Redistricting Committee with reaching out to individual Council Members to obtain data input from the Council Members and preliminary information as to their individual Districts which can then be compiled and disseminated to the Redistricting Committee as a whole at a noticed public meeting where the Council Members and the public will receive all information contemporaneously. So long as the fact-finding individuals are operating solely as information-gathering and fact-finding, do not have delegated any decision-making authority or capacity to make recommendations by the Redistricting Committee, and do not act as a conduit between Council Members on the Redistricting Committee or other Council Members, the fact-finding individuals can proceed to meet with individual Council Members to gather preliminary information to report to the Redistricting Committee at a noticed meeting compliant with Sunshine Law requirements.

We trust that this memo addresses your inquiries for the Redistricting Committee meeting. Please let us know of any other questions or concerns.