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MIAMI-DADE
#1
COMMISSION ON ETHICS & PUBLIC TRUST

In re:

C 16-17

Crespo v. Russell

PUBLIC REPORT AND FINAL ORDER

Complainant Al Crespo (Crespo) filed this complaint against City of Miami Commissioner Ken Russell (Russell) alleging a violation of Section (A) (3) of the Citizens' Bill of Rights entitled "Public Records." Crespo alleged that Russell lost or destroyed a public record (a list of gifts received by Russell's office after his November 2015 election) thus denying Crespo the opportunity to inspect the record.

Investigation revealed that a campaign worker in Russell's office admitted that she created such a list however the time period after Russell was elected was quite chaotic (furniture was moved, walls were painted) and the document was lost.

The Ethics Commission agreed with the Advocate's recommendation that there was probable cause in this case but that pursuant to Section 2-1074 of the COE's enabling ordinance the violation was inadvertent, unintentional or insubstantial and dismissed the case with the issuance of a Letter of Instruction.

On September 14, 2016, in open session, the Ethics Commission unanimously voted to dismiss the complaint and issue a Letter of Instruction.

Therefore it is:

ORDERED AND ADJUDGED that COMPLAINT C 16-17) against respondent Ken Russell is hereby concluded.

DONE AND ORDERED by the Miami-Dade County Commission on Ethics & Public Trust in public session on this 14th day of September, 2016.

MIAMI-DADE COUNTY COMMISSION ON ETHICS &
PUBLIC TRUST

By:



H. Jeffrey Cutler

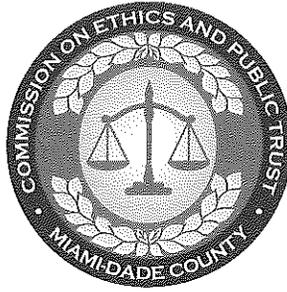
Vice Chair

Signed on : 09/21/2016

C16-17

In re: Crespo v. Russell

Final Order



APPROVED

EB 10-19-2016

**MIAMI-DADE
COMMISSION ON ETHICS & PUBLIC TRUST**

LETTER OF INSTRUCTION

To: City of Miami Commissioner Ken Russell

From: Miami-Dade County Commission on Ethics and Public Trust

Re: Crespo v. Russell (C16-017)

Date: October 2016

Complainant Al Crespo (Crespo), filed an ethics complaint against City of Miami Commissioner Ken Russell (Russell) alleging that Russell violated the Citizens Bill of Rights by either losing or destroying a public record requested by Crespo, thus denying Crespo the opportunity to inspect the record.

Investigation determined Russell had asked one of his staff to prepare a list of the various gifts that were being sent to his office in the days after his election to the City Commission. The staff member created the list, but subsequently, it was lost. Russell confirmed that the initial period of getting his office organized was a bit chaotic; furniture was moved around in the office and the walls were re-painted. Despite a diligent search, the list was not able to be found.

On September 14, 2016 the Commission on Ethics and Public Trust found that there was probable cause to sustain the complaint but, pursuant to Section 2-1074 (s) of the COE's enabling ordinance, voted to dismiss the complaint and issue a Letter of Instruction to Russell since the investigation supported the finding that the violation was inadvertent, unintentional or insubstantial.

WHEREFORE, the Miami-Dade County Commission on Ethics and Public Trust issues this Letter of Instruction to City of Miami Commissioner Ken Russell.

Section (A)(3) of the Citizens' Bill of Rights entitled "Public Records," states "All audits, reports, minutes, documents and other public records of the County and the municipalities and their boards, agencies, departments and authorities shall be open for inspection at reasonable times and places convenient to the public."

Florida Statute Section 119.011(12) defines "public records" to include: all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material,

regardless of the physical form, characteristics or means of transmission made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge. All such materials, regardless of whether they are in final form, are open for public inspection, unless the Legislature has exempted them from disclosure.

Russell said that he had his staff make the list so that he could have the information available to file the Form 9 disclosure listing gifts received by him and valued in excess of one-hundred dollars (\$100.00). Russell filed his Form 9 on March 31, 2016 reporting two tickets to Vizcaya Gala worth \$1,500 and one ticket to the Camillus Gala valued at \$165. The lost list, however, was believed by Russell to have included several gifts valued at less than \$100.00.

The document created by Commissioner Russell's staff was a public record because it was material made or received by an agency in connection with official business which was used to perpetuate, communicate or formalize knowledge.¹

Commissioner Russell accepted responsibility for the loss of the gift list although he claims, and no evidence disputes, that he never actually saw or had personal possession of the list. A member of his staff advised however, that she did create the list.

Commissioner Russell is instructed that the Citizens' Bill of Rights requires that public records be open for inspection at reasonable times and places. Care should be taken to safeguard all public records within the care and control of your office. Based on the facts of this case, this Commission recognizes that the document in question likely contained information about gifts received whose value was under \$100 and therefore non-reportable under the County Code, while acknowledging that Commissioner Russell disclosed the gifts received valued in excess of \$100. Accordingly, this Commission concluded that the violation was inadvertent, unintentional and insubstantial. We also note that Commissioner Russell, who is a newly elected government official, has taken the allegation brought against him very seriously and will, we trust, use this Letter of Instruction to guide his future conduct in office. Such future conduct should include the practice of instructing staff members in the proper maintenance of public records.

¹ Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc. 379 So. 2d 633 (Fla.1980)