



**Miami-Dade Commission on Ethics & Public Trust**

**Investigative Report**

**Investigator:** Manuel W. Diaz

<b>Case No.:</b> K14-062	<b>Case Name:</b> Sweetwater-Public Records	<b>Date Open:</b>	<b>CASE CLOSED</b>  Date: <u>8/4/14</u>
<b>Complainant(s):</b> Anonymous	<b>Subject(s):</b> Marcos Villanueva	7/10/14	

**Allegation(s):**

The COE received information that attorney Jose M. Herrera (Herrera) made a public records request to the City of Sweetwater (the City) which has not been responded to. The Mayor's Chief of Staff, Marcos Villanueva (Villanueva), allegedly directed the City not to provide the records.

**Relevant Ordinances:**

**Miami Dade County Conflict of Interest and Code of Ethics Ordinance, Sec. 2-11.1**

“(g) *Exploitation of official position prohibited.* No person included in the terms defined in Subsections (b) (1) through (6) and (b) (13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as

may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners.”

**Miami Dade County Citizens’ Bill of Rights, Part 1, Home Rule Charter**

“(A)(3) *Public Records*. 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 State Statutes - Public Records**

Sec. 119.07 Inspection and copying of records; photographing public records; fees; exemptions.—

“(1)(a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

(d) A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.

(2)(d) If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.”

**Investigation:**

**Jose M. Herrera** (Herrera), Jose M. Herrera PA, 2360 Coral Way, Coral Gables, Florida 33145

Herrera confirmed the public records request for telephone records for a lieutenant assigned to the Internal Affairs (IA) section of the Sweetwater Police Department. He said that the City Clerk advised him that it would cost \$890.00 to retrieve and screen the records and that he would have to prepay before the records to be produced. Herrera believes that the bill is inflated and the City has delayed the process because it wants to protect the police lieutenant. According to Herrera, the police lieutenant has been providing sensitive information to a local television reporter. Herrera advised that he reported his difficulty in obtaining public records to Miami-Dade Chief Assistant State Attorney Jose Arrojo.

Herrera said that Villanueva should know the law on producing public records because Herrera successfully sued the City six years ago.

He said that he would pay the \$890,000 for the telephone records. Herrera was advised that the City could charge a reasonable cost for producing public records.

**Marie “Val” Schmidt** (Schmidt), City Clerk, City of Sweetwater, Florida

Schmidt was interviewed. She advised that Herrera has made several requests for public records which were provided or are being worked on. One request dealt with the production of records for 5000 telephone calls made by or received by a police lieutenant assigned to the police department’s Internal Affairs(IA) section. Due to City policy, Herrera was told that he would have to pre-pay for the records prior to receiving the records. Herrera has contested the cost and has of yet not paid. She advised that she would provide the COE with copies of several e-mails between the Clerk’s office and Herrera. (Copies in file)

**Marcos Villanueva** Police Lieutenant, City of Sweetwater Police Department

Villanueva was interviewed. His current assignment is as the Chief of Staff to the Mayor.

Villanueva explained that Herrera has made a number of public records requests during the last several months. He advised that all requests are being worked on. He noted that the Clerk’s Office has a limited staff and other responsibilities.

One of Herrera’s requests dealt with the production of the telephone records of the lieutenant in charge of the police department’s IA section for a six month period. The City Clerk obtained the telephone records from the City’s Finance Department and is awaiting payment to begin processing the request. Once the payment is received, the City Clerk will work with the lieutenant to insure that the records are redacted to comply with Chapter 119, Florida Statutes.

Villanueva denied telling anyone in the City not to comply with Herrera’s public records requests.

He advised that Herrera is a personal friend of his. Herrera never contacted him directly to complain about a delay in the City providing public records.

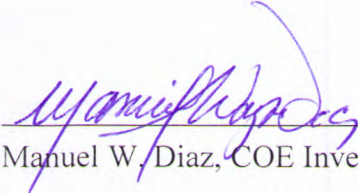
**Documents Reviewed:**

Copies of e-mails provided by Villanueva and by Schmidt (Copies in file)

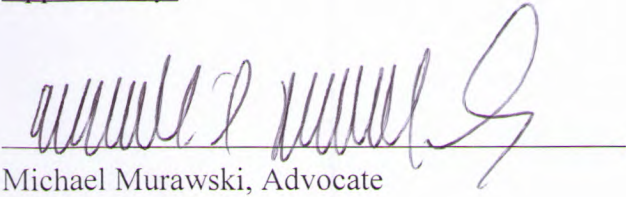
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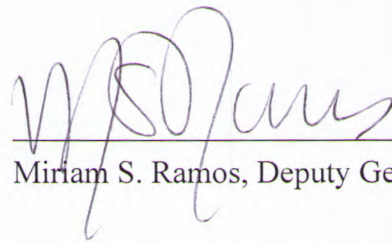
**Conclusion:**

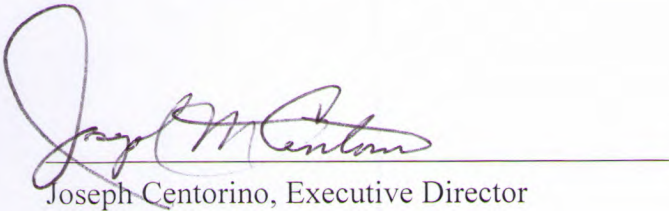
After discussion with the Ethics Commission's Advocate it was determined that there is insufficient evidence to show a violation of the Citizens' Bill of Rights or that Villanueva exploited his official position. This investigation should be closed with no further action.

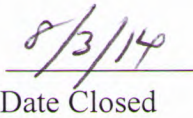
  
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Manuel W. Diaz, COE Investigator

Approved by:

  
\_\_\_\_\_  
Michael Murawski, Advocate

  
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Miriam S. Ramos, Deputy General Counsel

  
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Joseph Centorino, Executive Director

  
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Date Closed