

# MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST



## REPORT OF INVESTIGATION

K #: 12-116

Date Opened: August 8, 2012

Date Closed: August 28, 2012

Name of Investigator: Manuel W. Diaz

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On August 14, 2012, an election for Miami-Dade County (MDC) Mayor was held. The two principal contenders for the office were incumbent Mayor Carlos Gimenez and challenger, Joe Martinez (Martinez), Chair of the Miami-Dade Board of County Commissioners.

### Allegation:

A MDC employee contacted the COE reporting that he received a “robo-call”<sup>1</sup> from the Martinez campaign on this home telephone and also on his work voicemail. (Email from employee in file.)

An investigation was initiated to determine how the contact information utilized by the Martinez campaign was obtained.

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<sup>1</sup> A “robo-call” is a pre-recorded audio telephone message often containing a message from the candidate and urging voters to support him/her.

**Applicable Legislation:**

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...”

**Investigation:**

**Interviews:**

Joe Martinez – Chair, Miami Dade County Board of County Commissioners

Martinez was interviewed via telephone. He advised that the phone numbers used by his campaign for the “robo-calls” were obtained via a public records request to MDC. He advised that he would contact Albert Sotero (Sotero) the campaign worker who requested the information.

Albert Sotero – Campaign worker, Martinez for Mayor Campaign

Sotero advised that he made three public records requests to MDC for employee contact information: on April 2, 2012, on April 21, 2012, and on May 3, 2012. Sotero advised that the requests were made through the law Offices of Peter Sobota, Esq., 12555 Orange Drive, Davie, Florida, 33330.

**Document Review:**

MDC Internal Services Division Public Records Log

The log was reviewed and was found to contain two public record requests made by Sobota. A request was made via email on April 2, 2012 for a list of names and home addresses of current MDC employees. An additional request was made on April 21, 2012 for a list of names, home addresses, home telephone numbers, dates of birth, gender information and email addresses of current MDC employees. (Copy of log in file.)

As part of the investigation, ISD provided the COE with a public record request made by Kyle Prall (Prall) on behalf of Information Freedom, LLC (IF), a corporation registered in Wyoming.

The address listed for IF is 109 E. 17<sup>th</sup> Street, Suite 4130, Cheyenne, WY 82001. ISD also provided a copy of a CD reflecting the information that was provided to Prall. (Research on Prall and IF is included as part of the file.)

The contents of the CD were reviewed. It was noted that the names, dates of birth, age, title, work telephone, work email, home phone number, home addresses, hire date, base annual salary and adjusted annual salary of MDC employees were released to Prall. The public record request given to Martinez' campaign and to Prall contained thousands of phone numbers and addresses.

Upon review, it was discovered that certain home addresses and home telephone numbers that should have been designated as "protected" were disclosed. For example, it was noted that contact information for COE employees, who also fall under the protection of the statute, was released to Prall. Protected information is exempt from the public record law pursuant to Sec. 119.071, Florida Statutes. A detailed review of the released information to determine if contact details for other "protected" employees within the County was released was not done, but it is fair to assume may have been.

The following MDC employees were interviewed.

Ray Baker (Baker) - Assistant to the Director, Internal Services Division

Baker was contacted. He advised that the names of all MDC employees along with other identifying work and home information were released to Prall as a result of a public request made on March 29, 2012. Baker provided a chain of emails from Mary Lou Rizzo (Rizzo), Assistant Director ISD. (Copies in file.)

Baker explained that the information on the CD was derived from a combination of MDC data bases. The majority of the information was provided by MDC Human Resources. Baker explained that "protected" indicates that the employee information is protected under FS 119.071. In an email to the COE, Baker explained that MDC has determined that certain occupational codes are protected under FS 119.071.

Mary Lou Rizzo – Assistant Director, Internal Services Division

Rizzo was interviewed. She advised that any records released to Prall/IF were made in accordance with guidelines provided by the MDC Attorney's Office. The release of "protected" information to Prall was discussed. Rizzo advised that if information were released inadvertently by MDC, the employee should contact her directly, explain the rationale why the information should be protected and employee's contact information would be reclassified.

**Conclusion and Recommendation:**

As to the original inquiry to determine how the contact information for County employees was obtained by the Martinez campaign, there is no evidence of a violation of any ordinance within the jurisdiction of the COE. Therefore, the instant case is closed.

As to the release of "protected" employee information, it is important to note the problem in order to establish a better process to ensure "protected" information is not released in the future. Increasingly, public record requests are made for County employee information including, but not limited to, home addresses, phone numbers and e-mail addresses. These requests often occur during election season and the information is utilized by various candidates. The public record requests of this nature seek voluminous amounts of information. ISD seems to rely on certain MDC databases to gather the requested information and comply with the requests. Clearly, in this particular case, certain "protected" information was released as part of the public record requests. It is recommended that the Human Resource Department/ISD update their databases to insure they have the most recent information on file. While it is relatively easy to "flag" protected information for the police, corrections and fire departments (since most of the exemptions apply to law enforcement officers), there are many other departments that also have "protected" employees who are entitled to not have their personal information released as a public record.