



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Robert Steinback

Case No.: K13-145/C13-035	Case Name: Burke v. Hibbert	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s): Michael R. Burke	Subject(s): Ricky Hibbert	November 8, 2013	December 27, 2013

Allegation(s):

Complainant Michael Burke (Burke) alleges that employees of the City of Miami Beach's City Clerk and Information Technology (IT) offices repeatedly frustrated his requests for certain public records. He made contact primarily with Lillian Beauchamp (Beauchamp), office associate IV in the City Clerk's office, and Ricky Hibbert (Hibbert), senior systems analyst in the city's IT office, and chose to direct his complaint against Hibbert.

Relevant Ordinances:

Complainant alleges a violation of the Miami - Dade County, Florida, Code of Ordinances Part 1 – Constitutional Charter Citizen's Bill of Rights, (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.*

Investigation:

Interviews

Michael R. Burke – complainant, by telephone at 1:47 p.m., on November 7, 2013, and subsequent occasions, mostly by e-mail.

This investigator spoke with complainant Burke by virtue of his call to the COE hotline. Burke came into the COE on November 8, 2013, to file a formal complaint regarding the difficulty he was encountering obtaining copies of public records from the City of Miami Beach.

Burke said that he made a public records request (PRR) of the City Clerk's office on September 9, 2013. [Documentation later provided by the city indicates the date of his initial PRR was actually September 19, 2013]. His request was assigned a city public records request number of 8223. The request was to "make available for my perusal all variances, permits, renderings, reports, waivers, memoranda, letters, e-mails, billing and payment records re:1442 Jefferson lane [sic] , Miami beach, fl. 33139."

Burke said he was told at various stages of the process that he needed to provide a specific date range for his request, that there were no results at all for the property, and finally, that there was no such address in Miami Beach, that is, that while there is a Jefferson Avenue, there is no Jefferson Lane. (See analysis below).

By the date of Burke's call to COE, nearly two months after his initial PRR request to the city, he still had not received the information he sought, and had become convinced that the city was deliberately dragging its feet to comply. Asked why he believed this to be the case, he explained that the address he was researching is that of then-Mayor Matti Herrera Bower. With an election scheduled for November in which Bower was running for a city commission seat, Burke believed the city apparatus had engaged to frustrate his inquiry for political reasons.

"This is time sensitive," Burke said. "I don't think IT should be in politics. I know they can get this information – after 20 years of experience in municipal government [I know] they could have had this in 30 minutes by walking to the file."

Although he had been working through Beauchamp, Burke also had some direct and indirect contact with IT systems analyst Hibbert. "I believe the problem is him," Burke said.

Ricky Hibbert, Senior Systems Analyst, Information Technology office, City of Miami Beach, by telephone, Tuesday Nov. 12, 2013.

Summary of interview

In a brief conversation, Hibbert said that Burke's request had been fulfilled and turned over to Beauchamp.

Lillian Beauchamp, office associate IV in the City Clerk's office, by telephone, on Tuesday Nov. 12, 2013, and subsequent occasions.

Summary of interview

Beauchamp told this investigator over the course of several conversations and e-mail exchanges that Burke's original public records request eventually became three successive requests. The first was answered and closed on Oct. 24. This was request #8223 in the Miami Beach City Clerk's office recording system. Burke was told that the request was closed because "there was no information responsive to this request."

The explanation given for the lack of records was that the original request included no date range. Beauchamp said this led to the creation of a second request by Burke, which became #8364 in the clerk's office records system. In this request, Burke asked for records from November 1, 1999, to the present. Burke was provided with a disk of records on November 8, 2013, the same day he filed his complaint with the COE office. Burke could not open the files on the disk, and contacted Beauchamp for assistance in doing so.

Once he was finally able to access the disk records, Burke was still unsatisfied with the material he was given. [Aside from copies of his own e-mails and staff responses to them, there was no information provided on the address he was researching.] On November 13, 2013, Burke filed a third request, #8397 in the clerk's office records system. By this time, Burke had discovered that the primary reason he had not received the information he was expecting was because with both of his previous two requests, he had used "Jefferson Lane" in the address, rather than the correct "Jefferson Avenue." Miami Beach has no Jefferson Lane.

Jose Smith (Smith), City Attorney for the City of Miami Beach, by telephone, Tuesday, November 26, 2013, 2:30 p.m.

Summary of interview

Smith told this investigator that he had spoken to Burke twice about this matter. Smith said he was under the impression that Burke's concerns had been resolved. Smith said he was told by someone in the clerk's office – he believed it was Beauchamp – that copies of everything requested by Burke had been copied and made available to him.

Asked if the matter of “Jefferson Lane” versus “Jefferson Avenue” should have caused such a protracted delay in the city's response to Burke's request, Smith said that he has lived in Miami Beach for 50 years and still occasionally comes across addresses he cannot find. This was said to explain why the staff would go ahead and research an address that later proved to be non-existent. He said that the matter might have been resolved more quickly had Burke simply asked for materials related to the mayor's address, rather than identifying only the address.

Had Burke done this, Smith said, “I think it [Burke's request] would have been handled differently.”

Smith said, “I wouldn't impugn [sic] any insidious motives to anyone. I don't know the facts. There are many roads and lanes [in Miami Beach]. You could work in the planning department for 50 years and not know there is a Jefferson Lane. I think this is much ado about nothing. ... At the end of the day, I think the clerk's office handled it properly.”

Meeting with **Miami Beach staff**, Monday, December 16, 2013, at 1:15 p.m. Present: Smith, Beauchamp, Hibbert, City Clerk Rafael Granado (Granado), First Assistant City Attorney Gary Held (Held), Waldhys Rodoli office associate III, planning department; Rhonda Hasan, first assistant city attorney, and Victor Armendariz, building records manager. An audio recording of the meeting was made.

Summary of Interview

This investigator met with the above-named City of Miami Beach representatives to examine and discuss the time line of events (see below) regarding this complaint.

Held served as de facto moderator of the meeting. It was asserted that the initial public records request made by Burke was placed with the city on September 19, 2013, not September 9 as the Burke complaint to COE states. A printout of the original Miami Beach complaint form supported this.

The question arose about the city's use of two different e-mail addresses to communicate with Burke. All of the correspondence between Burke and Beauchamp and Hibbert [and also Burke and COE] used Burke's aol address. However, Beauchamp retrieved a copy of the original e-mail from Burke (dated Sept. 19) making his initial public records request; it was sent from Burke's yahoo account. Burke had earlier told this investigator that he had not used his yahoo account in years. [This is germane to the case as noted under the timeline and analysis below.]

Granado pointed out that even if Burke didn't receive the Stohl e-mail directly, it would have been among the 40 or so e-mails that were compiled in response to Burke's first PRR. This investigator noted that it would be understandable that Burke, upon being told that the PRR results included nothing about the property, but only electronic conversations he generated himself, might see no point in carefully reading through those results.

Held said Beauchamp and any other city employee who receives an e-mail would naturally respond to that e-mail, without cross-checking to see if another was on file.

Reference was made to Stohl's October 16 memo, in which she and Rodoli both note that there is no Jefferson Lane in Miami Beach. This memo at the time was copied to several people including Beauchamp and to Burke himself (using the supposedly inactive yahoo account). Said Held: "So in our mind, as of October 16, he [Burke] should know that Jefferson Lane does not exist because he was informed of that by the Antoinette Stohl e-mail."

The response to Burke's first PRR was made ready on October 15, though Burke did not discuss the contents with Beauchamp until October 17. The investigator observed that if Burke had not seen Stohl's e-mail, he would not have understood why there was no information found that was responsive to his PRR.

Held suggested that the focus of the investigation seemed to have shifted from the city's actions to Burke's actions. The investigator noted the importance of verifying that Burke really had used the yahoo account to initiate his PRR. The investigator then noted that Beauchamp, in her conversation with Burke on October 17, explained the problem of the lack of a date range in the first PRR, but she did not point out the problem with the non-existent address, even though she had just received a copy of Stohl's e-mail the day before. In other words, she told Burke of only one of the two key difficulties the city says impeded the search: That there was no such address. Asked directly, Beauchamp said that did not recall telling Burke about the problem with the address.

The investigator asked the group why it would take four weeks to determine that the original PRR could not be processed at all because it contained no date range. Hibbert said the city has no dedicated full time equivalent (FTE) job position for someone to exclusively handle public records requests, meaning employees must fulfill these requests around other duties. Said Smith: "When you look at a case in a vacuum, you have to understand we have a city to run." Smith said staff must handle requests from city commissioners, department directors, the legal staff dealing with lawsuits and more. "They have a city to run, we can't drop everything because Michael Burke starts jumping up and down and threatening ethics complaints. These are professionals. There is no sinister motive here to hide anything from anybody." The investigator pointed out that all municipalities and the county bear the same burden of having to deal with PRRs. Smith added that Burke's request came during an election cycle, when PRRs tend to spike.

The investigator noted that when Burke put in his second PRR on October 24, he again used the non-existent Jefferson Lane address. No one with the city warned him of this. Granado said that Burke again requesting the non-existent address "would reinforce to me that that's the address he wants. Antoinette Stohl has responded to him, and he again asks for the Jefferson

Lane address.” Held added, “It would be wrong for us to assume he is making a mistake if he is repeatedly asking for it.” Held offered the hypothetical situation of someone who had paid for a building permit, but using an incorrectly written address, who was deliberately researching the false address to buttress his demand for a fee refund. Held said, “We don’t go to motive. If someone asks for a request, we pursue that request. No one here knows where a public official lives.” Beauchamp said she typically would just copy and paste the requested address onto the PRR without evaluating the accuracy of the address.

Smith asserted that he has lived in Miami Beach for 53 years, and grew up only a few blocks from Bower’s address on Jefferson Avenue, and yet prior to this case could not have said for sure that Jefferson Lane did not exist. Hibbert said, “We are providing him with the information that there isn’t any [Jefferson Lane]. We are utilizing the address he gave us. At some point, the person making the request has to be responsible also. He reinforces that this is the address he wants.”

Smith said: You [the investigator] are almost suggesting that we have a fiduciary [sic] responsibility to assist him to get [what he was looking for]. We don’t have an obligation to read his mind and see that it is what he’s after if he’s not telling us. If he had said, ‘I want any and all records related to the mayor’s house’ ... While technically we may say, no, give us an address, I think he would have had a better result had he done that rather than throw out an address that didn’t exist.” The investigator noted that this reasoning would shift to the requester the burden of knowing in what form to phrase a request in order to make it easier for the city to fulfill it.

Smith said of Burke, “He is not a novice to PRRs. He has been asking about the mayor’s records over the last two and a half years. Her travel records, her personal records, her diary, who she talks to. He knows his way around the city. This is not a novice that doesn’t know how to find an address.” [This comment betrays a certain bias, or at least a conscious frustration, with Burke, which might point to a failure on the part of the city staff to treat him with the same level of consideration as it might treat an unknown requester.]

The investigator asked the group why, when the city staff knew Burke was unhappy with the results of his PRRs, no one simply asked him if he is sure of the address he is researching. Hibbert responded that this happened between requests two and three, during a conference call with Burke. Following this call on November 13, it took the city only about a week to complete the research and make the results available to Burke.

Smith said he ran into Burke just a few days before this meeting. Burke told him “I still don’t have my records,” even though city records show he had picked up all three CDs provided for him. Smith said, “At some point, you’ve got to consider the credibility, demeanor and attitude of the complainant. ... This is an individual who is always irate, always screaming, always thinking in a conspiratorial way. You’ve got to give that some degree of analysis than [to] just take somebody’s word for it. ... You [the investigator] seem to be implying that somebody [with the city] dropped the ball, somebody didn’t respond properly, somebody didn’t ask the right question, somebody didn’t say the right words. ... You have to look at who you’re dealing with. There is nobody here that wants to keep anything hidden or do anything to Mr. Burke to keep him from getting what he wants.”

Smith said, “He [Burke] is looking for illegal work on the mayor’s residence. He didn’t find it, and he’s upset. He wants to find out himself, that’s that this is all about, illegal work at the mayor’s home.” Smith said Burke stated explicitly to him that this was the case.

Document/Audio/Video Review

In response to a public records request, this investigator received copies of 35-40 incoming and outgoing e-mails between Beauchamp, Hibbert and Burke. Included in the request were screen grabs of Burke’s public records requests taken from the clerk’s record system.

In addition, Burke forwarded a copy of an e-mail received from a planning department office associate IV named Antoinette Stohl (Stohl), referencing the issue of the incorrect address. This was apparently included in the response to his second public records request. This e-mail is noteworthy in that it shows that Stohl’s message on the matter included an incorrect e-mail address for Burke – an apparent explanation for why he hadn’t received it earlier.

At the staff interview on December 16, 2013, the investigator received packets of all the e-mails and other correspondence related to all three Burke PRRs. Also received was a copy of Burke’s original e-mailed PRR [which came from his yahoo account]. Smith also provided a legal paper arguing that the COE should not have jurisdiction over public records cases. This was forwarded to COE Executive Director Joe Centorino.

Time Line

To effectively analyze this matter, it is helpful to construct a time line based on the e-mail record and interviews. All dates are 2013.

Thursday, September 19 – Burke files his first public records request. It is assigned clerk's PRR no. 8223 (IT PRR no. 721). The request was to “make available for my perusal all variances, permits, renderings, reports, waivers, memoranda, letters, e-mails, billing and payment records re:1442 Jefferson lane [sic] , Miami beach, fl. 33139.” The city provided documentation that this request came via Burke's yahoo account. Also, city records show that this was the date of the initial request, not September 9, as Burke stated in his COE complaint.

Tuesday, October 15 – Having heard nothing from the city in four weeks, Burke calls City Clerk Granado. Granado contacts Beauchamp, who asks Hibbert and John McGraw of the IT department for an update. Hibbert replies, asking for a date range to search. Beauchamp relays the question to Burke. Burke replies on Oct. 17.

Wednesday, October 16 – Antoinette Stohl writes an e-mail addressed to several city staff members including Beauchamp and Granado, and also to Burke, but using Burke's yahoo address, not his aol address. The message states that Jefferson Lane, the address Burke used in his initial PRR, does not exist. She conducted her research on the address 1442 Jefferson Avenue, Bower's correct address and the address Burke intended to research, and found that it had not come before the Board of Adjustment or Planning Boards. The same day, Stohl's colleague Rodoli, writes to Stohl that he can find no records related to the correct property address [Jefferson Avenue] for the Historic Preservation or Design Review boards. Burke said that he did not see this e-mail until it came as part of the first (8223) PRR response, and even then, not immediately, and so he doesn't immediately learn of the problem with the address.

Thursday, October 17 – IT informs Beauchamp that IT “cannot perform any type of inquiry” without a specified time period to search. Beauchamp relays this information to Burke, telling him all she needs is “just a date range.” Burke chooses November 1, 2007, to the present. Despite having received Stohl's message the previous day, Beauchamp never mentions to Burke that he was searching a non-existent address. Burke also asks for a cost estimate.

Monday, October 21 – Hibbert replies with an estimate of \$20. Beauchamp asks Burke if he still wants the request to proceed, to which he answers yes. The following day, Beauchamp instructs Hibbert to proceed.

Thursday, October 24 – Beauchamp informs Burke that no information was found on his initial request, #8223, that conforms with his inquiry parameters. . Burke asks for an e-mail from IT explaining the lack of records conforming to his request. Hibbert's reply e-mail to Beauchamp states that there were 40 hits in the requested date range, but that these were all internal staff messages regarding the request itself, that is, that nothing was found about the property.

Beauchamp relays this information to Burke, who asks for a new search with an expanded date range, November 1, 1999, to the present. Beauchamp still does not explain the problem with the non-existent Jefferson Lane address, and enters this incorrect address again on the form for the new PRR, given the number 8364. The source e-mail address on the form is still shown as Burke's yahoo account, not the aol account he uses to communicate with staff.

Monday, October 28 – After an e-mail exchange with Burke, Beauchamp informs Hibbert that Burke requested a new search covering the period November 1, 1999 to the present. Hibbert replies that he will be out of the office for two days but will take on the new search on October 31.

Friday, November 8 – Beauchamp informs Burke that his second PRR request is ready. He had not picked it up by November 12.

Wednesday, November 13 – A conference call takes place between Burke, Beauchamp and Hibbert. Burke has the CD by this point, but cannot open it; he puts someone on the line to get instructions on how to open it. In this call, Burke is told of the problem with the address, and so he initiates his third request, which becomes PRR #8397. This one has Matti Bowers' correct address and the date range from November 1, 1999 to the present.

Wednesday, November 20 – Beauchamp informs Burke that PRR #8397 is ready. Over the next two days, Burke reminds Beauchamp that he wanted the material printed rather than put on disk. Beauchamp replies that the cd contains 460 e-mails, and calculates a minimum printing cost for materials and labor of \$314.37, which doesn't include additional pages for e-mails longer than a single page. The cost of the CD is quoted as \$3.00.

Wednesday, November 27 – Beauchamp reminds Stohl, Rodoli, Richard Lorber and Victor Armandariz to check their areas for any responsive documents. Burke appears to have stated verbally that his PRR be specifically reviewed by the planning and building departments.

Thursday, December 5 – Burke complains that he still has received "no results."

Beauchamp is puzzled because she feels she has properly processed every request from Burke.

Monday December 9 – Burke’s third request plus his subsequent verbal amendment to have the building and planning departments also consider the request is completed and made available to him.

Analysis

Burke’s public records request was relatively simple: He wanted information regarding permits, variances or similar actions granted by the city on a particular residential property. The city took nine weeks to provide the information Burke sought. The city cites two relatively minor glitches in Burke’s first PRR – mistakes any citizen could easily make – for causing this delay. It should be noted that once these two glitches were corrected, it took the city only a week to fulfill Burke’s request. It should be also noted that because of the delays caused by the two glitches, Burke’s lost what he most wanted: The chance to receive the data he sought prior to the city election involving the subject of his research, Mayor and City Commission candidate Matti Herrera Bower.

The first glitch: Burke failed to indicate a specific time period to search. It took four weeks for the city to let Burke know that research into his PRR could not even begin until he provided a date range, and it might have taken even longer except that Burke himself called for a status update. The city’s explanation for this delay is simply that the city staff was busy handling a large number of PRRs that accompanied the election cycle, and that PRRs are handled on a first-come, first-served basis. . Smith argued that city staffers “have a city to run” and can’t be expected to “drop everything” to handle a particular PRR.

The second glitch: Burke gave the address he was researching as “1442 Jefferson Lane” instead of “1442 Jefferson Avenue.” Miami Beach has no Jefferson Lane. It was almost a full month after the PRR was filed before Antoinette Stohl and Waldhys Rodoli established that Jefferson Lane did not exist, but that 1442 Jefferson Avenue – Bower’s actual address – did. Stohl wrote an e-mail to Burke on October 16 explaining the address discrepancy, a message that was copied to Beauchamp and other city staffers. But the e-mail was sent to an old yahoo e-mail address that Burke claims he no longer monitors. Burke’s communications with Beauchamp and Hibbert always used Burke’s aol address. Burke had not communicated with Stohl at all prior to her October 16 e-mail.

The source of this discrepancy remains indeterminate. Burke provided documentation showing that he had asked the city to stop using his yahoo address in December 2012. Deputy city attorney Held said that process applied only to an e-mail distribution list used for agendas and other routine city clerk notices; for any other communication with the city, a staffer would simply reply to the same address as the incoming e-mail. The city provided a record showing that Burke had used his yahoo address to make his original PRR request, which is why Stohl replied to that address. Burke denied this, but could provide no contradictory evidence to back his denial.

Whatever the reason, Burke said he hadn't seen Stohl's e-mail when he spoke to Beauchamp on October 17 about the problems with his first PRR. Despite receiving Stohl's e-mail the day before, Beauchamp did not mention the erroneous address to Burke. Instead, she told him the only problem with his first PRR was the lack of a date range. So Burke specified a range of November 1, 2007 to the present. Beauchamp sent the request back to Hibbert and IT.

October 24, Burke was told that aside from his own e-mails and the staff's responses to them, there was no information that was responsive to his request. Suspicious of this response, Burke asks for a letter from IT explaining what was found. He is still not told of the problem with the "Jefferson Lane" address. Thinking the problem had to do with the date range, Burke asks for another search, using the expanded range of November 1, 1999 to the present. This became PRR #8364 – but it also used the non-existent Jefferson Lane address.

By October 17, every city staffer who handled this PRR knew, thanks to Stohl's e-mail, that there was no Jefferson Lane in Miami Beach. But aside from Stohl's e-mail to the yahoo address Burke said he no longer uses, no one with the city thought to check with Burke to make sure he realized it. Instead, the staff made the assumption that Burke knowingly wanted to research a non-existent address – for a second time. This is so despite the fact that Beauchamp for sure, and probably others, knew that Burke was unsatisfied that nothing had been found regarding the property he was researching. If Burke was knowingly researching a non-existent address, it is logical to assume that he would be expecting to find no information, and certainly wouldn't need to research it twice.

Nevertheless, IT went ahead and researched the non-existent address for a second time. Only after this fruitless and wasteful exercise does Burke finally learn, on November 13 – more than a week after Election Day – that all along he had been researching a non-existent address. He instigates a third PRR, #8397, which finally includes both a date range and the accurate address. This time the research was completed in a week. It turned up nothing on Burke's target property. Burke asked for further affirmation of this fact from the planning and development boards, which added an additional two weeks to the research process.

It appears Burke exacerbated the slow response by initiating his first PRR from an e-mail address he rarely uses (yahoo), but then otherwise communicating with the city through a different address (aol). While Burke insists that he did not do this, the likelihood that he did conforms best with the known facts. (Burke prefers to believe the city deliberately altered the e-mail address on his PRR to slow down the process and protect Bower, but this theory falters given that no scandalous or damaging information about Bower's property was ultimately uncovered; in other words, there appears to have been nothing to hide.)

Conclusion(s):

It seems that it did take an unusually long period of time for Burke's original public records request to be properly fulfilled.

The city staff's explanations for the delays are, as a technical matter, adequate to conclude that there was no active intent to frustrate Burke.

Burke makes his second PRR request on October 24, with a new, longer date range but still using the nonexistent Jefferson Lane address. Once again, Beauchamp does not tell him of the problem with the address. She also does not inform Burke that the city's board of adjustments, and the planning, historic preservation and design review boards, all had searched the *correct* address on Jefferson Avenue and found nothing – so that Burke, with his second PRR, continued to search for information that city staff already knew didn't exist.

Burke could have exercised more care in locating the accurate address of the property he was researching. He might have also contributed to the delay by using his yahoo address to make the request in the first place, and then not monitoring that address for a reply.

While there is no hard evidence or rationale that supports the notion of city staffers deliberately trying to protect Bower or frustrate Burke – especially given that in the end, Burke found no damning information about Bower's property – the city consider reevaluating its strategies for efficiently handling public records request.