



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Robert Steinback

Case No.: K14-011	Case Name: Rowan Taylor	Date Open:	CASE CLOSED Date: <u>11/4/14</u>
Complainant(s): Referral from Miami-Dade Office of the Inspector General (OIG)	Subject(s): MDFR Capt. Rowan Taylor	Jan. 28, 2014	

Allegation(s):

It is alleged that the subject, Captain Rowan Taylor (Taylor) of the Miami-Dade Fire Rescue Department, violated state law exempting from the state's Public Records law personal contact information for firefighters, including telephone numbers, when he engaged a private company to make automated telephone calls, or so-called "robocalls," to fellow firefighters during the course of a union officer election in October 2013.

Relevant Ordinances:

It is alleged that the subject violated Florida Statute 119.071 (4)(d)(2)b: "The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with s. 633.408; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1)."

Subject is also alleged to have violated the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance 2-11.1 (g), which reads in relevant part:
"(g) *Exploitation of official position prohibited.* No person [covered by this section] 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.”

Investigation:

Interviews

Pedro “Peter” Aleman (Aleman) – MDFR firefighter, interviewed by telephone June 12, 2014.

Summary of interview

Interviewer called Aleman because he was one of the participants in a Facebook conversation about Taylor arranging the “robocalls,” as indicated by a printout of a portion of the conversation provided anonymously to the OIG.

Aleman said he has been in the union for 19 years. He said the union bylaws spell out election rules. He says “robocalls” have never been used. He noted there are about 1,910 union members.

Aleman said candidates for union elected office can have access only to mailing list – not phone numbers.

Aleman said there are circumstances under which a firefighter can authorize receipt of “robocalls,” but it depends on the specific election. He said he remembers authorizing receipt of calls for local, state and federal campaigns, but not for the union election.

Aleman said that after getting the automated call regarding the election, he started getting other phone solicitations, for health insurance, etc. He said such calls that hadn’t happened before then.

“I found it very inappropriate that he did that. It gave him a very unfair advantage.” He said it had never been done before.

Aleman said that only “principal officers” can get into the firefighter personal information on the website. Must be accessed directly from the hard drive.

He says he believes that Taylor, as union president, had access to all the firefighter’s data.

Rowan Taylor (Taylor), Captain, Miami-Dade Fire Rescue (MDFR), sworn testimony under subpoena Tuesday, October 14, 2014, at COE offices, 11 a.m. Interview was audio recorded.

Summary of interview

Taylor stated that he has been a Miami-Dade fire fighter since January 1994, and a captain

since May 2003. He presently is assigned to MDR Station 51, an EMS unit located at Honey Hill Drive and Northwest 47th Ave.

Taylor said he had served on the Executive Board of International Association of Fire Fighters (IAFF) Local 1403 for six years in the late 1990s through early 2000s. Taylor said the chapter has about 2,700 members, of which roughly 800 are retired and 1,900 are active. Although county fire fighters are not compelled to be union members, Taylor said only about 20 countywide have opted not to join. They are included as part of the union's bargaining unit, however. Some civilian employees, such as dispatchers, also are eligible to become union members.

From January 2010 through December 2011, Taylor said he was the local's second vice president. He served as president from Dec. 2011 through December 2013. He was defeated for reelection in October 2013, with his term in office ending in December.

It was during this election, that Taylor acknowledges engaging Dark Horse Strategies (Dark Horse), a campaign media consulting company located on Southwest Eighth Street in Miami, to electronically deliver a telephone message to union fire fighters urging them to vote for Taylor.

Taylor said that the union had used Dark Horse on previous occasions in non-election situations, such as arranging to deliver mailers to union and retired union members. On one occasion, in July 2013, Taylor said the union engaged Dark Horse to make electronic "robocalls" to members about a non-election matter. Taylor said that on that prior occasion, he had received no complaints from members. "It was only when the campaign got really ugly" that complaints arose, Taylor said.

Taylor acknowledges providing a list of fire fighter names and contact telephone numbers to Dark Horse for the purposes of his election-related "robocall." Taylor stated that there were two databases at his disposal, a union database, and the county-maintained MDRNet database. Taylor explained that any firefighter can request addresses from the union database, and that practice had been used by candidates in past elections to prepare mailers. Taylor said that no one before him in October 2013 had thought to use a "robocall" service as a campaign tool. Taylor said he gathered telephone numbers not from the union database, but from MDRNet, because all firefighters, meaning all union candidates, have access to that database and could use it as he had, and so he would not have an unfair advantage.

Taylor said that some union election candidates may not be aware that they can come to the union office and simply request a copy of the contact list. In past elections, candidates have used the list to construct mailing lists.

Taylor said he checked with the union attorney, Matt Mierzwa, who informed him that he would not be in violation of the law to use the list because it wasn't the county releasing the protected information. Taylor said Mierzwa cited similar cases from around the country.

Taylor said that to his knowledge, Dark Horse did not retain fire fighter contact information. Taylor said that when he engaged the company to do the election "robocall" in October, he

had to re-supply the company with the contact list, even though the company had done a chapter-wide "robocall" just four months earlier.

Matthew Mierzwa, attorney for Local 1403 IAFF, Tuesday October 21, 2014, by telephone, with Michael Murawski present.

Summary of interview

Mierzwa stated that he is the attorney for the IAFF Local 1403, not for Taylor personally. He said, "When this happened, I was briefly consulted about it but not by the Election Committee. I didn't render an opinion."

Mierzwa said he represented neither Taylor nor any other candidate, and makes a practice of not returning calls from election candidates. He said he will sometimes answer questions from the Election Committee as directed by the union.

"My understanding is that union has some type of database. My understanding is that only union officers have access to union databases." But he added, "What I said could be inaccurate."

Mierzwa's understanding was that the union has its own database of contact information, and that Taylor didn't use it because, as an officer, he has access to the Union database while others do not. And so, Mierzwa said Taylor chose to use the county database because everyone (meaning election rival firefighters) has access to it.

"To make it clear, if any candidate for any union office contacts me about what they can do or cannot do, I'd never answer that question." Mierzwa said. "I never provided advice to Rowan Taylor prior to [this situation]. He consulted with me afterward."

Mierzwa said he didn't believe that Taylor asked him for advice but may have done so for others who were not involved in the election. "Somebody asked, but I don't recall Rowan asking me. I rendered an informal opinion that 119 has an exception for disclosure. The way I read 119 – Everything is available unless it is exempted. There is an exemption for firefighter numbers." "I may have said to others that something that is exempted [from disclosure] does not make it confidential."

Mierzwa described the difference as follows: Exempted information cannot be released by the county (exempt from disclosure), but if it is obtained by someone outside the county by other means, there is no restriction on its dissemination by that person. Confidential information would be protected from dissemination even if it were received from sources other than the custodian of the information. Mierzwa cited Chapter 447.

He reiterated he was not speaking as if rendering a formal opinion. "I believe exemption applies to the custodian of the record."

Mierzwa was unsure if Taylor should be considered covered by 119 because he, as a county

employee, gave personnel information to an outside company, or whether the hiring of the “robocall” company was a release of information by the union, which is not subject to the state’s Public Records Law.

Mierzwa also believed that the database used by Taylor was a county database (the “overtime list”), not a union database, because Taylor knew that all firefighters had access to the county’s database, while only union officers had access to the union database.

Mierzwa said he wasn’t sure if the union’s independent access to the firefighters’ information allows them to use it as they wish, and also whether Taylor’s independent access allowed him to use it.

Mierzwa used the example of two firefighters planning to meet at a station, and finding there a list of firefighter contact numbers. “Are they bound by 119? My question: Does 119 apply to only to the legal custodian of such information, or does it apply to all county employees?” Mierzwa said, “It was my understanding that the union has its own database that he didn’t want to use and so he used the county database.

Mierzwa said, “I don’t think Rowan did anything intentionally wrong.”

Emiliano Antunez (Antunez), principal of Dark Horse Strategies and Consulting, October 23, 2014, 11:45 a.m., interview, by telephone.

Summary of Interview

Antunez said he was “everything” regarding his company, owner, president, etc., implying he is a one-man shop.

Antunez said that before his October job for candidate Taylor, he had done prior work for the union, including both automated (once, in July 2013) and live calls, for their budget issue. He also said he has prepared mailers for the union on several occasions using firefighter addresses provided by the union.

Antunez said that for the October job, Taylor supplied him with “about 2,000” (as he recalled) phone numbers without names attached to them. “They were only numbers; I didn’t know who the numbers belonged to.”

This statement contradicted testimony from Taylor, and the e-mail record Taylor provided. After reconfirming with Taylor, the investigator spoke to Antunez again on Monday, October 27, 2014. Antunez said he had misspoken earlier by relying on his memory, and agreed that he received both names and numbers from Taylor. He added that he didn’t need the names to perform the” robocall” function. Antunez also confirmed that he would have received firefighter names and addresses in a separate delivery from Taylor to facilitate mass mailing function, both in the October instance and on earlier occasions with the union.

He said Taylor recorded the call message himself. Antunez said the “robocall” part of the deal amounted to only about \$100, roughly 5 cents per call.

He said he uses no standard contract for a job such as this. He said he had no need to retain the numbers of firefighters. He said that for “robocalls” he uses a cloud-based service called “Callfire” which can tell him how many of the automated calls were answered, and other information. He said Callfire is only a platform, and would not have the capacity to retain numbers.

Antunez described Taylor as a “nice guy” who he hoped would not get into any trouble.

Document/Audio/Video Review:

- A copy of a Facebook screenshot, partially obscured, of a dialogue including Taylor, in which he appears to affirm that he gathered contact phone numbers for fellow firefighters from an unidentified source available to all firefighters.

Received from Taylor:

- Copies of e-mails from Taylor to a man named “Emiliano” at Dark Horse, including one on Thursday, October 17, 2013, containing an attachment with the firefighter names and contact information. The e-mails are sent to Taylor’s personal e-mail and aol account addresses, not his county e-mail address. One e-mail contains Taylor’s acknowledgment that the “robocall” spot, which he recorded, would start the next day (Saturday, October 19, 2013) at 10 a.m.
- A copy of the invoice dated October 19, 2013, for a total of \$2,130, broken down as \$1,110 for the design, printing and mailing of 2,000 post cards, \$920 for another set of 1,000 6x1-inch cards.

Analysis

This case is a referral from the Miami-Dade County Office of the Inspector General, which closed its case on January 30, 2014, after referring it to this office and to the State Attorney’s Office (SAO). The SAO determined that there was no actionable criminal violation. The original complaint submitted to the OIG was done anonymously.

The core facts in the case are not disputed by the subject. Heading into an election for officers of International Association of Fire Fighters Local 1403, the subject Taylor was president, and seeking reelection. Taylor admits that he hired Dark Horse to perform several tasks related to the election, including the preparation of mailing lists and also the delivery of electronic telephone messages, informally known as “robocalls.” Although the union itself had contracted with Dark Horse in the past to deliver informational electronic telephone messages to its members, this apparently is the first time a candidate for elected union office had used “robocalls” for a partisan purpose. Some members were apparently displeased by this, and one presumably initiated the anonymous complaint to the OIG. The letter indicates that its author is a firefighter who received one of the phone calls.

As labor union bylaws governing internal elections fall outside the jurisdiction of the COE, the investigator did not examine these claims. Rather, the investigators focused primarily on the question of whether Taylor's delivery of personal contact information to an outside, i.e., non-county, firm violated Sec. 119 of state law, and whether this could be regarded as an exploitation of official position under the county Conflict of Interest ordinance.

Despite the use of the "robocall company," Taylor lost the election.

Taylor said he supplied Dark Horse with the numbers to call for the "robocall operation." Dark Horse principal Antunez stated that he was given only phone numbers without names attached. However, e-mail exchanges between Taylor and Antunez indicate Antunez was aware that the calls were going to firefighter union members. It also appears that the e-mail attachment Taylor sent Antunez included both names and numbers.

There was no contract between Dark Horse and the union or Taylor that specified how the contact numbers were to be utilized by the company, the disposition of those numbers after use, or any disclosure of the fact that state law exempts such records from public records disclosure.

The investigator uncovered no evidence of exploitation of position, as it appears Taylor did not use privileges accorded to him by virtue of his rank or his position as president of the union local to garner an advantage over other candidates in the election.

The union had previously provided Dark Horse with firefighter telephone numbers for purposes of a "robocall" effort in July 2013, although in that case, the message was informational rather than partisan. Taylor, as president of the local, was responsible for that instance. In October 2013, he utilized the same service in the same way, but this time for the partisan purpose of advancing his election prospects.

It should be noted as well that Dark Horse on a number of previous occasions had been utilized to prepare mailers to union, which also involve the use of firefighter contact information that Chapter 119 presumably exempts from public records disclosure. The investigator has not uncovered any fundamental difference between a union election candidate releasing contact information to a private outside contractor for the purpose of "robocalls" as opposed to mailers, or between doing so for an election as opposed to doing so for informational purposes. Another consideration would be whether a violation should be deemed to have occurred if a county employee – e.g., Rowan Taylor – gives an outside contractor like Dark Horse information that the company could not request itself from the county via a public records request.

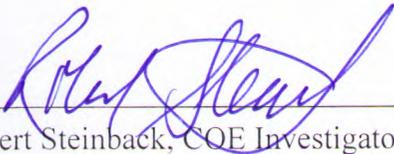
Union Attorney Mierzwa draws a distinction between "exempt" information and "confidential" information, suggesting that the former prohibits the custodian of contact information for exempt employees from releasing that information in response to a public records request, but includes no restriction on the use of such information if it becomes public by other means. "Confidential" information would be information that is prohibited from use by the public regardless of how the public or public entity obtained it.

Conclusion(s):

It is evident to those that worked with Taylor throughout the election process that he was being conscientious about doing the right things. Taylor used the county system, rather than the union system, to obtain the information because he felt that it was a more fair way of obtaining the information, as all Miami-Dade firefighters have access to the county database. Further, evidence suggests that Dark Horse was previously used by the union for similar matters and therefore had access to all the "exempt" information that Taylor provided in this instance. Hence, it seems patently unfair to punish Taylor for choosing to obtain the information from one database versus another, when, in fact, they contained virtually the same data. It seems further unfair to file a complaint against Taylor with the Florida Commission on Ethics when the information that he provided to Dark Horse had been previously provided by the union. While, technically speaking, Taylor may have provided information that is "exempt" from the public record to an outside party, it is clear that the violation is *de minimus* and unintentional.

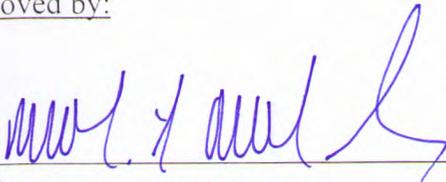
In order to avoid a similar occurrence in the future, MDR Chief will be putting out an "All Stations and Offices Memorandum" advising all MDR personnel that even though they may have access to personal information such as addresses and phone numbers in their capacity as an employee of MDR, they are not authorized to use that access for personal reasons even if it is related to Union activities, charitable, fundraising or other activities approved by the Department.

For the reasons enumerated above, the instant case is closed without further action.

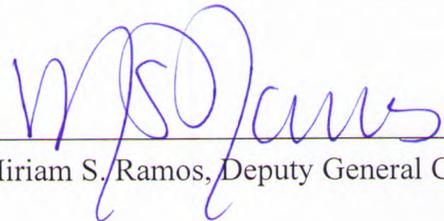


Robert Steinback, COE Investigator

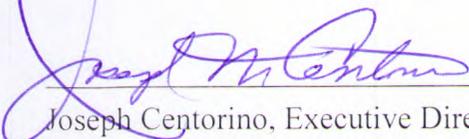
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11/4/14

Date