



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Larry Lebowitz

Case: PI 17-23	Case Name:	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s): Jose "Pepe" Herrera	Subject(s): Miami-Dade Police Communications Dept.	May 9, 2017	

**CASE
CLOSED**

Allegation(s):

Police agency maintaining a *de facto* policy that violates the spirit and the settled case law requiring the custodian of public records to produce them upon request in a timely and expeditious manner.
Date: 5/25/17

Relevant Ordinances:

Florida Statutes, Chap. 119.01 General state policy on public records. –
1) It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.

Florida Statutes, Chap. 119.07(1) (c) A custodian of public records and his or designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

Miami-Dade County Charter, Citizens Bill of Rights
A) This government has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administrative management, to make government more accountable, and to insure to all persons fair and equitable treatment, the following rights are guaranteed:

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 and copying, consistent with the requirements of the State of Florida's public records laws, at reasonable times and places convenient to the public.

Investigation:

Interviews

Preliminary inquiry initiated with an email sent on May 9, 2017 from Complainant Jose "Pepe" Herrera ("Herrera"). The email alleges that his law office made a very specific and detailed public records request, in writing, to the Miami-Dade Police Department Communications Bureau on March 27, 2017. The request specifically identified a date and location of an incident, contained the identity of the officers (name and ID) and time period between 5 and 11 PM. Herrera emailed COE Executive Director Joseph Centorino on May 9, registering his complaints with the manner in which MDPD Communications continuously failed to respond to his request in a timely and expeditious manner.

After numerous messages traded back and forth, this investigator spoke with Herrera on May 19, 2017. Herrera said the issue, in this specific complaint, was resolved within 24 hours of his May 9, 2017 email to Centorino, which was also cc'd to the MDPD Director's Office.

Herrera stated that his client is a tow-truck operator with a contract to remove and impound vehicles for MDPD in certain areas of the County. Herrera's client had been arrested and charged with aggravated assault with a deadly weapon for allegedly pulling a gun on a repossession agent at his tow yard. Among the communications being sought: Audio of the 911 call, the dispatch and radio communications linked to the incident, and body-camera footage of the officers who responded to the tow yard to investigate.

Herrera contended that the body-camera footage was needed to exonerate his client. While the case is still technically pending at the time of this report, Herrera believes that the case will be *nolle prossed* by the State Attorney's Office.

Document/Audio/Video Review:

See initial email from Herrera to Centorino sent at 1:42 PM on May 9, 2017. According to Herrera, seven weeks after the initial public records request, MDPD had not complied. Each time, he said he received a canned response: "It's our policy to do these in chronological (order), we will get to it." Whether it was a policy or practice, Herrera stated that the chronological order response resulted in an unreasonable delay in the production of public records directly in conflict with the intent and purpose of Chapter 119.

See 5-page printout of the MDPD online policies regarding the production of public records. Specifically in the segment marked "MDPD 911/Communications Audio Unit" it states:

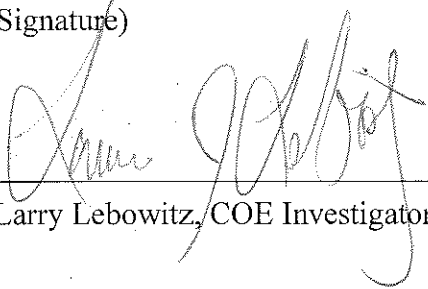
"Audio recordings of E911 calls are available for 60 days and may be obtained through the MDPD 911/Communications Audio Section using" [a form linked at https://miamidadecountyfl.govqa.us/webapp/_rs/supporthome.aspx] "Please allow 60 days to process your request. If you have any questions or would like to find out the status of your request, please contact the MDPD 911/Communications Audio Unit through the Records Center [same hyperlink]. "All requested recordings will be available on the Records Center..." [same hyperlink] "...when complete or mailed to the address provided on the request form. Please note that the recordings may not be picked up at the Public Safety Communications 9-1-1 Center." [Source: <http://www.miamidade.gov/police/public-records.asp>]

While there is no reason to doubt Herrera's veracity, there is no reference to a policy or practice of responding to these requests in chronological order.

Conclusion(s):


Twenty-four hours after emailing the COE and requesting an investigation, Complainant Herrera was able to get the records he sought. This report will be forwarded to the Director of the MDPD to take whatever administrative action he deems appropriate to assure that requestors do not have to wait seven weeks to obtain public records.

(Signature)

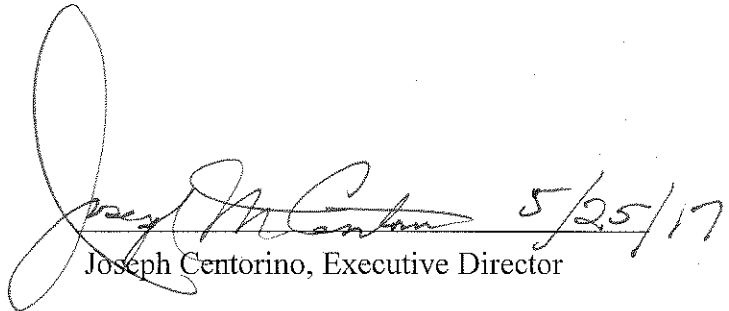


Larry Lebowitz, COE Investigator

Approved by:



Michael Murawski, Advocate



Joseph Centorino, Executive Director