



Miami-Dade Commission on Ethics & Public Trust

Report of Investigation

Investigator: Susannah Nesmith

Case: PI18-25	Case Name: North Miami Beach Public Records	<u>Date Open:</u> 5/22/2018	<u>Date Closed:</u>
Complainant(s): Stephanie Kienzle	Subject(s): North Miami Beach	CASE CLOSED	
		Date:	9/5/18

Allegation(s):

North Miami Beach officials failed to turn over public records in a timely manner.

Relevant Law:

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.

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

(c) A custodian of public records and his or her 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.

Investigation:

Interviews:

On May 22, 2018, this investigator spoke with North Miami Beach Assistant City Attorney Sarah Johnston regarding Ms. Kienzle's public records request. (City Attorney Jose Smith was out of town.) Ms. Johnston spoke with Commissioner Smith and got back to me that she had spoken with Commissioner Smith.

"Commissioner Smith explained the initial request was for a limited time frame and when the more extensive request was received she was very sick, she indicated that she is making sure she is responsive to the request and that it is very time consuming."

On May 25, 2018, this investigator spoke with North Miami Beach Clerk Pamela Latimore, who returned the call, though she was on vacation. She explained that she was working with Commissioner Smith to get the records in Ms. Kienzle's expanded records request redacted and copied for Ms. Kienzle. She also said the response to the initial request was delayed because Commissioner Smith was ill.

Document(s) Reviewed:

Ms. Kienzle's March 25, 2018 public records request for the phone records of Commissioner Smith from March 20, 2018 from 5 p.m. to 8 p.m. and Ms. Latimore's response the next day saying she had requested the records from Commissioner Smith.

Ms. Kienzle's follow-up emails inquiring about the status of her request on April 8, May 8 and May 16.

Ms. Latimore's May 16 response to Ms. Kienzle stating "Commissioner Smith stated that she would respond upon receiving her itemized phone bill, she has yet to provide the information per this email I will contact her again, Thank you."

Ms. Kienzle's response on May 16 stating "I made that request nearly two months ago. She had to have received at least one phone bill since that time. Is she again refusing to comply with Florida's public records law? This is not the first time. I am now expanding my PRR to include all phone calls in the last two months."

Commissioner Smith's response on May 16 stating "Regarding the last two months phone calls, once again, I do not have latest calls, that will have to wait."

Ms. Kienzle's response of May 16 stating, in part, "This response from Phyllis Smith is completely unacceptable, not to mention patently untrue. My original request for her phone records was made on March 25, 2018. It is absolutely impossible that she has not received at least one phone bill in the 52 days since I first asked for her records."

Commissioner Smith's May 22 email to Joe Centorino in which she explains that Ms. Kienzle's expanded request for two months of phone records required her to go through 1,200 calls she made during those two months, many of them to numbers she does not recognize because they are calls related to her real estate business. In order to determine whether each of these calls is a personal call or a call on city business, Commissioner Smith stated she had to call hundreds of phone numbers
She also said that when the initial request came in, she got very sick and she forgot to fulfill it.

The May 30 invoice sent to Ms. Kienzle by Ms. Latimore, along with an email letting her know the records were available. The invoice was for \$4.05 to copy 27 pages at \$.15/page and for \$56.16 for 39 hours of research time at \$1.44/per hour. (Commissioner's Smith's rate of pay.)

Ms. Kienzle's June 2 email contesting the charges.

Ms. Latimore's June 3 email explaining the charges.

Ms. Kienzle's email complaining that it was impossible for Commissioner Smith to spend 39 hours reading her own phone bill.

Ms. Latimore's email to me on June 19 stating that Ms. Kienzle has not picked up the records.

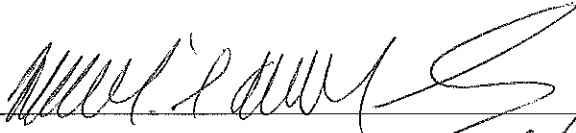
Conclusion:

After consultation with the Ethics Commission Advocate, it was determined that no further action would be taken in this matter since the City has made the requested public records available.



Susannah Nesmith, COE Investigator

Approved by:



Michael Murawski, Advocate

9/5/18