



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Gordon Bello  
Office of Miami-Dade County Commissioner Keon Hardemon

**FROM:** Radia Turay, Staff Attorney  
Commission on Ethics

**SUBJECT:** INQ 2021-84 [Cone of Silence § 2-11.1(t)]

**DATE:** June 2, 2021

**CC:** All COE Legal Staff

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed transaction.

Facts:

You work for Miami-Dade County Commissioner Keon Hardemon. You have advised that there is a solicitation currently pending for an affordable housing development in Commissioner Hardemon's district. You stated that the Cone of Silence is in effect.

You are seeking to request documents regarding the pending solicitation.

Issue:

Whether the staff of a County Commissioner may request documents regarding a competitive solicitation, during the time period that the Cone of Silence is in effect.

Discussion and Opinion:

Section (A)(3) of the Miami-Dade County Citizens' Bill of Rights, provides as follows: "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 public records laws, at reasonable times and places convenient to the public."

The State of Florida public records laws are embodied in Chapter 119, Florida Statutes, which includes the following provision: "Every person who has custody of a public record

shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of public records.” Section 119.07(1)(a), Florida Statutes.

Under these circumstances, any record regarding a solicitation which is not otherwise exempt under Chapter 119, Florida Statutes, is a public record and should be provided upon request, pursuant to Section (A)(3) of the Citizens’ Bill of Rights and Section 119.07.<sup>1</sup>

You have also advised that the Cone of Silence is in effect for the solicitation for which you are requesting documents.<sup>2</sup> The Commission on Ethics and Public Trust (COE) has opined that a County Commissioner and/or their staff may not communicate with County procurement staff during the time that the Cone of Silence is in effect unless the communication is in writing; the communication relates to a process or procedural matter; and/or the communication is made during a public meeting. *See* INQ 16-274.

The COE in INQ 16-274 further explained, that “in the event that the communication is made in writing to a County employee (*See* Subsection 2-11.1(t)1.(c)(i)) it would be permissible provided such a communication is not prohibited by the bid documents and it is filed with the Clerk of the board and made a county record.”

The County’s Strategic Procurement Unit frequently includes language in bid documents which restricts communication beyond the parameters of the Cone of Silence, including a provision requiring that, all written communications regarding a pending solicitation should be submitted only to the Procurement Contracting Officer with a copy to the Clerk of the Board. The precise language of the subject solicitation document should be reviewed.

If permitted by the solicitation, you may direct your written communications regarding the solicitation for which you are requesting documents, to the ISD Procurement Contracting Officer for that solicitation, with a copy to the Clerk of the Board.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret

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<sup>1</sup> Please note however that Subsection 119.071(b)(2), Florida Statutes, which deals generally with the exemption from the public records law in connection sealed bids or proposals on procurement matters, states that the records of such bids, proposals or replies are exempt “until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals or final replies, whichever is earlier.”

<sup>2</sup> The Cone of Silence at Section 2-11.1(t) of the County Ethics Code, goes into effect when a bid, RFP or RFQ is advertised and it generally terminates when the Mayor makes his recommendation to the Board of County Commissioners (BCC). While the COS is in effect, oral communications between the following parties are prohibited: potential vendor, bidder, lobbyist, consultant AND County’s professional staff; Mayor, BCC or their staffs AND County’s professional staff; potential vendor, lobbyist, bidder, consultant AND selection/evaluation committee; Mayor, BCC and their staffs AND selection/evaluation committee; potential vendor, bidder, lobbyist, consultant AND Mayor, BCC or their respective staffs; and, County’s professional staff and selection committee.

state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.