

MIAMI BEACH

OFFICE OF THE CITY MANAGER

NO. LTC# **289-2016**

LETTER TO COMMISSION

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: July 5, 2016

SUBJECT: **Miami Herald Public Records Request**

I am writing this Letter to Commission to address the issues raised by the recent Miami Herald article regarding their public record request on water quality issues and the reimbursement costs requested by the City pursuant to state statute. I apologize that I am only now providing this report, but I needed to get up to speed after returning from vacation.

First, it is important to understand that under state law, a governmental entity is entitled to recover reasonable costs incurred in producing the public records. This includes not only copy costs, but also staff time in preparing the response and reviewing documents to make sure that no information that is confidential or exempt under the public records laws is accidentally disclosed. Governments have a right to protect certain exempt information (e.g. Security plans) and have an obligation not to disclose confidential information (e.g. Social security numbers). Careful review of any public records before release is important. As such, a government in Florida has the right to reasonable cost recovery for these activities. Furthermore, if public record requests were free of charge, no matter how large, governments would be inundated with large records requests that essentially amount to "fishing expeditions". Passing on the reasonable costs of such requests protects public entities and taxpayers from the consequence of such efforts.

As I understand it, several weeks ago, the Miami Herald submitted a large public records request for emails from 1/1/14 to the present that included any one of over 30 key terms like "pump", "outfall", "DERM", "FIU", "water quality" and "sampling". The City Clerk's office assigned the request to the IT department and the Environmental Department. Not surprisingly given the long time frame and the extensive number of search terms, IT identified over 100,000 documents that would be responsive to the request. The word "pump" alone generated 24,892 hits. Environmental department staff calculated how long it would take them to review all the emails using the long standing City policy of 2 minutes per email. They then applied the hourly rate of the Environmental resources manager that would conduct the review (\$39.17 per hour) and that resulted in an estimate of just under \$73,000. All of this was in accordance with City policy.

The one mistake that was made was the use of the wrong hourly rate. City policy is to apply the hourly rate of the lowest paid employee in the applicable department, and not the rate of the actual person conducting the review. In this case, that would have required applying the hourly rate of the office associate in the Environmental Dept. That rate is \$21.51, which still would have resulted in an estimate of almost \$40,000.

As is often the case with people who submit very large PR requests and are surprised by the costs, we worked with Miami Herald staff to help them focus their request and narrow the issues. That effort resulted in 256 emails at an estimated cost of \$185.84 (including the CD). We have communicated that information to the Miami Herald and are awaiting their 50% deposit to process their request. I believe the system actually worked (as intended by the statute) since the Miami Herald will receive the documents they need and City staff and taxpayers are not overly burdened by the process.

Please let me know if you have any questions regarding the foregoing.