

**IN THE CIRCUIT COURT OF THE  
11th JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA**

**CIVIL DIVISION**

**CASE NO:**

**GRANT STERN,**  
Plaintiff

v.

**CITY OF MIAMI BEACH,**  
a political subdivision  
of the State of Florida, and  
**PHILIP LEVINE,**  
Mayor, City of Miami Beach  
Defendants.

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**COMPLAINT TO ENFORCE THE FLORIDA PUBLIC RECORDS LAW AND  
ARTICLE 1, SECTION 24 OF THE FLORIDA CONSTITUTION**

Plaintiff, Grant Stern, a resident and citizen of Miami-Dade County, Florida sues  
the City of Miami Beach (“City”) and Mayor Philip Levine , and states:

**Summary of Action**

1. This is an action for injunctive and declaratory relief to enforce Plaintiff’s  
rights to inspect and copy public records pursuant to the provisions of the Public Records  
Act, section 119, Florida Statutes and Article I, section 24 of the Florida Constitution.<sup>1</sup>

Plaintiff also requests an expedited hearing as required by section 119.011, Florida  
Statutes.

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<sup>1</sup> “I think the objective of the Sunshine Law, of course - is to make sure that everything is out in the open, and I believe that assuming you’re doing the right thing for your constituents and for the people that you’re serving, it’s a wonderful thing. Most people - I believe - appreciate the fact that... everything you do as it relates to the business of the city is public information, and it should be.”- Mayor Philip Levine. See <http://bit.ly/2dKErm6>.

### **Jurisdiction and Venue**

2. This Court has jurisdiction over the subject matter of this case pursuant to sections 26.012, 86.011, and 119.11, Florida Statutes.

3. Venue is proper in this Court pursuant to section 47.011, Florida Statutes.

4. All conditions precedent to the bringing of this action has occurred.

### **Parties**

5. Stern is a resident of Miami-Dade County. At all times relevant, Stern was entitled to inspect and copy public records requested pursuant to section 119, Florida Statutes and Article I, section 24 of the Florida Constitution.

6. City of Miami Beach is a political subdivision of the State of Florida and at all times relevant to this case was an “agency” under Section 119.011(2), Florida Statutes (2016).

7. Levine is the mayor of the City of Miami Beach and at all times relevant to this case was an “agency” under section 119.011(2), Florida Statutes.

### **Statement of Facts**

8. Levine is a 21<sup>st</sup> century mayor who employs various digital mediums including social media to communicate official business.

9. Levine’s Twitter® account identifies him as the mayor of Miami Beach. Levine’s account name is “Mayor Philip Levine” and his Twitter® handle is “@MayorLevine.” The self-description section on Levine’s account states that Levine is:

Proudly serving as Mayor of Miami Beach. This page expresses the views and opinions of Mayor Levine and not those of the City of MB. #MBMayor #MiamiBeach.

10. Similarly, Levine utilizes Facebook® to communicate the official acts and businesses of the City of Miami Beach to his constituents. Levine’s Facebook® account addresses him as a governmental official and that his current office is the mayor of Miami Beach, Florida. Levine’s account states that he is: “Making Miami Beach the city that works...for its people.”

11. After a cursory review of Levine’s Twitter® and Facebook®, there’s no question that Levine utilizes social media to communicate the City of Miami Beach’s official business. Levine’s communications include posts such as renaming a Miami Beach street after Muhammad Ali<sup>2</sup> to informing residents of the Zika virus outbreak in the city.

12. Levine has two other Facebook® accounts in which he does not conduct official business, which are his personal page and his political campaign page, neither of which is noted as “government official”.

13. Lastly, Mayor Levine hosts a weekly satellite radio program on SiriusXM called, “The Mayor.” As described by Mayor Levine in the show’s pre-launch press release, “The Mayor” provides listeners the “insiders’ perspective on everyday government decision-making.” The show focuses on issues that directly involve the City

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<sup>2</sup> A day after the Levine’s Muhammad Ali’s post, the City of Miami Beach unanimously approved the renaming of the street after Muhammad Ali. See <http://bit.ly/1alimb> and <http://bit.ly/ali2mb> and <http://www.local10.com/sports/miami-beach-commission-unanimously-votes-to-rename-street-after-muhammad-ali>.

of Miami Beach such as lobbying the U.S. Congress for Zika virus funding in his official role as mayor.

14. On July 23, 2016, Levine posted a photograph on Twitter® where Levine is seen greeting Hillary Clinton and Tim Kaine, who are currently running for President and Vice-President of the United States of America. Stern responded to Levine’s post by sharing a recent article he wrote on Huffington Post entitled, “Florida Senate Candidate Slams Miami Beach for Fouling Biscayne Bay, Sunshine Law Failures.” In addition to the shared article, Stern stated, “[@MayorLevine](#) hope that [@HillaryClinton](#) [@timkaine](#) advised you fix the [#MiamiBeach](#) water pollution problem you caused.” After said statement, Levine blocks<sup>3</sup> Stern on Twitter®.

15. Stern proceeded to Levine’s Facebook account (which is self-categorized as a government official and is a verified page with a blue checkmark indicating that Levine personally operates the account<sup>4</sup>), and requested a copy of Levine’s official posts for the last 30 days on Twitter®. Levine responded by deleting Stern’s public records request. Stern subsequently complained to Levine regarding the deletion of the previous requests. Levine then blocks Stern from Facebook and then deleted any comments made by Stern.<sup>5</sup>

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<sup>3</sup> Blocking is a feature that helps the account holder control how he or she interacts with other users on social media such as Twitter. This feature allows the account holder to restrict specific users from contacting the account holder, seeing the account holder’s messages, and following the account holder. See <https://support.twitter.com/articles/117063>. On Facebook, blocking prevents an unwanted person or entity from seeing things the account holder post on his or her profile, starting conversations with the account holder or adding account holder as a friend. The person blocked will not be able to be tagged in a posts, comments, or photos, invite the account holder to events or groups, start a conversation with the account holder, and add the account holder as a friend. See <https://www.facebook.com/help/131930530214371>

<sup>4</sup> See “Verified Page or Profile” <https://www.facebook.com/help/196050490547892>

<sup>5</sup> Interestingly enough, Levine did not delete Jeff Everhart’s comment containing an icon of a laughing child and a kitten to the same comment.

16. On July 25, 2016, Stern called the City of Miami Beach and made a public records request for Levine's block list<sup>6</sup> on his government official Facebook® page. The City emailed Stern acknowledging their receipt of Stern's request and assigning him a public records request number 12089.

17. Stern followed up by providing instructions to the City on how to obtain the block-list on Facebook®. Specifically, Stern stated:

I'd like a list or copy of all persons blocked by the Mayor of Miami Beach's official Facebook account. In a personal account this list can be found at <https://www.facebook.com/settings?tab=blocking> In a Facebook page account it's accessible from the below URL, there is a flip down box that says "Banned People and Pages": [https://www.facebook.com/mayorphiliplevine/settings/?tab=people\\_and\\_others](https://www.facebook.com/mayorphiliplevine/settings/?tab=people_and_others).

18. On July 27, 2016, the City of Miami Beach's attorney, Aleksander Boksner, informed Stern that the City will not be producing said documents because these documents are not public records. Specifically, Mr. Boksner stated: "Please be advised that the request for 'a copy of all persons blocked or banned from Mayor Philip Levine's Facebook page, is not a public record that was made or received in the course of the official business of the City of Miami Beach.'"

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<sup>6</sup> A block list is the group of Facebook users the account holder has chosen to block. In the case of Levine the block list is the group of individuals who are prohibited from commenting upon the official city business.

19. Undeterred by the City of Miami Beach's denial, Stern requested an in-person inspection. On behalf of the City of Miami Beach, Mr. Boksner stated: "Please be advised that the City of Miami Beach is disinclined to acquiesce to the below request, and is hereby asserting its legal position that was clearly set forth in the letter remitted directly to your attention."

20. Stern responded to the City's denial, and again requested the public records. Days later, Stern sent one last message seeking a response. Defendants did not respond to his final request.

21. On September 23, 2016, Stern made a public records request to the City of Miami Beach seeking audio recordings from Mayor Levine's SiriusXM show. Specifically, Stern requested:

[A]ll digital recordings related to 'The Mayor' a radio program by Mayor Philip Levine which broadcast on Sirius XM radio. Provide copies of all episodes and all related audio material recorded by Mayor Philip Levine in conjunction with his broadcast which have been released or not, that is all recorded material whatsoever including outtakes, to include all raw recorded episodes, all segments and any material related to the Mayor's appearances on Sirius XM for the entire calendar year of 2016.

On September 26th, the City of Miami Beach acknowledged Stern's request.

22. On September 28, 2016, Stern then requested: "Cop[ies] of [c]ontracts or [a]ll [w]ritten [a]greements between Mayor Levine and SiriusXM radio and/or all

independent producers or associated studios for the show entitled, ‘The Mayor.’” On the same day, this request was acknowledged by the City of Miami Beach. The City of Miami Beach’s attorney sent a reply letter to Stern, denying him access to the public records requests related to Levine’s SiriusXM show.<sup>7</sup>

### **ENFORCEMENT OF THE PUBLIC RECORDS LAW**

23. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 22 of this Complaint as if fully set forth herein.

24. Section 119.011(12), Florida Statutes defines public records as “all documents, papers, letters, maps, books... or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

25. Section 119.011(2), Florida Statutes defines “agency” to mean “any state, county, district, authority, or municipal officer, department... or other separate unit of government created or established by law...and any public or private agency, person, partnership, corporation, or business agency, acting on behalf of any public agency.”

26. The term “received” in section 119.011(12) refers not only to a situation in which a public agent takes physical delivery of a document, but also to one in which a public agent examines a document. If that were not the case, a party could easily circumvent the public records laws. See National Collegiate Athletic Ass’n v. Associated Press, 18. So. 3d 1201 (Fla. 1st DCA 2009), pet. for rev. docketed, No. SC09-1909 (Fla. Oct. 14, 2009); Times Publ’g Co. v. City of St. Petersburg, 558 So. 487 (Fla. 2d DCA 1990) (holding that records become public records once they have been viewed and used

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<sup>7</sup> These requests were assigned the following public records request numbers: 12364, 12352 and 12354.

by public officials). A “document that is used in the course of public business is a public record under the definition in section 119.011(12) if it was... received by the public official.” NCAA, 18 So. 3d at 1208.

27. Section 119.07(1)(a), Florida Statutes proves “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.” (Emphasis added).

28. The documents Stern requested from Defendant requested from which are public records subject to the disclosure requirements of section 119.07, Florida Statutes were (1) 30 days of published posts on to Twitter®, (2) a copy of Levine’s block list on his government official Facebook® page, and (3) audio recordings and agreements related to the SiriusXM show.

29. These documents are public records subject to the disclosure requirements of Article I, section 24, Florida Constitution.

30. These documents are not exempt from the disclosure requirements of Section 119.07, Florida Statutes, nor did Levine or the City of Miami Beach declare any exemptions from disclosure.

31. Defendants’ failure to produce responsive documents to Plaintiff’s Chapter 119 requests constitutes a non-discretionary refusal to produce public records and violates section 119.07, Florida Statutes, and Article I, section 24, Florida Constitution.

32. Plaintiff has retained the undersigned counsel to bring this suit, has incurred costs and attorney's fees in bringing this action, and is entitled to recovery of costs and reasonable attorneys' fees pursuant to section 119.12, Florida Statutes.

WHEREFORE, Plaintiff demands entry of orders:

- a. Setting an immediate hearing pursuant to section 119.11(1), Florida Statutes in order to address Defendants' ongoing refusal to comply with Chapter 119 and Article I, section 24 of the Florida Constitution. Section 119.11(1), Florida Statutes, provides that "[w]henever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending matters."
- b. Directing the Defendants to appear at such hearing or hearings pursuant to section 119.11(1), and to show cause why the records requested by Plaintiff should not be ordered to be produced.
- c. Directing the Defendants to produce the records requested by Plaintiff at such hearing or hearings pursuant to section 119.11(1), Florida Statutes.
- d. Directing the Defendants, by writ of mandamus or otherwise, to produce to Plaintiff, all of the records requested.
- e. Awarding Plaintiff the costs and attorney's' fees that he reasonably has incurred in prosecuting this action initially, and in seeking the Court's intervention to obtain records requested subsequent to the initial complaint, pursuant to section 119.12, Florida Statutes.
- f. Awarding Plaintiff any other relief that is necessary or appropriate.

**Certification**

I certify that the following will be served on the Defendants via Process Server.  
Respectfully submitted on October 10th, 2016 by:

s/Faudlin Pierre  
Faudlin Pierre  
Attorney for Plaintiff  
18900 NE 1<sup>st</sup> Court  
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FLA. BAR #56770