

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

CASE NO.

MIAMI HERALD MEDIA COMPANY,
publisher of *The Miami Herald*, and
DANIEL CHANG,

Petitioner,

vs.

MIAMI-DADE COUNTY PUBLIC
WORKS AND SOLID WASTE
MANAGEMENT DEPARTMENT,
and GAYLE LOVE, in her capacity as Senior
Division Director of the Miami-Dade County
Public Works and Solid Waste
Management Department,

Respondents.

**PETITION FOR ACCESS TO RECORDS OF
THE MIAMI-DADE COUNTY PUBLIC WORKS
AND SOLID WASTE MANAGEMENT DEPARTMENT**

Miami Herald Media Company, publisher of *The Miami Herald*, and Daniel Chang (collectively, "*The Herald*") petition for the entry of an Order granting them access to records of the Miami-Dade County Public Works and Solid Waste Management Department (the "County").

The grounds for this Petition are:

1. Zika is a virus that, according to the Centers for Disease Control and Prevention (the "CDC"), is primarily spread through the bite of a specific species of mosquito (the *Aedes* species). The CDC also reports that Zika – for which there is no vaccine or medicine – can be passed from a pregnant woman to her fetus and cause birth defects. A pregnant woman can

contract the disease from a mosquito bite, or from sexual intercourse with a man who was infected through a mosquito bite.

2. Most notable among these birth defects is microcephaly, which, according to the CDC, “is a birth defect where a baby’s head is smaller than expected when compared to babies of the same sex and age. Babies with microcephaly often have smaller brains that might not have developed properly.”

3. Miami-Dade County is ground zero for the Zika virus in the United States.

4. Initially, locally transmitted cases of Zika (that is, people who acquired the disease locally, and not while traveling abroad) were found to have been contracted in the Wynwood area of Miami. This resulted in the CDC – and public health agencies abroad – issuing advisories warning pregnant women not to travel to Wynwood.

5. Then, locally transmitted cases were discovered in Miami Beach – in a 1.5 square mile area in the heart of a world-famous tourist destination.

6. Mosquito traps have been set throughout Miami Beach for the purpose of catching the species of mosquito that carries Zika and determining whether any of the captured mosquitoes were actually carrying Zika.

7. In all, nineteen traps have been set.

8. The Florida Department of Agriculture and Consumer Services (the “Agriculture Department”) has announced that of those nineteen traps, four of them captured mosquitoes that subsequent testing confirmed to be carrying Zika.

9. The Agriculture Department has publicly disclosed that one of the traps that captured an infected mosquito was at the Miami Beach Botanical Garden, a location that had been closed for mosquito control.

10. The Agriculture Department declined to identify the locations of the other three traps that captured infected mosquitoes.

11. In response to these events, Miami-Dade County has begun a program to reduce the number of mosquitoes and, consequently, the number of mosquitoes carrying Zika, by aerial spraying Miami Beach with a chemical insecticide called “naled.”

12. This aerial spraying is conducted by airplanes that fly just offshore at an altitude of 300 feet, and release the chemical into the air, relying on wind to carry droplets of the chemical itself into the 1.5 square mile area of Miami Beach.

13. This use of naled has caused great concern among a substantial amount of residents of Miami Beach and sparked public debate because the chemical has been banned as unsafe in Europe and Puerto Rico, and opponents of the chemical point to studies finding that the chemical can cause birth defects and killed millions of honeybees when applied in South Carolina.

14. A Miami Beach City Commissioner has publicly stated:

It’s a powerful neurotoxin and the risks associated with it are unknown. I don’t care if it’s been used for one week, one decade or 50 years, it means nothing when there are studies out there and the jury’s still out on whether even a low dose of Naled can be harmful to animals, children or adults. People just don’t want it. A lot of people are pulling their kids from school on Friday and going away for the weekend; a lot have left town and don’t plan on coming back until October. It’s a shame that people have to flee from their own homes.

15. *The Miami Herald* is a newspaper of general circulation in Miami-Dade County. Daniel Chang is one of its professional journalists.

16. On September 6 and 14, 2016, Mr. Chang submitted requests to the County – pursuant to Florida’s Public Records Law, Chapter 119, Florida Statutes – requesting that the County provide him with documents identifying the specific locations of the traps that captured the mosquitoes that were found to be carrying Zika. Ms. Love is the custodian of those records.

17. The County refused to provide the requested records, and cited §381.0031(6), Florida Statutes, as the statutory basis for its position that the requested records are exempt from the Public Records Law.

18. A copy of the email strings containing these exchanges are attached as Exhibit 1.

19. Section 381.0031(6), Florida Statutes, provides, in relevant part, that “[i]nformation submitted in reports required by this section is confidential, exempt from the provisions of [the Public Records Law], and is to be made public only when necessary to public health.”

20. At the outset, the documents sought by *The Herald* do not constitute “information submitted in reports required by this section” and, thus, are not exempt from the Public Records Law.

21. Nonetheless, even if the County were able to prove that the requested information constitutes “information submitted in reports required by this section,” §381.0031(6) provides that the information “is to be made public only when necessary to public health.”

22. The Court should require the requested information to be publicly disclosed because it is required by public health, and there are at least two reasons why.

23. First, public health – and the ethics of public health – demand that people living, working, and recreating in close proximity to specific locations where the presence of infected mosquitoes has been confirmed be alerted to the fact that they are in close geographic proximity to such locations. The precautions, decisions, and risks facing someone living or working next door to these specific locations are different than those facing someone who lives miles away – especially because this species of mosquito typically travels no more than one thousand feet during its life cycle.

24. Second, public health requires that residents of Miami Beach have the information necessary to evaluate and debate whether the location of these traps justifies the aerial spraying of the entirety of a 1.5 square mile densely populated area with a chemical that some studies – and one commissioner – say is a dangerous neurotoxin, or whether more targeted treatment of the specific locations is a healthier and safer alternative.

25. Zika, and the efforts to eradicate it or limit its spread, is a public health issue of tremendous importance in Miami-Dade County. Public disclosure of the specific locations where the presence of diseased mosquitoes have been found is necessary for public health.

26. Section 119.11, Florida Statutes, provides that “[w]hen 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 cases.”

WHEREFORE, *The Herald* requests the entry of an Order (a) setting an immediate hearing, (b) directing the County to provide access to the requested records, and (c) awarding *The Herald* the attorneys’ fees and costs it incurs in obtaining such relief, as required by §119.12, Florida Statutes.

Respectfully submitted,

HOLLAND AND KNIGHT LLP
Attorneys for *The Herald*
701 Brickell Avenue, Suite 3300
Miami, Florida 33131
(305) 374-8500 (telephone)
(305) 789-7799 (facsimile)

By: /s/ Scott D. Ponce
Sanford L. Bohrer (FBN 160643)
sbohrer@hklaw.com
Scott D. Ponce (FBN 0169528)
sponce@hklaw.com

EXHIBIT 1

From: **Love, Gayle (DSWM)** <Gayle.Love@miamidade.gov>
Date: Mon, Sep 12, 2016 at 12:10 PM
Subject: RE: Records Request
To: "Chang, Daniel" <dchang@miamiherald.com>
Cc: Jenny Staletovich <jstaletovich@miamiherald.com>

Good morning, Daniel.

In response to your September 6, 2016 public records request for the locations of the traps which had Zika-positive mosquitoes, the County is unable to provide those locations. In accordance with Fla. Stat. Section 381.0031(6), "information submitted in reports of diseases of public health significance to the Department of Health as required by this section is confidential and exempt from 119.07(1) and shall be made public only when necessary to public health."

Best,

Gayle R. Love

Senior Division Director

Public Information & Outreach Division

Solid Waste Management Department

[305-375-3508](tel:305-375-3508) (office)/[305-297-1857](tel:305-297-1857) (cell)

loveg@miamidade.gov

www.miamidade.gov/solidwaste

From: Chang, Daniel [mailto:dchang@miamiherald.com]
Sent: Thursday, September 08, 2016 11:35 AM
To: Love, Gayle (DSWM)
Cc: Jenny Staletovich
Subject: Re: Records Request

Hi, Gayle,

I'm following up on this request from Tuesday evening. Please let me know if the county will provide the locations of the mosquito traps in Miami Beach where Zika-positive insects were found, or if there's a statutory exemption the county wants to cite for not providing it.

Thank you,

Dan

On Tue, Sep 6, 2016 at 6:08 PM, Chang, Daniel <dchang@miamiherald.com> wrote:

Dear Miami-Dade County Records Custodian:

Pursuant to Chapter 119, Florida Statutes (the "Public Records Law"), I request the specific locations in Miami Beach where three mosquito traps captured mosquitoes that tested positive for Zika virus and were announced last week.

I believe the information is provided to and maintained by the Public Works Department Mosquito Control Division.

Specifically, I request information including but not limited to the following:

1. A map or other identifying tool showing the locations of the mosquito traps that captured the Zika-positive mosquitoes;
2. Records of mosquito surveillance from those traps, including the dates the Zika-positive mosquitoes were captured or found, and the number of Zika-positive mosquitoes in each of the three traps.

This request includes copies of every document related to the matter, regardless of the format in which the information is stored. Please remember that information stored on a computer or disc or provided electronically is as much a public record as a written page in a book or stored in a filing cabinet.

If you intend to deny this request in whole or in part, we request that you advise us in writing, as required by Chapter 119, of the particular statutory exemption on which you are relying and your reasons for doing so. In addition, if the asserted exemption applies to only a portion of a record, we request that you delete the portion that you claim is exempt and release the remainder as required by law.

The Miami Herald will of course pay the actual cost of duplication as defined in Section 119.07(1)(a). However, if you anticipate that in order to satisfy this request, "extensive use" of information technology resources or extensive clerical or supervisory assistance as defined in Section 119.07(1)(b) will be required, please provide a written estimate and justification.

In light of the nature and importance of the records as well as the journalistic purposes for which we are seeking the records, we request that the records be made available by 2 p.m. Thursday, Sept. 8, 2016.

If any questions arise, please contact me at the numbers or email address below. Thank you.

Sincerely,

Dan

--
Daniel Chang
Healthcare Reporter
Miami Herald
3511 NW 91 Avenue, Miami, FL 33172
dchang@miamiherald.com
t. [305-376-2012](tel:305-376-2012) | c. [954-558-0927](tel:954-558-0927)
twitter: @dchangmiami

From: **Love, Gayle (DSWM)** <Gayle.Love@miamidade.gov>
Date: Thu, Sep 15, 2016 at 12:36 PM
Subject: FW: Records Request
To: "dchang.20@gmail.com" <dchang.20@gmail.com>

Hello,

I'm Gayle's secretary, I just heard the voicemail message you left Gayle regarding your work e-mail crashing. Below is the response she sent you yesterday.

Best.

Ruth Arias

Administrative Secretary

Department of Solid Waste Management

[305-375-4847](tel:305-375-4847) Phone

[305-372-6132](tel:305-372-6132) Fax

ariasr@miamidade.gov

www.miamidade.gov/solidwaste

From: Love, Gayle (DSWM)
Sent: Wednesday, September 14, 2016 5:04 PM
To: Chang, Daniel (dchang@miamiherald.com)
Cc: Hernandez, Michael A. (Office of the Mayor); Hudak, Alina T. (Office of the Mayor); Calderon, Francisco J. (DSWM); Richards, James (DSWM)
Subject: FW: Records Request

Hello, Dan.

In response to your September 6 and September 14, 2016 public record requests for the locations of the traps which had Zika-positive mosquitoes, the County is unable to provide a map of those locations. In accordance with Fla. Stat. Section 381.0031(6), "information submitted in reports of diseases of public health significance to the Department of Health as required by this section is confidential and exempt from 119.07(1) and shall be made public only when necessary to public health."

I am providing the chart below which provides information associated with Zika-positive mosquito pools:

Date	Total Number of Pools Tested	Results	Positive Mosquito Pools(s) Collected From
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			BG Trap Location #
8/22/16	19	1 Positive	#40
8/23/16	26	2 Positive	#49
			#53
9/4/16	19	1 Positive	#54

Please note that the information in the column labeled “Results” is not the number of positive mosquitoes. Rather, it is the number of positive mosquito pools among the total pools that were tested. Pools are vials which contain mosquitoes collected in the individual surveillance traps.

Gayle R. Love

Senior Division Director

Public Information & Outreach Division

Solid Waste Management Department

[305-375-3508](tel:305-375-3508) (office)/[305-297-1857](tel:305-297-1857) (cell)

loveg@miamidade.gov

www.miamidade.gov/solidwaste

From: Chang, Daniel [<mailto:dchang@miamiherald.com>]

Sent: Wednesday, September 14, 2016 10:34 AM

To: Love, Gayle (DSWM); Calderon, Francisco J. (DSWM); Hernandez, Michael A. (Office of the Mayor); Hudak, Alina T. (Office of the Mayor)

Subject: Re: Records Request

Dear Miami-Dade County Records Custodian:

Pursuant to Chapter 119, Florida Statutes (the “Public Records Law”), I request the specific location in Miami Beach where a fourth mosquito trap captured mosquitoes that tested positive for Zika virus and was announced on Sept. 9, 2016.

I believe the information is provided to and maintained by the Public Works Department Mosquito Control Division.

Specifically, I request information including but not limited to the following:

1. A map or other identifying tool showing the location of the fourth mosquito trap that captured the Zika-positive mosquitoes;
2. Records of mosquito surveillance from the trap, including the dates the Zika-positive mosquitoes were captured or found, and the number of Zika-positive mosquitoes in the trap.

This request includes copies of every document related to the matter, regardless of the format in which the information is stored. Please remember that information stored on a computer or disc or provided electronically is as much a public record as a written page in a book or stored in a filing cabinet.

If you intend to deny this request in whole or in part, we request that you advise us in writing, as required by Chapter 119, of the particular statutory exemption on which you are relying and your reasons for doing so. In addition, if the asserted exemption applies to only a portion of a record, we request that you delete the portion that you claim is exempt and release the remainder as required by law.

The Miami Herald will of course pay the actual cost of duplication as defined in Section 119.07(1)(a). However, if you anticipate that in order to satisfy this request, "extensive use" of information technology resources or extensive clerical or supervisory assistance as defined in Section 119.07(1)(b) will be required, please provide a written estimate and justification.

In light of the nature and importance of the records as well as the journalistic purposes for which we are seeking the records, we request that the records be made available by 3 p.m. Friday, Sept. 16, 2016.

If any questions arise, please contact me at the numbers or email address below. Thank you.

Sincerely,

Dan

On Mon, Sep 12, 2016 at 12:10 PM, Love, Gayle (DSWM) <Gayle.Love@miamidade.gov> wrote:

Good morning, Daniel.

In response to your September 6, 2016 public records request for the locations of the traps which had Zika-positive mosquitoes, the County is unable to provide those locations. In accordance with Fla. Stat. Section 381.0031(6), "information submitted in reports of diseases of public health significance to the Department of Health as required by this section is confidential and exempt from 119.07(1) and shall be made public only when necessary to public health."

Best,

Gayle R. Love

Senior Division Director

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From: Chang, Daniel [mailto:dchang@miamiherald.com]

Sent: Thursday, September 08, 2016 11:35 AM

To: Love, Gayle (DSWM)

Cc: Jenny Staletovich

Subject: Re: Records Request

Hi, Gayle,

I'm following up on this request from Tuesday evening. Please let me know if the county will provide the locations of the mosquito traps in Miami Beach where Zika-positive insects were found, or if there's a statutory exemption the county wants to cite for not providing it.

Thank you,

Dan

On Tue, Sep 6, 2016 at 6:08 PM, Chang, Daniel <dchang@miamiherald.com> wrote:

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I believe the information is provided to and maintained by the Public Works Department Mosquito Control Division.

Specifically, I request information including but not limited to the following:

1. A map or other identifying tool showing the locations of the mosquito traps that captured the Zika-positive mosquitoes;
2. Records of mosquito surveillance from those traps, including the dates the Zika-positive mosquitoes were captured or found, and the number of Zika-positive mosquitoes in each of the three traps.

This request includes copies of every document related to the matter, regardless of the format in which the information is stored. Please remember that information stored on a computer or disc or provided electronically is as much a public record as a written page in a book or stored in a filing cabinet.

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In light of the nature and importance of the records as well as the journalistic purposes for which we are seeking the records, we request that the records be made available by 2 p.m. Thursday, Sept. 8, 2016.

If any questions arise, please contact me at the numbers or email address below. Thank you.

Sincerely,

Dan

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Daniel Chang
Healthcare Reporter
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