

LAW OFFICE OF DENNIS GREEN
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Ms. Melody A. Hadley, Esq.

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Office of the Attorney General

400 S Monroe St # PL-01

Tallahassee, FL 32399-6536

**Re: DOAH Case No. 25-2355EC
Complaint No. 23-231
Commission on Ethics v. Jonathan L. Owens**

Section 57.105 Safe Harbor Notice and Demand for Withdrawal of Complaint in Its Entirety

Mr. Burns and Ms. Hadley:

Please accept this correspondence as formal safe-harbor notice under section 57.105, Florida Statutes. This letter is served in conjunction with Respondent's motion for sanctions under section 57.105, which is being served contemporaneously but will not be filed unless the Commission withdraws the Complaint in its entirety within twenty-one (21) days after service.

The Commission's continued prosecution of this case is no longer defensible. The record now establishes that the Commission cannot prove essential elements of the only charge pending under section 112.313(8), Florida Statutes, and that no competent witness exists to fill that gap.

The most glaring defect is this: **the Commission has no witness who can testify that Mr. Owens used his official position to obtain the Cell Phone Data.**

That is not a collateral problem. It is a required nexus element of the statute. Section 112.313(8) applies only if the Commission can prove that the information was both not available to members of the general public and gained by reason of official position. The Commission itself has articulated those as required elements in prior ethics proceedings, including *In re Thomas K. Dougherty*, where the tribunal treated those as separate elements that must be established to prove a violation.

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Here, the only firsthand witness regarding how Mr. Owens received the data is Bart Siders. Mr. Siders has sworn that Mr. Owens did not invoke county authority, did not submit an internal IT request, did not use any internal workflow or supervisory chain, and did not obtain the data through the exercise of official power. Mr. Siders further swears that he provided the data because he believed he was responding to a public-records request. If Siders is telling the truth, your case fails. If the Commission disputes Siders, then identify the witness who can testify otherwise. You cannot, because no such witness exists.

Your own investigations confirm the same fatal defect. The underlying County investigation was unable to determine conclusively how Mr. Owens obtained the Cell Phone Data. The Commission's own preliminary investigation incorporated that inconclusive result. Yet despite that failure of proof, the Commission proceeded with a charge requiring proof that Mr. Owens obtained the information by reason of official position.

Your own investigator then confirmed under oath what the reports already showed. He admitted he never possessed the Cell Phone Data. He admitted he never reviewed the dataset. He admitted he did not author the interrogatory responses served in this case. And when asked directly how Mr. Owens conferred a benefit upon himself or another person, he testified that he had ***"no opinion on that."*** Just as critically, he could not supply the missing nexus element tying acquisition of the data to official position, because he has no competent basis to do so.

The Commission's discovery conduct has only made matters worse. After being called out, the Commission supplemented only Interrogatory No. 4 and still failed to identify a single specific communication, sender, recipient, date, method of transmission, or privilege basis. Instead, the Commission continues to rely on conclusory assertions that unnamed "privileged communications" were furnished and that Dr. Edler later received a settlement. That is not evidence. It is inference stacked on inference, offered in place of proof.

This case is not just weak. It is wholly unsupported.

The Commission has now been put on notice of this defect repeatedly:

- 1) first, by direct correspondence identifying the lack of nexus to official position;
- 2) second, by motion practice expressly raising the same legal defect;
- 3) third, by discovery and deposition testimony confirming that no witness and no reviewed evidence can establish the required element.

At this point, the Commission and its counsel know, or at a minimum should know, that the Complaint is not supported by the material facts necessary to establish the claim. Section 57.105 exists for exactly this situation. The statute authorizes sanctions where a party or its counsel persists in a claim after it becomes clear that the required factual support does not exist.

Accordingly, Respondent demands that the Florida Commission on Ethics withdraw the Complaint in its entirety within twenty-one (21) days of service of this notice. If the Complaint is not withdrawn within that safe-harbor period, Respondent will file the attached motion and seek all relief authorized by section 57.105, including reasonable attorney's fees against the responsible party or parties.

This notice is served in good faith to provide the Commission and its counsel the opportunity the statute requires. Nothing in this letter waives any other defense, motion, objection, or request for sanctions available to Respondent.

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Kindly govern yourself accordingly.

Truly yours,

/s/ Dennis D. Green, Jr.
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Enclosures: Proposed Motion for Sanctions

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

In re: Jonathan L. Owens,

DOAH Case No.: 25-2355EC

Complaint No.: 23-231

Respondent.

RESPONDENT'S MOTION FOR SANCTIONS

Respondent, Jonathan L. Owens, by and through undersigned counsel, moves for sanctions pursuant to section 57.105, Florida Statutes, and states:

I. INTRODUCTION

1. This is an administrative ethics enforcement proceeding under Chapter 120, Florida Statutes, in which the Florida Commission on Ethics continues to prosecute a claim under section 112.313(8), Florida Statutes, despite the absence of material facts necessary to establish the claim.

2. The most glaring defect is the Commission's inability to prove that Mr. Owens obtained the Cell Phone Data by reason of his official position. No witness can testify to that fact. The only firsthand witness, Bart Siders, swears the opposite: that Mr. Owens did not invoke county authority, did not use internal governmental channels, and received the data because Siders believed he was responding to a public-records request.

3. The Commission's own investigations were inconclusive as to how Mr. Owens obtained the Cell Phone Data. Its own investigator later admitted during deposition that he never possessed the data, never reviewed the dataset, did not author the interrogatory responses, and had no opinion as to how the facts in this case establish a violation of the statute.

4. The Commission has nevertheless continued to prosecute the Complaint after repeated notice that the required nexus element cannot be proven. At this stage, the continued maintenance of this action is not supported by the material facts necessary to establish the claim and warrants sanctions under section 57.105, Florida Statutes.

II. LEGAL STANDARD

5. Section 57.105(1), Florida Statutes, provides that the Court shall award a reasonable attorney's fee to the prevailing party where the Court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense, when initially presented to the Court or at any time before trial:

- a. Was not supported by the material facts necessary to establish the claim or defense; or
- b. Would not be supported by the application of then-existing law to those material facts.

6. Section 57.105(4), Florida Statutes, requires that a motion for sanctions be served, but not filed, unless the challenged claim, contention, allegation, or denial is not withdrawn or appropriately corrected within twenty-one (21) days after service.

7. Section 57.105(5), Florida Statutes, applies the same standard in administrative proceedings under Chapter 120 and authorizes an award against the losing party and the losing party's attorney or qualified representative in the same manner and upon the same basis as provided in subsections (1) through (4).

8. Section 112.313(8), Florida Statutes, prohibits a current or former public officer, employee of an agency, or local government attorney from disclosing or using information not available to members of the general public and gained by reason of his or her official position for personal gain or benefit or for the gain or benefit of any other person or business entity.

III. FACTUAL BACKGROUND

9. The Commission's Complaint alleges a violation of section 112.313(8), Florida Statutes, based on the theory that Mr. Owens obtained Cell Phone Data by reason of his official position and used or disclosed that information for the benefit of himself or another person.

10. The only firsthand witness regarding how Mr. Owens received the data is Bart Siders.

11. Mr. Siders has executed a sworn affidavit stating that Mr. Owens did not invoke county authority, did not submit an internal IT request, did not act through supervisory channels, and did not obtain the data through the exercise of official power. (Siders Aff. ¶¶ 28, 31, 33-36, **Ex. A**).

12. Mr. Siders further swears that he provided the data because he believed he was responding to a public-records request. (Siders Aff. ¶¶ 32, 36, **Ex. A**)).

13. The underlying County investigation was unable to determine conclusively how Mr. Owens obtained the Cell Phone Data. (**Ex. B**).

14. The Commission's own investigative report incorporated that same inconclusive result. (**Ex. C**)

15. The Commission's investigator, Robert G. Malone ("Malone"), later testified during deposition that he never came into possession of the alleged Cell Phone Data and that his knowledge of it was based only on documents he read and information relayed to him by others, rather than any firsthand review of the data itself. (Malone Dep. 43:14-44:3, **Ex. D**).

16. Malone further testified that his understanding of the contents of the dataset was based on documents he read and information relayed to him by others, rather than any firsthand review of the data itself. (Malone Dep. 43:21-25, 44:1-3, 45:3-7, **Ex. D**).

17. Malone also testified that he did not author the Commission's interrogatory responses and that they were prepared by the Commission's Advocate. (Malone Dep. 33:14-19, **Ex. D**).

18. When asked directly how Mr. Owens allegedly conferred a benefit upon himself or another person, Malone testified: "Again, I—I have no opinion on that." (Malone Dep. 62:5-9, **Ex. D**).

19. Malone also admitted that he could not identify any act by which Respondent used his official position to obtain the Cell Phone Data.

20. The Commission has not identified any specific communication, sender, recipient, date, method of transmission, or privilege basis supporting its theory that Mr. Owens furnished nonpublic information for a prohibited benefit.

21. The Commission's supplemental answer to Interrogatory No. 4 remained conclusory. It asserted only that Dr. Edler's attorneys received unspecified privileged communications and that Dr. Edler later received a settlement, but still failed to identify the actual communication or communications, the date or manner of transmission, or any facts linking any specific communication to the settlement.

IV. ARGUMENT

A. The Commission Cannot Establish the "Official Position" Element

22. Section 112.313(8), Florida Statutes, applies only where the Commission can prove that the information at issue was both not available to members of the general public and gained by reason of the respondent's official position.

23. These are statutory elements that must be established by clear and convincing evidence in an ethics enforcement proceeding. See *In re Thomas K. Doughty*, 2007 Fla. Div. Adm. Hear. LEXIS 965 (DOAH Case No. 06-4829EC); *In re Jimmy Whaley*, 1997 Fla. Div. Adm. Hear. LEXIS 5438 (DOAH Case No. 97-0143EC).

24. The statute therefore does not apply where a public employee merely receives information while employed by government. Instead, the Commission must prove that the information was obtained because of the respondent's official role or authority, and not through ordinary public means or voluntary disclosure. *Doughty*; *Whaley*.

25. Here, the Commission cannot satisfy that element because no witness can testify that Mr. Owens used his official position to obtain the Cell Phone Data.

26. The only firsthand witness with knowledge of how the data was provided is Bart Siders. Mr. Siders swears that Mr. Owens did not invoke county authority, did not utilize internal channels, and did not obtain the data through the exercise of official power. Instead, Siders states that he provided the data because he believed he was responding to a public-records request. (Siders Aff., **Ex. A**).

27. The Commission's own investigative materials likewise fail to establish the required nexus. The County's Office of Compliance and Ethics investigation was unable to determine how Mr. Owens obtained the Cell Phone Data, and the Commission's own investigative report incorporates that same inconclusive result. (**Exs. B, C**).

28. The Commission's investigator cannot supply the missing proof. During deposition, Investigator Robert Malone admitted that he never possessed the dataset, never reviewed the Cell Phone Data, and had no firsthand knowledge regarding how Mr. Owens obtained it. (Malone Dep., **Ex. D**). Without such knowledge, Malone cannot testify that the information was gained by reason of official position.

29. Florida Commission on Ethics precedent confirms that the absence of proof connecting a respondent's conduct to his official authority defeats a claim under section 112.313. In *In re David Stewart*, the Commission rejected a violation where there was no evidence that the respondent invoked official authority or used internal governmental access to obtain the information. Likewise, in *In re Frank Kruppenbacher*, the Commission dismissed allegations where the evidence failed to establish that the respondent used his official position to obtain or disclose the information.

30. Those principles apply squarely here. The Commission has not identified any witness, document, or act demonstrating that Mr. Owens invoked his official authority to obtain the Cell Phone Data. To the contrary, the only witness with firsthand knowledge says he did not, the investigative reports are inconclusive, and the Commission's own investigator lacks personal knowledge of the dataset.

31. In short, the Commission cannot establish the required nexus between Mr. Owens's official position and the acquisition of the information. Where no witness and no competent evidence establish that nexus, a claim under section 112.313(8) cannot be maintained as a matter of law.

B. The Commission Cannot Establish Any Prohibited “Benefit” Through Identified Nonpublic Information

32. The Commission likewise cannot prove that Mr. Owens used or disclosed identified nonpublic information for the benefit of himself or another person, which is a required element of a claim under section 112.313(8), Florida Statutes.

33. The Commission has not identified any specific communication or document that allegedly conferred a benefit upon Mr. Owens or any other person.

34. It has not identified the sender, recipient, date, method of transmission, or privilege basis for any allegedly nonpublic communication that Mr. Owens supposedly furnished.

35. The Commission’s own investigator admitted during deposition that he has no opinion as to how Mr. Owens allegedly conferred a benefit upon himself or any other person. (Malone Dep., **Ex. D**),

36. The Commission’s discovery responses are equally devoid of facts. Its supplemental answer to Interrogatory No. 4 merely asserts that unidentified “privileged communications” were allegedly received by Dr. Edler’s attorneys and that Dr. Edler later received a settlement in separate litigation. The response still fails to identify the actual communication or communications, the date or manner of transmission, the asserted privilege, or any facts linking any specific communication to the settlement.

37. A generalized assertion that unidentified communications may have existed within a dataset is not evidence that Mr. Owens disclosed nonpublic information for a prohibited benefit. Without identification of a specific communication, its contents, its transmission, and the alleged benefit derived from it, the Commission cannot establish the elements required by section 112.313(8).

38. The complete absence of evidence identifying any specific communication, any specific disclosure, or any resulting benefit confirms that the Commission cannot establish this essential element of its claim.

39. The absence of proof as to both the “official position” element and the “benefit” element makes continued prosecution of the Complaint unjustifiable.

C. Malone’s Deposition Confirms the Commission Has No Witness and No Facts Establishing the Nexus Element

40. The deposition of Investigator Robert G. Malone confirms that the Commission has no competent witness who can testify that Mr. Owens obtained the Cell Phone Data by reason of his official position.

41. Malone admitted that, although he was assigned to investigate the matter, it was not his role to determine whether the statute had been violated:

“Q So it's your job to investigate based on this statute as it applies to my client, correct?

A Correct.

Q And it's part of your job duty to be able to interpret what you're reading to determine if it's been violated or not, correct?

A Wrong.”

(Malone Dep. 24:3-9, **Ex. D**).

42. Malone then explained:

“The job as an ethics investigator is not involved in determining whether there's been a violation or even probable cause for that matter. Our report is strictly factual. We leave the determination whether there's been probable cause issued or violation up to our advocates.”
(Malone Dep. 24:14-19, **Ex. D**).

43. Malone further admitted that he has no opinion as to how the facts of this case establish a violation of the statute:

“Q So, Investigator Malone, just to recap your testimony, it's your position that you do not have an opinion as to how the facts in this case apply to violations of the statute, correct?

A Correct.”

(Malone Dep. 76:21-25, **Ex. D**).

44. Malone also testified that the person who would supposedly know how the statute was violated would be the Commission's advocate:

“Q Who at the department would be the best person that would have information regarding how that statute was violated?

A The advocate, I would assume.”

(Malone Dep. 77:10-13, **Ex. D**).

45. Most importantly, Malone admitted that he did not develop factual evidence showing that Mr. Owens used his official position to obtain the Cell Phone Data. When asked directly what facts supported that allegation, he testified:

“Q Do you have any facts to support the contention that Mr. Owens used his official position to gain possession of the cell phone data?

A I have no opinion on that whatsoever.

Q I didn't ask for an opinion. I'm asking, what facts did you develop to make the contention that Mr. Owens used his official position to gain possession of the cell phone data?

A All I had was his radio telephone - - or his radio talk show comments he made. He -- and during the short period of time that that conversation happened on the radio, he mentioned seven times that he found the thumb drive on his desk in his county office. So that was pretty compelling to me that that's what happened. and that's what I reported.”
(Malone Dep. 33:14-34:6, **Ex. D**).

46. That testimony is fatal to the nexus element. It establishes that the Commission's allegation that Mr. Owens obtained the data by reason of official position is not based on documentary evidence, witness testimony, internal system access, supervisory authority, or any affirmative act invoking governmental power. According to Malone, the entire theory rests on his interpretation of a radio talk show statement.

47. Malone also acknowledged that the County's own investigation was unable to determine how Mr. Owens obtained the Cell Phone Data:

"Q ... A review of the June 23, 2023, report of investigation completed by the Office of Compliance and Ethics reflects that a number of county staff were interviewed. Ultimately, the investigation was unable to provide any conclusive findings.

Q And that is making reference back to Exhibit 2 with respect to that Case Number OCE 23-010, correct?

A Correct."

(Malone Dep. 37:17-38:7, **Ex. D**).

48. Malone then agreed that his own preliminary investigation likewise did not address how Mr. Owens used his official position to gain possession of the data:

"Q Nowhere in your report of the preliminary investigation does it address how Mr. Owens used his official position to gain possession of the cell phone data, correct?

A That's what I would garner by them saying they needed -- made no conclusive findings. Yes."

(Malone Dep. 38:8-13, **Ex. D**).

49. In short, the Commission has no witness who can testify that Mr. Owens used his official position to obtain the Cell Phone Data, no conclusive investigation establishing that element, and no factual basis beyond an investigator's interpretation of a radio show comment.

D. At This Stage, the Complaint Is Not Supported by the Material Facts Necessary to Establish the Claim

50. Section 57.105 does not require proof that a claim was frivolous on the day it was first filed. The statute applies when a party or its counsel continues to litigate a claim after it becomes clear that the material facts necessary to establish the claim do not exist.

51. Discovery in this case has now eliminated the factual foundation required to sustain the Commission's theory.

52. The only witness with firsthand knowledge regarding how Mr. Owens received the Cell Phone Data has sworn that Mr. Owens did not invoke official authority, did not act through internal governmental channels, and did not obtain the data through the exercise of official power. (Siders Aff., **Ex. A**).

53. The County's internal investigation was unable to determine how Mr. Owens obtained the Cell Phone Data, and the Commission's own investigative report incorporates that same inconclusive finding. (**Exs. B, C**).

54. Malone admitted that he never possessed the dataset, never reviewed the Cell Phone Data, and has no firsthand knowledge regarding how Mr. Owens obtained the information. (Malone Dep., **Ex. D**).

55. Malone further admitted that he has no opinion as to how the facts in this case apply to violations of the statute and no opinion as to how Mr. Owens allegedly conferred a benefit upon himself or another person. (Malone Dep., **Ex. D**).

56. The Commission's discovery responses likewise fail to identify any specific communication, document, sender, recipient, date, method of transmission, or privilege basis supporting its allegation that Mr. Owens disclosed nonpublic information for a prohibited benefit.

57. As a result, the Commission has been unable to identify any witness capable of testifying that Mr. Owens obtained the Cell Phone Data by reason of his official position or that he used or disclosed identified nonpublic information to confer a benefit.

58. At this stage of the proceedings, the absence of evidence is not a matter of incomplete discovery. It is the result of completed discovery demonstrating that the factual predicates for the Complaint do not exist.

59. Continuing to prosecute a claim after discovery confirms that the elements of the claim cannot be proven is precisely the type of conduct section 57.105 was enacted to deter.

60. Under these circumstances, the Commission and its counsel knew or should have known that the Complaint is not supported by the material facts necessary to establish a violation of section 112.313(8), Florida Statutes.

61. Continued prosecution of the Complaint therefore warrants sanctions under section 57.105.

VI. SAFE HARBOR COMPLIANCE

62. On March 12, 2026, Respondent served the Commission and its counsel with this Motion pursuant to section 57.105(4), Florida Statutes, together with a safe-harbor letter demanding withdrawal of the Complaint in its entirety.

63. More than twenty-one (21) days have elapsed since service of that motion and notice, and the Commission has failed or refused to withdraw the Complaint.

64. Accordingly, the safe-harbor requirements of section 57.105 have been satisfied, and this Motion is now ripe for filing.

VII. REQUEST FOR RELIEF

WHEREFORE, Respondent respectfully requests that the presiding officer enter an order:

- a. Find that the Commission and/or its counsel knew or should have known that the Complaint was not supported by the material facts necessary to establish a violation of section 112.313(8), Florida Statutes;
- b. Award Respondent his reasonable attorney's fees incurred as a result of the Commission's continued prosecution of this matter pursuant to section 57.105, Florida Statutes;
- c. Reserve jurisdiction to determine the amount of such fees upon further motion and hearing if necessary; and
- d. Granting such further relief as is just and proper.

Respectfully submitted this ____ day of April 2026.

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Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished via email on this ____ day of April 2026, to: all counsel of record, including Joseph C. Burns, Advocate for the Florida Commission on Ethics, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050, via Division of Administrative Hearings eALJ and email to: Joseph.Burns@myfloridalegal.com.

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