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MEMORANDUM

TO: Commission Members
FROM: Steven J. Zuilkowski, Deputy Executive Director & General Counsel
Gray Schafer, Assistant General Counsel
DATE: April 9, 2026
RE: Advocate's Motion to Dismiss Complaint No. 23-231

The Commission will be asked to consider the Advocate's Motion to Dismiss Complaint No. 23-231 (In re Jonathan L. Owens) during the public session of its meeting on April 24, 2026. While the General Counsel's Office is not involved in the prosecution of this matter, and will not be involved in presenting the Advocate's motion, we have reviewed the underlying materials filed in this matter—both before the Commission as well as when the case was transferred to the Division of Administrative Hearings (DOAH)—and recommend that the motion be granted. The following explanation concerns the procedural history of this case, as well as the reasons why dismissal seems appropriate.

The Respondent in this matter was a legislative aide to a former Escambia County Commissioner. The allegation in this complaint was that Respondent, while acting in his public position, obtained cell phone data of a County Commissioner, including information not available to the public, and released that data to attorneys involved in litigation against Escambia County. The Commission investigated this allegation under Section 112.313(8), Florida Statutes (Disclosure or Use of Certain Information), which addresses when a public officer or employee has disclosed or used information not available to members of the general public—and gained through his or her official position—for his or her personal gain or benefit, or for the personal gain or benefit of any other person or business entity.

The Respondent chose not to participate in the Commission's investigation (see Report of Investigation, paragraph 9). Following the investigation, the Commission accepted the Advocate's Recommendation, found probable cause that the Respondent had violated Section 112.313(8), and referred the matter to the DOAH for an administrative hearing. The Advocate's Recommendation was based on statements that the Respondent had made during a radio-talk show appearance indicating the cell phone data was delivered to his County Office, as well as statements by the former County Attorney that certain privileged information in the data related to the litigation against the County.

Given the information available to the Commission at the time of the probable cause determination, it appears there were grounds for the matter to proceed to DOAH for a hearing. However, subsequent discovery, conducted while the matter was pending at DOAH, has shown otherwise. This information includes:

- A sworn affidavit from the County's former IT Director stating he provided the cell phone data to the Respondent pursuant to a public records request brought in the Respondent's private capacity. (See Exhibit A, Respondent's Motion to Relinquish Jurisdiction Based on Absence of Genuine Issue of Material Fact).
- Attorneys from both sides of the litigation against the County, including the former County Attorney, opining that any privileged information included in the cell phone data "was not a significant factor" in the litigation. (See Paragraph 15, Advocate's Motion to Dismiss).

Based on this new information, which is unrefuted, both the Advocate and the Respondent moved at DOAH to close the file and relinquish jurisdiction back to the Commission so the matter could be dismissed. The Respondent also sent the Advocate a "Safe Harbor" letter indicating that, if the matter was not dismissed, he would move for sanctions under Section 57.105, Florida Statutes, emphasizing that the additional discovery had shown there was insufficient evidence to proceed with the case.

Ultimately, the Administrative Law Judge issued an order entitled "Order Cancelling Hearing, Closing File, and Relinquishing Jurisdiction." The order grants the Respondent's Motion to Relinquish Jurisdiction, and does not mention the Advocate's similar motion. In the order, the Administrative Law Judge states, "the parties agree that there are no disputed issues of material fact remaining for determination, [and] relinquishment of jurisdiction is appropriate."

Once the Administrative Law Judge's order was entered and the matter returned to the Ethics Commission, the Advocate moved to dismiss the complaint. That motion is before you now.

Having reviewed the materials in this matter, it is our recommendation that you grant the motion to dismiss. Section 112.313(8) requires that the public officer gain the information at issue through his or her official position, and that the disclosure of the information confers a benefit. There appears to be insufficient evidence for both of these elements, given the new information that arose during discovery. The County's former IT Director indicates the Respondent acquired the information through a private public records request—not through the use of his official

position—and no new information was discovered to refute this claim. And since all parties involved in the litigation against the County seem to agree that the confidential information in the cell phone data was not significant to their case, there does not appear to be evidence demonstrating that anyone received a benefit, as the statute requires.

Should you grant the motion, the complaint will be dismissed and the matter will be closed. Should you choose to deny the motion, the matter will be referred back to DOAH, and the Respondent ultimately may choose to proceed in moving for sanctions against the Commission under Section 57.105. Again, given what was learned during discovery, it is recommended that the motion to dismiss be granted.

---End of Memorandum---