

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

In re: Jonathan L. Owens,

DOAH Case No.: 25-2355EC

Complaint No.: 23-231

Respondent.

_____ /

**MOTION TO RELINQUISH JURISDICTION BASED ON
ABSENCE OF GENUINE ISSUE OF MATERIAL FACT**

Respondent, Jonathan L. Owens, by and through undersigned counsel, moves to relinquish jurisdiction pursuant to section 120.57(1)(i), Florida Statutes, based on the absence of any genuine issue of material fact requiring evidentiary hearing, and requests an order expressly so finding. In support, Respondent states:

1. This proceeding was referred to the Division of Administrative Hearings under section 120.57(1), Florida Statutes.

2. Respondent previously filed a Motion for Summary Final Order directed to the legal and evidentiary insufficiency of the charge.

3. The Commission responded that, because the undersigned Administrative Law Judge has recommended-order authority rather than final-order authority, section 120.57(1)(h), Florida Statutes, is not the proper procedural vehicle, and that where no genuine issue of material fact exists, the proper course is relinquishment under section 120.57(1)(i).

4. Respondent has withdrawn the Motion for Summary Final Order solely to conform to the procedural framework the Commission contends applies in this proceeding and now affirmatively seeks relief under section 120.57(1)(i).

5. Section 120.57(1)(i), Florida Statutes, provides that when, in a proceeding conducted under section 120.57(1), a dispute of material fact no longer exists, any party may move the Administrative Law Judge to relinquish jurisdiction to the agency. The statute further provides that an order relinquishing jurisdiction shall be rendered if the Administrative Law Judge determines from the pleadings, depositions, answers to interrogatories, admissions on file, and supporting and opposing affidavits, if any, that no genuine issue as to any material fact exists.

6. That is the posture of this case. No evidentiary hearing is necessary because no genuine issue of material fact remains as to essential elements of the charge.

7. The Commission has not identified competent record evidence establishing that Respondent obtained the information at issue by reason of his official position.

8. The Commission likewise has not identified a specific nonpublic communication, document, or item of information allegedly disclosed by Respondent for the purpose of conferring a prohibited benefit.

9. The existing record instead reflects an absence of proof on those essential points. The Commission's own evidentiary showing does not establish how Respondent allegedly used public office to obtain the information, nor does it identify with specificity the particular nonpublic information allegedly disclosed for a prohibited benefit.

10. Respondent's prior dispositive motion laid out these failures in detail, and the Commission's response did not cure them. Rather, the Commission took the position that the issue should be addressed through relinquishment, not summary final order practice.

11. The Commission's position confirms that the issue now presented is whether any genuine issue of material fact remains requiring an evidentiary hearing under section 120.57(1).

12. Under these circumstances, the matter should not proceed to evidentiary hearing under section 120.57(1), because there is no genuine issue of material fact requiring trial.

13. Respondent therefore requests that the Court expressly determine that no genuine issue of material fact exists and relinquish jurisdiction to the Florida Commission on Ethics pursuant to section 120.57(1)(i), Florida Statutes.

14. Respondent further requests that the Court's order expressly state that relinquishment is based on the absence of any genuine issue of material fact requiring evidentiary hearing under section 120.57(1).

15. Respondent makes this motion without waiving any substantive position previously asserted, including that the record fails to establish the statutory elements necessary to support adverse action against Respondent, and expressly reserves all rights as to further proceedings, judicial review, fees, costs, and such other relief as may be authorized by law.

I. STATEMENT OF UNDISPUTED MATERIAL FACTS

16. Bart Siders ("Siders") served as Escambia County Information Technology Director during the time period relevant to the allegations in this case. (Ex. A).

17. Siders executed a sworn affidavit describing the circumstances under which Respondent received the Cell Phone Data. (Ex. A).

18. In that affidavit, Siders states that Respondent indicated he wished to make a public records request for county-held information and wished to remain anonymous. (Ex. A, ¶ 26).

19. Siders further states that Respondent did not invoke county authority or position in requesting the Cell Phone Data, did not submit an internal IT ticket, did not act through a supervisory chain, and did not direct or instruct Siders using any official title or position. (Ex. A, ¶¶ 28, 31, 33-35).

20. Siders states under oath that he did not provide the thumb drive to Respondent because of any perceived authority Respondent held as a county employee, but instead because he believed he was fulfilling a public records request. (Ex. A, ¶ 36).

21. Assistant State Attorney Greg Marcille (“Marcille”) states in his affidavit that Siders received a call from a person making a public request for the downloaded information, recognized the caller’s voice as Respondent, and later provided Respondent a copy of the information in the parking garage adjacent to the County Office Building. (Ex. B-1 at 1-2).

22. On January 16, 2025, the State Attorney’s Office returned a No True Bill in connection with the related criminal investigation. Although not dispositive here, that undisputed fact is consistent with the sworn record that Bart Siders provided the Cell Phone Data in response to what he treated as a public records request, rather than through any unauthorized taking. (Ex. B-3).

23. The Escambia County investigation conducted by the Office of Compliance and Ethics was unable to determine how Respondent obtained the Cell Phone Data. (Ex. C at 2).

24. The Commission’s preliminary investigation incorporated that same inconclusive result. (Ex. D at 7).

25. Robert G. Malone (“Investigator Malone”) testified that it was not his role to determine whether the statute had been violated. (Ex. E, Malone Dep. 24:3-19).

26. Investigator Malone testified that he had no opinion as to how the facts in this case apply to violations of the statute. (Ex. E, Malone Dep. 76:21-25).

27. Investigator Malone testified that the person who would have information regarding how the statute was allegedly violated would be the advocate. (Ex. E, Malone Dep. 77:10-13).

28. When asked what facts supported the contention that Respondent used his official position to gain possession of the Cell Phone Data, Investigator Malone testified that all he had were Respondent's radio talk show comments. (Ex. E, Malone Dep. 33:14-34:6).

29. Investigator Malone also acknowledged that the County's own investigation was unable to determine how Respondent obtained the Cell Phone Data. (Ex. E, Malone Dep. 37:17-38:13).

30. Investigator Malone testified that his preliminary investigation report did not address how Respondent used his official position to gain possession of the Cell Phone Data. He further testified that the radio transcript did not, to his recollection, state how Respondent used his official position to gain possession of the Cell Phone Data, and that he did not recall any such statement in Respondent's declaration used in the Rayme Edler case. (Ex. E, Malone Dep. 38:8-40:12).

31. Investigator Malone testified that he never came into possession of the alleged Cell Phone Data and did not want to have a copy of it. (Ex. E, Malone Dep. 43:14-44:2).

32. Investigator Malone further testified that his understanding of the contents of the Cell Phone Data was based on documents he read and information relayed to him by others, including Mr. Bergosh and Ms. Rogers, rather than any firsthand review of the Cell Phone Data. (Ex. E, Malone Dep. 43:21-25, 44:1-3, 45:3-7).

33. When asked directly how Respondent allegedly conferred a benefit upon himself or another person, Investigator Malone testified, "Again, I—I have no opinion on that." (Ex. E, Malone Dep. 62:5-9).

34. The Commission has not identified any specific communication or document

allegedly conferring a benefit upon Respondent or another person. (Ex. F at 2).

35. The Commission has not identified any specific communication or document it contends was nonpublic, privileged, or exempt and actually furnished by Respondent, nor has it identified the sender, recipient, date, method of transmission, or privilege basis for any such communication. (Ex. F at 2).

36. Even after supplementation, the Commission's answer to Interrogatory No. 4 remains conclusory. It asserts only that Dr. Edler's attorneys received unspecified privileged communications and that Dr. Edler later received a settlement, but it still does not identify the actual communication or communications, the date or manner of transmission, or any facts linking any specific communication to the settlement. (Ex. F at 2).

37. The Commission has identified no witness who has testified that Respondent invoked official authority, used an internal county process, or otherwise obtained the Cell Phone Data by reason of official position. (Ex. A, ¶¶ 28, 31, 33-36; Ex. B-1 at 1-2; Ex. C at 2; Ex. D at 7; Ex. E, Malone Dep. 33:14-34:6, 37:17-38:13, 38:8-40:12, 76:21-25, 77:10-13).

II. LEGAL STANDARD

38. Section 120.57(1)(i), Florida Statutes, governs this Motion. In a proceeding conducted under section 120.57(1), any party may move the Administrative Law Judge to relinquish jurisdiction when a dispute of material fact no longer exists. The statute further provides that an order relinquishing jurisdiction shall be rendered if the Administrative Law Judge determines from the pleadings, depositions, answers to interrogatories, admissions on file, and supporting and opposing affidavits, if any, that no genuine issue as to any material fact exists.

39. The First District has recognized that section 120.57(1)(i) authorizes disposition of a matter by relinquishing jurisdiction to the agency upon such a determination. In *Altee v. Duval County School Board*, the court explained that an ALJ may relinquish jurisdiction “upon a determination from the pleadings, depositions, answers to interrogatories, and admissions on file, together with supporting and opposing affidavits (if any) that no genuine issue as to any material fact exists.” 990 So. 2d 1124, 1130 (Fla. 1st DCA 2008). *Altee* likewise confirms the converse: where a genuine factual dispute remains, relinquishment is improper.

40. A formal evidentiary hearing under section 120.57(1) is required when disputed issues of material fact exist. Where no such factual dispute remains, the matter need not proceed through trial-type factfinding under section 120.57(1). See *Fla. Dep’t of Health v. Chun*, 401 So. 3d 629, 631 (Fla. 1st DCA 2025) (explaining that the parties proceeded to a formal administrative hearing because disputed issues of material fact existed).

41. The question presented by this Motion is therefore whether the record materials identified in section 120.57(1)(i) show that no genuine issue of material fact remains requiring an evidentiary hearing under section 120.57(1). If no such issue remains, relinquishment is the proper statutory disposition.

III. ARGUMENT

A. No Genuine Issue of Material Fact Exists Requiring an Evidentiary Hearing on the Element That Respondent Obtained the Information by Reason of Official Position

42. The Commission must identify competent record evidence creating a genuine factual dispute on the element that Respondent gained the information by reason of official position. If the materials identified in section 120.57(1)(i) do not reveal such a dispute, no evidentiary hearing is required under section 120.57(1).

43. Here, the record does not present a true factual dispute on that point. Rather, it reveals an absence of competent proof that Respondent obtained the information by invoking, exercising, or using the authority of his office.

44. The sworn and documentary record does not show that Respondent obtained the Cell Phone Data by invoking the authority of his office, using any formal County process, or acting through any identified official channel. The Commission has identified no competent record evidence to the contrary.

45. The Commission has not identified a witness with personal knowledge, a document, or any other competent record evidence establishing that Respondent acquired the information through authority uniquely conferred by office. That deficiency is not a factual conflict. It is a complete failure of proof.

46. Put differently, the question is not whether competing witnesses tell different stories about how Respondent used his office to obtain the information. The problem is that the Commission cannot identify competent record evidence establishing that he did so at all.

47. Because the record presents no genuine issue of material fact requiring trial-type resolution on whether Respondent obtained the information by reason of official position, an evidentiary hearing under section 120.57(1) is unnecessary as to that element.

48. Accordingly, the Court should expressly determine that no genuine issue of material fact exists requiring an evidentiary hearing on the Commission's claim that Respondent gained the information by reason of official position.

B. No Genuine Issue of Material Fact Exists Requiring an Evidentiary Hearing on the Alleged Disclosure of Identified Nonpublic Information for a Prohibited Benefit

49. The Commission likewise bears the burden to prove that the information allegedly used or disclosed was nonpublic and that Respondent used or disclosed that information for the purpose of securing a special privilege, benefit, or exemption for himself or another. If the record materials identified in section 120.57(1)(i) do not reveal competent evidence creating a genuine factual dispute on those elements, no evidentiary hearing is required under section 120.57(1).

50. Here, the record does not present a true factual dispute on that issue. Instead, it reflects that the Commission cannot identify with specificity the particular nonpublic information allegedly disclosed, the communication in which it was supposedly disclosed, or the factual basis for concluding that any such disclosure conferred a prohibited benefit.

51. The Commission has not identified the specific communication, document, message, sender, recipient, date, or method of transmission that allegedly contained nonpublic information. Nor has it identified the precise content said to be nonpublic. Without identification of the actual information at issue, there is no concrete factual dispute for trial-type resolution.

52. The Commission's theory is not supported by evidence of a specific disclosure. Instead, it remains untethered to any identified item of nonpublic information.

53. The same defect exists as to the alleged benefit. The Commission has not identified competent record evidence showing how any specific disclosure secured any special privilege, benefit, or exemption for anyone. That is not a disputed fact. It is a missing element.

54. Put differently, the issue is not whether the record contains conflicting evidence about a clearly identified nonpublic disclosure and a clearly identified prohibited benefit. The issue is that the Commission cannot point to competent record evidence establishing either in the first instance.

55. Because the record presents no genuine issue of material fact requiring trial-type resolution on whether Respondent disclosed identified nonpublic information for a prohibited benefit, an evidentiary hearing under section 120.57(1) is unnecessary as to that element as well.

56. Accordingly, the Court should expressly determine that no genuine issue of material fact exists requiring an evidentiary hearing on the Commission's claim that Respondent disclosed nonpublic information for a prohibited benefit.

C. Because No Genuine Issue of Material Fact Exists on Essential Elements of the Charge, an Evidentiary Hearing Is Unnecessary and Relinquishment Is Required.

57. Section 120.57(1)(i), Florida Statutes, applies where the record materials show that no genuine issue of material fact remains requiring an evidentiary hearing under section 120.57(1). That is the posture here.

58. As set forth above, the Commission cannot identify competent record evidence creating a genuine factual dispute on two essential components of its claim: first, that Respondent obtained the information at issue by reason of official position; and second, that Respondent disclosed identified nonpublic information for the purpose of securing a prohibited benefit.

59. Those are not minor evidentiary gaps. They go to the heart of the statutory theory advanced against Respondent. These are not factual disputes requiring trial. They are missing elements the Commission cannot supply.

60. Because the present record reveals no genuine issue of material fact, formal adjudication under section 120.57(1) is unnecessary. What remains is the legal consequence of the Commission's inability to identify competent evidentiary support on essential elements.

61. Under section 120.57(1)(i), once the Administrative Law Judge determines from the record that no genuine issue of material fact exists, an order relinquishing jurisdiction is the proper statutory disposition.

62. Respondent therefore respectfully requests that the Court expressly determine that no genuine issue of material fact remains requiring an evidentiary hearing under section 120.57(1), and relinquish jurisdiction to the Florida Commission on Ethics pursuant to section 120.57(1)(i).

IV. PRAYER FOR RELIEF

WHEREFORE, Respondent, Jonathan L. Owens, respectfully requests that this Court enter an order:

- A. determining, pursuant to section 120.57(1)(i), Florida Statutes, that no genuine issue of material fact exists requiring an evidentiary hearing under section 120.57(1);
- B. relinquishing jurisdiction to the Florida Commission on Ethics pursuant to section 120.57(1)(i), Florida Statutes, for further proceedings authorized by law;
- C. expressly stating that the present record reveals no triable factual issue on essential elements of the charge, and that relinquishment is therefore based on the absence of any genuine issue of material fact requiring evidentiary hearing under section 120.57(1); and
- D. granting such other and further relief as the Court deems just and proper.

Respectfully submitted this 20th day of March 2026.

LAW OFFICE OF DENNIS D. GREEN

/s/ Dennis D. Green, Jr.
Dennis D. Green, Jr., Esq.
Florida Bar No. 1002418
dennis@lawofficeofdennisgreen.com
P.O. Box 146
Gulf Breeze, FL 32562
Tel: (850) 436-3559

Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email and through the Division of Administrative Hearings eALJ system on this 20th day of March, 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, at Joseph.Burns@myfloridalegal.com.

LAW OFFICE OF DENNIS D. GREEN

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Gulf Breeze, FL 32562
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Attorney for Respondent

EXHIBIT “A”

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

In re: Jonathan L. Owens,

DOAH Case No. 25-2355EC

Complaint No.: 23-231

Respondent.

_____ /

AFFIDAVIT OF WILLIAM "BART" SIDERS.

STATE OF FLORIDA

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared WILLIAM "BART" SIDERS, who being duly sworn, deposes and states:

1. My name is William Barton "Bart" Siders. I am over the age of eighteen (18) and competent to testify. I have personal knowledge of the facts stated in this Affidavit.

2. I was employed by Escambia County, Florida, in the Information Technology Department during the time period described in this Affidavit, I served as the IT Director for Escambia County.

3. This Affidavit is provided to state the facts as I personally know them concerning the events relating to Commissioner Jeffery Bergosh's iPhone restoration and the subsequent production of copied data that I provided to Jonathan Owens.

4. On or about February 1, 2022, around noon, I received a call from Commissioner Jeffery Bergosh. He advised that he had locked his personal iPhone. I understood him to say he believed the phone locked because he entered his Apple password too many times. He also advised he was leaving the state the next day.

5. Commissioner Bergosh told me that there was a large amount of public records data on his personal phone and that it was important to recover the data.

6. I told Commissioner Bergosh that recovery assistance would require involvement of James McCasland, because Mr. McCasland was our resident Apple iPhone specialist and had to work with Apple and Commissioner Bergosh to get the device and account access restored.

7. I understood that Commissioner Bergosh forwarded Mr. McCasland an email that came from Apple stating the device had been unlocked, which I understood provided written permission to access the phone.

8. Before Commissioner Bergosh arrived at our building, Mr. McCasland and I obtained software known as "CopyTrans" to attempt data recovery. I believe the software was purchased with a county credit card.

9. Later on February 1, 2022, at approximately 4:00 p.m., Commissioner Bergosh arrived at my office with his personal iPhone. I then accompanied him to Mr. McCasland's office to begin the recovery process.

10. Before recovery efforts began, I told Commissioner Bergosh that we could not guarantee that all data could be recovered but that we would do our best. Commissioner Bergosh gave approval and permission for us to proceed.

11. Using CopyTrans, Mr. McCasland began recovering data from the iPhone and copying it to a county hard drive attached to Mr. McCasland's county computer.

12. Commissioner Bergosh and I remained in Mr. McCasland's office during the process. Commissioner Bergosh continued to state during the process that he had a large amount of public record data on his personal phone and that it was important that it be recovered and preserved.

13. During that same time period, Commissioner Bergosh and I also discussed general topics, including that I had coached T ball with him years earlier and general county IT initiatives.

14. As the evening progressed, it became late, the data was still copying, and we did not have a thumb drive large enough to hold all of the recovered data.

15. We discussed that Commissioner Bergosh's aide, Debbie Kenney, could obtain a thumb drive of sufficient size and that the recovered data could then be copied to that thumb drive. At no point did Commissioner Bergosh request for us to delete the data off county servers or delete any copies the county had.

16. On a date shortly thereafter, which I believe fell within February 2 through February 4, 2022, Mr. McCasland received a thumb drive from Debbie Kenney and copied the recovered data to that thumb drive.

17. Also within that approximate February 2 through February 4, 2022 time period, I told Mr. McCasland I wanted to test the thumb drive before it was delivered to Debbie Kenney.

18. I took the thumb drive to my county office. Using my county computer, I copied the contents of the thumb drive to my home drive on the county servers. The folder path I used was: F:\wbsiders\smarsh\Bergosh

I did this to test access to the copied output in a manner consistent with how I understood Commissioner Bergosh might access the data at home. I verified I could access the text messages, pictures, and videos. I also compared the text message output to what we obtain from the county's SMARSH program. The testing was successful.

19. After testing, I returned the thumb drive to Mr. McCasland and informed him it could be delivered to Debbie Kenney.

20. Mr. McCasland delivered the thumb drive to Debbie Kenney. After the thumb drive was delivered to Debbie Kenney, I never saw that thumb drive again.

21. On or about February 17, 2022, during a Board of County Commissioners meeting at the Commissioner Forum, Commissioner Bergosh stated on camera that he had messed up his personal phone and thanked county IT staff, including Mr. McCasland and me, for staying late and helping restore his personal phone and retrieving and preserving the public record data on his personal phone.

22. After these events, on a date I believe fell between February 4 and February 28, 2022, I sent an email to Alison Rogers and Wes Moreno recommending that each commissioner download and install CopyTrans so commissioners could back up their personal phones and preserve public record data. I understood that Alison Rogers then sent a message to the commissioners requesting them to do so.

23. Sometime about March or April 2022, while I was in my county office, I received a phone call from Jonathan L. Owens.

24. Mr. Owens stated that he had seen the Board meeting where Commissioner Bergosh stated county IT was able to restore his personal phone and recover the public record data on his personal phone. Mr. Owens asked if the county kept a copy of the data.

25. I told Mr. Owens yes, because the data had been copied and stored on the county servers as described above.

26. Mr. Owens stated that he would like to submit a records request for all the county held data and that he would like to remain anonymous.

27. Based on my understanding of what Mr. Owens requested, I believed I could fulfill the request by providing the county held copy. I followed the process I understood to be appropriate by copying the relevant text and image data from my county home drive on the county server to a thumb drive.

28. Mr. Owens did not ask me to process the request through any internal county workflow. He did not submit an internal ticket or directive, and he did not request the data through any supervisory channel. I did not treat the request as an internal county request. I understood it as a request for county held records as a member of the public.

29. I met Mr. Owens one to two days later at the Escambia County parking garage adjacent to the Escambia County Central Office Building in downtown Pensacola, Florida. The location where we met was a common access, public area of the garage, and our meeting occurred on the second level within view of the garage's security camera(s).

30. At that meeting, I handed Mr. Owens the thumb drive containing the county held copy of the data. The transfer was a direct, hand to hand exchange in the garage.

31. Mr. Owens did not present any badge, letter, official written demand, or directive at the time of the exchange. He did not state that he was acting under county authority, and he did not reference any official power or position as the basis for the transfer.

32. At the time I provided the thumb drive to Mr. Owens, I believed I was fulfilling what he represented to me as a public records request for the county held data.

33. At no time did Mr. Owens state to me that he was demanding the data by virtue of any official authority.

34. At no time did Mr. Owens threaten me, direct me through any command of county authority, or instruct me using any official title to provide the data.

35. At no time did Mr. Owens use county letterhead, a county directive, or any supervisory authority over me to obtain the thumb drive.

36. I did not provide the thumb drive to Mr. Owens because of any perceived authority Mr. Owens held as a county employee. I provided it because I believed I was fulfilling a public records request for data held by the county as described above.

37. I provided the above facts regarding the restoration process and the subsequent provision of the thumb drive to Mr. Owens to law enforcement, including the Federal Bureau of Investigation and the State Attorney's Office, during their investigation.

38. This Affidavit is made based on my personal knowledge and is intended to accurately reflect the facts as I know them.

FURTHER AFFIANT SAYETH NAUGHT.

DECLARATION UNDER PENALTY OF PERJURY

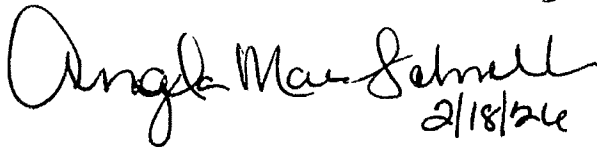
Under penalties of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true and correct.

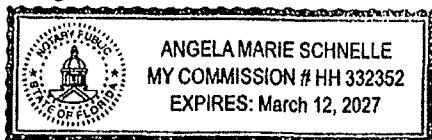

WILLIAM "BART" SIDERS

NOTARY ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF Santa Rosa

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 18th day of February 2026, by William Barton Siders, Jr., who is personally known to me ☒ or who has produced FLDL as identification.


2/18/26



Notary Public, State of Florida
(Print Name): Angela Marie Schnell
My Commission No.: HH 332352
My Commission Expires: 3/12/2027

EXHIBIT “B”

Affidavit of Greg Marcille, September 4, 2024 SAO Letter, and No True Bill

EXHIBIT “B-1”

Affidavit of Greg Marcille

AFFADAVIT

STATE OF FLORIDA

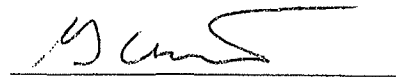
COUNTY OF ESCAMBIA

Before me this day personally appeared Gregory A. Marcille who, after being duly sworn deposes and says:

1. The undersigned is an Assistant State Attorney in the Office of the State Attorney for the First Judicial Circuit.
2. As part of his duties with the Office of the State Attorney the undersigned was part of an investigation of a complaint involving the release of personal identification information and other private communications from the cell phone of then county commissioner Jeff Bergosh.
3. During the course of that investigation the former I.T. Director for Escambia County, Bart Siders was interviewed. Mr. Siders' testimony was compelled pursuant to a subpoena and as such he had use immunity for any statements that he made.
4. Mr. Siders testified under oath that County I.T. staff recovered data from Jeff Bergosh's cell phone to ensure that no public records were lost. This data was eventually downloaded to a drive on Siders' computer.
5. Siders stated that he received a phone call from an unidentified individual who said he was making a public records request for the data downloaded

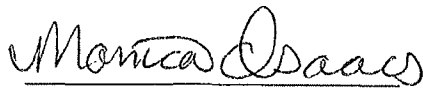
from Jeff Bergosh's cell phone. Siders testified that even though the caller did not identify themselves, he recognized the voice as Jonathon Owens.

6. Siders testified he provided a complete copy of the information downloaded from the cell phone in the parking garage located adjacent to the County Office Building.



Gregory A. Marcille
Assistant State Attorney
Florida Bar #393060

AFFIRMED TO AND SUBSCRIBED before me at Escambia County, Florida on February 6, 2026, by Gregory A. Marcille, who is (X) personally known to me and who physically appeared before me.



Notary Public
State of Florida

Official Seal:

My Commission Expires: December 8, 2029

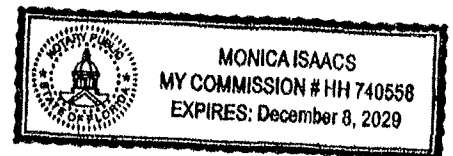


EXHIBIT “B-2”

September 4, 2024 SAO Letter, and No True Bill



OFFICE OF
STATE ATTORNEY
FIRST JUDICIAL CIRCUIT OF FLORIDA

September 4, 2024

Escambia County Board of County Commissioners
Commissioner Jeff Bergosh, District 1
221 Palafox Place
Suite 400
Pensacola, FL 32502

ESCAMBIA COUNTY
190 W Government St
Pensacola, FL 32591
(850) 595-4200

Dear Commissioner Bergosh,

SANTA ROSA COUNTY
6495 Caroline St
Suite S
Milton, FL 32570
(850) 981-5500

As we have previously discussed, this office has completed its review of the facts and circumstances surrounding the alleged theft of electronic information that had been downloaded from your personal cell phone to an Escambia County computer. Based on our review, we have determined that there is insufficient evidence to prove beyond a reasonable doubt that a crime has been committed. The reasons for that determination are set forth more fully below.

OKALOOSA COUNTY
1804 Lewis Turner Blvd
Suite 100
Ft Walton Beach, FL 32547
(850) 651-7260

As you are aware, you use your personal cell phone for personal use as well as in your position as an elected member of the Escambia County Board of County Commissioners. As such, your cell phone may contain information that would constitute public records under Florida law. When you began having problems with your cell phone you sought the assistance of County I.T. staff to recover your data and ensure that no public records were lost. The process to recover this data was difficult and time consuming but eventually the information was recovered and transferred to a county server. This information was then downloaded to a portable storage device which was eventually provided to you. It should be noted at this time that you considered yourself the custodian of any public records in your possession and that your intention was that any data downloaded from your cell phone would be deleted from any county server.

WALTON COUNTY
524 Hwy 90 East
Ft Funia Springs, FL 32435
(850) 892-8080

The download of the data from your cell phone was extensive and it took overnight to complete. The following morning, James McCasland transferred the data to a portable storage device which he provided to then I.T. Director Bart Siders. Siders transferred that data to a drive on his computer. This was

done in order to verify that the download was successful. Siders determined that the data had been recovered and that it contained approximately 60,000 text messages as well as numerous videos and images. The portable storage device was then provided to your assistant and ultimately to you. The data was not deleted from Siders computer as you had anticipated.

At a later public board meeting you complimented the I.T. staff and described the work they had done in recovering the information on your cell phone. Shortly afterwards, Siders received a telephone call from a person who said they wanted to remain anonymous but were making a public request for the data downloaded from your phone. Even though the caller did not identify themselves, Siders recognized the voice as then county employee Jonathan Owens. Siders provided Owens a complete copy of the information downloaded from your phone. This took place in the parking garage adjacent to the County Office Building.

At no time did Siders discuss this public record request with any other person. The information was not reviewed to redact confidential or exempt material. Additionally, the provided information contained private communications and personal identification information not subject to public records requests.

Under certain circumstances, it is unlawful for an individual to possess the personal identification of another person. The statute applicable to this matter is a specific intent crime. This means that the State must prove beyond a reasonable doubt that the person intentionally or knowingly possessed such personal identifying information and did so without authorization. Intentionally or knowingly are generally defined as having actual knowledge and understanding or that an act was done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

There is no evidence that Owens intentionally intended to obtain personal identifying information when he made his public records request. Had Siders followed proper procedure, the public record response would have been reviewed and any exempt or nonpublic information would have been redacted.

Further, the State cannot prove beyond a reasonable doubt that Owens was even aware that the public record response contained personal identifying information. This response contained more than 60,000 text messages as well as numerous videos and images. Even if it was likely that Owens had seen the personal identifying information this would be insufficient to prove the crime beyond a reasonable doubt. Finally, it is an affirmative defense to the charge if the person obtained the public identifying information from a public record. While this information is not a public record, it was obtained through a valid public record request. This may give rise to the affirmative defense.

For the reasons stated, there is insufficient evidence to charge Jonathan Owens with any crime.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Marcille', with a long horizontal flourish extending to the right.

Gregory A. Marcille
Assistant State Attorney

EXHIBIT “B-3”

No True Bill

**IN THE CIRCUIT COURT OF THE FIRST
JUDICIAL CIRCUIT FOR
ESCAMBIA COUNTY, FLORIDA**

TO THE HONORABLE JUDGES OF THE ABOVE-ENTITLED COURT:

We, the Grand Jurors of the State of Florida, lawfully selected, impaneled and sworn, in and for the body of Escambia County, FIRST TERM 2024 TERM, do respectfully present this report.

NO TRUE BILL

During our term as Grand Jurors, we were requested to inquire into allegations that certain violations of the criminal laws of the State of Florida may have been committed.

We have received sworn testimony from witnesses as well as other evidence regarding the alleged incident.

After hearing all the testimony, being advised on the law as it pertains to this particular situation, and deliberating thereon, we return this **NO TRUE BILL**.

SO SAY WE ALL,

Dated: May 21, 2024

Respectfully,



FOREPERSON

EXHIBIT “C”

ESCAMBIA COUNTY BOARD OF COMMISSIONERS
OFFICE OF COMPLIANCE AND ETHICS

REPORT OF INVESTIGATION

CASE NUMBER: OCE 23-010



COMMISSIONER JEFFREY BERGOSH
RELEASE OF PERSONAL CELLPHONE DATA

PERIOD OF INVESTIGATION: June 7, 2023, THROUGH June 23, 2023

JUNE 23, 2023

INVESTIGATION CONDUCTED BY: _____
Janie M. Brissett, Compliance Officer

INVESTIGATION CONDUCTED BY: _____
Jim Ward, Compliance Officer

APPROVED BY: _____
COUNTY ADMINISTRATOR WESLEY J. MORENO

*THIS REPORT MAY CONTAIN INFORMATION THAT IS PROTECTED UNDER FEDERAL OR STATE CONFIDENTIALITY REQUIREMENTS. THIS REPORT SHOULD NOT BE PROVIDED TO THE PUBLIC WITHOUT COORDINATING THE REQUEST WITH THE **ESCAMBIA COUNTY ATTORNEY'S OFFICE** TO ENSURE APPROPRIATE HANDLING OF INVESTIGATIVE INFORMATION.*

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AUTHORITY

Authority to conduct this investigation resides in the enacting policy establishing the Office of Compliance and Ethics (OCE) approved by the Board of County Commissioners on January 7, 2020. Policy Number OCE - 1.1, provides, *inter alia*, that the OCE has the authority to conduct civil and administrative investigations and reviews.

INVESTIGATIVE PREDICATE

This investigation is predicated upon a directive from County Administrator WESLEY J. MORENO, to conduct an investigation into the alleged unauthorized release of Commissioner JEFFREY BERGOSH's personal cellphone text messages. On or about February 1, 2022, former Information Technology (IT) Department Director WILLIAM "BART" SIDERS and Commissioner JEFFREY BERGOSH asked IT Workstation Architect JAMES MCCASLAND to copy data from BERGOSH's personal iPhone XR because BERGOSH was experiencing technical difficulties with the device. On this same date at 4:59 pm, BERGOSH forwarded an email he received from Apple to MCCASLAND (EXHIBIT 1 and EXHIBIT 3) to aide MCCASLAND in the repair of BERGOSH's cellphone. The email stated, "We reviewed the information you provided and turned off Activation Lock on your device. Restore your device as new through recovery mode to prevent Activation Lock from being reapplied." MCCASLAND began to transfer the data; however, the process took longer than expected. It was decided, to leave the phone in MCCASLAND's office to complete the transfer. BERGOSH's cellphone data was stored on MCCASLAND's hard drive and copied to a thumb drive. The following day, the thumb drive was given to DEBORAH "DEBBIE" KENNEY, BERGOSH's Aide. As of June 23, 2023, the data from BERGOSH's iPhone remains stored on MCCASLAND's hard drive. During an unknown time, date, and location, former Commissioner's Aide JONATHAN OWENS, allegedly obtained a copy of BERGOSH's personal cellphone data. Per the sworn testimony of Interim IT Director SCOTT MACDONALD, OWENS told him he came into possession of BERGOSH's cellphone data, when he found a thumb drive under the District 2 office door in the Ernie Lee Magaha (ELM) Building. OWENS allegedly shared BERGOSH's personal cellphone text messages, with the Lydecker Law Firm [EXHIBIT 2 shows emails received from Lydecker Law Firm during the period of June 1, 2023, through June 6, 2023, with a file containing BERGOSH's cellphone text messages. The emails were sent to the staff in the BCC County Attorney's Department.]

SUMMARY OF FINDINGS

Presently, the OCE is unable to provide any conclusive findings, without assistance from a Forensic Information Technology expert or with a law enforcement agency. While under oath, all witnesses denied, copying and/or providing a copy of BERGOSH's cellphone data file to anyone. There is no video surveillance available for the time period in which this incident may have occurred. Further, there is no reliable badge swipe history report available for the alleged time period. The OCE was instructed not to access [and did not access] any of BERGOSH's data by County Attorney ROGERS as it might corrupt the data on the hard drive and in the email. The data from BERGOSH's iPhone remains stored on MCCASLAND's hard drive.

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SUPPORTING EXHIBITS

EXHIBIT 1 – EMAIL DATED FEBRUARY 1, 2022, SENT TO MCCASLAND FROM BERGOSH REGARDING THE ACTIVATION LOCK OF BERGOSH’S IPHONE.

EXHIBIT 2 – EMAIL LOG FOR THE PERIOD OF JUNE 1, 2023, THROUGH JUNE 6, 2023, WHEN BERGOSH’S TEXT MESSAGES WERE SENT TO STAFF IN THE BCC COUNTY ATTORNEY’S DEPARTMENT FROM THE LYDECKER LAW FIRM.

EXHIBIT 3 – MCCASLAND’S WRITTEN SWORN STATEMENT WITH SUPPORTING DOCUMENTS.

EXHIBIT 4 – KENNEY’S WRITTEN SWORN STATEMENT.

EXHIBIT 5 – MACDONALD’S WRITTEN SWORN STATEMENT.

EXHIBIT 6 – SOFTWARE DEFINITIONS FOR COPY TRANS AND SMARSH.

EXHIBIT 7 – DOOR SWIPE HISTORY FOR DISTRICT 1 DOORS FOR THE PERIOD OF JANUARY 24, 2022, THROUGH FEBRUARY 11, 2022.

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EXHIBIT 8 – DOOR SWIPE HISTORY FOR DISTRICT 2 DOORS FOR THE PERIOD OF JANUARY 24, 2022, THROUGH FEBRUARY 11, 2022.

EXHIBIT 9 – EMAILS BETWEEN HAUPT, MACDONALD, GILMORE, AND STAFF IN THE BCC COUNTY ATTORNEY'S DEPARTMENT, REGARDING THE RELEASE OF DISTRICT 2 EMAILS.

EXHIBIT 10 – BCC DISCIPLINE POLICY, CODE OF ETHICS POLICY, AND INFORMATION TECHNOLOGY USER AGREEMENT POLICY.

RECOMMENDATIONS

The Office of Compliance and Ethics, recommends County Administration contract a forensic IT expert to conduct a complete audit of the BCC Information Technology Department, to include thorough research into the release of BERGOSH's cellphone data and creation of policies and standard operating procedures for the Information Technology Department.

INVESTIGATIVE METHOD

OCE employed standard investigative practices for this investigation, which included a review of files maintained or in the control of personnel within the Information Technology Department. Additionally, OCE reviewed BCC applicable policies, which included the Discipline Policy, Code of Ethics, and the Information Technology User Agreement. The findings of the OCE are addressed in the Summary of Findings section of this report.¹

In addition to reviewing documentary information, OCE contacted and/or conducted sworn recorded interviews² summarized within the Interview Summaries section of this report.

EVIDENTIARY STANDARD

The evidentiary standard used by OCE in determining whether the facts and claims asserted in the complaint were proven or disproven is based upon the preponderance of the evidence. Preponderance of the evidence is contrasted with "beyond a reasonable doubt," which is the strictest test of evidence required to convict in a criminal trial and "clear and convincing evidence," which is a standard describing proof of a matter established to be substantially more likely than not to be true. OCE investigative findings classified as "**Substantiated**" indicate the condition that existed for the investigator(s) disclosed sufficient relevant evidence and material evidence to conclusively prove the allegations, based upon the preponderance of the evidence. Investigative findings classified as "**Unsubstantiated**," indicate the condition that existed for the investigator(s) disclosed there was a lack of relevant and material evidence to conclusively prove or disprove

¹ The investigation was conducted in accordance with the Principles and Standards for Offices of Inspector General established by the Association of Inspectors General.

² Copies of all recorded interviews are maintained in the electronic case file.

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the allegations. “**Unfounded**” allegations are those allegations that are demonstrably false, and involve no reliable evidence or proper bases, which supports the allegations being made. Investigative findings classified as “**Exonerated**” are allegations that are defined as a conclusion of fact, indicating that evidence has been established that alleged actions by the agency or employee were consistent with governing policies.

DOCUMENT REVIEW AND ANALYSIS

As part of this investigation the following documents were reviewed:

EXHIBIT 1 is the email BERGOSH sent to MCCASLAND on February 1, 2022. BERGOSH received the email from Apple regarding the restoration of his iPhone.

EXHIBIT 2 is a screen shot of the email log history of emails sent to the BCC County Attorney’s Department from the Lydecker Law Firm. The emails contained attachments with BERGOSH’s text messages.

EXHIBIT 3 is MCCASLAND’s written sworn statement with supporting documents which include an email from BERGOSH to MCCASLAND and screen shots of MCCASLAND’s BCC personal computer (PC) showing the location of the file containing BERGOSH’s cellphone data.

EXHIBIT 4 is KENNEY’s written sworn statement, with corrections she made before signing the document.

EXHIBIT 5 is MACDONALD’s written sworn statement, with correction he made before signing the document.

EXHIBIT 6 contains software definitions for COPY TRANS AND SMARSH. COPY TRANS was the software utilized to download/copy data from BERGOSH’s iPhone on February 1, 2022.

EXHIBIT 7 and EXHIBIT 8 contain door swipe history reports for District 1 and District 2 doors in the ELM building, for the period of January 24, 2022, through February 11, 2022. However, during the course of this investigation, the OCE learned that this data is inconclusive, because physical keys can still be used to open these doors.

EXHIBIT 9 contains emails between HAUPT, MACDONALD, and staff in the BCC County Attorney’s Department, regarding the release of District 2 emails. Specifically former Commissioner DOUGLAS UNDERHILL and former Commissioner’s Aide JONATHAN OWENS.

INTERVIEW SUMMARIES

Interviews were conducted and are summarized as follows:

OCE conducted sworn recorded interviews³ with the following people.

- JAMES MCCASLAND, IT Workstation Analyst, Witness
- DEBORAH “DEBBIE” KENNEY, Commissioner’s Aide, Witness

³ Copies of all recorded interviews are maintained in the electronic case file.

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- PETER HAUPT, IT Analyst, Witness
- HAZEN GILMORE, IT Infrastructure Coordinator, Witness
- SCOTT MACDONALD, Interim IT Director, Witness
- DANIELLE COOPER, Citizens Services Coordinator, Witness
- STEVEN PAYNE, IT Security Coordinator, Witness
- MIGUEL "MIKE" PUENTES, IT Service Delivery Manager, Witness

JAMES MCCASLAND, IT Workstation Analyst, Witness

On June 7, 2023, Compliance Officers JIM WARD and JANIE M. BRISSETT, interviewed JAMES MCCASLAND (*sworn, written, and recorded*) **(EXHIBIT 3)** in the County Administrator's Conference Room in the ELM building regarding the unauthorized release of data from the personal cellphone of Commissioner JEFFREY BERGOSH. MCCASLAND essentially stated the following:

- On February 1, 2021, I was asked by then IT Director BART SIDERS to perform a download of pictures, contacts, and text messages from Commissioner BERGOSH's iPhone XR.
- BERGOSH's phone was apparently Activation Locked, and he needed to save his data to a USB drive.
- I utilized a product called COPY TRANS that was personally purchased by SIDERS for evaluation purposes to download the contacts and messages.
- I used file explorer to copy the pictures and videos to a secondary internal drive.
- BERGOSH forwarded an email from Apple stating that the device was now unlocked and can be restored to factory settings.
- I stayed later than my normal working hours while SIDERS and BERGOSH were in my office.
- Due to the large amount of data needing to be downloaded I left the process to complete overnight.
- It was discussed to move the data from my device to a network drive for retention purposes, but I believe that it was decided against.
- I retained the data on my secondary drive, in case BERGOSH might need it again.
- The next day a drive was provided to me by Commissioner's Aide [DEBORAH] DEBBIE KENNEY.
- I copied the data to the USB drive.
- I do not recall if she came to pick it up or if I went to her office to give it to her.
- After the drive was provided there was no more contact regarding the data.
- To my knowledge the data has not been accessed from my device since.
- My recollection is that the device [iPhone XR] was a personal device.

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DEBORAH “DEBBIE” KENNEY, Commissioner’s Aide, Witness

On June 7, 2023, Compliance Officers JANIE BRISSETT and JIM WARD, interviewed Deborah “DEBBIE” KENNEY (*written, sworn, and recorded*) **(EXHIBIT 4)** in Commissioner BERGOSH’s Office in the ELM Building regarding allegations of the unauthorized release of data from the personal cellphone of Commissioner JEFFREY BERGOSH. KENNEY essentially stated the following:

- I am the Commissioner’s Aide for Commissioner JEFFREY BERGOSH.
- I am the “boots on the ground” directly answering calls from citizens and most emails; however, BERGOSH answers some of his emails directly.
- As an Aide, I also interact with staff on special projects.
- Overall, I try to make the Commissioner’s job easier, aiding them in any way I can.
- I maintain BERGOSH’s calendar, but he also adds events to his calendar as well.
- BERGOSH was going to Mexico for a retirement celebration for a friend.
- I remember seeing it on his calendar.
- I have no idea what was going on with BERGOSH’s cellphone.
- I think the problems with his phone may have occurred the day before the trip.
- Knowing, what I know now, I think the issue with his phone had something to do with retaining text messages on his [BERGOSH] phone.
- I remember he came to the office at the end of the workday, and he was working with people in the IT [Information Technology] Department to take care of that situation.
- I later found out or I may have known at the time, but I really don’t remember the details, because this was not that important to me at the time.
- BERGOSH told me, I would receive a thumb drive from IT about his phone.
- I had no idea what was on the thumb drive.
- I am fuzzy about this next part, but I could tell it was important to him.
- I did not receive the thumb drive early the next day.
- I think I had to go down to the IT Department to ask about the thumb drive.
- I am not 100% about this, but I think I was told that it was not ready and that the IT Department would bring the thumb drive to me.
- They probably brought the thumb drive to me that day; however, I cannot confirm with absolute certainty.
- Usually, the IT Department is responsive to Commissioner’s Aides, and most likely delivered the thumb drive that day.
- BERGOSH told me what happened [disclosure of personal cellphone data].
- I asked him if he knew where it [the thumb drive] was.
- BERGOSH sent me a photo of the thumb drive.
- I wrote his initials “JB” on the thumb drive.
- Anything that is personal, and it belongs to BERGOSH, I write “JB” on it.
- If it was a project, something to do with the county, like Longleaf or something like that, I would write “Longleaf Project” on it.
- Anything that is private, I would never leave just out on my desk. I tend to put those things in my top desk drawer.
- I kept the thumb drive there until I saw him again.
- After former County Administrator JANICE GILLEY’s office was bugged, cypher locks / badge entry swipers were added to the [Commissioner’s] doors.
- In the past, we only had keys to enter the [Commissioner’s] office.

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- BERGOSH wanted tight security. He did not let the janitor enter the office at that time.
- Later, he began allowing the janitor to enter the office again.
- No other security risks occurred after the bugging of GILLEY's office.
- To my knowledge Administration did not take any steps to add layers of security after GILLEY's office was bugged.
- I have not received anything derogatory since the release of BERGOSH's text messages.
- It was BERGOSH's personal cellphone that was not working.
- To my knowledge, BERGOSH has not experienced being hacked.
- I have not been hacked.
- I am an iPhone user.
- BERGOSH is very cautious.
- If we receive suspicious emails, phishing emails, he will request verification.
- BERGOSH tends to be hypersensitive to security things.
- I did not print the text messages.
- I did not open the text messages. If I had, I probably would have thought, 'What is this?'
- I heard 66,000 of BERGOSH's text messages have been released.
- From what I understand, but you would have to verify, but the text messages were provided as part of a lawsuit for Dr. Edler [former Public Safety Medical Director RAYME EDLER, MD].
- Someone submitted those [texts] to the plaintiff's attorney.
- The plaintiff's attorney submitted them to our [BCC] insurance attorney, and they notified BCC Attorney ALISON ROGERS of their existence.
- This is odd. How did the attorney obtain the text messages?
- I was told that it was JONATHON OWENS [former Commissioner's Aide for former County Commissioner DOUGLAS UNDERHILL] that gave the attorneys the information.
- I assume it was a thumb drive because you cannot print 66,000 text messages and put them under a door.
- This is hearsay, but I was told that he [OWENS] found the texts under his office door, [former Commissioner] UNDERHILL's door.
- BERGOSH still has the original thumb drive.
- I cannot confirm or deny if BERGOSH has seen all of the texts from the attorney.
- Some of the information is personal.
- Some of it would need to be redacted.
- I mean when you think about personal stuff between your wife, your family, you probably have kids' social security numbers, account numbers.
- To my knowledge there was never a public records request.
- Even if someone did request every text message, they would not all be public record.
- I only released the text messages to Commissioner BERGOSH.
- The IT made something, I got it.
- I am not 100% if I received it down there or if they brought it to me.
- But I definitely know I put his [BERGOSH] initials on it and had it for him [BERGOSH] when he got back.
- It is my routine to put his initials on things. If it is personal, I put his initials on it "JB."
- I recognize my handwriting on the thumb drive.

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PETER HAAPT, IT Analyst, Witness

On June 8, 2023, Compliance Officers JANIE BRISSETT and JIM WARD, interviewed HAAPT (*sworn and recorded*) at the ELM building in the County Administrator's Conference Room regarding the unauthorized release of data from Commissioner JEFFREY BERGOSH's cell phone. HAAPT essentially stated the following:

- HAAPT began working for the BCC during August of 2020.
- HAAPT is responsible for IT end user support including Human Resources, the Board of County Commissioners, Civic Clerk, and UKG.
- HAAPT does not recall ever being involved with Commissioner BERGOSH except when BERGOSH swapped out his county iPhone.
- HAAPT was not aware of BERGOSH's data being saved on a hard drive in the IT Department.
- HAAPT said BCC IT records are retained on a case-by-case basis.
- When former Commissioner DOUGLAS UNDERHILL's term was ending, former Commissioner's Aide JONATHAN OWENS and former Commissioner UNDERHILL requested a copy of all of their emails since UNDERHILL was first elected.
- HAAPT and HAZEN GILMORE downloaded emails from Outlook from over the past eight years and downloaded OWENS' emails on one flash drive and UNDERHILL's email on another flash drive and provided them [OWENS and UNDERHILL] with the drives.
- Their [OWENS and UNDERHILL] iPhones were not provided to the IT Department until UNDERHILL resigned as Commissioner.
- HAAPT said he did not put a flash drive under the office door of former Commissioner UNDERHILL.

HAZEN GILMORE, IT Infrastructure Coordinator, Witness

On June 8, 2023, Compliance Officers JANIE BRISSETT and JIM WARD, interviewed GILMORE (*sworn and recorded*) at the ELM building in the County Administrator's Conference Room regarding the unauthorized release of data from Commissioner JEFFREY BERGOSH's cell phone. GILMORE essentially stated the following:

- GILMORE began working for the BCC during October of 2015.
- GILMORE is responsible for maintaining and giving access to email, file servers, creating employee accounts and backing-up data.
- It is routine for new employees to request access to the data created by the employee they are replacing.
- Each file server maintains an event log which has a history of at least thirty days, depending on the server.
- GILMORE has used COPY TRANS program once for his personal phone over ten years ago.
- The SMARSH program is used by the IT Department to back up cell phone text messages.
- GILMORE did not access Commissioner BERGOSH's cell phone data on the county hard drive.

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- GILMORE did not give a thumb drive to former Commissioner's Aide JONATHAN OWENS.
- Encryption is used for Criminal Justice Information Services (CJIS) data.
- GILMORE retrieved OWENS' and former Commissioner UNDERHILL's email using eDiscovery and placed the files on an IT network share drive.
- HAUPT then accessed the files and provided the emails to OWENS and UNDERHILL.

SCOTT MACDONALD, Interim IT Director, Witness

On June 8, 2023, Compliance Officers JIM WARD and JANIE BRISSETT, interviewed SCOTT MACDONALD (*written, sworn, and recorded*) **(EXHIBIT 5)** in the ELM building in the County Administrator's Conference Room regarding the unauthorized release of data from Commissioner JEFFREY BERGOSH's cell phone. MACDONALD essentially stated the following:

- I am the Interim Information Technology (IT) Director for the BCC.
- I manage a department of about 24 staff members, manage the budget, attend project meetings, and I also serve as the IT Infrastructure Division Manager.
- I also manage the network, server team, voice team, and cyber security team.
- During February 2022, I was the IT Infrastructure Division Manager.
- I was not present [on February 1, 2022] when Commissioner JEFFREY BERGOSH's cellphone data was copied onto an internal drive that was attached to a PC [personal computer] on the network. It was not copied onto a server.
- BERGOSH's files remain where they were originally copied, on the internal drive attached to JAMES MCCASLAND's PC.
- The file is only on MCCASLAND's PC.
- A USB hard drive is similar to a thumb drive; however, it actually has a hard drive inside, and it has more storage space, about 1 or 2 terabytes.
- There is no way to pull the history of how many times a file has been accessed on the internal drive; however, you can view the last access date.
- You can right click, to view the properties on a file, or just like in history in Windows Explorer on a PC.
- I cannot confirm or deny if COPY TRANS software was used for this event.
- The BCC still has the software, but it is rarely used.
- I did not release BERGOSH's cellphone data.
- I have never accessed BERGOSH's cellphone data on MCCASLAND's computer.
- The IT Department will keep data from devices if public records maybe contained on the device, per Legal.
- Because BERGOSH's personal cellphone may have contained public information, when he allowed his personal cellphone data to be downloaded onto the BCC IT Department's internal drive, his cellphone data became part of the BCC's public record.
- I received a call from Commissioner [JEFFREY] BERGOSH on Thursday, June 1, 2023. He explained the situation to me. This was the first time I had heard about it.
- Since then, I have been trying to gather more information and figure out what happened.
- Yes, I called JONATHAN OWENS.

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- OWENS told me, he came into his office [in the ELM building] one day, and he saw an envelope under his door. A USB drive was inside of the envelope. OWENS did not provide a date or time.
- I believe it occurred before OWENS vacated their office space in the ELM building.
- I was not involved when OWENS and former Commissioner DOUGLAS UNDERHILL requested all of their emails. I heard about the request, but I was not involved in the process.
- The IT Department does not regularly use encryption; however, because of FDLE [Florida Department of Law Enforcement] requirements CJIS [Criminal Justice Information Services] data must be protected.
- To my knowledge, cost is not one of the reasons the BCC does not utilize encryption.
- I believe encryption is built into Windows 10.
- I cannot confirm or deny that if a password is entered wrong three times on a thumb drive the data will be inaccessible.
- Before I contacted OWENS, we thought maybe BERGOSH's text messages somehow were linked among his Apple devices with his Apple ID; however, after speaking with OWENS that theory was dead.
- The cameras in the BCC do not go back a year and a half.

DANIELLE COOPER, Citizen Services Coordinator, Witness

On June 8, 2023, Compliance Officer JANIE BRISSETT, interviewed COOPER (*sworn and recorded*) at the ELM building in BRISSETT's office regarding the unauthorized release of data from Commissioner JEFFREY BERGOSH's cell phone. COOPER essentially stated the following:

- COOPER began working for the BCC during May of 2022.
- COOPER is responsible for public records requests and assisting during BCC meetings.
- There was no public records request submitted for Commissioner BERGOSH's text message history.
- Requests for other Commissioners' cell phone texts and social communications have been requested in the past.

STEVEN PAYNE, IT Security Coordinator, Witness

On June 12, 2023, Compliance Officers JANIE BRISSETT and JIM WARD, interviewed PAYNE (*sworn and recorded*) in the ELM building in the County Commissioner's Conference Room regarding the unauthorized release of data from Commissioner JEFFREY BERGOSH's cell phone. PAYNE essentially stated the following:

- PAYNE began working for the BCC during February of 2023 and has forty years of experience working in the IT field.
- PAYNE is responsible for the Information Security Program protecting the county from internal and external threats and reports on those possible threats.
- On June 1, 2023, PAYNE observed an inbound password protected email flagged for manual inspection (**EXHIBIT 2**).

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- The email contained an excel spreadsheet from an outside counsel addressed to our internal counsel containing a header titled “BERGOSH’s Text Messages”, which PAYNE approved and forwarded.
- Less than two hours later, MACDONALD came to PAYNE’s office and brought PAYNE into a conversation with MACDONALD, MCCASLAND, and IT Service Delivery Manager MIGUEL “MIKE” PUENTES regarding the unauthorized release of BERGOSH’s text messages.
- PAYNE told MACDONALD, PUENTES, and MCCASLAND that he had just released and forwarded an email with “BERGOSH Texts” as the header.
- To PAYNE’s knowledge, the 4 MB excel spreadsheet was not opened.
- Since June 1, 2023, PAYNE has not discussed the BERGOSH Text email with anyone and there have been no changes within the IT Department.
- PAYNE stated he did not make a copy of the BERGOSH text messages file.
- PAYNE does not know former Commissioner’s Aide JONATHAN OWENS.
- Encrypted files would be a safer way to transmit files.
- PAYNE did not look at or access the text message file titled, Messages.csv, on MCCASLAND’s drive.
- PAYNE stated there are only three sources from which the Messages.csv file could have been copied: the iPhone, the jump drive supplied to Commissioner BERGOSH or MCCASLAND’s drive.
- PAYNE used Microsoft 365 and searched for the file title Messages.csv and found a few files but the files had nothing to do with BERGOSH’s text messages.

MIGUEL “MIKE” PUENTES, IT Service Delivery Manager, Witness

On June 22, 2023, Compliance Officers JANIE BRISSETT and JIM WARD, interviewed PUENTES (*sworn and recorded*) in the ELM building – County Commissioner’s Conference Room regarding the unauthorized release of data from Commissioner JEFFREY BERGOSH’s cell phone. PUENTES essentially stated the following:

- PUENTES began working for the BCC during April of 2020.
- PUENTES supervises five Analysts and manages IT service requests and all devices connected to the county network system.
- PUENTES first became aware of the unauthorized release of the text data when he was in MACDONALD’s office and received a phone call from Commissioner BERGOSH asking how the data could have been released.
- To the IT Department’s knowledge, the file that was extracted from Commissioner BERGOSH’s iPhone was exactly where it was placed a year and a half before.
- PUENTES did not give a thumb drive to former Commissioner’s Aide JONATHAN OWENS or place a thumb drive under OWEN’s office door in the ELM building.
- PUENTES did not access Commissioner BERGOSH’s cell phone data on the county hard drive.
- PUENTES does not know JONATHAN OWENS.
- The IT Department recommended BERGOSH use COPY TRANS to download his personal data.
- Several other County Commissioners did use COPY TRANS to download and extract data from their personal phone.

OFFICE OF COMPLIANCE AND ETHICS
Report of Investigation

- PUENTES was not present when Commissioner BERGOSH's data was downloaded by MCCASLAND.

DISTRIBUTION LIST

Action Official Distribution:

This report is distributed with all exhibits and attachments for action to:

WESLEY J. MORENO, County Administrator
ALISON ROGERS, County Attorney
CRYSTAL DADURA, Human Resources Director

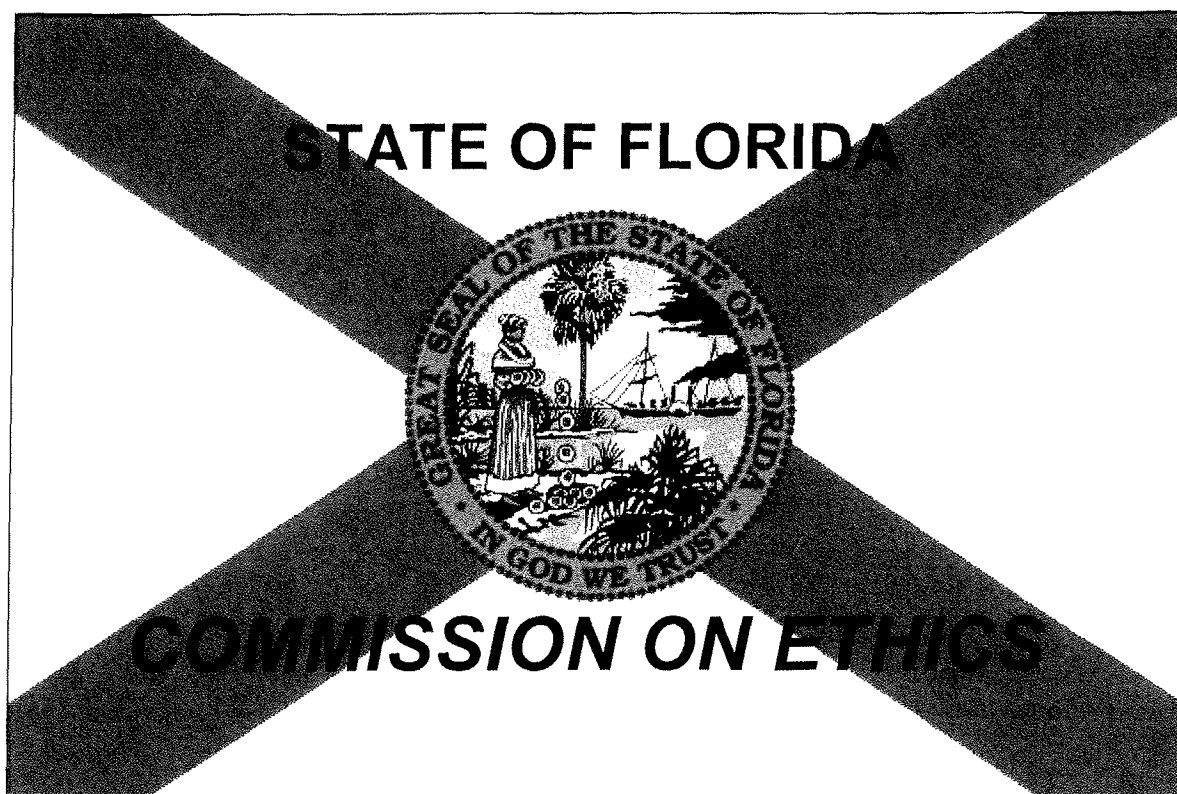
Files:

The original complete report has been placed in the Electronic Investigation File.

EXHIBIT “D”

Exhibit B

REPORT OF INVESTIGATION



Complaint Number 23-231

NOTICE CONCERNING CONFIDENTIALITY

This report of investigation concerns an alleged violation of Chapter 112, Part III, Florida Statutes, or other breach of public trust under provisions of Article II, Section 8, Florida Constitution. The Report and any exhibits may be confidential (exempt from the public records law) pursuant to Section 112.324, Florida Statutes, and Chapter 34-5, F.A.C., the rules of the Commission on Ethics. Unless the Respondent has waived the confidentiality in writing, this report will remain confidential until one of the following occurs: (1) the complaint is dismissed by the Commission; (2) the Commission finds sufficient evidence to order a public hearing; or (3) the Commission orders a public report as a final disposition of the matter. *See Section 112.3215, Florida Statutes, regarding executive branch lobbying matters and confidentiality.

STATE OF FLORIDA
COMMISSION ON ETHICS
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

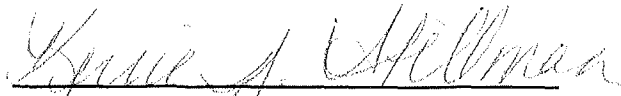
REPORT OF INVESTIGATION

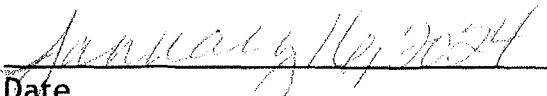
TITLE: JONATHAN OWENS
Former Legislative Aide
Escambia County
Pensacola, Florida

COMPLAINT NO.: 23-231
Exhibits A through D

INVESTIGATED BY: 
Robert G. Malone

Distribution: Commission on Ethics
Respondent
Advocate
File

Releasing Authority: 
Kerrie J. Stillman
Executive Director


Date

* * * *

**REPORT OF INVESTIGATION
COMPLAINT NO. 23-231**

(1) Jeffrey W. Bergosh, the Escambia County Commissioner for District 1, alleges Mr. Jonathan L. Owens formerly served as the Legislative Aide to then-Escambia County Commissioner Douglas Underhill, and, after leaving public employment, disclosed information not available to members of the public that he obtained during his public employment.

(2) The Executive Director of the Commission on Ethics noted that based upon the information provided in the complaint, the above-referenced allegation was sufficient to warrant a preliminary investigation to determine whether the Respondent's actions violated Section 112.313(8), Florida Statutes (Disclosure or Use of Certain Information).

(3) The Complainant advised that he has served as an Escambia County Commissioner since November 2016. He related the Respondent served as the Legislative Aide to former County Commissioner Underhill from November 2014 through November 2022, at which time Commissioner Underhill left public office. The Complainant maintains he and former Commissioner Underhill had a contentious relationship throughout his (Complainant's) tenure as a County Commissioner. He added the Respondent ran against him and failed to win his (Complainant's) seat on the County Commission during the 2020 election.

(4) Escambia County Attorney Alison Rogers advised she has served as the County Attorney since February 2008. She verified the Respondent was a full-time County employee from November 2014 through November 2022, serving as then-County Commissioner Underhill's Confidential Aide. She explained that each County Commissioner has one full-time aide who serves at the pleasure of the County Commissioner who hired them.

(5) The Complainant noted that, in February 2022, he requested the County's Information Technology (IT) Department to preserve the contents of his personal cell phone which contained both personal and County Commission-related data. He explained he uses his personal cell phone for both personal and County business and was having technical issues with the phone. The Complainant said he was planning to travel to Mexico and was concerned that the issue with his cell phone could delete County-related public records (primarily texts) that he was required to preserve pursuant to Chapter 119, Florida Statutes, if he attempted to preserve the data on the phone himself. The Respondent recalled asking the County's IT staff if they could help, and Mr. Bart Siders, the then-IT Director for the County, assured him that his department could preserve the data on the cell phone. The Complainant maintains he directed the IT staff not to make or retain any copies of his private cell phone data, other than one copy for himself, because, in addition to County-related data, his phone also contained private, personal, and privileged information, including confidential medical information, family medical information, personal financial information, including social security numbers, attorney-client privileged information, and personal texts between himself and his family members, friends, and business associates. He related he provided a "stick drive" to the IT staff, and all of the data from his cell phone was copied to the drive. The Complainant said he believed, based upon the instructions he had given the IT staff to delete any additional

copies, that the stick drive was the only existing copy of the data retrieved from his cell phone. He estimated one-third of the data on his cell phone was public records, and the remainder was private and/or privileged information.

(6) The Complainant stated that, in June 2023, he was notified by the Escambia County Attorney's Office that the entire contents of his personal cell phone data had been disseminated by the Respondent in an unredacted state, to a law firm involved in litigation with Escambia County. He explained the County has been involved in litigation with Dr. Rayme M. Edler, the former Medical Director for Escambia County, since 2020,¹ and that attorneys for Dr. Edler informed the County Attorney's Office that the Respondent had provided them with a significant amount of data taken from his (the Complainant's) personal cell phone. The Complainant added he did not give permission to the Respondent to retain or disseminate any of the data from his personal cell phone. He said data from his personal cell phone included texts between himself and the County Attorney's Office relative to the litigation between the County and Dr. Edler. The Complainant maintains Dr. Edler and her attorneys benefitted from having access to attorney-client privileged text messages between himself and County Attorney Rogers pertaining to the Edler lawsuit.

(7) County Attorney Rogers stated Dr. Edler filed a Federal False Claims Act against Escambia County during her former tenure as the County's Medical Director. According to Ms. Rogers, Dr. Edler claimed in the lawsuit that the County had falsely billed the Federal government through Medicare billings, had EMS employees who were not properly credentialed, and had mistreated her during her public employment. The lawsuit, according to Ms. Rogers, is still pending and the County's insurance company lawyers are litigating the case on behalf of the County. She recalled being advised by the insurance company's counsel in March 2023 that, through discovery requests, Dr. Edler's attorneys had advised they had texts from the Complainant's cell phone. She explained she initially assumed the Complainant had provided this information to Dr. Edler's attorneys. Ms. Rogers said when she later mentioned this to the Complainant, he informed her that he had not given any cell phone data to Dr. Edler's attorneys. Ms. Rogers said she then inquired with the insurance company's attorneys on how Dr. Edler's attorneys had obtained information from the Complainant's personal cell phone, and Attorney Stephanie Piderman informed her on May 23, 2023, that Dr. Edler's attorneys had claimed the Respondent voluntarily provided them with the data. Ms. Rogers noted she subsequently was provided a spreadsheet that listed the data provided to Dr. Edler's attorneys by the Respondent, and learned it included approximately 60,000 lines of texts from the Complainant's personal cell phone.

(8) The Complainant reported that the Respondent was interviewed on a radio talk show (NewsRadio 92.3, Pensacola Morning News with Andrew McKay) on August 7, 2023, during which he (Respondent) acknowledged that, during his employment with Escambia County, an anonymous source had left a "thumb drive" in his County office.² During the interview, the Respondent stated that when he opened the files on the thumb drive, he saw they contained the data from the Complainant's personal cell phone. The Respondent said during the radio

¹ United States of America, ex rel. Rayme M. Edler, M.D., v. Escambia County, Case Number 3:20cv5503-MCR-HTC, United States District Court, Northern District of Florida.

² A transcript of the radio interview is appended as Exhibit A.

interview that when he reviewed the data, he learned it contained hundreds, or thousands, of text messages pertaining to County business. The phone data, he continued, also included the Complainant's private text messages and records. When asked by the radio station host what he did with the thumb drive after realizing what information was on it, and whether he contacted the County's IT Department or law enforcement, the Respondent said, "I just held on to it." He acknowledged during the radio interview that Dr. Edler's attorneys asked him at a later date to provide a statement or affidavit regarding Dr. Edler's lawsuit against the County.³ The Respondent noted he informed Dr. Edler's attorneys about the thumb drive and sent them the data that he had kept from the Complainant's personal cell phone. He stated during the radio interview that he believed all of the records on the cell phone became public record when the Complainant used the County's resources to have the IT Department staff make a copy of the data on the cell phone.

(9) The Respondent advised by telephone that he retained Attorney Dennis Green, Jr., to represent him in this matter. Telephone contact was made with Mr. Green during which he stated the Respondent did not wish to provide a sworn statement in this matter.

(10) County Attorney Rogers said Dr. Edler's attorneys sent a copy of the spreadsheet of cell phone data they had received from the Respondent to her office requesting them to identify the information they (Dr. Edler's attorneys) were not allowed to see because of its personal nature, and to redact it from the data. Ms. Rogers advised that the County subsequently filed a Protective Order with Federal Magistrate Judge Hope T. Cannon, requesting that all of the cell phone data be barred from Dr. Edler's attorneys reviewing it and that her (Dr. Edler's) attorneys destroy all copies of the data. Ms. Rogers stated Judge Cannon granted the motion, ordering that the data on the spreadsheet be considered confidential and should not be shared outside of this litigation.

(11) Attorney Darth M. Newman, one of the attorneys representing Dr. Edler in the lawsuit against the County, provided a sworn statement (appended as Exhibit C) on June 21, 2023, in response to the County's Motion for Protective Order concerning the cell phone data. In the statement Newman indicates he obtained a single unsolicited Excel file from the Respondent on March 15, 2023, that contained text messages from the Complainant's personal cell phone. He noted in the statement that, shortly after coming into possession of the file, he notified the County's defense counsel and sent them a copy of the Excel file. He added he did not share this file with his co-counsel and no one on Dr. Edler's co-counsel team has "substantively" reviewed the file.

(12) Mr. Newman stated by telephone that he learned during a telephone conversation with the Respondent that he (Respondent) had telephone data from the Complainant's cell phone which might be helpful in Dr. Edler's litigation against the County. The Respondent, according to Mr. Newman, on March 15, 2023, emailed him the data copied from the Complainant's personal cell phone. Mr. Newman confirmed that the Respondent provided him with a written declaration (Exhibit B) relative to the Edler case on April 3, 2023. He

³ Records reflect that on April 3, 2023, the Respondent signed a sworn statement that was submitted by Dr. Edler's attorneys to the Court in the lawsuit against the County. A copy of the sworn statement is appended as Exhibit B.

maintains that the cell phone data provided by the Respondent involved information that he would have eventually obtained from the County's counsel through the discovery process and/or the filing of subpoenas.

(13) A review of Judge Cannon's response to the Protective Order (appended as Exhibit D) reflects that the Judge further ordered the County to redact all privileged and personal identification information from the spreadsheet forwarded to them from Dr. Edler's counsel, and provide Edler's attorneys with a "privilege log" identifying what was redacted from the spreadsheet. Judge Cannon further ordered that both parties confer regarding which data on the spreadsheet was relevant to the litigation and directed the County to redact any data concerning the litigation which both parties could jointly agree should be redacted. The redacted spreadsheet was then to be used by Dr. Edler's counsel in discovery going forward. Judge Cannon noted if the parties could not agree on what data should be redacted, they would jointly submit the list of disputed data to her and she would determine the status of the data.

(14) Attorney Newman confirmed that, in November 2023, the parties involved in the Edler lawsuit arrived at an agreement of what data in the cell phone records could be used in the litigation.

(15) County Attorney Rogers verified that some of the information that Dr. Edler's attorneys were provided by the Respondent included attorney-client privileged text messages between her and the Complainant relative to the Edler lawsuit. She explained that following Judge Cannon's Order Exhibit D), County legal counsel classified all of the information on the Complainant's copied cell phone data into three distinct categories: information that was personal in nature; information that pertained to the Edler litigation and was discoverable; and attorney/client privileged information that pertained to the Edler litigation and other legal issues before the County. Ms. Rogers recalled that the information determined to be attorney/client privileged information consisted of approximately 12 pages of texts with an average of three texts per page. She verified that within these 12 pages, there were three texts between her and the Complainant that directly addressed the Edler litigation and primarily dealt with her (Edler's) employment issues with the County. Ms. Rogers said these texts have been redacted from the cell phone data that is available to Dr. Edler's attorneys through the discovery process. She noted that the Respondent sided with Dr. Edler in the lawsuit and he provided an affidavit (Exhibit B) to Dr. Edler's attorneys that was beneficial to Dr. Edler. Ms. Rogers opined, based on this, that the Respondent provided the cell phone data to Dr. Edler's counsel because he believed it would benefit Dr. Edler in her lawsuit against the County.

(16) County Attorney Rogers advised that, on June 5, 2023, she sent a letter to First Judicial Circuit State Attorney Ginger Bowden Madden (page nine of the complaint) requesting a criminal investigation involving the unlawful taking of the Complainant's personal cell phone data. She said it is her understanding that the State Attorney's Office contacted the Florida Department of Law Enforcement (FDLE) to conduct the investigation, and FDLE requested the FBI to conduct a forensic investigation of the County computers used to make a copy of the cell phone data. Ms. Rogers stated that the FBI's investigation is ongoing. She added that the County's Office of Compliance and Ethics conducted its own

investigation into how the Respondent obtained the Complainant's cell phone data. A review of the June 23, 2023, Report of Investigation (Case Number OCE 23-010) 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. Additionally, Ms. Rogers stated that the County has filed a lawsuit for Replevin and Conversion against the Respondent in the County Court of the First Judicial Circuit (filed November 16, 2023), requesting the Circuit Court to direct the Respondent to relinquish possession of all of the Complainant's cell phone data. She noted that this matter remains pending.

(17) The Complainant stated that he has learned that Mr. Alexander Arduini, a purported friend of the Respondent; and Gannett MHC Media, Inc., the corporate owner of the Pensacola News Journal; each have obtained copies of the data from his personal cell phone. He assumes the Respondent gave the data to these entities, but acknowledged he has no evidence to support this assumption. The Complainant added he is concerned the Respondent will use the personal data from his cell phone against him politically in the upcoming 2024 election, when he (Complainant) plans to run for reelection. He noted the Pensacola News Journal has already printed text messages between him and his wife that were taken from the cell phone data. The Complainant added that, although the Respondent has information that includes his (Complainant's) and his family members' social security numbers, credit card numbers, and bank account information, he has no evidence of any identity theft attempts at this time.

END OF REPORT OF PRELIMINARY INVESTIGATION

EXHIBIT A

EXHIBIT A

Exhibit A

IN RE: Jonathan Owens responds to Jim Little in PNJ
flash drive

News Talk Radio Conversation

Recorded News Talk Radio transcribed by Elaine
Richbourg, a Court Reporter and Notary Public, State
of Florida at Large, taken via talk radio,
Pensacola, Florida, on Monday, August 7th, 2023.

ELAINE RICHBOURG

COURT REPORTER
2320 Brightview Place
Cantonment, Florida 32533
(850) 712-0984
elainerichbourg@cox.net

A/

1

APPEARANCES

2

For the News Talk Radio:

3

ANDREW MCKAY

4

5

For the Caller:

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JONATHAN OWENS

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A2

1 INDEX OF TRANSCRIPT

2 WITNESS:

3 News Talk Radio

4 News Talk Radio 04

5 Reporter's Certificate..... 20

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A3

P R O C E E D I N G S

ANDREW MCKAY: Good morning. 640 here on News Radio 92.3, informative, local, dependable. I know over the last couple of months we've have had a disproportionate emphasis on Santa Rosa County and the City of Milton, in particular, because they've been having meetings. I mean, Escambia County has barely had any meetings. They cancel all their committees of the whole. They're going to have to have one coming up to deal with apartment complex issues and parking regulations and things like that, if they have. They just canceled another one. So it's been a year since we've had a committee of the whole. All that is may way of saying, this is why I haven't talked as much about Escambia County politics in the last month or two. Oh, but that is about to change. That is about to change. Jim Little, at the PNJ, has an article out this morning detailing a records requests for all of the texts off of Jeff Bergosh's personal phone on which he's apparently doing county business a lot, in conjunction with lawsuits being brought by the former Medical

A4

1 Director, Rayme Edler, and Jonathan Owens, who
2 has gotten basically dragged into all of this
3 stuff. He joins us by phone now. Jonathan,
4 who used to be the Chief of Staff for Doug
5 Underhill, when he was a County Commissioner.
6 Jonathan also ran against Jeff Bergosh,
7 unsuccessfully, for the District 1 County
8 Commission seat three years ago, and he is with
9 us now. Jonathan, welcome back to the
10 Pensacola Morning News.

11 JONATHAN OWENS: Good morning Andrew. How
12 are you?

13 ANDREW MCKAY: I'm -- I'm good. You know,
14 just when you think it's, you know, all the
15 problems are over here, Escambia is like, hold
16 my beer. So, tell me, you tell me, what --
17 what is the back drop to this story, how did we
18 get to where we are now, where there's an
19 investigation and all kinds of other stuff
20 going, tell me what you know, and tell me how
21 we got here.

22 JONATHAN OWENS: Well, gosh, it's so much
23 to put in this short -- a short show for you.

24 ANDREW MCKAY: I know.

25 JONATHAN OWENS: Yeah. So, like you said,

AB

1 hold my beer, Escambia County will come through
2 again for you. The -- the Medical Director,
3 obviously, as you referenced the article, has a
4 lawsuit going, and I was asked for a statement
5 or an affidavit to provide to Dr. Edler's
6 attorneys, and I did, and in that statement,
7 and after that statement, there was a
8 conversation about any other information
9 related to the case at all. I said, well, you
10 know, I have a thumb drive that showed up in my
11 office that has lots of public records on them,
12 and they seem to be from Commissioner Bergosh's
13 personal cell phone.

14 So, I sent them over to Dr. Edler's
15 attorneys, and that was sometime last year. I
16 don't remember the exact date. And then that
17 was pretty much it. I didn't really think much
18 more about it.

19 Well, fast forward, and here we are, Jim
20 Little is writing an article about that, and
21 all kinds of motions and things have been filed
22 in the case to try to block Dr. Edler's
23 attorneys from using those public records, and
24 that's -- that's pretty much how we got to
25 where we are today. This thumb drive showed up

AG

1 in my office sometime last year, when I was
2 still an employee at the County. I assumed it
3 showed up in several people's offices, as
4 things showed up over the years, the 8 years
5 that I worked with the Board of County
6 Commissioners. I mean, we've had file folders
7 show up, you know, negative things against
8 political activists. We've had, as you
9 probably famously remember, a box showed up for
10 Commissioner Bergosh of -- as a prank.

11 ANDREW MCKAY: Yeah.

12 JONATHAN OWENS: We had all kind of things
13 that showed up in the office. I don't know if
14 we can have that conversation on your morning
15 show, if we want to keep it PG, but anyway,
16 things showed up over the years. So, I assumed
17 this showed up in my office, just like it
18 showed up in other people's offices. So, to
19 me, if something showed up in the office, it
20 was a public record, and that was it. So,
21 that's how we got to where we are today. So,
22 you know, hundreds, if not thousands of text
23 messages on there, after me going through them,
24 in relationship -- in relation to, you know,
25 County business, things that, conversations

A7

1 during meetings between individuals. So --

2 ANDREW MCKAY: Well, yeah, that's what --
3 that's what I'm curious -- so, you have, this
4 thumb drive shows up, with what appear to be --
5 what would be public records, anything that
6 would be on Jeff Bergosh's personal cell phone,
7 that would be talking about County business;
8 right, anything that's dealing with any
9 personal matter, that's unrelated to County
10 business is a private record, but anything that
11 would be dealing with, for example, Rayme
12 Edler's employment, or OLF-8, or you know,
13 hiring and firing decisions, anything along
14 those lines that would be from, you know,
15 anybody that would deal with County business,
16 that would be a public record. So, I assume,
17 you tell me if I'm wrong, it's a mixture of
18 public records and private records on his
19 phone; is that right, or at least that's what
20 you thought it was?

21 JONATHAN OWENS: One hundred percent,
22 correct. Yes, one hundred percent. That is --
23 it's a mixture of public and private records.

24 ANDREW MCKAY: So, how, I mean, how did it
25 come to exist, in the first place, because I'm

AP

1 pretty --

2 JONATHAN OWENS: I have no --

3 ANDREW MCKAY: -- I'm confident Jeff
4 Bergosh didn't just come to your office and
5 give you a copy of his phone, so --

6 JONATHAN OWENS: Right. I have no idea.
7 A thumb drive showed up in my office, and
8 that's what I know. That's how it came into
9 existence.

10 ANDREW MCKAY: Okay. So, I guess --

11 JONATHAN OWENS: And at least in my
12 possession. I mean, like I said, it could be
13 in -- it could have shown up in everyone's
14 office.

15 ANDREW MCKAY: Right.

16 JONATHAN OWENS: Because, like I said,
17 we've had folders show up in our offices over
18 the years of, you know, people, you know,
19 wanting to get information out to the public,
20 and I guess it's up to each individual
21 Commissioner's office whether to disregard it,
22 or do something with it.

23 ANDREW MCKAY: Yeah. And so what did you
24 do with it? I mean, when you got it, you
25 apparently opened it and read it. I'm very

A9

1 curious to know what you saw, but what did you
2 do, at that point? I mean, did you, you know,
3 did you contact IT, did you contact law
4 enforcement, did you just hang on it it, did
5 you, you know, what did you do, at that point?

6 JONATHAN OWENS: I just -- I just held on
7 to it.

8 ANDREW MCKAY: Okay. I'm dying to know
9 what's on it --

10 JONATHAN OWENS: There's no policy --

11 ANDREW MCKAY: I mean, I'm going to
12 definitely make a public records request to get
13 a copy, because anything that's done on --

14 JONATHAN OWENS: I'm sure.

15 ANDREW MCKAY: -- anything that's done on
16 the phone is a public record. Commissioner
17 Bergosh says, I guess in this article, he said
18 that he brought his phone -- it was his
19 personal phone in -- he brought the phone in
20 for work by a County IT before he was going on
21 a vacation, because the phone had been acting
22 up, and he wanted to make sure -- this is his
23 account -- from Jim Little -- is that he wanted
24 to make sure those public records were
25 preserved, you know, and not just at the whim

A10

1 of him having them on his phone when he's
2 overseas or whatever. So, he recognizes that
3 they're public records. You know, to the
4 extent that you believe that particular account
5 of it, that would at least validate the fact
6 that they are public records. Why does the
7 County want to prohibit them? I mean, if
8 they're public records, what's the issue?

9 JONATHAN OWENS: I have no idea.

10 ANDREW MCKAY: Okay.

11 JONATHAN OWENS: I have no idea why they
12 would want to prohibit them, other than, you
13 know, there may be some things in there that
14 are detrimental to other things that are County
15 related.

16 ANDREW MCKAY: Okay.

17 JONATHAN OWENS: I don't know. It will be
18 interesting to see how the judge rules in this,
19 because it's really similar to a previous case
20 of County records against the guy I used to
21 work with, a former Commissioner.

22 ANDREW MCKAY: Yeah.

23 JONATHAN OWENS: And it will be
24 interesting to see it.

25 ANDREW MCKAY: Yeah. We're talking

A//

1 about --

2 JONATHAN OWENS: And if you know, we can
3 go back --

4 ANDREW MCKAY: Just a second, Jonathan,
5 we'll come back to you in a second because I
6 want to get a quick traffic on the 5 before we
7 continue, Candy.

8 (Advertisement)

9 UNIDENTIFIED SPEAKER: Come on, man, come
10 on Jonathan. Disabled vehicle, I-10 westbound
11 at exit 22, there's a safety truck on scene
12 with cones. And then almost right on the other
13 side of I-10, it's east, a disabled vehicle
14 I-10 east at mile marker 23. So, the right
15 shoulder is blocked. Other than that, good to
16 go. If you have traffic tips you can text
17 437-1620. It was brought to you by FDOT, and
18 make sure you're prepared. It's hurricane
19 season. Keep FL-511.com your emergency tool
20 kit to see helpful traffic info, before and
21 after the storm, message from FDOT. 6:48.

22 (End of advertisement.)

23 ANDREW MCKAY: All right. Thanks so much.
24 Back to Jonathan Owens, talking to about this
25 case that the PNJ has a good story on this

A 12

1 morning of the public records on Jeff Bergosh's
2 personal cell phone that were somehow or other
3 delivered to Jonathan Owens, when he worked for
4 Commissioner Underhill at the County, and now
5 have been brought up in the Rayme Edler lawsuit
6 against the County and the County is trying to
7 squash those records, for reasons that we're
8 still not sure about. Jonathan, I kind of
9 interrupted you. You were about to say
10 something though. Go ahead.

11 JONATHAN OWENS: I was just going to say,
12 Commissioner Bergosh, at the time, thanked
13 County staff in a meeting publicly, on
14 February 10th, for recovering his personal
15 phone, and he claimed responsibility for it,
16 you know. Thanks to County staff, so he used
17 County resources, County employees to recover
18 his personal phone, and all of those records on
19 it, in my opinion, of course, it's not enough
20 for me to have an opinion, you know, that's
21 legal, they all became public record when you
22 use County resources. I mean, this would be
23 the equivalent of saying I got my oil changed
24 on my car because I was using County business.
25 Now, you and I and anybody else in the public

A13

1 would say, well, that's not right, but do you
2 know when I first started at the County, the
3 County Attorney, Allison Rogers told me, she
4 said, it's not the vehicle of which you receive
5 a public record, but the content of that record
6 is whether it's a public record or not.

7 ANDREW MCKAY: Right. Right.

8 JONATHAN OWENS: Whether it was on his
9 personal phone or County phone or on a piece of
10 paper, on a bar napkin, on whatever, it become
11 -- it became a public record. I mean, the
12 whole drive, in my opinion, became a public
13 record, when it showed up in my office. I
14 mean, how could it not be? I was -- it was in
15 my office.

16 ANDREW MCKAY: Right.

17 JONATHAN OWENS: So --

18 ANDREW MCKAY: So, how did -- so, the
19 story mentions the FBI and Jeff Bergosh says he
20 doesn't want to comment because there's an
21 active investigation. I mean, has the FBI
22 contacted you?

23 JONATHAN OWENS: No. The only person who
24 has contacted me, is the IT Director, current
25 IT Director, Scott McDonald, asking me about

A14

1 this thumb drive, and I said, you know, he
2 said, how did I get it? And I'm telling you
3 the same story I would tell him or anyone else,
4 it showed up in my office and that's it.
5 That's how I ended up with this. So --

6 ANDREW MCKAY: So, why is the -- why is
7 the FBI involved?

8 JONATHAN OWENS: As far as the FBI, no one
9 has contacted me --

10 ANDREW MCKAY: I mean, this doesn't
11 sound -- this doesn't sound like an FBI issue
12 to me, but I don't know. Maybe there's
13 something that I'm missing.

14 JONATHAN OWENS: Well, you know -- well,
15 many people have many different opinions on the
16 FBI.

17 ANDREW MCKAY: That's fair.

18 JONATHAN OWENS: If you watch national
19 news, and that's no -- a slight against them,
20 in any way, but why the FBI would be involved
21 in something as miniscule as this, based on the
22 filings by Commissioner Bergosh, and what the
23 article says, is that I obtained these things
24 illegally. So, I'm assuming, and this is an
25 assumption, that a complaint was filed with the

A15

1 FBI or law enforcement or FDLE or someone, that
2 these files were illegally removed from a
3 county servant. That's a guess.

4 ANDREW MCKAY: Okay.

5 JONATHAN OWENS: That, in my opinion, that
6 would be the only way that law enforcement
7 would be involved in this, that something was
8 illegally removed. Well, I mean, I had nothing
9 do with anything illegal.

10 ANDREW MCKAY: You just received --

11 JONATHAN OWENS: A thumb drive showed up
12 in my office.

13 ANDREW MCKAY: -- you received the
14 thumb -- yeah. All right. So, the question
15 I've been delayed asking: What's on them?
16 What does it say about what kind of County
17 business is being done on Jeff Bergosh's phone,
18 which by the way, I think -- I think most every
19 elected official, it may not be all, but most
20 every elected official does some degree of
21 business, official business, on their personal
22 cell phone. Just these days, it seems
23 impossible to avoid, but the point is, you're
24 supposed to turn that over. That's supposed to
25 become a public record, and at the very least,

A16

1 if anybody asks, you're supposed to provide
2 that; right? That's sort of the basis of what
3 where we are.

4 JONATHAN OWENS: Right. And I went
5 through that while working with Commissioner
6 Bergosh, at the time. I mean, there was --
7 there's an active lawsuit right now over
8 Facebook messages that -- that someone, David
9 Bear, has filed against Commissioner Underhill,
10 former Commissioner Underhill --

11 ANDREW MCKAY: Right.

12 JONATHAN OWENS: -- in regards to the
13 contents of his text, I'm sorry, the contents
14 of his Facebook messages.

15 ANDREW MCKAY: Right.

16 JONATHAN OWENS: So, if those are
17 considered public records, public business on
18 Commissioner Bergosh's personal cell phone are
19 definitely considered public records. And to
20 your point, what all is on there, I would say
21 do a public records request --

22 ANDREW MCKAY: Yeah, I'm going to.

23 JONATHAN OWENS: -- and ask the County for
24 -- for any of the communications on
25 Commissioner Bergosh's cell phone having to do

A 17

1 with county business. I mean, that's --

2 ANDREW MCKAY: All right.

3 JONATHAN OWENS: I'm not the one that
4 should determine what public records are;
5 right?

6 ANDREW MCKAY: No, and that's fair.

7 JONATHAN OWENS: -- that should --

8 ANDREW MCKAY: Right. There might be
9 privilege, there might be, it's certainly
10 personal, you would expect. There might be
11 things that, you know, are legally protected.
12 There's all kind of categories of information
13 and that would, I assume, be up to the County
14 Attorney, to make that decision, but yeah, I
15 mean, I'll definitely call Allison later today,
16 and you know, make the request and then she'll
17 give me what we get, and we'll find out from
18 there. Okay. All right.

19 JONATHAN OWENS: I will tell you this --

20 ANDREW MCKAY: Go ahead, yeah, yeah.

21 JONATHAN OWENS: I will tell you this:
22 There are communications between Commissioner
23 Bergosh and a former County employee on there
24 that ended up getting a lawsuit and a
25 settlement that is also currently in the news

A18

1 right now in regards to Pam Childers.

2 ANDREW MCKAY: Okay.

3 JONATHAN OWENS: The payment for --

4 ANDREW MCKAY: -- the ECMO (phonetic)
5 thing?

6 JONATHAN OWENS: -- the payment for the
7 settlement for Selover --

8 ANDREW MCKAY: Oh, the Selover case, okay.
9 All right.

10 JONATHAN OWENS: Yeah. So, there is
11 communication, lots of communication between
12 Commissioner Bergosh and Selover, the former
13 County employee, in those text messages.

14 ANDREW MCKAY: All right. Well, without
15 being able to get more at the moment, we'll get
16 more when we get the records request fulfilled,
17 assuming that we can get it. Jonathan Owens,
18 interesting stuff, the FBI, all right.
19 Jonathan, thanks --

20 JONATHAN OWENS: Yeah.

21 ANDREW MCKAY: -- thanks so much for the
22 time this morning, man. I appreciate it.

23 JONATHAN OWENS: No problem. Have a good
24 one.

25 (WHEREUPON: The recorded talk radio conversation was

A19

1 concluded.)

2

3

CERTIFICATE OF TRANSCRIPTION

4

5

6 I, ELAINE RICHBOURG, do hereby acknowledge that
7 the foregoing pages are a transcription of the
8 electronically-recorded talk radio conversation, taken on
9 August 7th, 2023, and transcribed to the best of my ability.

10

11

12

13

/s/Elaine Richbourg

14

15

ELAINE RICHBOURG
Court Reporter
Notary Public, State of Florida
Commission No. GG929588
Commission Expires: 3/6/2024

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EXHIBIT B

EXHIBIT B

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

UNITED STATES OF AMERICA *ex rel.*
Rayme M. Edler, M.D.

Civil Action No 3:20-CV-05503

Plaintiff,

v.

Escambia County,

Defendant.

DECLARATION OF JONATHAN OWENS

1. My name is Jonathan Owens and I offer this declaration to recite the facts as I know them with respect to my former employer Escambia County.

2. I have personal knowledge of the facts stated herein and if called upon to testify to them I would do so.

I. My Professional Background

3. Prior to my government service, I owned various local businesses in the technology and commercial realty industries.

4. In 2014, I worked on Doug Underhill's campaign for District 2 County Commissioner.

5. Between 2014 and 2022, I served as a legislative aid for Commissioner Underhill.

II. My Role at Escambia County

6. As a legislative aid to a County Commissioner, I participated in various meetings and other communications with the County Commissioners, County administration, County staff, and citizens.

7. From time to time, County staff would bring their concerns and problems to my attention.

8. I also became aware of issues brought to the attention of the County Commissioners generally and Commissioner Underhill specifically.

9. Commissioner Underhill held weekly meetings with the County Administrator.

10. However, during the term in office of Interim County Administrator Matthew Coughlin, fewer meetings were held than the more regular meetings with County Administrators Brown and later Gilley.

11. It is my understanding and observation that County Administrator Gilley briefed all of the Commissioners equally.

III. EMS and Fire Department Dysfunction

12. During my time at Escambia County, it became clear that major problems existed in the EMS and Fire Departments.

A. Training Problems

13. In particular, no later than 2018 it was clear that EMS and Fire had a serious training deficiency.

14. I know County Administration was also aware of these problems because they came up during Commissioner Underhill's weekly meetings with the County Administrator.

15. In addition, Dr. Rayme Edler, then the Medical Director for EMS, personally raised training deficiencies with me, Commissioner Underhill, and the County Administrator as early as 2018 and then continuously thereafter.

16. At no time did I witness any steps taken to remedy, solve, or address these training problems.

17. In fact, I do not recall solutions even being discussed by County administration.

B. Billing Problems

18. In addition to the training deficiencies, I became aware of problems in the EMS Billing department as well.

19. Like the training problems, the billing issues were also a topic of conversation at Commissioner Underhill's weekly meetings with County Administration.

20. At least one EMS billing staffer, Lindsay Ritter, was concerned with the County's billing non-compliance.

21. For example, EMS charges were being coded improperly and there were ongoing software problems that resulted in inaccurate bills.

22. Ms. Ritter would often report to me that she was finding billing non-compliance and, more troublingly, she was being prevented from investigating and fixing the compliance issues.

23. For example, Leon Salter, who was then the Deputy Chief of EMS, would constantly assign Ms. Ritter tasks that would keep her busy and prevent her from investigating or fixing the billing errors and compliance issues she was finding and reporting and generally prevent her from fully identifying or remedying billing fraud.

24. At no time did I witness any steps taken to remedy, solve, or address these billing problems.

25. I believe the County changed billing software vendors at least in part to obfuscate and hide problems with billing.

26. I am aware that the County had to issue refunds for EMS services and am also aware that no leaders were held accountable for that event or the events that gave rise to the need to issue substantial refunds.

IV. Failed Internal Investigations

27. County Administrator Gilley was reluctant to fully investigate the issues in EMS and Fire Department out of concern about a simultaneous State of Florida investigation that appeared to be focused on the same or similar issues.

28. However, she did hire Jerry Maygarden to assist her in fact finding with respect to the EMS and Fire Departments.

29. In April 2019, and at the direction of the Board of County Commissioners, an "Ombudsman" Janice Kilgore, was hired to investigate issues in the EMS and Fire Departments.

30. At various times, Mr. Maygarden and Ms. Kilgore appeared to be in conflict with each reporting different facts and conclusions.

31. I found Mr. Maygarden substantially more credible than Ms. Kilgore.

32. Mr. Maygarden was an outsider that did not have any preexisting connections or loyalties to the people he was investigating.

33. Ms. Kilgore, on the other hand, was a prior leader of the EMS department and had personally hired or supervised many of the people she was tasked with investigating including the personnel who were arrested and charged with crimes by FDLE.

34. I believe her impartiality and credibility were negatively impacted by bias.

35. In fact, I believe that is why a majority of the Board of County Commissioners directed that she be engaged to add an official imprimatur to their desired outcome: not finding any wrongdoing.

36. Ms. Kilgore did appear to conduct a perfunctory and cursory investigation with the goal of reporting no serious issues. She appeared very reluctant to give any remarks disparaging the people or departments she was tasked with investigating.

37. My impression of these facts is based on my observations of her investigation and presentations which both appeared to be lacking in quality and depth.

V. Retaliation

38. I witnessed the County retaliate against Dr. Edler.

39. This retaliation took many forms including a general refusal of other County staff and leaders to adequately communicate with her even when otherwise required for the orderly operation of County business.

40. Dr. Edler was isolated and denigrated in private and in public including by the County Commissioners in public meetings.

41. The County Commissioners castigated Dr. Edler in plenary session and asked her questions that should have been directed to County Administration, not Dr. Edler and similarly suggested she have solutions, answers, or information that should have come from County Administration, not Dr. Edler.

42. County staff that attempted to do their jobs and help Dr. Edler in the normal course of County business or particularly with respect to uncovering the full scope of the training and billing problems within the EMS and Fire Departments were similarly retaliated against and sidetracked by their superiors with other and additional work tasks designed to leave them without the time or bandwidth to address the serious issues Dr. Edler and others had identified.

A. County Commissioner Coordination with Citizen Agitator

43. At least Commissioner Bergosh appeared to coordinate his attacks on Dr. Edler with Melissa Pino.

44. That observation is based on the fact that their public comments at Board of Commissioners meetings appeared well coordinated and synchronized.

45. In addition, Ms. Pino would communicate to County staff exactly the same topics and viewpoints that Commissioner Bergosh espoused from the dais and in less public settings.

46. I also know that Commissioner Bergosh frequently used his personal cell phone for County business to the near exclusion of his County provided phone.

47. Beginning in April or May 2019, Commissioner Underhill and I met with Dr. Edler more than once to discuss the ongoing harassment she was suffering from Ms. Pino.

48. In connection with these meetings, Commissioner Underhill reported the harassment to Matthew Coughlin who was then the acting County Administrator.

49. Based on the information provided by Dr. Edler and my own observations of what Ms. Pino posted online and spoke about in public forums, I easily drew the conclusion that Ms. Pino's harassment campaign directed against Dr. Edler was undertaken on behalf of and in coordination with County leaders and employees.

50. In May 2019, I referred Dr. Edler to attorney Greg Whibbs who I knew had previously sent a cease-and-desist letter to Ms. Pino after Ms. Pino directed a similar campaign of harassment and lies at another member of the community.

51. I continued to receive communications from Dr. Edler on an essentially continuous basis through which Dr. Edler reported and complained to me about the continuing harassment she was suffering from Ms. Pino and the County generally.

52. My observation was that the ongoing harassment was creating continuing and deepening distress for Dr. Edler.

B. Undue Pressure

53. Commissioner Bergosh, and others, applied undue and unwarranted pressure on Dr. Edler and on County Administrator Gilley.

54. The purpose of that pressure was an attempt to make Dr. Edler stop raising the alarm on the EMS and Fire Department issues she was rightly bringing to the attention of her superiors.

55. Based on my observations of them at public meetings, it appeared to me that a majority of the County Commissioners also attempted to run Dr. Edler out of money through lawsuits for which they refused to reimburse her legal fees.

56. With respect to Ms. Gilley, that pressure was an attempt to make Ms. Gilley fire, discipline, or otherwise cause Dr. Edler to cease reporting the problems that were facing the EMS and Fire Departments.

C. Impact of Retaliation

57. Dr. Edler contemporaneously communicated to me the toll the County's campaign of retaliation was having on her and I could see it for myself.

58. Dr. Edler complained to me about the retaliation approximately once or twice a week.

59. Before the retaliation began, I would have described Dr. Edler as full of energy and excitement. She appeared energized by the opportunity to serve the public as the County's EMS Medical Director.

60. I know from my conversations with her and my observations of her work that Dr. Edler took her obligations and commitments to the County and our citizens, especially people who might find themselves in need of emergency medical services, exceptionally seriously.

61. After the retaliation began, Dr. Edler's mood and physical health declined.

62. She was angsty, miserable, and ground down.

63. She lost substantial weight -- so much so that it was easy to observe in her face.

64. She looked sickly.

65. I communicated these observations about the impact the County's retaliation was having on Dr. Edler directly to County Administrator Gilley and to Commissioner Underhill.

66. I believe, though I am not sure, that Commissioner Underhill also discussed the retaliation against Dr. Edler with Ms. Gilley.

67. Despite all of this, the County failed to take appropriate remedial actions with respect to the dysfunction in EMS, the criminal prosecution of EMS staffers, and the retaliation against Dr. Edler.

Conclusion

68. If called upon to provide testimony about the above topics I would and could competently testify consistent with this declaration as to the facts set out herein.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on 3rd April, 2023

Jonathan Lee Owens
Jonathan Owens

STATE OF ~~FLORIDA~~ Virginia
COUNTY OF Arlington

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☒ online notarization, this _____ this 3rd day of April, 2023, by Jonathan Owens.

(NOTARY SEAL)

Jerod Coutts
(Signature of Notary Public-State of ~~Florida~~ Virginia)
Notarized online using audio-video communication

(Name of Notary Typed, Printed, or Stamped)

Personally Known _____ OR Produced Identification ☒ _____
Type of Identification Produced Drivers License

EXHIBIT C

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

UNITED STATES OF AMERICA
ex rel. RAYME M. EDLER, M.D.

Plaintiffs,

v.

Case 3:20-cv-05503 MCR-HTC

ESCAMBIA COUNTY,

Defendant.

**DECLARATION OF DARTH M. NEWMAN IN SUPPORT OF PLAINTIFF-
RELATOR'S RESPONSE TO DEFENDANT'S MOTION FOR
PROTECTIVE ORDER**

1. I am the founder and sole practitioner at the Law Offices of Darth M. Newman, LLC in Coraopolis, PA. I am one of the attorneys representing Plaintiff-Relator, Dr. Edler, in the above-captioned matter. I am an attorney in good standing with the State Bars of New Jersey and New York, and the Commonwealth of Pennsylvania. I have personal knowledge of the facts set forth in this Declaration, and if called as a witness for this purpose, I could and would testify competently under oath to them. I submit this Declaration in support of Plaintiff-Relator's Response to Defendant's Motion for Protective Order.

2. On March 15, 2023, Jonathan Owens, a non-party to this litigation and

former County employee, emailed me a single Excel file he represented contained text messages from County Commissioner Jeff Bergosh's personal cell phone.

Counsel did not request this file from Mr. Owens, and we did not know in advance that he would be sending it.

3. Mr. Owens represented to me that he came by the Excel file innocently.

4. Dr. Edler's attorneys have sequestered the file and proceeded carefully. Shortly after coming into possession of the file, they notified defense counsel. Dr. Edler herself has never had access to and has not reviewed the file in any way. I was the only one of her Counsel to receive the file, and have not forwarded it to the co-counsel firms in an accessible format.

5. When I sent the Excel file to the County, I password protected it and have not shared the password with co-counsel. Nobody on Dr. Edler's co-counsel team has substantively reviewed the file.

6. Mr. Owens told me that he saw Dr. Edler referenced in the Excel spreadsheet.

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 21st day of June, 2023

s/Darth Newman

Law Offices of Darth M. Newman LLC

Darth M. Newman

LAW OFFICES OF DARTH M. NEWMAN LLC

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Coraopolis, PA 15108

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darth@dnewmanlaw.com

(admitted pro hac vice)

EXHIBIT D

EXHIBIT D

UNITED STATES OF AMERICA, ex rel. RAYME M. EDLER,
M.D., Plaintiffs,
v.
ESCAMBIA COUNTY, Defendant

Case No. 3:20cv5503-MCR-HTC
United States District Court, N.D. Florida

Filed August 25, 2023

Counsel

Jonathan Evan Kroner, Jonathan Kroner Law Office, Hollywood, FL, Kathryn Wilburn Drey, US Attorney, Pensacola, FL, Mary Ann Lane Couch, DOJ-USAO, Pensacola, FL, Marie Armstrong Moyle, DOJ-USAO, Tallahassee, FL, for Plaintiff United States of America.

Darth M. Newman, Pro Hac Vice, Law Offices of Darth M. Newman, Coraopolis, PA, Gerald Charles Pierre Robinson, Grace Irene Chanin, Matthew H. Morgan, Rebekah L. Bailey, Nichols Kaster PLLP, Minneapolis, MN, Jonathan Evan Kroner, Jonathan Kroner Law Office, Hollywood, FL, for Plaintiff Rayme Edler.

Katherine Laura Gudaitis, Margaret Hood Mevers, Stephanie Pidermann, Lydecker LLP, Miami, FL, for Defendant.

Cannon, Hope T., United States Magistrate Judge

ORDER

*1 Plaintiff-Relator Dr. Rayme M. Edler ("Dr. Edler") has filed this False Claims Act Qui Tam ("FCA") action against Escambia County alleging, among other things: (1) the County *falsely billed various government healthcare programs for Emergency Medical Services ("EMS") that were carried out by unlicensed personnel, in contravention of applicable law and regulation ("Count I")* and (2) the County submitted false claims to the federal government, namely, by miscoding the level of service provided ("*Count II*").^[1] Count II was added in the Second Amended Complaint, ECF Doc. 59, and is subject to a pending motion to dismiss, ECF Doc. 91.

This matter is before the Court on two discovery motions, one filed by Dr. Edler and one filed by the County. The first motion is Dr. Edler's motion to compel and for sanctions against the County arising from a discovery dispute that is more than a year old. ECF Doc. 106. The second is the County's motion for protective order relating to an excel spreadsheet containing text messages belonging to Commissioner Bergosh that the County alleges was improperly provided to Dr. Edler's counsel by a former County employee.^[2] ECF Doc. 112. All motions have been fully briefed and are addressed below. See Responses, ECF Docs. 113, 115, 121, 126, 128.^[3]

I. MOTION TO COMPEL

The motion to compel relates to three discovery requests: (1) Request Number 1, of Dr. Edler's Third Requests for Production ("RFPD III-1") (which is also the subject of Dr. Edler's motion for sanctions, infra Section II); (2) Request Number 6 of Dr. Edler's Fourth Requests for Production ("RFPD IV-6"); and (3) Request Numbers 1, 2 and 3 of Dr. Edler's Fifth Requests for Production ("RFPD V1-3"). For the reasons discussed below, the Court finds the motion to compel should be GRANTED IN PART.

A. RFPD III-1 and IV-6

*2 In November 2021, Dr. Edler served a third set of requests for documents on the County, seeking, among other things, claims data, work hour reports, dispatch records, and patient records from 2016 to present, which Dr. Edler

subsequently agreed to limit to 12 employees. See RFPD III-1. The 12 employees had been identified by law enforcement as having provided ambulance services without the mandated minimal training and certifications. The County initially objected to providing this information, primarily on the ground that it was overly burdensome. Specifically, the County argued that just 8 employees alone resulted in over 24,180 calls and that it would take over 4,000 hours of personnel time for the County to go through each record for the information sought.

Although Dr. Edler initially filed a motion to compel, ECF Doc. 49, the matter was never addressed by the Court because the parties jointly requested the Court cancel the hearing on the motion and submitted a consent proposed order overruling the County's objections and requiring the production within 14 days or, alternatively, in lieu of a production, the parties could enter into certain stipulations.^[4] ECF Docs. 60, 60-1. Although the Court did not adopt the proposed order verbatim, it did overrule the County's objections and ordered the County to produce documents in 14 days (by October 4, 2022). Nonetheless, now almost a year later, this same discovery dispute is back before the Court.

When the County agreed to the consent order, the County believed that it could work with its prior database provider, Zoll, to run queries on the existing database for the information being requested by Dr. Edler. It appears, however, that the Zoll reports did not provide all the information expected. Namely, claims data that had been stored by the County's prior database provider, ESO, which relate to about a 6-month period, was not included. Additionally, Dr. Edler believes the work reports and dispatch records are incomplete, including that the information did not include all government payors. Thus, Dr. Edler moves to compel responses to RFPD III-1, as promised by the County, and also moves for sanctions for the County's failure to comply with the Court's September 30, 2022 Order.

On May 30, 2022, Dr. Edler served a Fourth Request for Production, seeking the same information as in Request III-1, for 5 additional employees. See Request IV-6. Although these requests were not a part of the Court's September Order, they are at issue here and the alleged deficiencies are the same as with RFPD III-1.

Under Federal Rule of Civil Procedure 37, "a party may move for an order compelling disclosure or discovery." Fed. R. Civ. P. 37(a)(1). Under Federal Rule of Civil Procedure 26(b)(1), "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). As an initial matter, the County does not dispute the relevance of the information sought in RFPD III-1 or RFPD IV-6. And as discussed above, although the County initially argued the discovery was not proportional to the needs of the case, the Court overruled that objection (with the County's agreement). Thus, what remains in dispute is not whether the motion to compel as to these requests should be granted (because it should), but simply when and what the County must do to comply with its discovery obligations.

*3 At the hearing, counsel for the parties represented that they believe they have reached some solutions with regard to the information requested in RFPD III-1 and VI-6. Based on the representations of the parties at the hearing, and to ensure the Court does not see this issue again months down the road, the parties shall strictly comply with the following directives as to the categories of documents requested in RFPD III-1 and IV-6:

1. Work hour reports

The County shall have fourteen (14) days of the date of this Order to produce any work hour reports which may be missing or are incomplete. The Court understands the County believes the Zoll reports it has already produced include the work hour reports for all relevant time periods for the 17 requested employees and that there is nothing else to produce. Certainly, if that is the case, the Court cannot compel the County to produce records or information that do not exist. However, the County should be aware that if Dr. Edler proves otherwise after taking a Rule 30(b)(6) deposition of a Zoll representative,^[5] then the Court may reconsider the imposition of sanctions. Thus, Dr. Edler shall have fourteen (14) days after conducting the 30(b)(6) Zoll deposition to file a renewed motion to compel as to any work reports that it believes remain missing or are incomplete. If no such motion is filed, the Court will consider this issue RESOLVED.

2. Dispatch records (CAD)

The County shall have fourteen (14) days of the date of this Order to produce to Dr. Edler the long-form Zoll summary reports, which the County's counsel represented is currently in counsel's possession, and the short summary reports, which have yet to be generated. Dr. Edler shall have fourteen (14) days after conducting the 30(b)(6) Zoll deposition to file a renewed motion to compel as to any missing or incomplete dispatch records. If no such motion is filed, the Court will consider this issue RESOLVED.

3. Claims information

As the Court understands this issue, the Zoll reports the County produced contain incomplete claims information because it did not include the ESO data and, also, did not include all government payors. Dr. Edler believes the issue can be resolved by having Zoll remove the employee filters when running claims information and by adding additional payors identified by Dr. Edler. The County believes this issue can be resolved by providing a statistical sampling of the ESO data and comparing it to the Zoll data.

Within fourteen (14) days of the date of this Order the County shall provide the statical sampling of ESO data, referenced at the hearing, to Dr. Edler and within seven (7) days of receipt of that information, Dr. Edler shall advise the County whether such information is sufficient and, if not sufficient, shall meet and confer regarding alternative means. If the information is not sufficient and the parties are unable to agree as to a different approach for production, the County shall run the queries as suggested by Dr. Edler to omit the employee filter and to add the missing government payors and shall produce the reports fourteen (14) days after the meet and confer.

B. RFPD V1-3

*4 On December 22, 2022, Dr. Edler served a Fifth Request for Production seeking the same type of information i.e., patient care records, dispatch records, and billing records, but this time not limited to specific employees, and going back a 13-year period. See Request V-1 to 3. These requests pertain to Count II of the Second Amended Complaint, which charges the County with miscoding services provided. According to Dr. Edler, this broader request is necessary for two reasons: (1) the limitation to 17 employees may have altered the data that was produced and (2) broader information is needed for Count Two.

The County argues these requests amount to nothing more than a fishing expedition as Dr. Edler has no personal knowledge on which to base Count II. This argument, however, goes to the merits of the claim but, "as a general rule, a party may not resist discovery relating to a particular claim by arguing the claim lacks merit." See *Suever v. Connell*, 2008 WL 906423 at *12 (N.D. Cal. Apr. 1, 2008). As discussed during the hearing, until the Court dismisses Count II, it remains a claim in this litigation and Dr. Edler is entitled to discovery on the claim. See Fed. R. Civ. P. 26(a).

The County also argues the production of responsive information is unduly burdensome. When a party raises an unduly burdensome objection to the production of documents, the objecting party must submit evidence that reveals the nature of the burden. See *Trinos v. Quality Staffing Servs. Corp.*, 250 F.R.D. 696, 698 (S.D. Fla. 2008) ("Additionally, courts should only limit discovery 'based on evidence of the burden involved, not on a mere recitation that the discovery request is unduly burdensome.'"). The County, however, was unable to provide any specifics to support its burden argument. Although the County provided an affidavit from Shandra Jenkins, the County's EMS Billing Manager, in support of its opposition, the information in that affidavit is based on having individual employees review each record in the database for the requested information and does not consider whether a query can be run for the information. ECF Doc. 115-1.

Indeed, the County was not able to provide the Court with information about how much time or expense it took to run the Zoll reports limited to the 17 employees or evidence to rebut Dr. Edler's position that, while the results may be more voluminous, the same (if not less) effort is required to run a Zoll report for all employees (limited only by government payee) as to limit the query to certain employees. In other words, while the volume of information

produced may be much greater when not limited to a specific employee, it is not clear that the time spent running queries is greater.

While the Court agrees with Dr. Edler that the County has not shown that the requests are unduly burdensome, Dr. Edler's counsel also recognized that Dr. Edler might be able to narrow the requests or better understand what compromises might be possible with regard to the production after she has had an opportunity to depose a 30(b)(6) representative regarding the Zoll reports. Thus, given the proportionality standards^[6] which the Court must consider in deciding discovery issues, the Court finds it will be more judicially efficient to have the parties further vet this issue.

*5 Therefore, with regard to RFPD V1-3, the parties shall comply with the following directives:

- Within thirty (30) days of the date of this Order, Dr. Edler shall depose a 30(b)(6) representative regarding the Zoll reports and data.
- Within seven (7) days of the date of the deposition, the parties shall meet and confer regarding ways to narrow RFPD V1-3 or ways in which the information can be timely produced. Any agreement as to the production of information responsive to these requests must include a requirement that the production be made within thirty (30) days of the deposition.
- If the parties do not reach an agreement during their meet and confer, then within fourteen (14) days of the date of the deposition, Dr. Edler shall file a renewed motion to compel.
- If the parties reach an agreement in the meet and confer, but upon review Dr. Edler determines the production remains insufficient or the County did not comply with the agreement, then Dr. Edler shall have fourteen (14) days after production is made to file a renewed motion to compel.
- The Court will consider the issues as to RFPD V1-3 fully RESOLVED if no motion is filed within the times set forth above.

II. Request for Sanctions

Dr. Edler asks the Court to sanction the County for failing to comply with the Court's September 30 Order. Under Rule 37(b)(2)(C), whenever a party disobeys a court order, "the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(b)(2)(C). District courts have broad discretion to fashion appropriate sanctions for violation of discovery orders. See e.g., *Malautea v. Suzuki Motor Co., Ltd.*, 987 F.2d 1536, 1542 (11th Cir. 1993).

Exercising that discretion here, the Court does not find sanctions to be appropriate at this time because the evidence presented by both parties suggests that the County tried, albeit unsuccessfully, to comply with the Court's Order. The County was in communications with Dr. Edler regarding the Zoll reports as well as whether the parties could agree to certain stipulations that would alleviate the need for the discovery sought. Moreover, although the Court required the production to be made within fourteen (14) days, Dr. Edler did not seek relief from the Court for the County's non-compliance until June 2023, more than eight months after the County's noncompliance.

The Court will add one caveat to its ruling – the County has had long enough to figure out how to respond to relevant discovery requests and it is time for these discovery issues to be laid to rest. While the County may not want to do it, it may very well be at the point where the County simply needs to transfer the data to Dr. Edler's counsel and let them figure out how to extract what they need. Thus, while the Court does not find sanctions to be appropriate now, that may not be the case if there continues to be delays.

III. Motion for Protective Order

*6 In addition to the parties' dispute over Dr. Edler's discovery requests, another issue has arisen involving text messages belonging to County Commissioner Jeff Bergosh. As alleged in the County's motion for protective order, Jonathan Owens, a former County employee, improperly (and possibly illegally) obtained an excel spreadsheet containing text messages that were downloaded from Commissioner Bergosh's cell phone to the County's server and provided that excel spreadsheet to Dr. Edler's counsel.[7] The County seeks to prevent Dr. Edler from reviewing the information or using it in discovery and asks that Dr. Edler be ordered to destroy any and all copies of the "potentially illegally acquired text messages."

Dr. Edler, on the hand, argues she should be allowed to retain and use the excel spreadsheet because neither she nor her counsel engaged in any improper conduct to obtain the spreadsheet; it is disputed as to how Owens came into possession of the spreadsheet; and it is a document that counsel obtained outside of discovery. Recognizing, however, that there may be privileged information or personal identification information as defined in Fla. Stat. § 817.5685, Dr. Edler's counsel immediately notified the County's counsel of the existence of the spreadsheet and asked counsel to redact such information.[8] Dr. Edler's counsel also has not reviewed the spreadsheet.

The County filed a motion for protective order under Federal Rule 26 seeking to have the spreadsheet destroyed. Under Rule 26, upon motion by a party or by a person from whom discovery is sought, and for good cause shown, [9] the Court may enter a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Fed. R. Civ. P. 26(c)(1)(G).

As an initial matter, Rule 26 does not apply because the spreadsheet was not obtained during discovery. See e.g., *Lahr v. Fulbright & Jaworski, LLP*, 1995 WL 17816334 (N.D. Tex. Oct. 25, 1995) ("A court may not issue a Rule 26 protective order to control documents obtained outside the court's formal discovery process."), *aff'd* *Lahr v. Fulbright & Jaworski*, 1996 WL 34393321 (N.D. Tex. July 10, 1996). In *Lahr*, the district court reversed the magistrate judge's entry of a protective order precluding the use of handwritten notes that a third party stole and provided to a party in an employment discrimination case. *Id.* Similarly, in *In re Rafferty*, 864 F.2d 151, 155 (D.C. Cir. 1988), the district court reversed a magistrate judge's entry of a protective order limiting the disclosure of a document which had been improperly obtained, finding that the employers could not "use the happenstance of a discovery proceeding to place under a protective order materials not obtained through discovery." *Id.* at 155.

*7 That, however, does not mean the County is without recourse. As the Texas court held in *Lahr*, a district court may nonetheless impose restrictions on the use of such information under its inherent power to control the litigation. See *Lahr*, 1996 WL 34393321, at *3 ("The court's power to remedy unfair litigation practices and preserve the judicial integrity is broader in scope). Thus, the Court may preclude or place other limitations on the use of a document under its inherent powers even if the document was not obtained through discovery. *Smith v. Armour Pharm. Co.*, 838 F. Supp. 1573, 1578 (S.D. Fla. 1993) ("A bright-line rule prohibiting a court from regulating the use of information or documents obtained through means other than discovery in the pending proceeding would result in inequitable consequences and could undermine the integrity of a court's judicial proceedings."); see also *In re Shell Oil Refinery v. Shell Oil Co.*, 143 F.R.D. 105 (E.D. La. 1992) (granting protective order where the PLC communicated with a current Shell employee and "surreptitiously obtained from this employee propriety documents belonging to Shell").

Here, the County seeks a protective order for two reasons. First, the County argues the spreadsheet has not been authenticated and could have been altered. Second, the County argues Owens obtained the spreadsheet illegally or through improper means. Whether the spreadsheet has been or can be authenticated does not determine whether it can be obtained during discovery or retained by Dr. Edler.[10] See, *supra*, fn. 2. Also, it is unclear how Owens came into possession of the spreadsheet and, as of this writing, Owens has not been charged with any illegal conduct. [11] And it is undisputed that neither Dr. Edler nor her counsel engaged in any improper conduct to obtain the spreadsheet. Those arguments, therefore, do not advance the ball. Notably, the County does not argue the spreadsheet does not contain relevant messages[12] and concedes it contains messages that would fall under the Florida Public Records Act, Fla. Stat. § 119, et seq.

Nonetheless, when determining whether the Court should intervene in these circumstances, the Court must "balance the scales" to ensure that it does not condone or encourage litigants or any person to use illegal or improper means to obtain information, whether during or outside of discovery, to gain an unfair advantage, while at the same time not

unnecessarily preventing a party from accessing information to which it is entitled. See *In re Shell*, 143 F.R.D. at 108 (“What matters is balancing the scales.”). In “balancing the scales,” here, the Court finds some protection of the spreadsheet is required and imposes the following conditions on Dr. Edler’s use and retention of the spreadsheet in discovery.

First, as agreed to by Dr. Edler, the spreadsheet shall be marked CONFIDENTIAL and no information in the spreadsheet shall be shared with anyone outside this litigation or used outside this litigation.[13] The Court will not hesitate to sanction any person or party who violates this Order.

Second, within seven (7) days of the date of this Order, the County shall redact all privileged information as well as personal identification information as defined in Fla. Stat. § 817.5685 from the spreadsheet that was provided to the County from Dr. Edler, and provide the redacted spreadsheet to Dr. Edler, along with a privilege log identifying what was redacted.

*8 Third, the parties shall then have seven (7) days after the redacted spreadsheet and privilege log are provided to meet and confer regarding which messages are (1) relevant to this litigation or (2) involve County business and thus would be subject to production under the Florida Public Records Act, Fla. Stat. § 119. The County shall redact any text messages which the parties jointly agree do not fall into either category. If the parties are able to agree on what should be redacted, then the County shall provide a second redacted spreadsheet to Dr. Edler redacted for (1) privileged information, (2) Fla. Stat. § 817.5685 information, and (3) mutually agreed upon clearly irrelevant and non-public information. That second redacted spreadsheet will be the spreadsheet Dr. Edler can use in discovery going forward and Dr. Edler’s counsel shall immediately destroy other copies of the spreadsheet in her possession, custody, or control.

If, however, the parties are unable to agree on all redactions i.e., the parties dispute whether a message is relevant or a public record, then the parties shall jointly submit the list of disputed text messages to the Court for in camera review, and identify the nature of the dispute i.e., “Relator contends the message is relevant to show retaliation; County disagrees.” The disputed list of text messages shall be submitted in camera, by no later than twenty-one (21) days from the date of this Order. Until the Court makes a determination on the disputed text messages, which it will promptly do, Dr. Edler cannot use any of the disputed text messages in discovery.

The Court understands Dr. Edler believes relevance redactions are not appropriate because the spreadsheet is a document her counsel obtained outside discovery. However, other than for purposes of annoyance, embarrassment, or harassment, the Court can find no basis for why Dr. Edler would need information that is not relevant to her claims. Also, while Dr. Edler’s counsel did nothing wrong in receiving the spreadsheet and took the exact steps this Court would have expected upon receipt of the spreadsheet, the Court also cannot ignore that the text messages at issue include personal text messages that were on a personal cell phone, many of which were intended to be private conversations.[14] Indeed, in the line of FCA cases relied upon by Dr. Edler, the “misappropriated” document was relevant to, and used to support, the FCA claim. See e.g., *United States ex re. Gohil v. Sanoff U.S. Servc., Inc.*, 2016 WL 9185141, at *2 (E.D. Pa. Sept. 29, 2016) (recognizing strong public policy in favor of allowing relators to use documents, even if they have been misappropriated “in prosecution of FCA claims”) (emphasis added).

Here, even with this limited protective order, Dr. Edler will still be able to prosecute her whistleblower claims because she will have access to relevant information on the spreadsheet and by allowing Dr. Edler to review the spreadsheet, while keeping its contents confidential, Dr. Edler can be assured that the County is not redacting information that Dr. Edler contends is relevant. Thus, this limited protective order achieves a “balancing of the scales.”

Accordingly, it is ORDERED:

1. Dr. Edler’s Motion to Compel and for Sanctions, ECF Doc. 106, is GRANTED IN PART as set forth herein.
2. The County’s Motion for Protective Order, ECF Doc. 112, is GRANTED IN PART as set forth herein.



3. The County's Motion for Reconsideration, ECF Doc. 120, is DENIED.

DONE AND ORDERED this 25th day of August, 2023.

Footnotes

[1]

Each count also includes a claim of retaliation in contravention of the FCA.

[2]

After the motion for protective order was filed, the Court ordered the parties to submit the spreadsheet to the Court for in camera inspection. ECF Doc. 119. On the same day that the County sent the spreadsheet to the Court, the County also filed a motion for reconsideration asking for the Court not to review the spreadsheet because the spreadsheet had not been authenticated. ECF Doc. 120. Regardless of whether the spreadsheet has been authenticated, the Court cannot address the County's request for a protective order without seeing the spreadsheet. Moreover, discovery on the spreadsheet would be required before the Court can determine whether it is authentic. See *Brandnameswatches Int'l, LLC v. PNC Bank, N.A.*, 2018 WL 3089325, at *2 (S.D. Fla. Jan. 18, 2018). The motion shall, thus, be DENIED.

[3]

After the hearing, counsel for the County submitted a notice of supplemental authority (improperly docketed as a memorandum). ECF Doc. 128. As the Court was drafting this Order, Dr. Edler filed a response, ECF Doc. 129, and its own notice of supplemental authority, ECF Doc. 130. While the Court did not intend to, and does not recall, stating it was leaving the record open for further briefing, the Court has considered all late submissions in drafting this Order.

[4]

After the Zoll reports were produced, the parties discussed entering into certain stipulations to avoid having to produce additional documents. Dr. Edler requested the parties reach a stipulation as to the following: (1) an average claim amount for the government claims; (2) the percentage of calls that relate to government payors; and (3) the total number of calls per identified employee. The County agreed to the first two stipulations, but not the third. As to the third, the County argues it could not agree "at that time" because it did not have complete information and several of the employees at issue did not answer any calls. Although Dr. Edler asks that the Court go ahead and enter certain stipulations as to these matters as sanctions, for the reasons discussed in Section II, below, the Court finds sanctions to be unwarranted at this time. Moreover, as discussed at the hearing, Dr. Edler's requested stipulations would no longer streamline the discovery because Dr. Edler wants the stipulations and discovery. That does not mean, however, that the parties should not continue to see if they can streamline the disputed issues in this case prior to trial.

[5]

Dr. Edler sought, as a sanction, to be able to take the deposition of a representative regarding the Zoll reports. The County does not object to this deposition. And the Court finds that such a deposition is appropriate regardless of sanctions. As set forth in Section II.B., below, the parties shall conduct that deposition within thirty (30) days of this Order.

[6]

See Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.").

[7]

The spreadsheet was created when Commissioner Bergosh asked the County's IT personnel to download the contents of his personal cell phone prior to taking a trip out of the country. According to Commissioner Bergosh he did this because he knew there was some County business on the cell phone and wanted to preserve that information.

[8]

Despite being notified in March of the spreadsheet, the County did not talk to Dr. Edler about the spreadsheet until May.

[9]

"For good cause to exist, the party seeking protection bears the burden of showing specific prejudice or harm will result if no protective order is granted." *Huddleston v. Bowling Green Inn of Pensacola*, 333 F.R.D. 581, 584 (N.D. Fla. 2019) (citing *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210 (9th Cir. 2002)). "[B]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." See *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). Ultimately, the trial court has broad discretion to decide when a protective order is appropriate and what degree of protection is required. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984); *Phillips*, 307 F.3d at 1211.

[10]

The County argued that only Commissioner Bergosh has the "true" spreadsheet, but admitted that it had not compared what Commissioner Bergosh has with what Dr. Edler was provided.

[11]

Owens told the Pensacola News Journal he did not do anything illegal and a thumb drive with the text messages was left on his desk at the county office. ECF Doc. 126-1 at 4.

[12]

The Court found 85 instances of the word "Edler" on the spreadsheet.

[13]

The Court understands the Pensacola News Journal has obtained a copy of the spreadsheet. Although the *confidentiality of the spreadsheet may, thus, already be compromised, the parties and their counsel are nonetheless obligated by this Order to keep the information confidential.*

[14]

Even if there was no improper or illegal conduct involved, Commissioner Bergosh did not authorize any individual other than the IT personnel who downloaded the phone's contents to "access, view, copy, or distribute" his text messages or the contents of his personal cell phone. ECF Doc. 120-1.

EXHIBIT “E”

1 MR. GREEN: Thank you. Noted.

2 BY MR. GREEN:

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

5 A Correct.

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

9 A Wrong.

10 Q Wrong?

11 A Correct. Wrong. Yes. Yes, sir.

12 Q Okay. Why is that wrong? You don't --
13 explain that to me.

14 A Yeah. The job as an ethics investigator is
15 not involved in determining whether there's been a
16 violation or even probable cause for that matter. Our
17 report is strictly factual. We leave the determination
18 whether there's been probable cause issued or violation
19 up to our advocates.

20 They look at the law. They look at what's in
21 the report of investigation, the factual information in
22 the report, and then they go ahead and make a
23 determination of whether there's a probable cause or a
24 violation. The investigator does not do that. We are
25 an unbiased third party at that stage of the

1 desk at work, is that by use of their official position?

2 A I have no idea.

3 MR. BURNS: Objection as to form.

4 BY MR. GREEN:

5 Q And what's your opinion about that as an
6 investigator?

7 A I try not to --

8 MR. BURNS: Objection as to form.

9 THE WITNESS: Yeah. I try not to make
10 opinions as investigator. I've been at this for over 37
11 years, and we're not supposed to make opinions. We're
12 supposed to report facts.

13 BY MR. GREEN:

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

17 MR. BURNS: Objection as to form.

18 THE WITNESS: I have no opinion on that
19 whatsoever.

20 BY MR. GREEN:

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

25 A All I had was his radio telephone -- or his

1 radio talk show comments he made. He -- and during the
2 short period of time that that conversation happened on
3 the radio, he mentioned seven times that he found the
4 thumb drive on his desk in his county office. So that
5 was pretty compelling to me that that's what happened.
6 And that's what I reported.

7 Q Okay. So let's -- I'm going to show you
8 what's going to be marked as Exhibit 3.

9 (Exhibit 3 marked for identification.)

10 BY MR. GREEN:

11 Q And if you take a second and scroll through
12 this document, make sure -- well, you know what, this
13 one's probably going to take us a little while. We're
14 almost an hour in, and my blood pressure medicine's
15 starting to work and so is the coffee.

16 MR. GREEN: So I'm going to take a little
17 break, and let's get back on the record, say, 10:05,
18 11:05 for you guys. Does that -- that'll work?

19 MS. HADLEY: Okay.

20 MR. BURNS: Sure.

21 MR. GREEN: Okay. Great. Thanks. Be
22 right back.

23 THE PROCEEDINGS OFFICER: Okay. Hold on
24 one moment. Let me officially go off.

25 With no objection, we are going off the

1 Q And as you've testified previously, that
2 determination is to be made by the advocate, correct?

3 A Correct.

4 Q Who was Ms. Miller, correct?

5 A That is also correct.

6 Q So I'm going to go to -- let's go to Paragraph
7 16. In Paragraph 16 -- and you can look from your
8 report; probably easier to do that -- states:

9 "County Attorney Rogers advised that, on June
10 5, 2023, she sent a letter to First Judicial Circuit
11 State Attorney Ginger Bowden Madden, page 9 of the
12 complaint, requesting a criminal investigation involving
13 the unlawful taking of the Complainant's personal cell
14 phone data."

15 You see that paragraph?

16 A I do.

17 Q And then on the following page -- well, I
18 guess I want to get to the sentence -- the last sentence
19 of that page.

20 Ms. Rogers stated the FBI's investigation's
21 ongoing. She added that the county's Office of
22 Compliance and Ethics conducted its own investigation
23 into how Respondent obtained the complainant's cell
24 phone data. A review of the June 23, 2023, report of
25 investigation completed by the Office of Compliance and

1 Ethics reflects that a number of county staff were
2 interviewed. Ultimately, the investigation was unable
3 to provide any conclusive findings.

4 And that is making reference back to exhibit -
5 - I believe it was Exhibit 2 with respect to that Case
6 Number OCE 23-010, correct?

7 A Correct.

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

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

14 Q Okay. And then the next part of your report,
15 Exhibit A, would be the transcript for the news talk
16 radio conversation in which Mr. Owens was on the radio,
17 correct?

18 A Correct.

19 Q And what is the purpose of this transcript?

20 A It includes his references to where he came
21 into possession of Mr. Bergosh's telephone data.

22 Q And without reading every single line of this
23 thing, does it state in this transcript how Mr. Owens
24 used his official position to gain possession of the
25 cell phone data?

1 A Not that I recall.

2 Q And then let's see. Get to the other exhibit
3 real quick. See Exhibit B, gets into the declaration of
4 Mr. Owens as used in the Rayme Edler case, correct?

5 A Correct.

6 Q With respect to this, does it state anywhere
7 in this declaration of how Mr. Owens got into possession
8 of the cell phone data?

9 A I don't --

10 MR. BURNS: Objection as to form.

11 THE WITNESS: Yeah. I don't recall.

12 Without reading it, I -- I don't recall.

13 BY MR. GREEN:

14 Q Well, can you go ahead and read it and look
15 through there and tell me if you found that in there.
16 Because that'd be pretty important to your
17 investigation, wouldn't it?

18 A How he found the -- the data?

19 Q So let me ask it this way. If there was
20 information connected to how Mr. Owens came into
21 possession of the cell phone data and it was contained
22 in this exhibit, you would have notated that in your
23 investigative report, correct?

24 A Correct.

25 Q And so the absence of it states or tends to

1 show that nowhere in here in Exhibit B does it state how
2 he used his public office to get -- come into possession
3 of that data, correct?

4 MR. BURNS: Objection as to form.

5 THE WITNESS: Yeah. Again, without --
6 without reading it over, I don't recall.

7 BY MR. GREEN:

8 Q I'm assuming you did read Exhibit B of your
9 report.

10 A When I included it as an exhibit?

11 Q Yes, sir.

12 A Oh. Definitely.

13 Q Yeah.

14 A That was two years ago.

15 Q It feels longer. All right.

16 We'll go to Exhibit C of your report. This is
17 the declaration of Darth Newman. I believe he was the
18 attorney for Dr. Edler, correct?

19 A Correct. He was one of the attorneys.

20 Q She had a pile of them.

21 A She did.

22 Q She's actually my client before this.

23 A Oh. Really? Okay.

24 Q Yeah. On a separate matter. Yeah. So
25 anywhere in Attorney Darth's declaration, does it state

1 state in here, anywhere in this order, of how Mr. Owens
2 came to possession of the cell phone data?

3 MR. BURNS: Objection as to form.

4 THE WITNESS: Yeah. Again, without
5 reading it, I -- I really can't say.

6 BY MR. GREEN:

7 Q But based upon your prior testimony and
8 everything that's in your investigative report, had it
9 stated that, you would have included that in your
10 summary, correct?

11 A Correct.

12 Q And that's not in your summary, is it?

13 A Again, not that I recall.

14 Q So let's talk about this cell phone data. Did
15 you ever come into possession of the alleged cell phone
16 data?

17 A No.

18 Q So you investigated this matter pertaining
19 cell phone data, but you don't even know what the cell
20 phone data is?

21 A I know what it is according to the documents
22 that I read. I also had testimony from Mr. Bergosh who
23 told me what included. I believe Ms. Rogers also had
24 knowledge of what was in it, and she told me information
25 about what was included in it, but I did not want to

1 have a copy of it because then it sooner or later would
2 become public again, and I didn't think that was
3 probably the right route to take.

4 Q Public again. So your testimony today is the
5 cell phone data is a public searchable document,
6 discoverable?

7 MR. BURNS: Objection as to form.

8 THE WITNESS: No. That's not what I
9 said, sir.

10 BY MR. GREEN:

11 Q That is what you said. You said that it was
12 public again. So it's your position that the data was
13 public.

14 MR. BURNS: Objection as to form.

15 THE WITNESS: That is not my position.

16 BY MR. GREEN:

17 Q But that -- that's what you testified to.

18 A No, sir. You misunderstood what I said.

19 MR. GREEN: Madam Court Reporter, can you
20 read back his response?

21 THE PROCEEDINGS OFFICER: Sure.

22 (Readback as requested.)

23 BY MR. GREEN:

24 Q So as it stands today, Mr. Malone, it's your
25 position that this cell phone data was public at some

1 point in time?

2 MR. BURNS: Objection as to form.

3 THE WITNESS: Yeah. My statement
4 referred to information that was relayed to me by Mr.
5 Bergosh and by Ms. Rogers, and that portions of it had
6 been reported in the Pensacola News Journal, I believe.
7 So that's what I'm referring to when I said "again."

8 BY MR. GREEN:

9 Q Yes, sir. Can you hold on one second for me.
10 All right. So I think that pretty much does it as far
11 as your report.

12 Is there anything else in your report, if you
13 had to draft it today, that you would include in it
14 additionally?

15 A Anything I would include in it? Well, I've
16 since learned that Mr. Owens has changed his story on
17 how he came by the -- the phone data. So certainly, if
18 I'd known that at the time, I would have included it.

19 Q How did -- where did you hear that Mr. Owens
20 changed his, quote, unquote, story?

21 A From Mr. Burns. Also, the state attorney's
22 document that I referred to in the file that references
23 that. State attorney's document, September 4, 2024.

24 Q All right. We'll get to that here in a
25 second. So let's put that on the back burner. Let's

1 allegedly was violated?

2 A Again, it's not my decision to make.

3 Q That's your answer.

4 A My answer says that it's just overbroad.

5 Q So how did Mr. Owens confer a benefit upon
6 himself or another person?

7 MR. BURNS: Objection as to form.

8 THE WITNESS: Again, I -- I have no
9 opinion on that.

10 BY MR. GREEN:

11 Q I'm not asking for your opinion. I'm asking
12 you because you were the one that swore in an affidavit
13 to this answer.

14 So how is it overbroad and unduly burdensome?

15 A Because of the size of the data.

16 Q But yet the State of Florida through your
17 office is going after Mr. Owens, and potentially, he
18 could be barred from ever running for public office,
19 correct?

20 MR. BURNS: Objection as to form.

21 THE WITNESS: I don't believe it's
22 correct to say we're going after him.

23 BY MR. GREEN:

24 Q You're not? Are you not pursuing an action
25 against him?

1 MR. BURNS: Objection as to form.

2 THE WITNESS: Yeah. Again, I really
3 don't know. I'd have to consider that for some time.

4 MR. GREEN: Let me take a quick second,
5 go over my notes real quick. Okay? Tell you what,
6 let's go off the record and come back in at 12:20 your
7 time, 11:20 my time. Sound good?

8 THE WITNESS: Yeah.

9 MR. BURNS: Yeah. That's fine with us.

10 MR. GREEN: Okay.

11 THE PROCEEDINGS OFFICER: Okay.

12 With no objection, we are going off the
13 record at approximately 12:10 p.m., Eastern Time.

14 (Off the record.)

15 THE PROCEEDINGS OFFICER: We are going
16 back on the record at approximately 12:22 p.m., Eastern
17 Time.

18 MR. GREEN: All right. I'm going to go
19 ahead and close out that exhibit.

20 BY MR. GREEN:

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

25 A Correct.

1 Q And you will not be testifying as to how Mr.
2 Owens violated that statute, correct?

3 MR. BURNS: Objection as to form.

4 THE WITNESS: I don't -- testifying when
5 and where?

6 BY MR. GREEN:

7 Q At the hearing for this matter.

8 A I don't know if I'm going to be called as a
9 witness or not.

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

13 A The advocate, I would assume.

14 Q How many of these DOAH hearings have you gone
15 through?

16 A In my career?

17 Q Yes, sir.

18 A I'll hazard a guess. 40. And it's merely a
19 guess.

20 Q In your experience, have you ever testified --
21 have you testified?

22 A Yes, yes.

23 Q In what capacity?

24 A As the investigator for the Commission on
25 Ethics.

EXHIBIT “F”

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

In re: Jonathan L. Owens,

**DOAH Case No. 25-2355EC
Complaint No.: 23-231**

Respondent.
_____ /

**COMMISSION'S SUPPLEMENTAL ANSWER TO RESPONDENT'S FIRST SET OF
INTERROGATORIES**

The Commission on Ethics, by and through its undersigned counsel, hereby provides this supplemental answer to Respondent's First Set of Interrogatories served on May 29, 2025. The Commission's representative who executed this answer has provided information that is available to the Commission. The affiant's signature on this supplemental answer, therefore, should not be deemed to indicate that he or she has personal knowledge of the information stated below.

General Objections

1. The Commission objects to Respondent's interrogatories to the extent they seek confidential, proprietary, or privileged information, including, but not limited to, attorney/client communication or work product.
2. Objections to individual interrogatories are included in the Commission's responses thereto.

Without waiving said objections, the Commission responds as follows:

SUPPLEMENTAL ANSWER TO INTERROGATORIES

4. Describe in detail, with particularity, each fact that forms the basis of the Commission's allegation that Respondent conferred a benefit to other persons by furnishing the Cell Phone Data.

ANSWER: The Judge in Dr. Edler's case against Respondent's agency ordered attorneys for each party to review all of the data to reach an agreement about what was admissible and what was not. The data included privileged communications about the lawsuit between Mr. Bergosh and the County Attorney. Dr. Edler's attorneys received privileged communications between Mr. Bergosh and the County Attorney pertaining to the lawsuit from Respondent. Dr. Edler received the benefit of a multi-million dollar settlement of the case.

AFFIDAVIT

STATE OF Florida

COUNTY OF Leon

I, Robert Malone, having this day personally appeared before the notary public whose signature and seal are affixed to this document, and either being either (check one) personally known to the notary public or having produced the following identification personally known and not otherwise being a person whose document the notary public is prohibited from notarizing under Section 117.05(6), Florida Statutes, duly swear, depose and state that I have executed the foregoing interrogatories and that the responses are true and correct.

SIGNATURE: [Signature]

PRINT NAME: ROBERT G. MALONE

PRINT TITLE: Investigator

Sworn to and subscribed before me this 11th day of March, 2026.

[Signature]
Notary Public, State of _____

Print Name: _____

My Commission Expires: _____

