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Sent: Wednesday, May 13, 2020 4:44 PM
To: Jackson, Brenda; Diamond, Rory; Wilson, Scott; DeFoor, Randle
Cc: Gabriel, Jason; Sidman Martin, Margaret
Subject: RE: COJ/JEA - Revised Status Update

Special Investigatory Committee Members,

This is an update since our May 4 report.

JEA's E-mail Document Production. Our last report addressed concerns we had with JEA's document productions to date. We discussed those concerns with OGC after the May 5 meeting, and JEA produced approximately 197,000 additional documents in the Relativity database yesterday (bringing the total number of documents produced in Relativity to 366,954).

We are now reviewing those documents. We anticipate it will take approximately a month to review these 366,954 documents. Additional searches may be necessary if we identify gaps or missing information during our review.

The vast majority of JEA's documents thus far are emails. As described below, we have not yet received JEA's production of documents and information from other sources, including mobile phones, the Intralinks data room, and shared workspaces.

JEA's Document Production from Non-email Sources. We have requested but do not yet have a date by which JEA expects to produce documents and information from the following sources:

- Mobile devices: The Committee's document request requires JEA to produce communications from mobile devices of JEA's employees. The Committee's requests include text messages, as well as other communications using messaging apps such as GroupMe, Confide and Signal. We requested that JEA retain a mobile forensics expert named Mark Lanterman who has recent experience collecting mobile device data from JEA's senior leadership team members. On April 27, 2020, JEA's outside counsel, Hill Ward, told us that JEA is "making a targeted collection text messages from custodians who have identified the possibility of having messages related to the Inquiry Matters in your requests." Since April 27, 2020, we have not received any further updates regarding the scope or timing of JEA's production of documents from mobile devices. We are concerned that JEA did not timely preserve—and therefore will be unable to produce to the Committee—information from mobile devices of employees such as Melissa Dykes prior to their departure from JEA.
- Data rooms: The Committee requested information from JEA regarding the use of electronic data rooms by JEA and its attorneys and consultants before and during the ITN process [e.g., who had access, what information was added (and by whom) and what information was removed (and by whom)]. We have asked Hill Ward to provide a date by which the Committee can expect to receive data room information, but we do not yet have a date.

- Diligent: JEA uses a tool called Diligent to organize materials for JEA Board Meetings. We have asked Hill Ward to provide a date by which the Committee may expect to receive this information.
- Network file shares: JEA employees use a combination of public file shares (SharePoint) and personal folders to store information. Because of the large volume of information unrelated to Inquiry Matters, Hill Ward conducted a targeted collection from the network file shares based on information obtained by Hill Ward during custodian interviews. We have not received this information or the timing of it.
- Oracle: JEA’s financial and accounting information, including the general ledger and payroll records, is stored in a system called Oracle. This system likely contains information related to expenses for undisclosed vendors or meetings attended by Aaron Zahn or other Senior Leadership Team members, including those at White Oak Plantation, the Ponte Vedra Inn and Club Continental. This system may also have information about JEA’s anticipated switch to using ADP for payroll services of “appointed employees.” Hill Ward has not provided us with any information regarding the collection or date of production of information from Oracle.

Preliminary Document Review. In preparation for our interviews with Melissa Dykes, Lynne Rhode, and Joe Orfano, we have reviewed and identified several dozen insightful documents. As an example, Lynne Rhode provided Jessica Lutrin, a Pillsbury attorney, a draft performance unit allocation policy on August 16, 2019. (Attachment 1 at pp. 2-3). Lutrin, in turn, provided comments, questions, and suggested edits to the policy. (Attachment 2). These documents indicate how the SLT intended to implement the PUP after the JEA Board approved the PUP concept at its July 23, 2019 meeting:

- The proposed policy delegated to JEA’s CEO, Aaron Zahn, authority to allocate performance units to JEA employees subject to specified parameters. (Attachment 1 at p. 1). The policy further noted that other authority “may” be delegated to “JEA’s senior executive management.” (*Id.* at p. 1). Lutrin warned Rhode that (i) compensation committees “typically” adopt resolutions to delegate authority to CEOs (Attachment 2 at p. 1) and (ii) “[t]he CEO should not have the ability to determine his allocation [of performance units]” (*id.* at p. 1).
- The proposed policy required the allocation of performance units based on (i) the employee’s position level and (ii) the employee’s job performance. (Attachment 1 at p. 1, no. 1). The policy further stated, “No position level shall be allocated in excess of [20%] of the next highest position level allocation.” (*Id.* at p. 2, no. 9). As a result, it is unclear at this time whether the PUP would have limited the number of performance units JEA’s CEO, Aaron Zahn, could have purchased.
- The proposed policy required 100% of 100,000 performance units to be allocated to JEA employees. (Attachment 1 at p. 2, no. 4). Moreover, Ryan Wannemacher stated during

his PUP presentation at the JEA Board meeting on July 23, 2019 that “the [PUP] plan document contemplates a program; however, the 30,000 is all that would be authorized under the current fiscal year performance period.” (Video available [here](#) at 02:53:24). Similarly, the presentation materials discussed by Wannemacher at the Board meeting on July 23, 2019 “recommended” the allocation of only 30,000 performance units during the first three-year performance period. (Available [here](#) at p. 278 of 352).

- The proposed policy required unpurchased performance units to be re-allocated “on a pro-rata basis[.]” (Attachment 1 at p. 2, no. 6). Lutrin warned, “Allocating all the PUs [performance units] and re-allocating PUs that are not purchased suggests that the * [PUP] is not long term which had initially been expressed as a concern.” (Attachment 2 at p. 2, no. 2).

We will share other documents with you after they have been cleared by OGC.

Objections by JEA Consultants. We recently learned that at least two critical JEA consultants, McKinsey & Co. and Willis Towers Watson, objected to JEA producing purportedly confidential, proprietary, or trade secret documents. We are working with OGC to address these objections and the objections asserted by the ITN bidders that are the subject of a preliminary injunction issued in pending state court litigation.

Witness Interviews. Here is our current schedule of witness interviews:

- Melissa Dykes’ lawyer, Hank Coxe, tells us Ms. Dykes will make herself available during the week of May 18. I will fix the date with Mr. Coxe this week.
- Ms. Rhode’s lawyer, Rut Liles, told us she will appear for a sworn interview. We are coordinating the date and manner of the statement with Mr. Liles.
- Joe Orfano has agreed to give a sworn statement on May 19.
- Stephanie Burch has agreed to give a sworn statement on June 11.
- Randall Barnes notified us his attorney will contact us.
- We have communicated with Robin Smith and he agreed to provide us this week dates for his interview.

Once we complete our document review and complete the sworn interviews you requested we will consult with you about next steps. When we have your direction in that regard, we will provide the Committee a draft budget for the completion of our work.

Presentations to Councilmembers. Councilmember Salem asked us to provide him a presentation regarding material documents we have identified to date. We will provide any Councilmember with a similar presentation, which is approximately on hour.

Please let me know if you have any questions.

Steve

Stephen D. Busey
Chairman

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