

OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE
117 WEST DUVAL STREET
SUITE 480
JACKSONVILLE, FL 32202
PHONE: (904) 255-5100



MEMORANDUM

TO: Tommy Hazouri, City Council President
Cheryl Brown, City Council Secretary/Director
Brian Hughes, Chief Administrative Officer
Jason Gabriel, General Counsel
Craig Galley, Assistant Information Technology Officer

FROM: Jon R. Phillips, Deputy General Counsel

RE: Special Investigative Committee's Issuance of Subpoena to Mr. Tim Baker
LITIGATION HOLD REQUIREMENTS

DATE: November 4, 2020

The Office of General Counsel is in receipt of letter correspondence from the law firm, Bishop & Mills, regarding the above-referenced matter. See attached Exhibit A, October 21, 2020 letter from Thomas E. Bishop, Esq. The purpose of this memorandum is to advise you regarding the preservation of the records related to this matter and any issues that may be raised in litigation regarding same, and to supplement your on-going efforts to preserve documents and electronic data under Florida's public records laws.

In accordance with Mr. Bishop's letter, all documents and things, whether paper or electronic, which relate to the Special Investigative Committee's issuance of a subpoena to Mr. Tim Baker or to any company or entity owned by Mr. Baker, must be maintained until such time as any potential dispute is concluded. This obligation is imposed and exists without regard to any document retention policy which may otherwise be in place. This also applies to former employees that would have knowledge of the issues and whose documents and information are in your or the City of Jacksonville's ("City") possession, custody or control.

Examples of the types of documents that must be maintained include, without limitation, correspondence, emails, memos, drafts, notebooks, handwritten notes, financial information, spreadsheets, marketing, advertising, videos, due diligence information, and promotional materials. In identifying and preserving electronic data, please keep in mind that "electronic data" includes, but is not limited to, all text files (including word processing documents and presentations), spreadsheets, email (and attachments), databases, calendars, computer system

activity logs, computer files, internet usage files, network access information, and information saved on any computer network, iPhone, or other mobile device, or found on any hard drive. The City's computer systems include, but are not limited to, all workstations, laptops, network servers, removable media, handheld devices, voicemail and backup tapes. Any questions as to what should be preserved should be resolved in favor of preservation and retention.

The preservation request should extend to all the related companies, affiliates, consultants and subsidiaries, and their employees and agents. Please communicate an instruction to all individuals you believe would have relevant information concerning the dispute that all electronic information, documents and things related to the issues alleged in complaint must be preserved. A form of written notice is attached hereto as **Exhibit B**.

Additionally, with regard to those individuals whose information is being preserved, please have disabled any "janitorial" functions, such as automatic deletion of email after a certain number of days, or automatic recycling of networks. One full back up or snapshot of key players' mailboxes, hard drives and network drives should be created as soon as practicable. All information related to these individuals should be preserved going forward and none should be destroyed.

We recognize that you already have obligations to preserve records and information, including ESI, which are made or received pursuant to law or ordinance or in connection with the transaction of official business by the City under Chapter 119, Florida Statutes. In an abundance of caution, however, we disseminate this litigation hold memorandum as the failure to preserve such information could result in extreme sanctions, including the striking of pleadings in any litigation that may ensue. Please let us know if you have any questions relating to this subject.

EXHIBIT A

BISHOP & MILLS
TRIALS & APPEALS

THOMAS E. BISHOP
DIRECT LINE: 904.446.2984
TBISHOP@BISHOPMILLS.COM

October 21, 2020

Via Electronic Mail and U.S. Mail

Consolidated Government of the City of Jacksonville
Care of
The Honorable Jason R. Gabriel
General Counsel
City of Jacksonville
117 W. Duval Street, Suite 480
Jacksonville, FL 32202
jgabriel@coj.net

Re: City of Jacksonville's Special Investigative Committee ("The Committee")

Dear Jason:

I write to you regarding the obligation of your clients to preserve any records and information, including electronically stored information ("ESI"), which relate to the work of The Committee. Now that The Committee intends to pursue the issuance of a subpoena to my client, Tim Baker, or to any entities owned by Mr. Baker, there is a likelihood that litigation over the validity of that subpoena will occur. This likelihood triggers an obligation by your clients to preserve any records or information they may possess relating to these matters. This would include by records of communications between them and any other person or entity, private or public, relating to the work of The Committee, relating to Tim Baker, BCSP, LLC, Data Targeting, Data Targeting Research, LLC, Lenny Curry, Brian Hughes, Sam Mousa, Aaron Zahn, Nextera Energy, Florida Power & Light and JEA.

As you know, ESI is a broad term which encompasses all electronic methods of storing information. Typical sources of ESI are data maintained in computer source codes, servers, databases, hard drives (including drives on all personal computers and laptops), other storage media (including but not limited to CD and DVD ROMs, removable flash drives, and memory cards), emails, cell phones, personal digital assistants (PDAs such as Palm Pilots), smart phones (such as iPhones, Android devices and BlackBerrys), including text messages, and messaging applications, transportation safety recording devices, digital voice recorders and dictation equipment, voicemail systems, and all backup tapes and safety devices relating to same, wherever located.

Please be advised that the preservation of ESI may also require the suspension (or to oversee the suspension of) the operation of any policies and/or systems which automatically delete, overwrite, or could otherwise render unavailable ESI as identified above. This includes routine tape backup procedures which recycle previously used tapes. Such policies and routines should be discontinued immediately.

Please take all steps necessary to ensure that your clients preserve all information in their possession, custody, or control that relates or may relate to the work of The Committee.

ESI should be retained and preserved in its "native format," i.e., the form in which it is accessed, created, or used in the ordinary course of business.

The above categories are intended to be illustrative and not an exhaustive list of information you should maintain. This includes, but is not limited to, email and other electronic communication, word processing documents, spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, and network access information.

We expect that you will commence appropriate efforts to preserve relevant documents and information dating back to at least 1 December 2017. The preservation obligations created by these matters are ongoing and continuous. For any electronic data created after this letter or for any electronic processing systems used after this letter, you must take the proper steps to avoid destroying information that may be relevant to these matters.

We also expect you to take all necessary steps to preserve information relating to these matters other than ESI. While this letter addresses your responsibilities relative to ESI, it should not be construed as limiting your obligation to preserve and maintain information from other sources.

Thank you for your attention to these matters and, of course, please do not hesitate to call if you have questions about this.

Sincerely,


BISHOP & MILLS

Thomas E. Bishop

TEB/sah/00077147.docx

EXHIBIT B

The City of Jacksonville may be involved in litigation with Mr. Tim Baker and/or any company or entity owned by Mr. Baker regarding the Special Investigative Committee's issuance of a subpoena to compel his testimony before the Special Investigation Committee and/or City Council. Any failure to preserve all paper records and electronic data may result in adverse legal consequences to the City.

The City is required to take immediate steps to preserve all paper records and electronic data that are relevant to this matter. Any paper records and electronic data (including duplicates) concerning the above-referenced matter through the present date must be preserved at all storage locations, including your office computer, home computers, and other portable electronic media such as iPhone, laptop, discs and thumb drives.

Please preserve all electronic data and paper documents, including drafts, e-mails and any other communications, related to this matter. Please immediately suspend the deletion (manual or automatic) of relevant electronic data from any location where you believe responsive data may be found. With respect to paper documents, please check all your office files and home files. Please immediately suspend the destruction of any responsive paper documents.

You may be contacted in the upcoming weeks by the City's legal counsel to determine if you have any responsive paper or electronic documents. If you feel that any person involved with this matter did not receive this directive, please advise Tiffiny Douglas Pinkstaff, Assistant General Counsel, at (904) 255-5072.