


**TO:** City Council Special Investigation Committee on JEA Matters  
**FROM:** Christopher Garrett, Assistant General Counsel   
Jon Phillips, Deputy General Counsel  
**SUBJECT:** Answers to Subpoena Enforcement Questions from the SIC  
**DATE:** November 6, 2020  
**CC:** Jason Gabriel, General Counsel  
Peggy Sidman, Deputy General Counsel  
Steve Busey, Special Counsel

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### Questions Asked

On October 12, 2020, the SIC voted to request the issuance of subpoenas by the Rules Committee to: Timothy Baker, Timothy Baker Consulting, LLC, Baker Law Group, PLLC, BCSP, LLC, Conventus, LLC, and Data Targeting Research, LLC (the “Witnesses”). On October 20, 2020, the Rules Committee voted to issue the subpoenas, which were then issued and served that same day. The subpoenas call for the Witnesses to appear before the SIC and provide testimony and requested documents on November 16, 2020 at 5:00pm. At the meeting of the SIC on October 26, 2020, CM Brenda Priestly Jackson (Chair) and CM DeFoor requested legal memoranda from OGC and Special Counsel addressing the following issues:

1. the available enforcement options if any of the Witnesses fails to comply with the subpoenas<sup>1</sup>;
2. the cost of further subpoena enforcement steps in the event of non-response;
3. whether there is any other way to get the desired information that the subpoenas are seeking; and,
4. whether the lack of full compliance with the subpoenas would prevent a full and complete report from being prepared.

### Enforcement Options

If any of the Witnesses fail or refuse to testify or provide documents requested to the SIC, the Ordinance Code identifies a procedure that may be used to enforce the subpoena, as follows:

Step 1 - Assuming a witness has appeared before the SIC but refuses to answer certain questions or provide required documents, the “chairman or vice-chairman shall (1) repeat the question to the witness and request that he answer it or (2) read from the subpoena duces tecum the item of evidence required to be produced and request that the witness forthwith produce the item.” Ord. Code § 134.108(a).

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<sup>1</sup> This is a likely scenario, as the Witnesses have asserted a number of objections to the enforceability of the subpoenas in a letter to the General Counsel dated October 26, 2020, which was delivered by OGC to the SIC and Special Counsel on October 27, 2020.

Alternatively, if the witness fails to appear or produce documents at all, it would be considered a refusal and Step 2 below could be commenced. Ord. Code § 134.108(d).

Step 2 – If the witness continues to refuse to respond to the inquiries, the chair or vice-chair of the committee will: (1) excuse the witness for the time being (if applicable); and (2) report the refusal to Council at its next meeting. Along with the report, a resolution must be introduced by the Committee for the issuance of an order by Council, directing the witness answer the question or produce the named evidence at the next committee meeting. Ord. Code §§ 134.108(a) & (b).

Step 3 – The Council’s order must then be served on the witness.

Step 4 – If the witness still refuses to appropriately respond to the inquiries pursuant to the Order of Council, the chair, vice-chair, or any other member of the committee, may refer the matter to the State Attorney and request that the non-complying witness be charged with a misdemeanor per section 5.09 of the Charter without any further Council action. Ord. Code § 134.108(c).<sup>2</sup>

Alternatively, we believe enforcement of the subpoenas, along with adjudication of the objections and defenses raised by the Witnesses, could be resolved through a civil action directed by Council or brought by the Witnesses.

### **Cost of Enforcement**

Enforcement could be accomplished through referral to the State Attorney or through a civil action. In the first instance, OGC would expect that minimal attorney time and cost would be required.

In the case of a civil action instituted by Council, there would be court costs, OGC attorney time, and fees from Special Counsel. Although OGC would work with Special Counsel to accomplish any enforcement action requested by Council, the primary driver of costs would be the amount of time Special Counsel must expend in pursuing enforcement. Special Counsel recommended and drafted the subpoenas and document requests based on the investigation they have been performing for the SIC. Their explanation and defense of the need and legislative purpose for obtaining the information sought in the subpoenas would be indispensable in such an action. OGC defers to Special Counsel to identify the expected cost of enforcement.

Additionally, we would note that there is a non-monetary cost in terms of time that would be associated with either option. As it would involve numerous factors outside of our control, such as court scheduling, it is impossible to accurately predict how long such enforcement would take.

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<sup>2</sup> “Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the council shall be guilty of a misdemeanor and punishable by a fine of not more than \$1,000 or by imprisonment of not more than 60 days, or both.” Charter § 5.09. Similarly, section 134.105 of the Ordinance Code states, “[a] person duly served by subpoena authorized by this chapter who fails or refuses to appear as ordered the subpoena shall be guilty of contempt of the Council and of a class D offense.”

### **Other Methods to Obtain Information Sought by the Subpoenas**

Obviously, information relating to the areas of inquiry has been provided by JEA and the City during the course of the investigation based on the SIC's requests and searches formulated by Special Counsel. For purposes of answering this question, we will assume that the information sought is not possessed by JEA or the City and is not already in the possession of the SIC.

To the extent the requests relate to business conducted on behalf of JEA or the City, the documents sought in Exhibit B to the subpoenas could be requested in public records requests from the other parties to those communications. Those potential witnesses would include former JEA and City employees, current and former City Council members, and corporate entities such as The Dalton Agency. For example, emails about JEA business between JEA SLT members and Tim Baker sent and received by non-JEA email accounts are public records, if they exist, and could be requested from any of the relevant individuals. Enforcement of such requests would require the filing of a lawsuit predicated on a basis to believe the documents exist and have been withheld.

Similarly, additional subpoenas could be issued by the SIC to those same persons and entities. Enforcement of the subpoenas would be by the same means described in this memorandum.

Based on Special Counsel's familiarity with the information sought, OGC defers to Special Counsel for a complete list of potential alternative sources for the information sought by the subpoenas. Notably, OGC may not be aware of searches, requests, interviews or other efforts conducted by Special Counsel to obtain the information sought. Furthermore, OGC is not opining on whether such public records requests or subpoenas would be the most efficient means of obtaining such information, or the most likely means to produce the intended results.

### **Impact to Report of Lack of Compliance**

OGC defers to Special Counsel regarding the impact that non-compliance would have on their ability to prepare a full and complete report. The impact could be significant, as Special Counsel has indicated that if it does not obtain the information sought through the subpoenas, its recommendations to the SIC will be based on inferences, rather than direct evidence.