

SMITH HULSEY & BUSEY

MEMORANDUM

DATE: April 14, 2020
TO: Jason Gabriel
FROM: Steve Busey
SUBJECT: Protocol for JEA Document Production

In response to your request, we propose the following protocol to assist the Special Investigative Committee in obtaining production of documents from the Jacksonville Electric Authority (“JEA”) as soon as possible and to protect exempt public records from disclosure:

1. OGC, Hill Ward Henderson and KLDDiscovery (“KLD”) will identify and remove from Relativity any documents exempt from public record disclosure by using search terms, data analytics and computer assisted review (target completion time should be one week).
2. Hill Ward and KLD will provide Smith Hulsey and OGC access to the documents in Relativity identified as potentially responsive to the Committee’s 84 requests for documents from JEA.
3. SHB will search, view and tag documents in Relativity that the Committee may use in connection with the Committee’s investigation.
4. OGC will (i) review all SHB-tagged documents to determine whether any statutory exemptions apply, (ii) instruct HWH and KLD to remove any exempt documents from Relativity and (iii) tag all non-exempt documents as public records which SHB, OGC and the Committee may use in connection with the investigation.
5. SHB will not disclose to the Committee (or any other person that does not have access to Relativity) any tagged documents until after review by OGC.
6. After OGC review, SHB may share any non-exempt documents with the Committee and use any non-exempt documents in connection with the Committee’s investigation.

7. All persons with access to any documents in Relativity will execute a clawback agreement providing for removal of any documents inadvertently produced in Relativity that are later identified as subject to a statutory exemption.

The foregoing protocol will expedite the timing and reduce the cost of JEA's production of documents responsive to the Committee's requests, including avoiding the cost of creating a separate Relativity database for SHB, OGC and the Committee that contains the same information already stored in Hill Ward's Relativity database.

This protocol will avoid any inadvertent loss of statutory sunshine exemptions. The protocol is distinguishable from the electronic repository at issue in *NCAA v. Associated Press, et al.* 18 So.3d 1201 (1st DCA 2009) because the documents stored in *NCAA* were "not merely viewed, they were used in connection with public business." (*NCAA*, 18 So.3d at 1208). The approximately 1.3 million documents assembled by Hill Ward in Relativity are not automatically public records, and do not become public records until SHB uses them in connection with the investigation.

The confidentiality agreement in the *NCAA* case is distinguishable from the clawback agreement described in the protocol above because the clawback agreement provides only for removal of *exempt* documents not used by SHB or the Committee, whereas the confidentiality agreement in *NCAA* prevented access to *public* records "examined and used for an official state purpose". See *NCAA*, 18 So.3d at 1208.