

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

FLORIDA CENTER FOR GOVERNMENT
ACCOUNTABILITY, INC.,

Plaintiff,

v.

CASE NO. 2022-CA-3276

MANATEE COUNTY,

Defendant.

NOTICE OF FILING

Plaintiff, through counsel, gives notice of the filing of the depositions of the following witnesses:

1. Ron Hardy taken on October 24, 2023
2. Debbie Scaccianoce taken on October 26, 2023.

Respectfully submitted,

/s/ Andrea Flynn Mogensen, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 13, 2023, a copy of the foregoing has been filed with the Clerk of Court via the e-Portal, which shall cause a copy to be served via email on: Douglas Polk, Esq. (douglas.polk@mymanatee.org).

/s/ Andrea Flynn Mogensen, Esq.

Andrea Flynn Mogensen, Esq.

In The Matter Of:
Florida Center for Government Accountability, Inc. vs.
Manatee County

Ronald Hardy
October 24, 2023



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IN THE CIRCUIT COURT OF THE TWELFTH
JUDICIAL CIRCUIT OF THE STATE OF FLORIDA
IN AND FOR MANATEE, FLORIDA

Case No. 2022-CA-3276

FLORIDA CENTER FOR GOVERNMENT
ACCOUNTABILITY, INC,

Plaintiff,

vs.

MANATEE COUNTY,

Defendant.

X

DEPOSITION OF

RONALD HARDY

TAKEN ON BEHALF OF THE PLAINTIFF

DATE: October 24, 2023

TIME: 9:54 a.m.

PLACE: Zoom Teleconference

EXAMINATION OF THE WITNESS TAKEN BEFORE:

V. LIZ NIEVES, COURT REPORTER

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ALSO PRESENT: Michael Barfield

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* * * *

1 THE COURT REPORTER: Do you swear or affirm the
2 testimony you're about to give will be the truth, the
3 whole truth, and nothing but the truth?

4 THE WITNESS: Yes.

5 -----

6 Whereupon,

7 RONALD HARDY, acknowledged having been duly
8 sworn to tell the truth and testified upon his/her oath
9 as follows:

10 DIRECT EXAMINATION

11 BY MS. MOGENSEN:

12 Q. Good morning, Mr. Hardy.

13 A. Morning.

14 Q. Let's start out with some questions about your
15 background. Can you tell me a little bit about your
16 educational background, please?

17 A. High school graduate.

18 Q. And can you tell me your employment background for
19 the last -- for as long as you've been in the field you're
20 presently in?

21 A. Approximately I've been in telecommunications IT
22 for -- since 1985, through several employers. Most of
23 them, you know, in the IT TBX telecom field. Sixteen years
24 with a company, a nationwide organization. I did large
25 scale installations, infrastructure, became operations

1 manager for that company for Florida.

2 Then was my own -- was a business owner for
3 approximately three years. I ran a telecommunications
4 interconnect company. Again, doing infrastructure and large
5 scale communications project. And then the last 17 years
6 with Manatee County.

7 Q. When you started with Manatee County, what was
8 your position?

9 A. Telecom technician III, I believe it was.

10 Q. What is your present position with the county?

11 A. My current position is IT senior manager over
12 telecom client services and infrastructure.

13 Q. Are you -- are there other senior managers or are
14 you the highest level employee in your --

15 (Simultaneous speakers)

16 A. There are, I believe, three other senior managers
17 report directly to our direct -- we're direct reports to our
18 CIO.

19 Q. I'm sorry, could you say that again?

20 A. We're direct reports to the CIO, to the county CIO.

21 Q. All right. And does Manatee County presently have
22 a written IT policy?

23 A. Yes, they do.

24 MS. MOGENSEN: Okay. Mr. Barfield, could you share
25 your screen and pull up Deposition [Exhibit A](#)?

1 Q. Or do you have a Deposition [Exhibit A](#) in front of
2 you, Mr. Hardy?

3 A. Yes, I do.

4 Q. Okay. Very good.

5 Did you have an opportunity to review Discovery
6 Deposition [Exhibit A](#)?

7 A. Yes. I am somewhat familiar with the document
8 from previous.

9 Q. Okay. Is that the present information technology
10 written policy for Manatee County?

11 A. Yes, it is.

12 Q. Do you know for how long [Exhibit A](#) has been -- it
13 says date issued 11/1/2019. Is that the date that this
14 policy went into effect? Has it been in use since then, do
15 you know?

16 A. I do not know. I can't give definitive dates. I
17 can see that's the date that was issued for this version.
18 But I don't recall what the previous versions or whatever
19 were.

20 Q. Okay. I guess my question is: Do you recall any
21 subsequent versions being issued --

22 A. No, I do not.

23 (Simultaneous speakers)

24 A. I mean, again, I don't have any recollection of
25 those where I can give you any content. I know that there

1 were policies, you know, in place. I really don't know.
2 This is the one I know that is the working document right
3 now.

4 Q. All right. Excellent. Thank you.

5 Let's talk -- I would assume from your position
6 that you have familiarity with the manner in which Manatee
7 County stores and accesses electronic records; is that a
8 fair statement?

9 A. Certain -- certain areas of it, yes. I'm not
10 intensely aware of some of the other areas as far as our
11 data storage with our -- you know, outside of my areas, I'm
12 not -- not super knowledgeable of the exact procedures or
13 how it's done. But I'm familiar with, you know, what
14 pertains to my area.

15 Q. Could you provide for me what are the areas that
16 you call your areas, the areas that you have --

17 (Simultaneous speakers)

18 A. My area would be the telecommunications side as
19 far as the text messages currently, our instant messaging
20 with our application that we have that was in-house, which
21 is Cisco Jabber, which is referenced in this document. As
22 well I know the retention methods and, you know, how that's
23 done with that, you know, those two areas.

24 Q. Do you also help with regard to emails and scanned
25 documents and other documents storage and retention and

1 retrieval?

2 A. Not detailed information. It's superficial just
3 what I hear by, you know, seeing other emails or whatever.
4 But I don't have an in-depth knowledge, no.

5 Q. Okay. Can you tell me with regard to your areas,
6 are the -- is the data, the telecommunications, text
7 messaging, the IMFs, phone logs, text logs, that sort of
8 think, are those kept in a central database or are those --
9 how are those stored?

10 A. Today?

11 Q. Presently today. Yes, presently today.

12 A. Presently today, the text messages that are on
13 county devices, on devices that are allowed text messaging
14 are captured by a third-party application, Smarsh is the
15 name of the company that they retain those on our five-year
16 retention cycle. And then we have the regular phone records
17 that we use for verifying phone bills, county purposes, et
18 cetera, are kept in a database that's in-house. That is our
19 local detail call recording system that we use for our
20 normal -- for county phones. Like inbound/outbound calls,
21 et cetera.

22 Q. Okay. We'll talk about the Smarsh retention in a
23 moment. But presently today, if someone requests text
24 messaging content, is that something where you can go to a
25 centralized database to search for all text messages for

1 county employees? Or do you have to go device by device or
2 database by database?

3 A. You go with just specific search parameters and
4 you look by the call -- you know, the subscriber phone
5 number, whatever. And it's in their compliance, the Smarsh's
6 compliance database.

7 Q. Is that a centralized database for all county-issued
8 phones?

9 A. Yes. That is the central repository for county-owned
10 devices that have allowed texting as of today, yes.

11 Q. Okay. And then with regard to today, are there
12 also -- is there also data in there for privately used
13 phones for county business?

14 A. For what, I'm sorry?

15 Q. If people use their private devices for county
16 business.

17 A. No. I have nothing to do with the private --
18 private devices.

19 Q. Okay. If you know, is there a means by which data
20 produced by private devices is retained by the county today?

21 A. Not that I do. I know that they have an application
22 that they use to pull messages off the phones. But that is
23 not something that I do.

24 Q. Okay. What's that application, if you know?

25 A. I'm sorry, I didn't hear the question.

1 Q. What is the application that's used for that, if
2 you know?

3 A. It's DrFone, D-r-f-o-n-e. And I believe they were
4 also using an application called iMazing.

5 Q. Okay. We'll get to those in a moment.

6 Now, let's talk about 2022. As of June of 2022,
7 were you using the Smarsh database for county devices?

8 A. I would have to look back at the dates that we
9 actually went live. I don't know. I couldn't attest to
10 that, that date at this moment.

11 Q. Okay. Tell me, if you know, when --

12 (Simultaneous speakers)

13 A. It was a fairly long process of rolling the phones
14 out just because of what was involved like technology-wise
15 and ordering phones that were distributed out to the staff
16 and everything. So it was quite a long process. I don't
17 know the exact date.

18 Q. All right. Well, irrespective of the date, can
19 you tell me what the county was doing prior to implementing
20 the Smarsh technology as far as --

21 (Simultaneous speakers)

22 A. Prior?

23 Q. Yes, the retrieval of content of text messages,
24 text logs, things of that nature?

25 A. Prior to Smarsh, there was no retention of those

1 text messages other than through the carrier, which just
2 showed a transaction had occurred between text in or text
3 out. But the content was not retained.

4 Q. And are you familiar with the public records
5 requests that we're here about today made by Michael
6 Barfield on behalf of the Center?

7 A. I'm not familiar with any specific request, no.

8 Q. So you didn't work on retrieval of the requests by
9 Mr. Barfield?

10 A. I'm sorry?

11 Q. You did not work on the retrieval of the text --
12 request for text messages made from -- by Scott Hopes
13 between January 2, 2022 and April 23, 2022, for example?

14 A. I couldn't say whether -- we may have been
15 involved in looking at the phone data from the device as far
16 as any phone calls, et cetera. I'd have to see the explicit
17 request. But I can't comment on what the exact -- what work
18 was put into a request without seeing the details. We have
19 quite a few, you know, requests that come through. So I
20 don't know.

21 Q. Today who does the retrieval messages from private
22 phones using the applications we discussed?

23 A. The individual departments are responsible for
24 that. I don't know.

25 Q. Okay. But it's not you?

1 A. No, it is not.

2 Q. Okay. Do you do any work on retrieving text
3 messages for public records requests? Are you responsible --
4 (Simultaneous speakers)

5 A. Yes. When we have a public records request, my
6 group, one of my employees, is tasked with going to the
7 portal and pulling those messages out for that request, yes.

8 Q. For purposes of today, I'm going to talk about
9 records and records retrieval. Can we agree that we will
10 talk -- that we will use that terminology with regard to
11 what you define as your area, the data storage for
12 telecommunications, texts, IMFs and those things?

13 A. Uh-hmm. Yes.

14 Q. Okay. All right. Presently, the Smarsh database
15 that contains the county records, are those presently backed
16 up?

17 A. Yes, they are archived by the vendor.

18 Q. And do you know how often?

19 A. I mean, when you say backed up, I mean the
20 database itself as a whole is maintained with integrity by
21 the vendor. But the messages are realtime -- close to
22 realtime sent to the database via the carrier. We do not
23 have any direct interface with the carrier and Smarsh.

24 Q. And then as far as you already told me that prior
25 to using the Smarsh technology that there was no retention.

1 So I'm presuming there was also no backup done?

2 A. That's correct.

3 Q. And for today's purposes, that database maintained
4 by Smarsh is searchable?

5 A. Yes, it is.

6 Q. And are those linked to a server at the county or
7 are they just on the web?

8 A. No, it's in the Cloud.

9 Q. Prior to using the Smarsh technology, can you just
10 walk me through in laymen's terms how a request for like a
11 text log, for example, because I understand you to be saying
12 that there was no retention of the content, but I would
13 presume that you had text logs prior to using Smarsh; is
14 that right?

15 A. Correct. They would go -- we would go to the
16 carrier portal, in this case most of the phones are by
17 Verizon wireless, and we would just pull an activities
18 report for that device and it would just show any activity
19 as far as phone calls and text messages that occurred.
20 Again, just as a transaction without the content.

21 Q. If a request was made for such logs, for a log say
22 for a month, generally speaking, how long would that take
23 for a team to perform to pull that log?

24 A. Within a day.

25 Q. Okay. It would take an entire day to do that or

1 to actually perform the task? Not how long to respond to a
2 records request, but if you were sitting there to perform
3 the task to pull a text log, how long would that generally
4 take you if the log was say, for example, 30 days, within
5 one billing cycle?

6 A. It depends. Within a couple hours. But it
7 depends if that particular information was outside of the
8 current billing cycle, you'd have to go back and pull an
9 archive. You know, you'd have to generate a report to the
10 carrier. So, again, within a couple, three hours.

11 Q. Okay. Now, I have a cell phone. I have a cell
12 phone bill. I can pull up my text log. Is that the process
13 we're talking about the same as for a private individual or
14 were there additional steps necessary for county devices?

15 A. It's similar. But it's electronic. You're
16 pulling out an electronic format. I mean, conceptually,
17 it's the same, yes. And you would see about the same data.
18 You would see a transaction, but you wouldn't see the
19 content.

20 Q. For a present day records request, does the system
21 retain searches that are being conducted for records --

22 (Simultaneous speakers)

23 A. Yes. There is a transaction history, yes.

24 Q. Prior to the Smarsh technology, was the county
25 retaining what searches have been conducted and what

1 responsive documents were produced?

2 A. No. I mean, there is a -- I'm assuming there is a
3 audit log -- I'm assuming there's an audit log with Verizon
4 as far as who was logged in. You know, particular tech.
5 There is a limited number of people who have access to do
6 that work.

7 Q. I'm sorry, can you repeat that last part?

8 A. I said there was a limited number of people that
9 have access to that account. It's not something that
10 general county employees have access to.

11 Q. Understood.

12 You're one of the employees that has that access;
13 is that right?

14 A. Correct.

15 Q. Can you walk me through what information is
16 returned when you conduct a search today? For example, the
17 number of different --

18 A. With Smarsh or --

19 (Simultaneous speakers)

20 (Reporter admonition)

21 Q. I was asking what information is returned when you
22 do a Smarsh search as, for example, the number of responsive
23 records, the number of different locations, things of that
24 nature.

25 A. It will return the data that's -- that your

1 filters would apply for. So if I'm looking for a subscriber
2 phone number, it will pull up the activities that occurred
3 that -- whether it was, for example, a text to or from, you
4 know, that number, along with the content and, you know,
5 associated data, pictures, attachments, et cetera, that
6 happened, you know, for that period with that search
7 subscriber or information or date in time. Whatever filters
8 you put in is obviously the information you get back.

9 Q. Okay. So when you do a Smarsh search, you can get
10 attachments, the size of the records and the contents?

11 A. Correct.

12 Q. And prior to using Smarsh, was that the case?

13 A. No. That was not the case. We would only get,
14 again, just we would have a transaction of a to and a from
15 number and date and time and, you know, to and from and
16 whether it was originated or received.

17 Q. Are you familiar with Microsoft Exchange?

18 A. I use it. I'm somewhat familiar. I'm not an
19 administrator of it though.

20 Q. Okay. Is that an application that the Manatee
21 County IT Department utilizes, if you know?

22 A. We use Office 365, which is basically a Cloud
23 exchange. We don't have an on-premise exchange anymore.

24 Q. Can you just tell me for the record what is an
25 exchange?

1 A. Exchange is Microsoft -- Microsoft Exchange is
2 their email, their back-in system that would house your
3 email. But we haven't had that in quite a few years. We've
4 been Office 365 which is the Cloud, you know, hosted Microsoft
5 email.

6 Q. Are you familiar with the term single instance
7 storage?

8 A. What was that again? I'm sorry.

9 Q. Are you familiar with the term single instance
10 storage?

11 A. No, I'm not.

12 Q. Are you familiar with the term D-duplication?

13 MR. POLK: We're having a little bit of a hard time
14 hearing you. Sometimes your first word. So we missed
15 the first word sometimes of your question.

16 MS. MOGENSEN: Okay. Maybe I should delay just a
17 moment before I ask.

18 Q. My question was: Are you familiar with the term
19 D-duplication when it comes to records requests?

20 A. No.

21 Q. Now, you mentioned Jabber. What is Jabber?

22 A. Jabber is an instant messaging program that we
23 have internally only for the county.

24 Q. Is that the only instant messaging program used on
25 county devices?

1 A. No. We all use Microsoft Teams.

2 Q. All right. And were you using the Jabber IO
3 program in 2022?

4 A. Yes, we were. We actually just stopped using it
5 from the county side from our port side around the first of
6 October of this year.

7 Q. And with regard to the messaging that's done using
8 Jabber, is that messaging archived?

9 A. Yes, it is.

10 Q. Can you just describe for me in laymen's terms how
11 it is archived? Is it like on a server? Is it on an
12 individual device? How does that work?

13 A. We actually have a third-party application which
14 takes those messages and ingests them into Microsoft Office
15 365 data discovery. So they are archived with our email
16 messages.

17 Q. Okay. And is that in a database at the county?

18 A. No. That's in a Microsoft Cloud database along
19 with our emails.

20 Q. I see. And with regard to Teams, I think you said
21 was another program you used, is Teams archived?

22 A. Yes. It's also archived in the Microsoft Discovery
23 portal. It's the same place, in the Cloud with Microsoft.

24 Q. And was the county using Teams in 2022?

25 A. Yes. We had started using it then, yes.

1 Q. Okay. Do you know when Teams -- did you say Teams
2 you started using it in 2022?

3 A. No. We were using it in 2022. I don't know
4 exactly when it was started because it was being adopted by
5 different groups around the county at different times. So
6 we finally standardized in -- on Teams and deprecated
7 Jabber.

8 Q. And then were there any other IM programs being
9 used in 2022?

10 A. No.

11 Q. And when we're talking about archive, is that the
12 content of the messaging?

13 A. Yes.

14 Q. Okay. And this discussion about Jabber and Microsoft
15 Teams, that's with regard to the county-issued phones, right?
16 As compared to --

17 A. No. This was -- this is predominantly on county
18 computers.

19 Q. Oh, I see.

20 A. Yes.

21 Q. Does the county have a current policy on use of
22 text messaging for county business?

23 A. I will let -- we do have a recently revised policy
24 on text messaging for county employees regarding county
25 business, yes.

1 Q. In what way was it revised, if you know?

2 A. I don't have it verbatim in front of me. But it
3 was forbidding employees -- county employees from using
4 their personal phones for texting county business.

5 Q. And do you know when that policy change was made
6 approximately?

7 A. I don't have a date. I don't. I don't know.
8 Fairly recently, but I can't give a date.

9 Q. Was it in 2023?

10 A. Yes.

11 Q. Okay. Prior to that, was there any prohibition on
12 using personal devices for county business?

13 A. I would -- I don't know. I can just -- I know
14 within the county ITS policy manual, [Exhibit A](#), in regards
15 to text messages and the instant messaging. But I don't
16 know anything outside of that.

17 Q. Okay. So [Exhibit A](#) would have been the governing
18 policy prior to the change in 2023 that prohibited -- that
19 forbid people from using personal devices for county business
20 text messaging?

21 A. Yes.

22 Q. These county policies, with regard to text messaging,
23 applies to county employees, correct?

24 A. I'm sorry, can you repeat that question?

25 Q. The Manatee County IT policy with regard to text

1 messaging that we've just been talking about, [Exhibit A](#) and
2 the recent change, those policies apply to Manatee County
3 employees, right?

4 A. I believe so. Yes. Yes.

5 Q. If you know, do those policies also apply to
6 contractors used by Manatee County?

7 A. I don't know. I couldn't answer that.

8 Q. Do you know if the IT policy is applied to elected
9 officials for Manatee County?

10 A. I don't know.

11 Q. With regard to [Exhibit A](#), does this policy in any
12 part require approval for text messaging by department
13 director for group texts?

14 A. Can you repeat the question? You broke up on the
15 last part.

16 Q. I said -- let me ask a different question first.
17 You said that there was a recent policy change in
18 2023. Was the primary change recently with regard to what
19 you mentioned, forbidding private devices for texting about
20 county business?

21 A. Yes.

22 Q. Was that a change to Policy D1 [Exhibit A](#)?

23 A. I don't know. But I can -- the difference is that
24 in the revision that recently came out, it was explicitly
25 calling out personal devices. Whereas, the ITS policy just

1 referenced text messaging in general regardless of the device.

2 Q. Okay. So [Exhibit A](#) is still in place, it's just
3 that recent changes are more an addition; is that right?

4 A. It was an updated policy, yes. I don't know
5 exactly how that aligns with -- in order. But yes, it was
6 updated to the personnel policy.

7 Q. Would you take a look at page 7 of [Exhibit A](#),
8 please?

9 A. I'm looking at it.

10 Q. It says -- I don't know how to describe it.
11 Two-thirds of the page down there is bold text messaging.
12 And it says -- it appears to say "Text messaging shall not
13 be used for conducting county business unless expressly
14 approved by a department director."

15 Do you know who that department director would be
16 or they would be if there's more than one?

17 A. There -- no, I do not know explicitly. There are
18 several county directors within the county. I don't know
19 which one they'd be referring to directly.

20 Q. Do you know, if you know, are those requests and
21 approvals recorded or retained anywhere?

22 A. I don't know.

23 Q. Are you familiar with the term mobile device
24 management or MDM?

25 A. Yes, ma'am.

1 Q. Okay. Can you tell me what that is, please?

2 A. Yes, because we just implemented Microsoft Intune
3 as part of this project as well to maintain control of the
4 county-owned devices.

5 Q. What is MDM?

6 A. Mobile device management allows the county to
7 maintain control of the mobile device and limits activities
8 that the user can do on the device such as logging into
9 personal accounts, loading apps that are not authorized. We
10 can wipe the device, unlock it or lock it remotely, find
11 lost devices, et cetera.

12 Q. Thank you. Do you -- what is the present MDM
13 management program?

14 A. Microsoft Intune.

15 THE COURT REPORTER: Did you say Intune?

16 THE WITNESS: I-n-t-u-n-e. Intune, yes.

17 BY MS. MOGENSTEN:

18 Q. When was Microsoft Intune implemented for the
19 county?

20 A. Some point in 2022 when we started distributing
21 all the county devices. When the personal -- when the phone
22 stipend was removed.

23 Q. Do you know when the phone stipend was removed?

24 A. I don't have the exact date in front of me. I
25 would have to go back and look.

1 Q. Okay. For record purposes --

2 A. It was -- it was a phased project, so there wasn't --
3 you know, an explicit cut date.

4 Q. Can you just tell me, I know what it is, but for
5 record purposes, tell me what the phone stipend is or was?

6 A. Phone stipend was a monetary amount that was paid
7 to an employee to use their personal device in lieu of
8 having a county device.

9 Q. And was a phone stipend available for any employee
10 of Manatee County or any specific groups?

11 A. Only specific groups that were deemed or specific
12 employees that were deemed that they needed communication
13 device for their job duties, which was the same criteria
14 that was applied when that was removed and phones were
15 provided by the county for employees that, again, were
16 deemed necessary for their business, to conduct their work
17 activities.

18 Q. With reference to the time frame in which Smarsh
19 was implemented, was the phone stipend removed before Smarsh
20 was implemented, after Smarsh was implemented or simultaneously
21 or something else?

22 A. It was all done as a project process. So it was
23 all simultaneously.

24 Q. Okay. And you said that the MDM program presently
25 is Microsoft Intune. I think you said that that started at

1 the time that the stipend was removed and this process of
2 moving everybody to county phones started; is that a correct
3 understanding?

4 A. Correct. As the phones were issued, they were
5 being enrolled into Microsoft Intune.

6 Q. Prior to using Microsoft Intune, what MDM service
7 was Manatee County using, if any?

8 A. We were using Airwatch, which became Work Space
9 One.

10 Q. Airwatch?

11 A. Airwatch, yes.

12 Q. And what controls did Airwatch permit you to place
13 on county devices?

14 A. Similar controls as in regards to limiting
15 applications, et cetera, that could be put on phones,
16 locking them, unlocking them.

17 Q. If you know, in 2022, using Airwatch or in 2022
18 using Microsoft Intune, were county phones restricted as far
19 as adding applications for text messaging?

20 A. If the phone was enrolled in Intune or I'm sorry
21 Airwatch, yes, they were restricted to a catalog as they are
22 now with Microsoft Intune. A county device if it's enrolled
23 which every phone is enrolled in Intune, they are restricted,
24 yes.

25 Q. Did you say restricted to a catalog of messaging

1 apps?

2 A. No. Not messaging apps. They're restricted to a
3 catalog of approved apps which we do not approve messaging
4 apps to go on there. Other than Microsoft Teams, which is
5 captured via the Cloud.

6 Q. Okay. And prior to the implementation of Smarsh
7 technology, was the text messaging restricted to just Teams
8 on county phones?

9 A. No. They were -- they were phones, they were texting.

10 Q. Say that again, please.

11 A. No, it -- when you said restricted to text, they
12 could text message using their phone, yes. Not using an
13 app, but using the native texting of the phone.

14 Q. Oh, I see. But only the native texting of the
15 phone?

16 A. Correct.

17 Q. Did the Airwatch program prohibit the installation
18 of the Signal app, if you know?

19 A. I don't know because I -- I wasn't an administrator
20 of Airwatch. We took over that transition to Intune and my
21 group is administering Intune and I know that they're
22 explicitly locked from that now.

23 Q. So I think what you just said was that Intune does
24 prohibit the use of the Signal app, is that right, on
25 the devices enrolled --

1 (Simultaneous speakers)

2 A. Correct.

3 Q. Okay. But you don't know with regard to Airwatch;
4 is that right?

5 A. I could not say for sure, correct.

6 Q. Does the catalog identify what apps are allowed?

7 A. Yes.

8 Q. Can personal devices also be enrolled in the MDM
9 service Airwatch?

10 A. In Airwatch, I don't know. I don't know the answer
11 to that. Intune, no.

12 Q. So no personal devices are enrolled in Intune to
13 your knowledge; is that right?

14 A. That's correct.

15 Q. If I was seeking a copy of the catalog of
16 applications that were permitted on county phones, what
17 would be the terminology to ask for that?

18 A. A list of catalog apps from Microsoft Intune or
19 apps catalog for Microsoft Intune for county devices.

20 Q. And does the county maintain a list of devices
21 that are enrolled in the MDM service, be it Airwatch or
22 Microsoft Intune?

23 A. Yes. Microsoft Intune gives us a portal which we
24 can view all the active devices to make sure that they've
25 checked in, et cetera.

1 Q. Was that also the case for Airwatch?

2 A. I don't know.

3 Q. Do you know if Airwatch has a catalog of permitted
4 apps like Intune does?

5 A. I don't know. I believe so. But I'm not for sure.

6 Q. What happens to data on a device that is unenrolled
7 from your MDM service? Is it maintained and stored? I'm
8 talking about in Intune.

9 A. When you say -- what do you mean exactly?

10 Q. Well, does the list of devices enrolled on the MDM
11 service change over time?

12 A. It will, yes. With employees leaving and new
13 employees coming on.

14 Q. But to date, it's been consistent, nobody has been
15 added or left since you started using Intune?

16 A. No, there's -- there's always, you know -- there
17 are always employees leaving and coming.

18 Q. Okay. But as far as devices, if an employee
19 leaves, is their device unenrolled? Because you said
20 private devices aren't enrolled. So is the county phone
21 just reissued to a new employees?

22 A. Yes.

23 Q. Are they unenrolled from --

24 (Simultaneous speakers)

25 A. No.

1 MR. POLK: Let her finish before you start
2 answering. That's really for the benefit of the court
3 reporter trying to take it down.

4 THE WITNESS: Okay. Can you ask the question
5 again? I'm sorry.

6 BY MS. MOGENSTEN:

7 Q. Are devices ever unenrolled from Intune?

8 A. Not unless they're being removed from service to
9 surplus and are being replaced.

10 Q. If that happens, what happens to the data from
11 that device?

12 A. The device is wiped before it goes to the -- you
13 know, to surplus.

14 Q. Is the data still stored on the MDM Intune?

15 A. What data are you referring to?

16 Q. Any data. I'm trying to learn from you actually
17 what data.

18 A. No. There's no -- any data like email, et cetera,
19 that is all again archived in the Cloud. It's not -- you
20 know, it's not retained on the local device.

21 Q. Okay. So the MDM doesn't really assist in data
22 storage, it's more control the phone as they're being used;
23 is that a fair statement?

24 A. That's correct.

25 Q. Okay. Now, you expressed to me that you're not

1 familiar with the answers to these questions with regard to
2 Airwatch, at least to the degree that you do for Intune. Is
3 that also a fair summary of what you said to me?

4 A. Correct.

5 Q. Who would know the answers to these types of questions
6 for Airwatch?

7 A. I'm assuming one of the previous administrators of
8 Airwatch. I have to find out who that was specifically.

9 Q. You don't know who was -- who was administering
10 Airwatch?

11 A. There were several people. I don't know who would
12 be the most knowledgeable in it though.

13 Q. Who was the most recent?

14 A. Well, I have an existing employee who is -- we're
15 migrating old devices over who is in there, who works for
16 me, but he's not I would consider -- you know, he doesn't
17 have the historic information from Airwatch.

18 Q. If you know, who was administering Airwatch in
19 2022?

20 A. I have to verify. Again, I don't have the name of
21 the person. I'd have to find out who was doing it specifically
22 around that time.

23 Q. Now, you mentioned a recent change where there's
24 prohibition on the use of personal devices. Was there a
25 period of time where employees of Manatee County were using

1 personal mobile devices to conduct county business that were
2 not enrolled with MDM services?

3 A. Yes.

4 Q. Okay. What was that approximate period of time?

5 A. I don't know.

6 Q. Prior to the recent change that you indicated
7 prohibiting the use of private devices for county business,
8 were any of the private devices that were being used for
9 county business enrolled in the MDM service, whether it was
10 Intune, Airwatch or something else?

11 A. I don't know.

12 Q. Are you aware of any period of time where
13 employees with county-owned devices were not enrolled in the
14 MDM service?

15 A. I don't know. I wouldn't specifically know that.

16 Q. Are you familiar with iMessaging?

17 A. Yes.

18 Q. What is that?

19 A. It's Apple's proprietary messaging, instant messaging.

20 Q. And that's specific to Apple phones?

21 A. Apple devices, yes.

22 Q. We're going to take a look at what's been marked
23 for identification as Deposition [Exhibit H](#). H should be the
24 Complaint in this case. Specifically I'd like you to look
25 at Exhibit 1 to the Complaint. It's going to be an email

1 chain. And as I'm sure you're familiar with, email chains,
2 in time, go from the bottom up. So for purposes of looking
3 at that, time-wise it's going to go from the bottom up.

4 MR. POLK: You mind if I help him?

5 MS. MOGENSEN: No. Certainly.

6 BY MS. MOGENSEN:

7 Q. Have you had a chance to review that?

8 A. Yes.

9 Q. It appears to be an email chain that you wrote.

10 Would you agree with that?

11 A. Yes.

12 Q. Can you tell me who is Riley Lambert?

13 A. Riley Lambert is a representative for Smarsh.

14 Q. Okay. Was that a sales representative?

15 A. Yes.

16 Q. All right. And can you tell me with regard to
17 your work with the county, what does Smarsh specifically do?

18 A. I'm sorry?

19 Q. What does Smarsh specifically do with regard to
20 Manatee County's business?

21 A. It captures the text messages that occur on the
22 county phones that have been allowed text messaging.

23 Q. Now, it looks like from this Exhibit 1 that
24 initially you were seeking assistance from AT&T with regards
25 to phone and text records retention for AT&T users. Is that

1 a fair statement?

2 A. That's correct. I had queried the carriers to see
3 what the options were for capturing text messages and they
4 both referred me over to Smarsh.

5 Q. Why did you make that inquiry?

6 A. Because it had become apparent that we were going
7 to need to capture text messages content.

8 Q. And it looks like that inquiry was made in July 13th
9 of 2021 or so; is that right?

10 A. I have to -- I don't know the exact date. Possibly.

11 Q. Well, I'm looking at the last page of Exhibit 1.
12 It looks like July 13th of 2021 you made inquiry of AT&T
13 regarding phone and text records message retention.

14 A. Correct.

15 Q. Can I assume from that that there wasn't retention
16 at that time?

17 A. That's the date, yes.

18 Q. Okay. And as of July 13th of 2021, that's --
19 there was no retention of the content of text messaging for
20 Manatee County; is that right?

21 A. That's correct.

22 Q. And then looking at Exhibit 1, the pages aren't
23 numbered I'm sorry, it looks like you had given some dates
24 and times for a telephone meeting with Riley Lambert in
25 mid-July. Did such a meeting take place?

1 A. I don't -- we had several phone calls. I can't
2 give you the dates and times though. I don't know when they
3 were.

4 Q. Okay. Now, I see that Smarsh apparently gave an
5 estimate for their services. Is that what the top of
6 Exhibit 1 reflects?

7 A. That was the first preliminary quote, yes.

8 Q. Now, I notice that they gave a quote for 50
9 Verizon devices and 50 AT&T devices. Where did those -- is
10 that the approximate number of county-issued phones that
11 were in service at the time in 2021?

12 A. That was the number -- yes, that was the number of
13 phones that we were looking at at that time to enable the
14 text capture for the retention purposes and then disable or
15 anything else. But then we started adjusting the numbers up
16 from there when the stipend program was decided to be
17 removed.

18 Q. I'm sorry, which program was removed?

19 A. The stipend, the personal stipend program was --

20 Q. Oh, stipend.

21 A. When the discussion started to remove that, we
22 started adjusting numbers. This was just a quote to get a
23 baseline cost.

24 Q. How many employees were on the stipend program,
25 approximately?

1 A. I don't know. I'd have to go back and look. I do
2 not know that number.

3 Q. How many county cell phones were in service in
4 July of 2021 approximately?

5 A. I don't know. I'd have to go look. I would just
6 be guessing on a number.

7 Q. Was it more than 200?

8 A. Yes.

9 Q. Where would you go to look for that information?

10 A. I would have to try to go back historically and
11 find that information. But I don't know the exact number.

12 Q. What kind of document would reflect the number of
13 phones? There's got to be some type of list of phones that
14 are in service that's kept by the county, right?

15 A. It's a constantly changing number, so I don't know.

16 Q. Right. But if I was looking, if I made a public
17 records request for a document that reflected the full
18 number of county phones that were in service as of July 15th
19 of 2021, what document would I be asking for?

20 A. I would probably look back at the Verizon bill for
21 that time period.

22 Q. Were all the county phones on Verizon at that
23 time?

24 A. The majority, yes. There is a small percentage
25 that were on AT&T.

1 Q. I notice that you initially were seeking to
2 collect phone and text messages regarding the AT&T users
3 when you talked initially in this July 13th email to
4 Christina Caligiuri from AT&T?

5 A. Correct. We were looking for solution --

6 Q. What group --

7 (Simultaneous speakers)

8 Q. What group of employees were using the AT&T phones
9 as compared to the Verizon phones?

10 A. What was that question again?

11 Q. I think you said and I want to be sure, please
12 verify, that the majority of people were using, the majority
13 of Manatee County employees were on Verizon phones, right?

14 A. That's correct.

15 Q. And a small percentage was using AT&T phones in
16 July of 2021?

17 A. Correct.

18 Q. Who was using AT&T --

19 (Simultaneous speakers)

20 Q. I'm sorry.

21 A. Predominantly our EMS department, public safety.

22 Q. I see. On the third page of Composite Exhibit 1
23 it appears that you made the statement to Mr. Lambert "We
24 have already discussed the limitation or lack of records
25 with iMessaging and will take the necessary steps to disable

1 that and force the users to SMS MMS."

2 Can you explain to me what limitations there were
3 with iMessaging as far as your statement there? What does
4 that mean?

5 A. Because iMessaging cannot be captured by a
6 application service such as Smarsh because it's proprietary
7 and it's encrypted. So you have to disable the capability
8 of MMS or I'm sorry, iMessaging on the phones and we only
9 allowed SMS and MMS messaging. That's how you can successfully
10 capture the messages.

11 Q. It looks like from Exhibit 1 that it had not been
12 accomplished, the forcing of the users to SMS MMS as
13 compared to iMessaging as of July of 2021. Do you agree?

14 A. Yes. Because we did that as part of the Intune
15 MDM rollout. That was a control that we did within Intune
16 of disabling and not allowing any iMessaging.

17 Q. When did occur?

18 A. When we deployed the phones with Intune during
19 that time period.

20 Q. I'm sorry. Can you say that a little bit louder?

21 A. When we deployed the phones with Intune.

22 Q. Okay. At this time of this messaging it appears
23 that the phones were -- that the county was using Airwatch;
24 is that correct?

25 A. Correct.

1 Q. Who is Noel Lopez?

2 A. He's one of our systems administrators.

3 Q. Did he have anything to do with Airwatch?

4 A. Yes, he did. But I don't know if he was actually
5 doing the device administration. At that time he was a
6 systems administrator.

7 Q. He was either the device administrator or the
8 assistant device administrator?

9 A. He's a systems administrator. But I don't know
10 who was actually doing the device administration, you know,
11 enrolling devices in Airwatch at that time.

12 Q. Okay. You mentioned the Apple device enrollment
13 program in Exhibit 1. Can you tell me what that is?

14 A. When we purchased devices through the county,
15 they're enrolled under a profile for us through Apple
16 business manager that allows us to integrate and bring them
17 into Intune automatically. Gives us a better level of
18 control on the device.

19 Q. At the time of this email chain reflected in Exhibit
20 1, were iMessages captured and retained on county-issued
21 devices?

22 A. No. Not by a centralized capture system, no.

23 Q. How and when did that issue come to your attention
24 that they were not being retained?

25 A. Right around this time period of these emails

1 starting to being generated.

2 Q. Do you recall how that came to your attention?

3 A. No, I do not.

4 Q. Did you discuss this issue with other staff
5 employees, et cetera?

6 A. I had discussions with several directors in
7 regards to steps that needed to be taken to address the
8 situation and then that started the respective email chains
9 that you see, in addition to the conversations about the
10 phone stipend and then eventually led to the program to
11 replace the personal phones with the county devices.

12 Q. Okay. Was there an event that occurred that
13 brought the issue of the non-retention to the attention of
14 yourself or others at the county?

15 A. Not a specific event. It was just the -- through
16 our previous records manager, we saw an elevated number of
17 public records requests and they were conversations between
18 the records manager about the records that were being asked
19 for. And then we determined that we had an issue that we
20 needed to resolve.

21 Q. And who's that records manager?

22 A. It was Debbie Scaccianoce at the time.

23 Q. Okay. And you mentioned that this was discussed
24 with some directors and others. Can you tell me who you
25 remember talking to in 20 -- in July of 2021 about this

1 developing problem?

2 A. I was talking to our acting interim director
3 because our previous one had just retired and she had --
4 this was right at this time in July that we reached out to
5 Smarsh. And then she was asked to step down from that
6 position. And we had a contracting employee brought in as
7 our director. And shortly thereafter, I started discussions
8 with him, that's Drew Richardson, who is our CIO now. He
9 became permanent around January of '22 and then that's when
10 we kicked off full scale the whole project.

11 Q. Okay. I think -- who is the acting interim
12 person? What is their name?

13 A. Susie Maguire.

14 Q. And then I think you said in January of 2022 a
15 contracting employee came in who was presently the director?

16 A. Sorry. I don't know if it's -- I believe it was
17 January '22, somewhere around there he was brought in -- he
18 was -- he was made the permanent CIO director. He was
19 previously a contract employee.

20 Q. Okay. And I think you said the last name Richardson.
21 What was the first name?

22 A. Andrew.

23 Q. What was the last name?

24 A. Andrew Richardson. He's Drew Richardson. He is
25 the director of IT right now.

1 Q. Okay. Who does Drew Richardson report to now?

2 A. Now he reports to the deputy county administrator,
3 who was recently hired. But at that time he was reporting
4 directly to the county administrator.

5 Q. And that person's name?

6 A. At that time it was Scott Hopes.

7 Q. Let's take a look at Exhibit 4 of [Exhibit H](#).
8 [Exhibit H](#) being the Complaint. So Exhibit 4 is attached to
9 the Complaint.

10 A. Okay.

11 Q. There appears to be some duplication between 1 and
12 4. But it appears that the previously mentioned Debbie
13 Scaccianoce was added to the chain; is that fair to say?

14 A. Correct.

15 Q. Did you forward the communications that were part
16 of Exhibit 1 to Ms. Scaccianoce?

17 A. Yes.

18 Q. And it looks like she indicated that the problems
19 were with the commissioners' personal phones, "I don't think
20 I can force him to give me access or make him turn off
21 messaging."

22 Tell me what that means to you?

23 A. It means to me that she has issues with the
24 commissioners, with their personal phones, which I have
25 nothing to do with.

1 Q. Okay. Well, tell me -- I guess, turning off the
2 messaging, in other words, the retention of records -- at
3 the time commissioners were using their personal phones
4 apparently. Was there any records retention for those
5 personal devices if they were used for county business?

6 A. I don't know.

7 Q. Between July 16, 2021, the conversations with
8 Smarsh and AT&T reflected in Exhibit 1 and October 4th, when
9 communications between you and Ms. Scaccianoce occurred,
10 what, if anything, was done with regard to archival of text
11 messages for the County of Manatee?

12 A. There was nothing additionally that was enacted
13 that was capturing them. At that time we were still in the
14 conversations with Drew Richardson who at that time, again,
15 was a contract employee. This prior to him coming aboard.
16 And he was trying to get information to figure out what to
17 do prior to getting hired and then he got hired.

18 Q. Okay. So is it safe to assume because you're
19 sending the estimate on October 4th of 2021 to Ms. Scaccianoce
20 that Smarsh had not been implemented as of October 2021?

21 A. That's correct.

22 Q. Other than Ms. Scaccianoce, did you relay the
23 information of the Smarsh's products to anyone else in the
24 Manatee County government?

25 A. Not that I can remember. Other than discussions

1 with my director or the contract director at that time.

2 Q. Did you have conversations with Drew Richardson
3 about Smarsh dealing with the fact that the county's text
4 messages were not being retained?

5 A. Yes, we had discussions about that.

6 Q. Do you recall if you talked to anyone else about
7 it?

8 A. Not specifically, no.

9 Q. If text messages of county commissioners were
10 being archived by the county prior to June 2022, would it be
11 fair to say you would have known that?

12 A. Can you repeat the question again, please?

13 Q. If text messaging of county commissioners were
14 being archived by the county prior to June of 2022, would it
15 be fair to say that you would have known about that?

16 A. On a county device, yes.

17 Q. Okay. If text messages of county commissioners
18 were being archived by their personal devices, if they were
19 submitting them to the county somehow, would you have known
20 about it?

21 A. I was not involved in that at all.

22 Q. Let's take a look at Exhibit 8 to Discovery
23 Deposition [Exhibit H](#). So Exhibit 8 of the Complaint.

24 Let's take a look at Discovery Deposition Exhibit

25 B. I'm sorry it's confusing. [Exhibit H](#) is the Complaint.

1 It has numbered exhibits. So we tried to do the discovery
2 deposition exhibits as letters to be less confusing.

3 A. This is which one?

4 Q. Deposition [Exhibit B](#)?

5 MR. POLK: D as in dog?

6 MS. MOGENSEN: B as in boy.

7 MR. POLK: Boy, okay.

8 BY MS. MOGENSEN:

9 Q. At the bottom of page 1, I think I know the answer
10 to this, but I wanted to be sure, can you tell me what you
11 meant by the statement: "Debbie, there is no content
12 retention on the SMS text messages. We only see the number
13 texted to and from just as with regular phone calls"?

14 A. Yes. Because at that time, you know, we did not
15 have Smarsh enabled. Again, you only saw -- if you looked
16 at a phone record through the carrier, you only saw the text
17 message that would have occurred as far as the to, from,
18 date, time, et cetera. And I referenced SMS because that's
19 all you'll see through the carrier. If somebody had been
20 doing, you know, an iMessage or something, it would not have
21 shown up.

22 Q. I see. And then at the top of [Exhibit B](#), if you
23 could read your statement there "I had previously researched
24 it and received an estimated cost which I will forward to
25 you. The solution Smarsh integrates directly with the

1 carriers, for the county that would be Verizon and AT&T and
2 will work with any phone type." And specifically, "All
3 iPhones will need to have iMessage disabled and the
4 application only captures text messages, any voice phone
5 calls will still have to be pulled from the carriers as they
6 are today."

7 Can you walk me through step by step what that
8 specifically means?

9 A. Yes. The solution for Smarsh is a direct
10 integration between carriers and that vendor. So messages
11 from a phone, SMS messages, the content and the information
12 is sent right from the carrier to Smarsh. The county or the
13 subscriber is not involved in that at all. It happens
14 automatically. We have no control over that. Once it's
15 enabled, it happens.

16 And then as I mentioned iPhones, iMessaging it has
17 to be disabled because it only works, as we talked about
18 earlier, with SMS messages, not with iMessaging. And then
19 voice phone calls, as far as Smarsh only captures -- it only
20 captures the text messaging and content. They don't capture
21 regular phone calls, voice phone call traffic as far as
22 showing that you called from a specific number to a specific
23 number or received a call from a number to a number with
24 date and time, et cetera. That information is still through
25 the carriers. Smarsh at this time doesn't have an interface

1 to pull that information.

2 Q. Okay. Now it looks like Mr. Richardson, Drew
3 Richardson was copied on that communication; is that right?

4 A. That's correct.

5 Q. Did you have any conversations with Mr. Richardson
6 at that time about that issue?

7 A. Yes.

8 Q. Okay. Tell me what you recall about that?

9 A. Any conversation would have been pretty much the
10 same content of the emails that were being sent such as this
11 one.

12 Q. Let's take a look at [Exhibit C](#), please. Discovery
13 Deposition [Exhibit C](#). You recognize that?

14 A. Yes.

15 Q. What is it?

16 A. This email?

17 Q. Yes. It appears to be an email chain between you
18 and Mr. Richardson; is that right?

19 A. Correct.

20 Q. Okay. It looks like it's also for October 4th and
21 it looks like you said "just so happens as we were
22 discussing the other day." Can you tell me what you meant
23 by that, what you're referring to?

24 A. In general, just the overview of the text message
25 capture.

1 Q. And I see Mr. Richardson responded to you
2 suggesting that it was a legal and HR matter that could
3 possibly help with technology. When he says will help or we
4 can, do you know who's we?

5 A. IT.

6 Q. Okay. And when it says "but those conversations need
7 to be had to ensure we're offering the right solution," do
8 you know what he means by that? What was your understanding?

9 A. I don't know exactly. I mean, he's just -- I'm
10 assuming he means discuss this to make sure whatever we're
11 looking at is going to solve the issue.

12 Q. Who is Jan referred to in [Exhibit C](#)?

13 A. She was the previous CFO who's no longer with the
14 county and he's referencing on there, I'm assuming, the
15 costs that's associated with any application or with any
16 solution, who's going to bear that cost.

17 Q. Other than the exhibits that we've looked at
18 today, are there any records or notes that you're aware of
19 relating to your conversations with Riley Lambert or Smarsh?

20 A. Not that I'm aware of, no. Just anything in these
21 document, as far as quotes, and emails going back and forth.

22 Q. Are you aware of any records or notes relating to
23 discussions with other employees or elected officials at
24 Manatee County about the Smarsh quote or their archiving of
25 text messages when you were trying to get Smarsh into place?

1 A. No. As far as I know, everything was done via email.

2 Q. Going back to Discovery [Exhibit H](#), the Complaint.

3 Could you look at Exhibit 5 to that Complaint? Do you
4 recognize it?

5 A. Yes.

6 Q. What is it?

7 A. I'm sorry?

8 Q. What is Exhibit 5?

9 A. It's just an email that we had from Riley after we
10 had our initial phone conversation when he was describing
11 this product and then he sent us the first quote.

12 Q. Okay. And that is something that you received at
13 the time?

14 A. Something I what?

15 Q. That you received at the time?

16 A. He sent it shortly after. We had a phone conversation.
17 This is a first reading. And discussed, again, the product
18 and then he sent the quote over to talk about the environment
19 and then it's just a follow-up.

20 Q. Okay. I'm sorry, the conversation you had with
21 him that day, what was that about?

22 A. It was an introductory call where we just talked
23 about the product and introduced ourselves.

24 Q. Let's take a look at Exhibit 6 to the Complaint.

25 A. Exhibit what?

1 MR. POLK: Six.

2 Q. Six. You recognize that?

3 A. Yes.

4 Q. That appears to be a communication from Riley
5 Lambert back to you dated January 25, 2022. In that
6 message, Mr. Lambert suggests that the text message
7 archiving discussion was something that and this is the
8 quote "that you knew the county urgently needed to comply
9 with 119 Sunshine Law requests."

10 Did you talk to him about compliance with 119
11 Sunshine requests?

12 A. Not specifically referencing that. I just told
13 him that we had a need to capture text messages on our
14 county-owned cell phones, yes.

15 Q. Okay. What was the sense of urgency, if any, at
16 that time?

17 A. I don't know. I don't know. That's his perception,
18 not mine. I mean, it was something that we were looking
19 into. But I did not express an urgent need at that time.

20 Q. Between the initial communications with Smarsh
21 that we looked at earlier from July of 2021 and this text
22 message in January of 2022, what, if anything, was done to
23 retain, on behalf of the county, the content of the text
24 messages on county devices?

25 A. They were still not being retained.

1 Q. Okay. And I think you told me, but I want to make
2 sure, you don't know anything about county business on
3 personal devices with regard to that question?

4 A. That's correct.

5 Q. You don't know of any sense of urgency as of
6 January of 2022 as far as compliance with 119 Sunshine Law
7 request?

8 A. No. Riley was, in January, was just reaching back
9 out to me. And, again, that's his perception, that was his
10 words of urgency, not mine.

11 Q. Okay. Well, did you consider it urgent to archive
12 and capture and retain the content of text messaging as of
13 January 25, 2022?

14 A. I'm sorry, I couldn't understand the question again.

15 Q. I know you're telling me those are his words. My
16 question to you is: Did you feel there was a sense of
17 urgency as of January 25, 2022 in addressing the problem
18 that the text messages for Manatee County were not being
19 archived?

20 A. I felt it was an item that needed to be addressed
21 and we were taking the proper steps to get to what we needed
22 to do.

23 Q. Okay. So is that -- was there a sense of urgency
24 or no? It's kind of yes or no.

25 A. I would say that we knew we had -- we had something

1 we had to address. I would not say I had a sense of urgency.

2 Q. Okay. Do you know if anyone else at the county
3 felt that there was a sense of urgency in addressing the
4 problem that text messages were not being archived as of
5 January of 2022?

6 A. I do not know.

7 Q. All right. Would you look at Exhibit 7 of the
8 Complaint, please?

9 THE WITNESS: What's that?

10 MR. POLK: Seven.

11 THE WITNESS: Seven. Okay.

12 BY MS. MOGENSEN:

13 Q. All right. Does the -- what is that? Let's start
14 with that.

15 A. It's an email to Riley Lambert with Smarsh.

16 Q. Was that your response to Riley Lambert to the
17 email chain we discussed that's Exhibit 6?

18 A. I believe so, yes.

19 Q. Okay. It says -- it's dated June 24, 2022 and
20 says "I apologize for dropping off on this. However, we've
21 had quite a few changes going on."

22 What, if any, changes were going on that you're
23 referencing in that email?

24 A. That's when we just had -- our other director had
25 left and we had the acting director coming in and we were in

1 the middle of full blown COVID outbreak at that time with
2 the county in which we ultimately lost two of our staff
3 members during this period here.

4 Q. Okay. So is that the time that Drew Richardson
5 came on as the acting?

6 A. After that. I believe this is July of 2022.
7 Shortly thereafter, yes.

8 Q. All right. And what steps were being taken
9 between January and June of 2022 to address the fact that
10 the text messaging was not being archived for any phone in
11 Manatee County government?

12 A. There was nothing at that time.

13 Q. What made you reach back out to Mr. Lambert on
14 June 4th of 2022?

15 A. That's when our acting director -- our interim
16 director came on and I addressed it with her right away.

17 Q. And that person's name is?

18 A. Susie Maguire.

19 Q. To your knowledge, were there any pending requests
20 that prompted reaching back out to Smarsh?

21 A. Specifically, no. I can't think of one specific.

22 Q. All right. Let's take a look at Discovery
23 Deposition [Exhibit D](#), as in dog.

24 Before we move on to that, were you aware of a
25 meeting -- first of all, have you heard the name Michael

1 Barfield before?

2 A. I have here, yes. Yes, I have now.

3 Q. Okay. Were you aware of public records requests
4 made by Mr. Barfield on behalf of the Center?

5 MR. POLK: As of when?

6 MS. MOGENSEN: Ever.

7 THE WITNESS: Yes.

8 BY MS. MOGENSEN:

9 Q. All right. When did you first become aware of
10 that?

11 A. I don't know an exact date.

12 Q. Were you aware of a meeting that Mr. Barfield had
13 with Mr. -- Dr. Hopes and Mr. Polk regarding text messages
14 that were being sought for Manatee County?

15 A. No, I was not.

16 Q. Did someone ask you to reach out to Smarsh as of
17 June of 2022, if you remember?

18 A. I don't remember that.

19 Q. Let's take a look at Discovery Deposition Exhibit
20 D as I said a moment ago. Can you tell me if you recognize
21 that?

22 A. Yes. Email to Riley.

23 Q. You asked in that email where you could monitor
24 license usage. What does that mean to you? What does that
25 mean?

1 A. By that period of time, we had I believe -- well,
2 I'm sure we had already started the Smarsh implementation.
3 So we had gotten through procurement with the contracts and
4 everything to get them -- get the contracts taken care of so
5 we could start onboarding and testing. And that's what I
6 was inquiring as to how we saw, through the actual admin
7 portal, as we were bringing them up online.

8 Q. Okay. So does this exhibit Discovery Deposition
9 [Exhibit D](#) shed any light on the question of when the Smarsh
10 technology was implemented in Manatee County?

11 A. No. It -- provisioned and starting to use it
12 versus fully deployed with all the devices are two different
13 dates. This is when we were given an instance to start
14 provisioning and testing. So this time period we were
15 working with the application and working with their project
16 manager to get us on board and get all the integrations with
17 the carriers and trying to do data import, et cetera. So
18 there was a long process to get it up and working so-to-speak.

19 Q. Okay. So was this email at the beginning of that
20 process of implementing Smarsh?

21 A. Yes.

22 Q. Okay. You were talking kind of fast right there.
23 Can you walk me through the transition to the Smarsh
24 archival system? You said it was over a period of time and
25 phases. Can you just sort of walk me through what had to

1 happen to get Smarsh implemented?

2 A. Well, first, we had to get through procurement,
3 which took quite a bit to get through legal, between our
4 legal and their legal department to agree on just legal
5 terms of the contract.

6 Once that was taken care of, we were handed off to
7 an onboarding specialist who gave us different
8 configurations and attendant site that we had to set up. And
9 then there's the integrations they had to set up between the
10 carriers and themselves with all the respective data,
11 account information, et cetera. And then we start again
12 provisioning test users and test phones and then verifying
13 that they were working.

14 Q. Okay. Can you estimate, please, the approximate
15 amount of time it took from the time you started implementing
16 Smarsh to when it was fully up and running?

17 A. I have to go back to see when the contract was
18 actually signed. But it was a period of several months.

19 Q. Okay. And can you tell me through Smarsh, the
20 Smarsh platform, can you determine whether a particular
21 employee is using their county-issued mobile phone?

22 A. Yes. You mean can you see activity, texting
23 activity? Yes.

24 Q. And is the Smarsh platform fully up and running
25 and integrated today with respect to all county-issued

1 cellular devices?

2 A. Yes. For devices that have texting enabled.

3 Q. And I think I know the answer to this, but I want
4 to be sure. Smarsh is not used for any private devices at
5 any point with regard to Manatee County business?

6 A. That's correct.

7 Q. And today are there any employees currently
8 receiving any type of stipend for using a private device in
9 lieu of a county phone?

10 A. I do not know that answer because that would come
11 from Burt's office not from me as far as that fact.

12 Q. Okay. Do you know of anyone who is using their
13 personal device and receiving a stipend?

14 A. No, I do not.

15 Q. If you could take a look at Discovery Deposition
16 [Exhibit E](#) for identification.

17 Actually, one more question on the last topic.
18 When did the county achieve full compliance with archiving
19 text messaging for all county-owned phones?

20 A. I don't have an exact date.

21 Q. Do you have a month and year, approximately?

22 A. No, I do not.

23 Q. Was it in 2023?

24 A. Yes.

25 Q. All right. Looking at Discovery Deposition

1 [Exhibit E](#), can you tell me what that is, please?

2 A. Yes. It was still in the early phases of the
3 implementation with Smarsh and they were having issues with
4 getting the carrier integration clean and that's why I
5 expressed to her in there that, you know, obviously for the
6 purpose that we were using this application that we couldn't
7 have, you know, devices that were not enrolling and they had
8 a problem which they were able to resolve and it was fixed.

9 Q. Okay. You were trying to enroll devices in Smarsh
10 and they were not enrolling properly, is that what you're
11 saying?

12 A. Correct. They weren't provisioning properly,
13 correct.

14 Q. Okay. What did you mean when you said "it has
15 created unwanted exposure"?

16 A. Because we had made the steps of going and
17 starting to do text capture and then they were not able to
18 complete it a hundred percent for the devices we were trying
19 at that time.

20 Q. Okay. And what is the exposure piece? What does
21 that expose or exposed Manatee County to?

22 A. Exposure was the fact that we were trying to
23 implement the solution and if I said if we had the solution
24 if it wasn't working correctly.

25 Q. Right. But what it says is, "It has become a

1 serious issue for us in regards to onboarding users who are
2 text enabled and it has created unwanted exposure." Is that
3 like liability exposure? Is that exposure of data? What
4 does the exposure part mean?

5 A. Exposure for the fact that we weren't retaining
6 the messages in the application.

7 Q. Okay. So you weren't retaining pursuant to Chapter
8 119?

9 A. Yes. That we weren't retaining the text messages --

10 Q. Okay. Now in exhibit --

11 A. -- that we were -- that we said we were with the
12 application.

13 Q. Okay. It said that you were yet -- as of December 19,
14 2022, it said you were not even close to 100 percent
15 compliance. Does the Smarsh technology, would that reflect
16 in the platform somewhere when you did reach 100 percent
17 compliance?

18 A. Yes. It shows -- yes. We are currently at that
19 hundred percent users have opted in and are provisioned.

20 Q. What would be the name of a document, report that
21 could be found on the Smarsh platform that would indicate
22 when Manatee County reached that 100 percent compliance?

23 A. I don't know a name of a specific report. But
24 that data is going to change every time you add another
25 device in because your quantities are changing. So when

1 you're adding them in, the data -- that hundred percent is
2 going to change obviously.

3 Q. Okay. Do you know when Manatee County achieved
4 compliance with archiving text messages for the elected
5 officials?

6 A. I do not. I don't know. If it's a county device,
7 it would have been -- if the device is enrolled, it would
8 be -- with texting turned on, it would be now. I mean, as
9 far as it's in there now.

10 Q. If I wanted to find out when the Manatee elected
11 official's mobile devices were enrolled into Smarsh and
12 archiving began, would that be just a request for the
13 enrollment data for a particular phone or particular number?

14 A. Yes. But I don't know the name of the specific
15 report.

16 Q. Is there a list of when the existing employees at
17 the time of implementation of Smarsh reached a hundred
18 percent compliance as compared to adding new employees, new
19 phones?

20 A. No, I don't have that data.

21 Q. Is there a way to find it in Smarsh?

22 A. I don't believe so.

23 Q. Now, today, if an elected official or employee
24 installs a messaging app on a county-issued mobile device,
25 would Smarsh detect that? Would you know about it?

1 A. Smarsh would have nothing to do with that. But
2 they can not do that because it's restricted by the MDM
3 application.

4 Q. We talked about that before, that was the case
5 throughout 2022; is that right?

6 A. Correct.

7 Q. And then there's that catalog of permitted apps,
8 right?

9 A. Correct.

10 Q. So if a county employee installed a permitted app,
11 would those records be archived as of now with Smarsh, no
12 matter what the app, as long as it's in the catalog of
13 permitted apps?

14 A. Not through Smarsh. The only thing Smarsh is
15 going to archive would be the SMS text messages. Anything
16 else that they would install that was approved, like Teams,
17 would be archived through the respective application.

18 Q. So if an employee adds a messaging app that's
19 different than the SMS MMS that comes on the phone, those
20 are not being presently archived? And they use the app
21 obviously. Those text --

22 (Simultaneous speakers)

23 A. They do -- no, there is -- there is no app that
24 they can install, no.

25 Q. Okay. I see. And prior to using Smarsh technology,

1 if an employee installed a messaging app on a county device,
2 would that have been archived?

3 A. I don't know.

4 Q. All right. And then how about same question for
5 elected officials, is there a difference if an elected
6 official installed a messaging app on a county device,
7 whether that would be detectable, whether it would be
8 archived?

9 A. They're in the same mobile device management. If
10 it's a county device, in the same MDM program. So they
11 would not be able to install the app.

12 Q. Okay. And I'm pretty sure I know the answer to
13 this. But I want to be certain. With regard to personal
14 mobile devices, the county does not have any information on
15 that, right?

16 A. That's correct.

17 Q. Now, are you aware of any employees or elected
18 officials submitting personal device text message records?
19 In other words, I'm an elected official, this person is
20 texting me about Manatee County business, I want to submit
21 it so it can be retained and stored and put in the database
22 for a records request. Are you aware of any --

23 A. I have not -- I do not have them or receive them.
24 Am I aware? I'm just aware from the public records manager
25 that they have done that. But I'm not -- I'm not involved

1 in that.

2 Q. Are you familiar with the Mobile Guard report
3 function of Smarsh?

4 A. Mobile Guard is a component of Smarsh. I don't
5 know -- I'm not the -- I'm not an administrator, systems
6 administrator in there so I don't know the specific of that
7 report. But Mobile Guard is component of Smarsh, yes.

8 Q. Okay. Does Mobile Guard allow you to determine
9 whether an employee was provisioned to the Smarsh platform?

10 A. Possibly. I don't know.

11 Q. Have you ever used Mobile Guard?

12 A. Yes, briefly or lightly.

13 MS. MOGENSEN: Mr. Barfield, can you put the Mobile
14 Guard email on the screen, please.

15 MR. BARFIELD: Sure. Bear with me just a minute.

16 Can everyone see that?

17 BY MR. MOGENSEN:

18 Q. Mr. Hardy, can you see the screen okay?

19 A. No, I don't see anything -- yeah, it's coming up
20 now.

21 Q. Is that familiar to you?

22 A. Yes.

23 Q. Okay. Looks like there is an attachment, all
24 devices by status Mobile Guard report. Can you tell me --

25 (Simultaneous speakers)

1 A. Okay. That's -- yeah, that's an automated report
2 that runs -- yes, I get that report. Yes, that's --

3 (Simultaneous speakers)

4 Q. Go ahead. What is that?

5 A. I haven't looked at it in a while. But it's
6 probably the registered devices by status that are currently
7 in Smarsh. I don't know the exact information. I'd have to
8 go back and look at it to see what's in the report.

9 MR. BARFIELD: I have clicked on the attachment in
10 that email if that helps, Andrea.

11 MS. MOGENSEN: Okay.

12 MR. BARFIELD: Can everyone see the attachment now?

13 THE WITNESS: Okay. That's the information you're
14 asking about and there it is in that report, yes.

15 BY MS. MOGENSEN:

16 Q. Can you tell me what it is we're looking at in
17 this report?

18 A. You're looking at the subscriber number, the name
19 that we put in for the device and then a pseudo email that's
20 created just as a forwarding placeholder and then the -- it
21 looks like the date the device was created and then the
22 carrier.

23 Q. Okay. So that device created list, is that when a
24 particular device was enrolled in Smarsh?

25 A. I have to go and look at the report parameters to

1 see what the explicit details of that column were. But I
2 don't know. Possibly.

3 Q. Okay. So you don't know what that date created
4 column means?

5 A. I don't know what that column means explicitly,
6 no. It may be the date it was put in there. Again, I have
7 to read the report details to see what that means.

8 Q. We talked for a moment a little bit ago --

9 MS. MOGENSEN: If you can stop the screen sharing,
10 please.

11 Q. -- about Signal. Do you know what the Signal app
12 is?

13 A. I know what it is, yes.

14 Q. Okay. And can messages sent or received using the
15 Signal app be archived by the county today?

16 A. No. They would not be able to, no.

17 Q. All right. And would messages sent or received
18 using the Signal app have been retained prior to implementing
19 Smarsh?

20 A. No.

21 Q. Are you aware of any employee or elected official
22 using Signal on a personal device or county-issued device
23 for county business?

24 A. I can't speak for personal device. But on the
25 county devices, not that I'm aware of, no.

1 Q. Let's talk about --

2 (Simultaneous speakers)

3 A. It's not -- it's not one of the allowed apps that
4 we have in our catalog.

5 Q. Okay. Understood.

6 Let's talk about the iMazing software. Are you
7 familiar with that?

8 A. Yes. I know what it is.

9 Q. Okay. What is it?

10 A. It's a software that can be used to pull text
11 messages off of iPhones, et cetera, androids. I believe
12 it's iPhone only, I think.

13 Q. Okay. And I'm sorry, it pulls what off an iPhone?

14 A. I believe messages, contacts, et cetera, content
15 off of the phone.

16 Q. Has it been used by Manatee County?

17 A. I believe the records department was using it,
18 yes.

19 Q. Do you know what it was used for?

20 A. Debbie Scaccianoce was using it to pull records
21 off the phones.

22 Q. When the iMazing software is used -- have you ever
23 used iMazing?

24 A. Yes, I have.

25 Q. Okay. Does this software require each device to

1 be attached to a drive to download the texts device by
2 device?

3 A. It requires it to be connected to a computer, yes.

4 Q. But you have to do that one device at a time,
5 right?

6 A. I believe so, yes.

7 Q. Do you know if the iMazing software was used for
8 any private devices of employees or elected officials on the
9 stipend program or just for county-issued phones or do you
10 know that?

11 A. I don't know which ones it was specifically being
12 used for.

13 Q. And you said Ms. Scaccianoce was using it?

14 A. Correct.

15 Q. Do you know if anyone else in Manatee County used
16 the iMazing software to retrieve text messages regarding
17 county business?

18 A. Not that I'm aware of, no.

19 Q. Did the county issue new phones to employees in
20 2022?

21 A. Did we issue new phones to employees? Yes.

22 Q. Okay. Tell me about that.

23 A. We ordered --

24 Q. Well --

25 (Simultaneous speakers)

1 A. I'm sorry.

2 Q. Was the entirety of the phone fleet retired and
3 new phones came in? Were they implemented to only new
4 accounts or how did that occur?

5 A. We ordered new phones for the people who were
6 being removed from the stipend program and were being issued
7 county phones at the discretion of their department. And
8 then we also replaced any phones that were due for -- that
9 were up for replacement due to their age.

10 Q. Okay. And with regard to the phones that were
11 returned due to their age, were any efforts made to archive
12 the data on those phones, specifically the text messages?

13 A. No. Because the bulk -- the bulk were not smart
14 phones. This isn't just smart phones. This is also
15 standard like flip-phones and push-to-talk phones.

16 Q. Okay. As of the summer of 2022, was Manatee
17 County retaining any of the content of any text messages on
18 county phones?

19 A. I believe at that time we had started, yes. We
20 had Smarsh was capturing some.

21 Q. Okay. And prior to Smarsh, that was not being
22 done; is that right?

23 A. There was no global content collection, no.

24 Q. Was there any discussion about archiving text
25 messages on phones that were retired that had been receiving

1 and sending text messages?

2 A. No. Not that I can remember.

3 Q. Were you -- do you recall any incident involving
4 former county administrator Scott Hopes erasing, wiping or
5 losing data from his electronic devices upon separation from
6 the county?

7 A. Can you repeat the question one more time?

8 Q. Could you recall an incident involving Scott Hopes
9 and the loss of data from electronic devices when he left
10 the county?

11 A. Am I aware of the incident? Yes.

12 Q. Did you have any involvement in trying to retrieve
13 or otherwise work on that problem?

14 A. Yes.

15 Q. Tell me what was your involvement?

16 A. My involvement was the reclaim of the devices,
17 securing of the devices and then we had the devices provided
18 to the law enforcement authority.

19 Q. What law enforcement authority was that?

20 A. Manatee County Sheriff's Office.

21 Q. Did the county conduct any forensic analysis of
22 those devices?

23 A. It was done by law enforcement.

24 Q. Okay. Where are those devices now?

25 A. Still in possession of law enforcement.

1 Q. Are you familiar with litigation against the
2 county in 2021 by Paul David Daniels over public records?

3 A. I have some knowledge of it. But not extensive
4 knowledge.

5 Q. Where did you get knowledge of that incident from?

6 A. From internal discussions because at that time we
7 were looking at transitioning public records requests from
8 the IT Department to the public records group to allow them
9 to run queries. There was just conversations about who was
10 running the public records request.

11 Q. Okay. Who were --

12 A. For email. For email.

13 Q. Okay. For email, but not for text messaging?

14 A. Correct.

15 Q. Okay. Who was having those conversations about
16 transitioning up who responded to public records requests?

17 A. It was conversations between IT and the public
18 records manager.

19 Q. Okay. And who was the public records manager?

20 A. Debbie Scaccianoce.

21 Q. All right. And are you aware of what the ruling
22 was in the litigation filed by Paul David Daniels in
23 general?

24 A. Not explicitly, no. No.

25 Q. Let's pull up discovery deposition Exhibit I for

1 identification. Have you seen that before?

2 MR. BARFIELD: This is one that we added. I don't
3 think it's included, so I'll have to display it on the
4 screen.

5 MS. MOGENSEN: Thank you. Can everyone see that
6 now?

7 THE WITNESS: Yes.

8 MR. POLK: You have to blow it up a little bit.

9 BY MS. MOGENSEN:

10 Q. Mr. Hardy, have you ever seen that before?

11 A. This document, no.

12 Q. Okay. So you've never read the ruling with regard
13 to the litigation filed with Paul David Daniels?

14 A. No. I've never seen that document.

15 Q. Okay. Do you know if any changes were made --

16 MR. MOGENSEN: You can take it down, Mr. Barfield.

17 Q. Do you know if any changes were made in Manatee
18 County as a result of litigation filed by Paul David Daniels?

19 A. Not that I'm aware of. I wouldn't know.

20 Q. Do you have annual training with regards to public
21 records compliance?

22 A. Do we have annual training? No.

23 Q. So you don't attend any training with regard to
24 public records compliance at all?

25 A. No.

1 Q. Are you familiar with requirements for archiving
2 public records as set forth in Chapter 119?

3 A. Specifically, no.

4 Q. I know you're in IT. But have you been given any
5 training on Chapter 119 and the Public Records Act at all?

6 A. No.

7 Q. Are you aware of administrative rules from the
8 Division of Library of Information Services relating to
9 retention of electronic records?

10 A. No.

11 Q. Are you aware if there are requirements for
12 retention of records, electronically-stored records for
13 Manatee County at all?

14 A. Yes.

15 Q. Okay. Tell me what your understanding is?

16 A. The understanding is that we have to capture the
17 text messages and retain them for a period of five years at
18 this point.

19 Q. Okay. What is the source of that understanding
20 for you?

21 A. From the public records manager at the time.

22 Q. Okay. Who is that?

23 A. Debbie Scaccianoce.

24 Q. And is there a person in that role -- I take it
25 she is not currently the public records manager?

1 A. Correct.

2 Q. Is there someone in that role today?

3 A. I believe they have an acting person.

4 Q. And who is that?

5 A. Lacey Pritchard.

6 Q. Other than being told that you have to capture
7 text messages and retain for five years, have you been given
8 any other sources of information about Manatee County's
9 responsibility for records, electronic records collection,
10 storage or retention?

11 A. No.

12 Q. Do you have any responsibility with regard to
13 responding to public records requests coming into Manatee
14 County requesting electronic records?

15 A. If it falls under my specific area, yes.

16 Q. Okay. What does that mean? Tell me what your
17 responsibilities are.

18 A. If it's related to the text messaging or phone
19 activity, my group's responsible for providing that
20 information to the public records department; who, in turn,
21 provides it to the requester.

22 Q. Okay. Do you receive the requests?

23 A. I receive a request from the public records
24 department. I don't receive it from the public directly.

25 Q. Okay. So when a member of the public makes a

1 records request, it goes to the -- I think you called it the
2 public records director; is that right?

3 A. Public records, yes.

4 Q. All right. How does that person communicate to
5 you what is being requested from the public? Do they give
6 you a copy of the records requests or something else?

7 A. They submit an internal work request to us, which
8 is assigned to our department and then they put in the
9 specific parameters of the request.

10 Q. That's done by the public records liaison?

11 A. Correct.

12 Q. So you don't -- you've never seen an actual public
13 records request as it was submitted by a member of the
14 public?

15 A. No, I do not see them. I just see the area that's
16 specific to our department.

17 Q. Does Manatee County keep a record of like
18 descriptive documentation for their record keeping system
19 with Smarsh that tells the characteristics necessary for
20 reading or processing the records?

21 A. Do they -- I don't understand the question. What
22 is that again?

23 Q. Do you have like a narrative description of the
24 Smarsh system?

25 A. Do I? No. I mean --

1 Q. I guess that was a badly asked question.

2 Does Manatee County maintain a narrative description
3 of the Smarsh system that would tell the inputs and outputs
4 of the system, the organization, contents of files, things
5 of that nature?

6 A. No. That -- that would be done on a per case
7 basis just based on the filter, the criteria that's put in
8 to get that information.

9 Q. Is there any kind of Smarsh manual?

10 A. Yes. There's user -- there's an administrator and
11 user guide, yes.

12 Q. Have you ever seen the Complaint in this case?

13 A. I believe, yes, I've seen the -- yes. You're
14 referring to [Exhibit H](#)?

15 Q. Yes.

16 A. Yes, I have.

17 Q. Other than us sending you [Exhibit H](#) for purposes
18 of today's deposition, on what occasion did you have to see
19 [Exhibit H](#), the Complaint in this case?

20 A. Prior to the previously scheduled deposition, it
21 was provided by the attorney.

22 Q. Did you read it in its entirety?

23 A. For the most part, yes.

24 Q. Let's take a look at that. If you can take a look
25 at paragraph 14 of [Exhibit H](#). Let me get there too. Is

1 paragraph 14 true and correct?

2 A. Yes. It's the summary of the email, yes.

3 Q. Okay. And how about paragraph 15, could you read
4 that and tell me if that is an accurate statement?

5 A. Yes, that's accurate.

6 Q. Okay. And paragraph 16, if you could review that
7 and tell me if that's an accurate statement?

8 A. Yes. That's when -- it's Mr. Lambert by the way.

9 Q. Oh.

10 A. Yes, he sent me that. Yes, that's the information
11 he sent me.

12 Q. Okay. And then paragraph 17, can you tell me if
13 that's an accurate statement?

14 A. That's correct.

15 Q. And paragraph 18, can you tell me if that's an
16 accurate statement?

17 A. Correct.

18 Q. And then paragraph 20, can you tell me if that's
19 an accurate statement?

20 A. Yes.

21 Q. And paragraph 21, can you tell me if that's an
22 accurate statement?

23 A. Yes.

24 Q. Paragraph 22, is that an accurate statement?

25 A. Yes.

1 Q. And paragraph 23, can you review that and tell me
2 if that's accurate statement?

3 A. No. I wouldn't say -- I don't know what the event
4 was on June 23rd that it's referring to and there wasn't --

5 Q. If you look at paragraph --

6 A. I don't recall it.

7 Q. Did you look at paragraph 35 of the Complaint
8 that's referenced in paragraph 23?

9 A. This is in reference to looking at TV or display
10 of somebody's phone or something.

11 Q. There was a meeting.

12 A. Yes, I was not aware of that. That wasn't -- I
13 wouldn't agree with that paragraph.

14 Q. Okay. That's not to your knowledge?

15 A. Correct. Not to my knowledge.

16 Q. All right. Take a look at paragraph 27, please.
17 Is that an accurate statement insofar as on May 31, 2022,
18 was it true that Manatee County did not have a method to
19 capture the content of text messages as outlined in paragraph
20 27?

21 A. That's correct. At that time we didn't have a --
22 we didn't have a system that was capturing county-owned --
23 county device text messages.

24 Q. Okay. Thank you. All right.

25 Could you look at paragraph 50 of [Exhibit H](#),

1 please. Can you tell me if you agree that's true? Not the
2 basis on information and belief part, but the remainder.

3 A. Yes, I would agree.

4 Q. How about paragraph 51? And this is as of the
5 date of this document, which would be --

6 MR. BARFIELD: Andrea, I think it's dated November 17,
7 2022.

8 MS. MOGENSEN: Right. November 17, 2022. Sorry.
9 I'm flipping around electronically.

10 BY MS. MOGENSEN:

11 Q. So I'm sorry, I didn't hear your answer with
12 regard to paragraph 50. Is that true as of November 17,
13 2022?

14 A. 50? Yes. I would agree.

15 Q. And how about 51?

16 A. 51, I can't make that statement because I'm not --
17 you know, I can only speak in reference to the text messaging
18 at that time, not anything else.

19 Q. Okay. To your knowledge, as of November of 2022,
20 did the elected appointed officials, staff or employees use
21 electronic devices to transact official business without
22 adherence to archiving requirements?

23 A. In reference to text messaging, yes.

24 Q. Okay. And then with regard to paragraph 52, you
25 were saying that text messages were not archived as of

1 November of 2022 or portions of 2022?

2 A. Correct.

3 Q. That we already --

4 A. 52, yes, as well in reference to text messages.

5 MS. MOGENSEN: If we can take a short break.

6 (WHEREUPON, a brief recess was taken.)

7 BY MS. MOGENSEN:

8 Q. We talked briefly today about the changeover in

9 2022 from older phones to newer phones by Manatee County.

10 You remember that?

11 A. Yes.

12 Q. And I think I asked you, but I want to be sure,
13 when the changeover was made from old phones to new phones
14 was any effort made to collect and archive any text messaging
15 or email messaging from those old phones?

16 A. No.

17 Q. Prior to the recent prohibition of use of private
18 devices, was any effort made to collect or archive any text
19 messaging regarding Manatee County business from any private
20 devices?

21 A. Can you repeat the question one more time?

22 Q. You mentioned earlier in your testimony today that
23 there was a recent change or recent prohibition on the use
24 of private devices for text messaging regarding Manatee
25 County business; is that right?

1 A. Yes.

2 Q. All right. Prior to that prohibition coming out,
3 was any effort made to collect or archive private messages --
4 I'm sorry, public business messages conducted on private
5 devices?

6 A. If there was, it was arranged through the public
7 records department.

8 Q. Okay. If it was, was there any systematic we're
9 going to deliver to IT on a monthly basis, a weekly basis,
10 an annual basis the text message content from our private
11 devices or was this only done on a case-by-case basis as
12 requested?

13 A. It was done on a case-by-case basis as far as I'm
14 aware and that information, that data was not ever sent to
15 IT.

16 Q. Okay. And then you mentioned there was a time
17 when a stipend was given to some employees and some elected
18 officials who were using their private devices in lieu of
19 having a county-issued cell phone. Do you remember that?

20 A. Yes. I don't -- I don't know about the elected
21 officials. I'm only referring to county employees.

22 Q. Okay. With regard to persons who were receiving a
23 stipend for using their private device as compared to a
24 county device for public business, was there a policy in
25 place for collection and archiving text messaging done with

1 reference to Manatee County business?

2 A. Not that I'm aware of, no. It's only dictated
3 that the owner of the device, the employee was responsible
4 for the information.

5 Q. Thank you. And do you know what a records management
6 liaison officer is?

7 A. No.

8 Q. Okay. Have you ever heard records management liaison
9 officer, the term used before?

10 A. No. Not officially.

11 MS. MOGENSEN: Okay. I do not have any other
12 questions for you.

13 MR. POLK: This is Don Polk. I don't have any
14 questions. If the transcript is ordered, I'll take a
15 copy. And you can send me the original errata sheet and
16 I can coordinate the signing by the deponent through our
17 office.

18 THE COURT REPORTER: Ms. Mogensen, are you ordering
19 the deposition?

20 MS. MOGENSEN: Let me think about that. I'll let
21 you know.

22

23

24

25

STIPULATION

It was stated by counsel that the exercise of reading and signing the transcript would not be waived.

(WHEREUPON, the taking of the deposition was concluded at 12:23 p.m.)

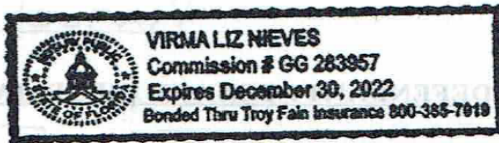
CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF HILLSBOROUGH)

I, V. LIZ NIEVES, the undersigned authority,
certify that RONALD HARDY remotely appeared before me on
October 24, 2023, at 9:54 a.m., and was duly sworn.

WITNESS my hand and official seal this 24th of
October, 2023.



V Liz Nieves

V. LIZ NIEVES
Notary Public - State of Florida
Commission No. HH324376
Expires 12/30/2026

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF MANATEE)

I, V. LIZ NIEVES, Shorthand Reporter, hereby certify that I was authorized to and did stenographically report the deposition of Ronald Hardy; that a review of the transcript was not waived; and that the foregoing transcript, pages 3 through 80 is a true and complete record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 7th day of November 2023, Manatee, Florida.



V. LIZ NIEVES,
COURT REPORTER

DATE: November 7, 2023

Deponent Name: RONALD HARDY
c/o: DOUGLAS E. POLK, JR., ESQUIRE
douglas.polk@mymanatee.org

In Re: Deposition of RONALD HARDY taken on 10/24/2023
CASE NAME: FLORIDA CENTER FOR GOVERNMENT
ACCOUNTABILITY, INC vs. MANATEE COUNTY

Dear Sir:

This letter is to advise that the transcript for the above-referenced deposition has been completed and is available for review. Please have your client contact Imperial Court Reporting at (941)260-9000 to make arrangements to read and sign the transcript at our office within 30 days from the date of this letter; otherwise, they may sign below to waive review of this transcript and email this page to the email address below.

In the alternative, if you have ordered a copy of the transcript and will be handling reading and signing, have your client note any corrections on the errata sheet provided and email it to admin@imperialcourtreporting.com to be forwarded to all parties for inclusion in the transcript.

Sincerely,

Imperial Court Reporting

cc: ANDREA F. MOGENSEN, ESQUIRE
andrea@sarasotacriminallawyer.com

Waiver:

I, _____, hereby waive the reading and signing of my deposition transcript.

Deponent Signature

Date

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In The Matter Of:
Florida Center for Government Accountability, Inc. vs.
Manatee County

Debbie Scaccianoce
October 25, 2023



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IN THE CIRCUIT COURT OF THE TWELFTH
JUDICIAL CIRCUIT IN AND FOR MANATEE COUNTY, FLORIDA

Case No.: 2022-CA-3276

FLORIDA CENTER FOR GOVERNMENT
ACCOUNTABILITY, INC.,

Plaintiff,

vs.

MANATEE COUNTY,

Defendant.

X

DEPOSITION OF
DEBBIE SCACCIANOCE
TAKEN ON BEHALF OF THE PLAINTIFF

DATE: October 25, 2023

TIME: 10:00 a.m. - 12:22 p.m.

PLACE: Via Zoom

EXAMINATION OF THE WITNESS TAKEN BEFORE:

SHEILA CARROLL, COURT REPORTER

Imperial Court Reporting (941) 260-9000

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* * * *

1 THE REPORTER: Do you swear or affirm the
2 testimony you're about to give will be the truth,
3 the whole truth, and nothing but the truth?

4 THE WITNESS: I do.

5 -----

6 Whereupon,

7 DEBBIE SCACCIANOCE, acknowledged having been
8 duly sworn to tell the truth and testified upon his/her
9 oath as follows:

10 DIRECT EXAMINATION

11 BY MS. MOGENSEN:

12 Q. Good morning, could you please pronounce
13 your last name for me?

14 A. Scaccianoce.

15 Q. Trying to get that right. I'm Andrea
16 Mogensen, I represent the plaintiffs in this case.
17 Today we're taking your deposition. Have you given a
18 discovery deposition before?

19 A. No.

20 Q. Okay. It's simply a sworn statement.
21 There are a couple of things that are a little
22 different than a regular conversation, but otherwise
23 it's pretty casual.

24 You have just been sworn in, so it's a
25 statement under oath. So it's important that your

1 questions are truthful and accurate. And to make sure
2 that it reflects that when it's typed up, could you,
3 please wait until I've completely finished the question
4 before you start answering. Lots of times you're going
5 to know where I'm going and it's instilled as Americans
6 to start answering as soon as we know, but it's
7 important that I finish the question before you start
8 answering. Okay?

9 A. Okay.

10 Q. Conversely, if you're giving an answer and
11 I start asking you a new question but there's more to
12 say, would you kindly stop me and make sure that your
13 answer is complete so that I don't inadvertently cut
14 you off before you have given us a complete answer?

15 A. Okay, yes.

16 Q. All right. I'm going to try to speak more
17 slowly than I usually do, if you could do the same, I'd
18 appreciate it.

19 A. Okay.

20 Q. If I ask a question that assumes something
21 that's not true, please tell me because if you just
22 answer the question, it will seem as though that
23 premise is true. If you know it not to be true, please
24 correct it.

25 A. Okay.

1 Q. Okay. Very good. Can you please tell
2 me --

3 MR. POLK: I'm sorry, I just want to jump
4 in here. This is Doug Polk. I just want to make
5 sure. So on my screen I'm seeing a couple of
6 Michael Barfield screens and this was not noticed
7 as a video depo. So I just want to make sure
8 we're not videotaping the deposition, beyond what
9 the court reporter Zoom is, which she can use for
10 her own purposes, but it's not noticed as a
11 videotape deposition; is that correct?

12 MS. MOGENSEN: Yeah, it's correct.

13 MR. POLK: Okay. So nobody is videotaping
14 it other than the court reporter.

15 THE COURT REPORTER: Okay, hold on. I am
16 not videotaping it.

17 MS. MOGENSEN: I am not videotaping it.

18 MR. BARFIELD: I am videotaping it, but I
19 will stop the video now, Mr. Polk.

20 MR. POLK: Thank you.

21 (Video recording stopped.)

22 Q. (By Ms. Mogensen) All right. Could you
23 start off by telling us your educational background?

24 A. I have a bachelor's degree in business
25 administration. I've spent 30 years in government as a

1 records manager and a records supervisor. I also have
2 30 years experience in Freedom of Information and
3 public records.

4 Q. That 30 years experience, is that all in
5 Florida?

6 A. No. Majority of it -- the last 11 years
7 was in Florida. Previously it was in the State of
8 Illinois.

9 Q. And as I understand it, you worked for
10 Manatee County; is that right?

11 A. That is correct, for 11 years.

12 Q. All right. Do you remember the month and
13 year you got hired there?

14 A. August of 2012.

15 Q. And you no longer work there; is that
16 right?

17 A. That is correct.

18 Q. When did your employment there end?

19 A. August of 2023.

20 Q. During your time with Manatee County, what
21 positions did you hold?

22 A. I held the position of records management,
23 division manager.

24 Q. Okay. And when you say division manager,
25 was it of a specific division?

1 A. It was over records, the mail room and
2 courier, the copy center. And at the end they added
3 the 311, and the communications division to my -- as
4 well as public records.

5 Q. What is 311?

6 A. 311 is a nonemergency calls to the county.
7 So if you just need directions or want to know when
8 your garbage pickup is, you call 311 and we have
9 operators that answer those calls.

10 Q. Okay. Were there other records division
11 managers, besides yourself, in other divisions of the
12 county?

13 A. There were no other records division
14 managers in the county that I know of. My position was
15 actually created in 2012.

16 Q. I see, when you were hired?

17 A. Yes.

18 Q. Were you furnished with the deposition
19 exhibits before today's deposition?

20 A. I do not have any documents. No, I don't.

21 Q. Okay. All right. We're going to do a
22 little screen sharing now.

23 MS. MOGENSEN: Mr. Barfield, could you help
24 me with the screen share this morning?

25 MR. BARFIELD: Sure. And my apologies,

1 Miss Scaccianoce, I did e-mail them this morning
2 right as the deposition was -- began. I don't
3 know if you have access to e-mail, but I can
4 otherwise display them on the screen.

5 MS MOGENSEN: We're going to show you what
6 I am going to call Discovery Deposition [Exhibit A](#)
7 for identification.

8 ([Exhibit A](#), marked for identification.)

9 MR. POLK: Just for the record, I don't
10 have an e-mail from you Mr. Barfield, so I don't
11 have them available as well. They were not
12 provided to me, as far as I can tell.

13 MS. MOGENSEN: They're the same ones from
14 yesterday's deposition.

15 MR. POLK: Okay.

16 MS. MOGENSEN: With the same identifying
17 numbers, except I think there will be one at the
18 end that's like a single page that will be pretty
19 obvious.

20 MR. POLK: Okay. Fair enough, thank you.

21 THE WITNESS: I can try and find them in my
22 mail, but I think I will lose the Zoom meeting if
23 I do that.

24 MR. BARFIELD: Okay. I'm pulling it up
25 now. If everyone could tell me if they see that

1 and if it needs to be enlarged, just let me know.

2 THE WITNESS: I can see [Exhibit A](#).

3 Q. (By Ms. Mogensen) Do you recognize that?

4 A. Yes.

5 Q. What is that, what is [Exhibit A](#)?

6 Does [Exhibit A](#) appear to you to be the
7 Manatee County's written policy regulating the use of
8 information technology resources for the county?

9 A. Yes.

10 Q. And do you believe that would be the
11 operative policy? It looks like it's dated 2019.
12 Would you believe that issued around 1/2019, that first
13 page, do you believe that to be the policy that was in
14 effect in 2022?

15 A. That would be, yes.

16 Q. Okay. Thank you. During the course of
17 your employment with the county, was there a written
18 policy governing public records requests?

19 A. When I -- yes, there was a written policy
20 regarding public records.

21 Q. What was the title of that document, if you
22 know?

23 A. I don't know the title of the document, but
24 it's part of the county's policies and procedures that
25 were approved by the administrator.

1 Q. If I wanted to make a public records
2 request for that document, what would be the best way
3 to word that, if you know?

4 A. If you just requested the policy on -- with
5 public records requests, they would be able to provide
6 that to you.

7 Q. All right. Thank you. Are you familiar
8 with the term records management liaison officer?

9 A. Yes.

10 Q. All right. Can you tell me what that is?

11 A. The records management liaison officer is
12 the person designated in the county to oversee all the
13 practices and make -- to make sure that we're following
14 all statutory requirements regarding physical and
15 electronic records, and any information that the county
16 collects and preserves.

17 Q. Okay. This case involves records request
18 for June of 2022, and thereafter, who was the records
19 management liaison officer for Manatee County from June
20 of 2022, to the time you left?

21 A. That would be me.

22 Q. Can you tell me a little bit about what
23 training you received in your capacity as the records
24 management liaison officer for Manatee County?

25 A. I completed the State of Florida's training

1 when I was -- in the beginning of my employment, and
2 every year that -- after that, I attended the Florida
3 records managers association conference. I'm also
4 certified in the State of Florida, I passed the exam.
5 And every year I attended the county training that they
6 gave that related to public records.

7 Q. Was there any other records management
8 liaison officers for Manatee County during that period
9 -- I'm going to call it the time period, meaning from
10 June 2022, to the time that your employment ended, were
11 there any other records management liaison officers
12 during that time?

13 A. No, there was not.

14 Q. Let's talk about Manatee County systems
15 that were used to log in public records request. Was
16 there a specific computer program or system that was
17 used for that purpose?

18 A. Yes, it's called Comcate.

19 Q. Were there any others used or just Comcate?

20 A. Well, in the time frame that we're
21 discussing, it was only Comcate. Prior to that, there
22 was not -- there was a manual processing from 2012 to
23 2014.

24 Q. Understood, thank you. For the time period
25 June 2022, to the time you left working for Manatee

1 County, was it the practice that all records requests
2 be logged into that system?

3 A. Yes.

4 Q. All right. And could a log of requests be
5 generated from Comcate?

6 A. Yes.

7 Q. And can that be done by requester or by
8 date, other parameters, what parameters could be used
9 to generate a log of public records request?

10 A. You can use timeframe, you could use
11 requester name, a key word. It just depends on what
12 you're looking for.

13 Q. And when you received such a log, what kind
14 of data was in the log when you would search for public
15 records request?

16 A. It would depend again on how you ran the
17 report. You would specify what you were looking for.

18 So if you just wanted a list, a log of all
19 the requests just with the names of the requesters, you
20 could do that. If you wanted a log with just the type
21 of request, meaning, was it an HR request, was it, you
22 know, building department request, you could do that or
23 you could get down to more detail in which it would
24 also include the description of what the requester was
25 looking for.

1 Q. Let's talk for a moment about processing a
2 public records request. When a public records request
3 was received by you during the relevant time period,
4 what was the process for processing that request?

5 A. As soon as the request comes in, you know,
6 it generates a notification and the request is open and
7 read. And then the area of the request is identified.

8 And then we would reach out to, if it was
9 public works, we would reach out to public works. If
10 it was building department and it was other than
11 something we had direct access with, we reached out to
12 the building department, public safety, and so on. And
13 in the case of text messages, we would go directly to
14 the person who possessed that device.

15 MR. POLK: I'm sorry, I don't mean to
16 interrupt, but I just received another notice
17 that the closed-captioning has been turned on and
18 is being recorded.

19 Again, this is a deposition noticed as a
20 deposition. I don't know if that's -- who's
21 doing that, or -- but I would of course object to
22 any recording of the deposition beyond the
23 official transcript being provided by the court
24 reporter. So I don't know who's doing that.

25 THE COURT REPORTER: I am not doing that.

1 The court reporter is not doing that.

2 MR. BARFIELD: It's not my video, Mr. Polk.

3 MR. POLK: I know it's not your video, but
4 someone is apparently, and I'm not the greatest
5 tech person in the world, but I just received
6 notice at the top of my screen, that one of the
7 participants is recording the closed-captioning
8 and saving that so.

9 THE COURT REPORTER: I have that also on my
10 screen.

11 MR. POLK: So whoever's doing that, I would
12 object to that and if Miss Mogensen is not doing
13 it, Mr. Barfield are you doing that?

14 MR. BARFIELD: Yes, it's part of my Zoom
15 settings automatic. Let me see if I can disable
16 that, if that's what you would like.

17 MR. POLK: And I'm not trying to be
18 disruptive or interrupting here, but we have
19 certain rules and the official transcript is the
20 official transcript so.

21 Q. (By Ms. Mogensen) All right. Let's talk
22 for a moment about --

23 MR. POLK: I'm sorry, can we just stop
24 until we have some confirmation that that's been
25 disabled.

1 MR. BARFIELD: I believe it is off now.

2 MR. POLK: Okay, thank you.

3 THE COURT REPORTER: I still see it on.

4 MR. BARFIELD: I'm not seeing it, but...

5 THE COURT REPORTER: It's still appearing
6 at the top of my screen.

7 MR. POLK: It is still going, I can see it
8 now.

9 MR. BARFIELD: Okay. I believe I've
10 disabled it in settings. Do you see it still,
11 does anyone still see it?

12 MR. POLK: No. Thank you.

13 Q. (By Ms. Mogensen) Getting back to the
14 processing of public records requests, can you tell me
15 about the process from the point of view of your
16 communications with the requester, identifying and
17 searching, that sort of thing?

18 A. Well, the system generates a notification
19 that we received the request, and we communicate with
20 the requester if we have additional questions. If the
21 request is overly broad and we have questions trying to
22 narrow the scope, we try to keep in touch if it's
23 taking a while so that we let them know that we're at
24 least working on it. That's typically how we handled
25 it.

1 Q. And I would expect that you would have to
2 identify whether any special service charges applied
3 and communicate that to the requester?

4 A. Yes.

5 Q. Now, you mentioned text messaging. When we
6 talk about text messaging, I've kind of included text
7 activity logs in that -- well, we'll differentiate
8 between text activity logs and content, as well as
9 phone logs.

10 But if you received, during the relevant
11 time period, when receiving a public records request
12 for the content of text messaging, what would the
13 process for that be, to retrieve those records?

14 A. In the time frame that you're looking at,
15 initially text messaging we would reach out to the
16 individual who possessed the phones and we would tell
17 them that there is a request for text messaging and ask
18 them to provide those messages.

19 Back in June of last year, the county did
20 not possess a method to extract those text messages
21 from the phones of the county issued phones or the
22 personal cell phones.

23 So it was a matter of the individuals
24 providing screenshots of the text messages that were
25 related to county business, and any text messages that

1 were not related to county business would have been
2 redacted.

3 Q. Okay. So for the category of text message
4 content, it was the device user that made the decision
5 what was a public record and what was responsive as
6 compared to you?

7 A. That's correct.

8 Q. Prior to June of 2022, did the county ever
9 have the ability to archive and retain text messages
10 from either county phones or private devices that were
11 being used for public use?

12 A. Users were asked or told to have any
13 county-related text messages forwarded to their
14 mymanatee.org e-mail account so that they could be
15 archived and captured via the e-mail archive process.

16 Q. Did you receive any feedback or any
17 information about compliance with that request or
18 noncompliance with that request, I guess I should say?

19 A. From individual users?

20 Q. Yes. Was there any means in place for the
21 county to ascertain whether or not the individual users
22 were compliant and forwarding all records related to
23 public business to their e-mail?

24 A. Nope, there was no way to verify that.

25 Q. So, I understand your answer to be that

1 there wasn't a centralized database for text message
2 content for Manatee County employees or elected
3 officials, as of June of 2022; is that right?

4 A. They started a process, I believe it was in
5 November of 2022, but prior to that, there was not a
6 method to capture text messages.

7 Q. How about text messaging logs?

8 A. No, none of that was obtainable prior to
9 November of 2022, it wasn't logged.

10 Q. Prior to November of 2022, were telephone
11 logs from county issued phones preserved by the county?

12 A. I do not have the answer to that question.
13 The desk phone logs were captured. But cell phones, at
14 the time, I don't -- I'm not privy to that.

15 Q. Okay. Still, is it fair to say that each
16 county employee became the custodian of their own text
17 messages either on county issued or personal devices
18 before November of 2022?

19 A. I would have to say yes.

20 Q. E-mail messaging, I would presume the
21 county employees had county issued e-mail addresses,
22 right?

23 A. Correct.

24 Q. Was there a means for preserving and
25 archiving e-mail message communications on county

1 e-mail addresses within the county during the relevant
2 time period?

3 A. Yes.

4 Q. All right. And how did that go?

5 A. That -- the IT department has a method to
6 capture all e-mails through Microsoft Private
7 eDiscovery, and it was archived via that process.

8 Q. And as far as electronic files like Word,
9 PDF, Excel, other electronic records, excluding those
10 we talked about, was there a centralized location where
11 those were kept for the county?

12 A. As long as the user did not save the
13 records to their individual desktop, the county had a
14 method to preserve all those records.

15 Q. Now, you mentioned, as we were talking
16 here, that up to November of 2022, text message content
17 was not preserved by the county, what happened in
18 November of 2022, that changed that, if anything?

19 A. They, the IT department and the county,
20 contracted with a vendor to begin capturing of all
21 county issued cell phones with Smarsh, I believe, is
22 the vendor.

23 Q. Okay. Now, we talked a little bit about
24 the text content, records containing text message
25 content, and that each individual user of a device was

1 responsible for maintaining those records and providing
2 them when a records request came in; is that fair to
3 summarize what we just said?

4 A. Yes.

5 Q. Do you know if each of the employees who
6 were custodians of those records, completed any annual
7 documentation regarding to the destruction or retention
8 of those records?

9 A. No, they did not, to my knowledge.

10 Q. Okay. And you said as long as the user
11 didn't save records to their desktop, the county
12 retained records, what does that mean? Do you mean
13 save it to a desktop as compared to on a server?

14 A. Correct.

15 Q. Okay. So that was also user dependent
16 whether those records went into a centralized database?

17 A. Yes.

18 Q. And if a public records request came in for
19 a particular documentation, I would presume that you
20 would first look in the centralized databases on the
21 server for responsive records; is that right?

22 A. The way the county system works is each
23 individual department had its own server drive, and I
24 did not have access to all the server drives. I only
25 had access to my division's server drive. So if there

1 were records that I needed in another department, it
2 was dependent on them to provide them to me when I
3 asked them for them.

4 Q. And as far as any responsive records to a
5 particular request that were saved on a desktop, as
6 compared to the server drive, was it also dependent
7 upon someone other than you, I guess, to search the
8 desktop and determine if there were responsive records?

9 A. Yes.

10 Q. Did each division have a person that you
11 were to contact for public records requests or did you
12 go to the individual user that would be most likely to
13 have them or how did that work?

14 A. We identified point of contact in each
15 department so that they could go to the subject matter
16 expert, for lack of a better word, because it would be
17 difficult for me to know every individual person that
18 might possess that record.

19 Q. That makes sense. Do you know, I suppose
20 you don't, if there were was a search from -- an
21 off-server search from the desktop to records request
22 went to a particular department or do you not know?

23 A. Wait, can you repeat the question.

24 Q. When you -- you said there was a point of
25 contact for each department, so let's use an example --

1 it was a really bad question.

2 If you were -- if you received a public
3 records request for a particular category of PDF or
4 Excel or Word documents, and you sent it to the point
5 of contact in that department, what methods, if any,
6 were in place to ensure that the -- both the
7 departmental server drive and the desktops of the
8 individual employees were searched for those responsive
9 records?

10 A. The only method in place would be that you
11 would assume that the person in that department had
12 done their due diligence and that all the records were
13 provided.

14 Q. If you know, if documents were saved to a
15 desktop hard drive as compared to the department
16 server, were those documents on the desktop hard drives
17 backed up anywhere?

18 A. I'm sorry, were the documents on the
19 desktop what?

20 Q. If you save the document -- if you
21 specifically save a document to your desktop as
22 compared to putting it on the server, departmental
23 server, was that backed up anywhere, your hard drive --
24 your desktop hard drive, were they backed up anywhere?

25 A. No, if it wasn't on the network, it was not

1 backed up. If that computer crashed, then that would
2 not have been backed up.

3 Q. When a records request came in, did each
4 department have a copy of it or just select department
5 heads or was that determined by the requester?

6 A. We reached out to each department head and
7 asked them if they want to be notified for every
8 request, and they initially said yes. But, eventually,
9 it -- they changed their mind because it very often
10 their e-mail inbox would get filled with requests and
11 so then that practice was stopped. There were certain
12 departments that wanted notifications, most did not.

13 Q. Do you recall which departments opted out?

14 A. Of notifications?

15 Q. Yes.

16 A. Public works, public safety, building
17 department, they did not want constant notifications
18 because there was very often too many. The departments
19 that requested notification, HR always got them because
20 those requests went to upper management in HR, so they
21 automatically knew, and then administration.

22 Q. Okay. Once a public records request was
23 assembled, how was it delivered to the requester?

24 A. The requester determines that.

25 Q. Okay. In certain cases, did you send a

1 link to the records?

2 A. Yes.

3 Q. When links were sent, how long were the
4 links active?

5 A. That was predetermined by the software. I
6 believe it was 10 days that the links were active.

7 Q. And does the county archive what records
8 are actually furnished to a requester?

9 A. I'm sorry, can you repeat that.

10 Q. For the relevant time period, does the
11 county archive what records were furnished to a
12 requester in response to a specific request?

13 A. Yes.

14 Q. How's that done?

15 A. It's maintained within the software used
16 for public records requests.

17 Q. And does the system retain the searches
18 that have been conducted?

19 A. The system -- we put into the system that
20 information, and IT, through the eDiscovery tool in the
21 case of phone text and e-mail, maintains a record of
22 that in their eDiscovery archive.

23 Q. What is Jabber?

24 A. Jabber is a chat tool that the county has
25 as part of their own system.

1 Q. In the case of receiving a public records
2 request for Jabber content during the relevant time
3 period, what was your process for retrieving that?

4 A. We would make the request to IT, and then
5 IT would provide us the records in that time frame from
6 Jabber.

7 Q. During the relevant time period, from June
8 of 2022, to the time that you left the county, did the
9 county's policy on text messaging change?

10 A. The policy on text messaging did not change
11 in that time frame.

12 Q. And can you tell us what your understanding
13 was of the policy on whether employees and elected
14 officials should use text messaging for public
15 business, if so, can you tell us what your
16 understanding of that was during the relevant time
17 period?

18 A. During the relevant time period, employees
19 were told or asked to forward any county related
20 business text messaging to their e-mail and that they
21 discouraged text messaging.

22 Q. With regard to the software we talked about
23 that is used for public records requests, I think you
24 said is Comcate, is there some type of manual that
25 describes the functions of the software that's

1 available at the county?

2 A. There's not a manual. The software is
3 really only used by myself and the public records
4 assistant that assisted me for this, and we use the web
5 help option if we ever had a question on how to use the
6 software. We were trained initially when it was
7 implemented.

8 Q. With regard to text messaging again, we
9 talked a little bit about the policy, were there
10 circumstances where the policy required approval for
11 text messaging by the department director, if you know?

12 A. No, that was not -- nothing like that was
13 in place.

14 MS. MOGENSEN: Let's take a look at
15 [Exhibit A](#) again, please, Mr. Barfield. If you
16 can go to page seven.

17 MR. BARFIELD: Can everyone see that?

18 MR. POLK: Yes.

19 THE WITNESS: Yes.

20 Q. (By Ms. Mogensen) It looks like it says in
21 that policy, "Text messaging shall not be used for
22 conducting County business unless expressly approved by
23 an department director." And then, "The only exception
24 to this is for transitory messages such as asking if
25 someone is available to meet or where they are

1 located."

2 Do you know if -- this is deposition
3 Exhibit A, do you know if there was any compliance with
4 that term of this policy?

5 A. No.

6 Q. You don't know or there wasn't?

7 A. I don't know if there was compliance. That
8 would be at the department level with the department
9 directors.

10 Q. Are you familiar with the term local device
11 management?

12 A. Am I? No, I'm not.

13 Q. Are you familiar with the county's stipend
14 program, whereby employees use their personal phones,
15 if they needed to for county business, or be stipend by
16 the county for doing so in lieu of using a county
17 device?

18 A. Yes.

19 Q. Do you know if there were categories of
20 employees that did that, if it was elected by the
21 employee or how that stipend program was adopted?

22 A. I think again that was a determination by
23 the department director if an employee needed access or
24 to use a phone for county business.

25 Q. Do you know how many employees were on this

1 stipend program as compared to not, was it like half
2 and half, was it a small percentage?

3 A. No, IT was responsible for monitoring that
4 program.

5 Q. Okay. When did you first learn that text
6 messaging on county issued phones were not be being
7 archived or stored?

8 A. When a public records request was made.

9 Q. Okay. Do you recall when that was?

10 A. I can't say for sure definitively.
11 Probably the first text message request came in
12 probably in 2020, I believe, yes, 2020.

13 Q. Do you recall who the requester was?

14 A. No. Not specifically, I do not.

15 Q. What do you recall about that request that
16 caused it to come to your attention that text messaging
17 on county issued phones was not being archived?

18 A. It was when the new board members were
19 elected in November of 2020, and it was shortly after
20 their first swearing in that my first request for text
21 messages began.

22 Q. When it came to your attention in 2020,
23 that content of text messages was not being preserved
24 on the county phones, or archived I should say, were
25 there discussions about Chapter 119 compliance, did you

1 alert anyone as it relates to the county's
2 responsibilities under Chapter 119?

3 A. Yes.

4 Q. Who did you talk to?

5 A. I initially addressed the issue with the
6 county administration and also with the office of the
7 county attorney.

8 Q. Do you remember specifically who you spoke
9 to?

10 A. I do not know. I do not recall
11 specifically. The county administrator at the time was
12 Cheri Coryea, and I believe the county attorney at the
13 time was Mitchell Palmer.

14 Q. And do you recall if you alerted Cheri
15 Coryea by phone, by e-mail or in person?

16 A. I would imagine it was by phone.

17 Q. All right. And same question with regard
18 to the county attorney, Mitchell Palmer. Would that be
19 by e-mail, by phone or in person?

20 A. It would have been by phone.

21 Q. Do you know if there are any records
22 relating to your efforts to alert people that this was
23 a Chapter 119 compliance issue in 2020?

24 A. I cannot recall if I ever committed that to
25 e-mail.

1 Q. And with regard to text messaging on
2 private devices, did it come to your attention at any
3 point that text messaging regarding county business on
4 private devices created any kind of problems with
5 regard to your responsibilities under Chapter 119?

6 A. Yes.

7 Q. When did that first come to your attention?

8 A. The same time frame.

9 Q. Okay.

10 A. November of 2020.

11 Q. And same question, did you alert anyone
12 about that or were those part of the same discussions
13 that you had, or efforts that you made to Cheri Coryea
14 and Mitchell Palmer?

15 A. Yes, same.

16 Q. All right. And with regard to the county
17 phones and the archiving, I think that you mentioned in
18 November of 2022, the archiving problem was solved by
19 use of the Smarsh software; is that right?

20 A. That's correct.

21 Q. All right. With regard to private devices,
22 either on the stipend program or not, that were used
23 for public business, was the issue of collecting the
24 content of text messages, as it related to your Chapter
25 119 responsibilities, resolved during your tenure with

1 Manatee County?

2 A. The ability to download text messages with
3 a software was available, but the same issue with
4 personal devices wasn't -- the person who possessed the
5 device then downloaded the messages they felt were
6 applicable without my intervention or without me seeing
7 the messages themselves.

8 Q. Okay. And did that continue to be a
9 problem until you left your employment with Manatee
10 County?

11 A. Yes, I was not seeing personal text
12 messages. I mean the personal devices themselves. It
13 was incumbent on the owner of the device.

14 Q. Okay. Did individuals object to you
15 reviewing the messages on their devices, their personal
16 devices?

17 A. Yes.

18 Q. Who objected to that, if you remember?

19 A. Pretty much -- well, I can't say that. So,
20 it's a long list. So I don't know if you want me to go
21 through every single person. There were certain
22 individuals that had no problem with it and just gave
23 me their phone and said, Here, I've got nothing to
24 hide. And others were very reluctant and would not
25 cooperate.

1 Q. Were there individuals who refused to
2 provide their phones or their text messages upon your
3 request?

4 A. Yes. Which is why at a point
5 administration decided to deploy laptops to upper
6 administrative personnel that were not connected to the
7 network so that they could download their own text
8 messages, review them, and then provide me or my staff
9 with the text messages they felt were relevant to the
10 request.

11 Q. Okay. As far as the elected officials,
12 were there any elected officials that refused to
13 provide their devices to you for the purpose of
14 retrieving public records?

15 A. Uhm, most of them were compliant, but, I
16 said, when I would make a request, they would simply
17 say, I don't have anything. There would be no way for
18 me to confirm that.

19 There were individuals, Mr. Van Ostenbridge
20 never provided a phone. He does not have a county
21 issued cell phone. He only has a personal device, so
22 -- I wouldn't say they refused, they just wanted to do
23 it themselves.

24 Q. Okay. Did Dr. Hopes conduct his own
25 searches or did he turn over his device to you and the

1 requested records?

2 A. No, not ever.

3 Q. So he never examined his phone for records
4 to respond to public records requests?

5 A. Nope.

6 Q. Is that because there were no requests or
7 is that because he would not give you his phone?

8 A. Yeah, he would not give me his phone.

9 Q. Same question with regard to Mr.
10 Reinshuttle, did you ever examine his phone in response
11 to any public records request?

12 A. Yes, Mr. Reinshuttle was compliant. I did
13 not have issues with Mr. Reinshuttle.

14 Q. Okay. Same question with regard to Charlie
15 Bishop?

16 A. I did not get Charlie Bishop's phone.

17 Q. How about Courtney De Pol?

18 A. I did not get Courtney De Pol's phone. I
19 got Mr. Bishop's and Miss De Pol's phone the day that
20 the lawsuit was filed.

21 Q. For this lawsuit?

22 A. Yes.

23 Q. Okay. And when you say with regard to the
24 individuals that you did not get their phone, was that
25 because there were no requests or is that because they

1 would not provide their phone upon request?

2 A. They just were not providing the phones.

3 Q. Okay. And with regard to this topic of
4 compliance with turning over phones for public records
5 requests, have you ever given any sworn testimony
6 regarding these questions, prior to today?

7 A. Regarding text messaging?

8 Q. Regarding turning over phones to retrieve
9 text messaging?

10 A. I don't believe I've ever given sworn
11 testimony regarding that.

12 MS. MOGENSEN: Okay. Let's take a look at
13 Discovery Deposition [Exhibit B](#), please. This is
14 a text message chain. It starts at the bottom
15 time-wise.

16 So if we can scroll through from the
17 bottom up so that the witness can review it.

18 ([Exhibit B](#), marked for identification.)

19 MR. BARFIELD: This is the very bottom and
20 just let me know when you want me to scroll up.

21 THE WITNESS: If you can scroll up. Okay,
22 keep going. Yep, keep going.

23 Yes, I recall this.

24 Q. (By Ms. Mogensen) Okay. Can you tell me
25 what [Exhibit B](#) is first?

1 A. I'm sorry.

2 Q. Can you tell me what that is?

3 A. The e-mails are discussing the ability to
4 capture text messaging from county issued devices.

5 Q. Okay. And do those e-mails appear to be
6 authentic to you; do you recall them?

7 A. Yes.

8 Q. It looks like it's between you and Ron
9 Hardy with Drew Richardson copied; is that fair to say?

10 A. Yes.

11 Q. Now, this is from October 4th of 2021, do
12 you know if -- it would appear from these e-mails that
13 the Smarsh system was not in place yet because it looks
14 like from a content point of view, that Ron Hardy was
15 then researching Smarsh; is that right?

16 A. Yes, he was in the process of getting
17 Smarsh.

18 Q. That was October of 2021, do you know when
19 Smarsh was actually implemented in Manatee County?

20 A. I'm not sure of the purchase date, but the
21 implementation date was October and November of 2022.

22 Q. Okay. So a year later?

23 A. Yep.

24 Q. Do you know what efforts, if any, were made
25 between October 4th of 2021, and the implementation of

1 Smarsh in October or November of 2022, to archive the
2 content of text messaging?

3 A. No, I'm not aware of any efforts. That
4 would be an IT effort.

5 MS. MOGENSEN: Thank you. Let's take a
6 look at Discovery Deposition [Exhibit C](#) for
7 identification. We'll do the same thing. I just
8 want you to authenticate what this is and if it
9 appears to be authentic to you.

10 ([Exhibit C](#), marked for identification.)

11 MR. BARFIELD: Okay. I'm going to start at
12 the bottom and tell me when you want me to
13 scroll.

14 THE WITNESS: You can scroll up. You can
15 scroll up. You can scroll up. You can scroll
16 up. You can scroll up. You ask scroll up. Okay
17 you ask scroll up. Scroll up. You can scroll
18 up. You ask scroll up. Oh, that's the top?

19 MR. BARFIELD: That's the top.

20 Q. (By Ms. Mogensen) Do you recognize
21 [Exhibit C](#) for identification?

22 A. I can verify the ones that I am on, a party
23 to in the e-mail, those are -- I can verify those are
24 -- I do recall those messages. The ones that I'm not
25 included in, they look to be authentic, but I cannot

1 speak to those.

2 Q. It looks like on October 4th, you were
3 forwarded the proposal from Smarsh by Ron Hardy; is
4 that fair to say?

5 A. Yes.

6 Q. Do you recall that occurring?

7 A. Yes.

8 Q. All right. And then it looks like your
9 response was that your issues were with commissioners'
10 personal phones. "I don't think I can enforce them to
11 give me access to the phones or make them turn off
12 I-messaging"; is that also fair to say?

13 A. Yes.

14 Q. What is the significance of I-message in
15 the context of this message?

16 A. I am not technology savvy, but I-messaging
17 is between iPhone users only and that those messages
18 are saved differently on a device than a message from a
19 phone that is not an iPhone.

20 Q. Okay. So from a records custodian's point
21 of view, did this present any problems for you?

22 A. I-messaging presented a problem because
23 they weren't saved on the phone. They had a -- I guess
24 they disappeared. Again, I'm not IT savvy. I don't
25 know how I-messaging works, but I know I-messaging was

1 a problem.

2 Q. Okay. So from a custodial records concern
3 point of view, if a user of an iPhone turned over to
4 you their iPhone for a public records request for text
5 messaging, were you able to retrieve the messages?

6 A. If they were texting with an Android
7 device.

8 Q. Okay. With an iPhone you could not
9 retrieve any text messaging --

10 A. I would have to -- I'm sorry.

11 Q. No, go ahead and answer.

12 A. If the request and the phone was turned
13 over to me quickly, I could retrieve messages. If
14 there was any delay in obtaining the phone, then
15 messages disappeared.

16 Q. And then you weren't able to get them; is
17 that right?

18 A. Correct. That is correct.

19 Q. Okay. And was that true for county phones
20 and private phones that were iPhones?

21 A. If I-messaging wasn't disabled on the
22 phone, then I would have to say yes. But, again, I
23 can't say for sure because that was an IT decision.

24 Q. And did you talk to Ron Hardy or anyone in
25 the IT department about this issue?

1 A. Only in this message alerting them about
2 the I-messaging being turned off.

3 Q. And was that problem resolved during the
4 time that you worked with the county?

5 A. The only time the problem was resolved is
6 when they deployed new cell phones to all employees in
7 October of 2022, in which they enabled Smarsh. That's
8 the only time I can say for sure that the I-messaging
9 issue was resolved.

10 Q. And are you aware of any records or notes
11 or documents relating to the issue of non-retention of
12 text messaging within Manatee County during the
13 relevant time period?

14 A. Any records of non-retention?

15 Q. Any records of conversations addressing the
16 issues with administration, talking amongst employees,
17 anything of that nature, memos?

18 A. There's no memos, there's no policies.
19 There may have been e-mail conversations, but I
20 wouldn't be able to identify a specific time frame,
21 other than one in which there was a request for them
22 and they weren't saved, there may be an e-mail that
23 says, no.

24 Q. Do you remember a specific conversation
25 about an e-mail where text messaging wasn't saved?

1 A. There's not an e-mail. There would have
2 been oral conversation, but not in writing.

3 Q. To your knowledge, what, if anything, was
4 done within the county between October 4, 2021, when
5 those e-mails in Exhibits B and C were exchanged, and
6 June of 2022, which is the date the records request was
7 made in this case, to address the issue of archiving
8 and retaining the content of text messaging?

9 A. Outside of reinforcing verbally that people
10 should be forwarding the text messages to their
11 mymannatee.org e-mail account, I'm not aware of any
12 other attempts to do that.

13 Q. Do you believe that addressing the problem
14 with the failure to archive text messages was a
15 priority for Manatee County between October 4, 2021,
16 and June of 2022?

17 MR. POLK: Form.

18 THE WITNESS: I can't answer that.

19 MS. MOGENSEN: Let's look at Discovery
20 Deposition [Exhibit H](#). Exhibit H8. H is the
21 complaint, Mr. Polk.

22 ([Exhibit H](#), marked for identification.)

23 MR. POLK: Thank you.

24 MR. BARFIELD: I'll get to the bottom and
25 then scroll up.

1 Q. (By Ms. Mogensen) The top of that document
2 is the e-mail chain?

3 A. Right.

4 Q. Do you recognize Exhibit H8?

5 A. Yes.

6 Q. What do you recognize that to be?

7 A. That's a public records request made by Mr.
8 Barfield directly to me.

9 Q. Okay. And do you recall receiving that,
10 does that appear to be authentic to you?

11 A. Yes, I recall receiving this.

12 Q. And can you tell me what steps were taken
13 to comply with this public records request?

14 A. I immediately had it entered into the
15 Comcate system so that the records request could be
16 tracked. From that point, Dr. Hopes was notified, as
17 well as his administrative assistant, that the public
18 records request existed and that I needed him to
19 provide the record.

20 Q. And what happened next?

21 A. I waited for Dr. Hopes to respond. He was
22 not responsive. I reached out to the county attorney
23 to let them know and asked for their assistance in
24 getting Dr. Hopes to comply. I did try multiple times
25 before reaching out to the county attorney in order to

1 get Dr. Hopes to comply.

2 Q. And after that, what, if any, steps were
3 taken to fulfill this public records request?

4 A. I can't recall exactly. I believe
5 ultimately, however, this -- in this particular
6 request, Mr. Barfield was contacted and a meeting was
7 set up with Dr. Hopes so that he could view the text
8 messages in the conference room on a screen.

9 Q. Okay. And you did not attend that meeting,
10 correct?

11 A. I was in the room initially, but then I was
12 not there when the actual text messages were being
13 viewed.

14 Q. Okay. And after that meeting, what, if
15 anything, was done to fulfill this public records
16 request, as far as furnishing the records to Mr.
17 Barfield that he requested?

18 A. I know Mr. Polk was involved in this. We
19 attempted to get Dr. Hopes to provide the screenshots
20 that Mr. Barfield was looking for regarding the
21 messages. I was not able to get Dr. Hopes to comply
22 with that part of the request, and that's all I know
23 about that.

24 Q. Okay. And, to your knowledge, was this
25 request fulfilled?

1 A. The subsequent request for the screenshot
2 of Dr. Hopes's phone for that message was not.

3 Q. Was not?

4 A. That particular message that Mr. Barfield
5 -- specific -- he requested a specific message in that
6 chain of messages that he saw, and that Dr. Hopes did
7 not provide that to me in order for me to provide it to
8 Mr. Barfield.

9 Q. With regard to the original request that we
10 just looked at for the time period of text messaging,
11 were there any records that were furnished in response
12 to that request?

13 A. I believe Mr. Barfield did receive them and
14 it may have been in that room, but without actually
15 having access to the physical request and seeing what
16 the exchange was in the system, I can't answer that.

17 Q. Okay. You don't know?

18 A. I don't know for sure what Mr. Barfield
19 received or did not receive with the exception of that
20 one.

21 Q. Let's take a look for a moment at
22 [Exhibit H](#), which is the complaint, Exhibit H21.

23 Do you recognized this document?

24 A. Yes.

25 Q. All right. What is that?

1 A. That's a public records request made by Mr.
2 Barfield directly to Dana Rawls, my public records
3 assistant.

4 Q. And did you receive this public records
5 request during your employment with Manatee County?

6 A. I did.

7 Q. Can you tell me what efforts were made to
8 fulfill this public records request?

9 A. I reached out to, in this case, Mr.
10 Reinshuttle, in order to obtain the records. It took a
11 while but Mr. Reinshuttle did eventually provide me
12 with his phone and all the records, both -- they were
13 unredacted. So I got a full record of all the text
14 messages in that time frame whether they were personal
15 or county related.

16 Q. Okay. And were you able to send the
17 content of text messages requested between January 2,
18 2022, and June 23, 2022, from any personal devices in
19 response to the request?

20 A. Yes. Yes, it was his personal phone.

21 Q. Okay. Let me ask you about, we were
22 talking about, a moment ago, about the county retaining
23 the content of text messages on county devices, during
24 what we're calling the relevant time period. Do you
25 know if the county achieved full compliance of

1 archiving text messages of all county employees on
2 county devices?

3 A. In the time frame of this request?

4 Q. There was full compliance with archiving
5 text messages for county employees?

6 A. Not until Smarsh was implemented for county
7 devices. Prior to that, there was not full compliance.

8 Q. And do you know if full compliance was ever
9 accomplished for any county employees or elected
10 officials with regard to personal devices when they
11 were used for county business?

12 A. No, I can't speak to that. That there was
13 any -- that there was full compliance.

14 Q. Are you familiar with the messaging app
15 called Signal?

16 A. Yes.

17 Q. What, if anything, do you know about that
18 one?

19 A. That it's kind of like an instant messaging
20 service and the messages can be sent and they're highly
21 encrypted and that the messages disappear pretty much.

22 Q. Are you aware of any employee or elected
23 officials using Signal for county business?

24 A. I cannot say with any level of -- or any
25 confidence, or I can't prove that they're doing it.

1 No, I can't, because I do not see their personal
2 devices. I know on county issued devices it is not
3 possible because the county device does not allow
4 adding applications to the phone.

5 Q. Did you hear about any elected officials or
6 employees using Signal, whether it is doable or not?

7 A. It was rumored that Signal was in use, but
8 again, without seeing or having access to the phones,
9 there's no way to confirm that.

10 Q. Of course. There was rumored that who was
11 using Signal?

12 A. Uhm, the only rumor I heard was county
13 commissioners.

14 Q. So the elected officials?

15 A. Yes.

16 Q. Are you familiar with the iMazing software?

17 A. I absolutely am.

18 Q. Okay. What is iMazing software?

19 A. So iMazing is a software specific to
20 iPhones that allows and gives you the ability to
21 download contact text messages, phone logs, anything
22 that is currently on an iPhone device.

23 Q. So iMazing would permit the capture of text
24 messaging content that you couldn't otherwise capture?

25 A. Correct, and it would allow you to provide

1 it in a legally accepted format such as PDF, Excel, or
2 TXT.

3 Q. And to use the iMazing software, was it
4 necessary for you to possess the iPhone that you were
5 seeking to collect records from?

6 A. Yes.

7 Q. And did you use the iMazing software to
8 collect public records off iPhones during the time in
9 Manatee County?

10 A. I did.

11 Q. Now, you mentioned that the county issued
12 new phones to employees in the summer of 2022; is that
13 right?

14 A. In the fall of 2022.

15 Q. Do you know if the county made any efforts
16 to archive the text messages or phone logs from those
17 phones, from the old phones when they retired them?

18 A. I do not have any knowledge if they did
19 that or not.

20 Q. When you received a public records request
21 that related to personal devices for employees or
22 elected officials, and a decision had to be made what
23 records were personal as compared to public records,
24 who made that decision?

25 A. The individual.

1 Q. Okay. Were there occasions where you made
2 those decisions?

3 A. Initially I was able to make those
4 decisions and then that decision was taken away.

5 Q. Okay. How did that decision get taken
6 away?

7 A. Administrative level decision was made that
8 I would no longer have access to phones and that the
9 individual would be solely responsible for that.

10 Q. When did that happen?

11 A. That happened -- I'm trying to think
12 exactly, in early spring of this year.

13 Q. Do you know specifically who made that
14 decision?

15 A. Charlie Bishop.

16 Q. Okay. Were you given some rationale for
17 this decision?

18 A. No.

19 Q. Prior to the time where you were no longer
20 permitted to examine phones, when you were making
21 decisions about what were public records as compared to
22 private records, was there a charge associated with
23 that that was passed on to the requester?

24 A. If there was a large amount of records that
25 I needed to review for exempt information, then a

1 charge was related to the requester.

2 Q. Okay. And by exempt information, you mean
3 information that was private?

4 A. Yes, statutorily under 119, the information
5 that would be considered private.

6 Q. Okay. Once you were no longer examining
7 the phones, you didn't have any ability to determine
8 whether there was full compliance with a request or
9 not, correct?

10 A. Yes, correct.

11 Q. That was made by a user?

12 A. Correct.

13 Q. All right. And prior to that, when you
14 were permitted to examine phones, were you able to
15 retrieve any deleted messages that had been deleted by
16 the user regarding specifically county business related
17 text messages?

18 A. No, I was not.

19 Q. Would the iMazing software have an ability
20 to retrieve deleted messages, if you know?

21 A. No, there's not.

22 Q. Did the iMazing software give a report for
23 each device that was used to retrieve messages?

24 A. I never attempted to run a report using the
25 iMazing software.

1 Q. Do you recall in your tenure with Manatee
2 County, any incident involving the former
3 administrator, Scott Hopes, erasing or otherwise losing
4 data from electronic devices at or near the time of his
5 separation from the county?

6 A. I only was aware of what was released after
7 he left, that he had done so. Prior to that, I had no
8 knowledge of him doing that -- doing so.

9 Q. Okay. Did you have any involvement in
10 trying to recover messaging or anything like that?

11 A. No, that would be an IT function.

12 Q. Do you know if anyone conducted a forensic
13 analysis on Mr. Hopes' devices that were allegedly
14 wiped, or what have you?

15 A. I do not have knowledge of that.

16 Q. Okay. Are you familiar with litigation
17 against the county in 2021, filed by Paul David
18 Daniels, over access to public records?

19 A. Yes.

20 Q. Can you tell me, in general, what that was
21 about?

22 A. I believe that was regarding an e-mail
23 request that he had an issue with.

24 Q. And did you testify in that case?

25 A. I did.

1 Q. Are you aware of the ruling in that case?

2 A. I am.

3 Q. Have you ever read the order in that case?

4 A. From the judge?

5 Q. Yes.

6 A. Yes.

7 Q. Do you know if any changes were implemented
8 in Manatee County as a result of the ruling in the Paul
9 David Daniels' matter?

10 A. The only change that was made after that
11 ruling that I was granted the ability to run the e-mail
12 requests again myself, along with Dana. Prior to that,
13 IT -- that ability was taken away from me. IT was
14 running all requests for e-mails, and after that
15 ruling, eventually, I was given the ability back to run
16 e-mail searches.

17 Q. Okay. And do you know why that was?

18 MR. POLK: Form.

19 THE WITNESS: Why it was given back?

20 Q. (By Ms. Mogensen) Yes. Why it was
21 transferred back to you as a result of the Paul David
22 Daniels' case?

23 A. I do not. That was a decision made by
24 administration.

25 Q. Okay. Now, I think you told me earlier in

1 your deposition statement that you did annual training
2 related to public records; is that right?

3 A. Yes.

4 Q. All right. And do you recall attending in
5 late 2021, such a training?

6 A. Yes.

7 Q. Do you recall a PowerPoint presentation
8 being put forth at that training?

9 A. Yes.

10 MS. MOGENSEN: Let's take a look at
11 Discovery Deposition [Exhibit J](#).

12 ([Exhibit J](#), marked for identification.)

13 Q. (By Ms. Mogensen) And tell me if that looks
14 familiar to you?

15 A. Yes.

16 Q. Now, it is 195 pages long, we're not going
17 to scroll through all 195 pages. But since you've
18 recognized it, can you tell me, is that the PowerPoint
19 presentation from the 2021 public records training that
20 you attended?

21 A. Yes.

22 Q. Let's look at page 134, please, and let me
23 know when you've had a chance to review that.

24 A. Okay.

25 Q. And then 135, please.

1 A. Okay.

2 Q. And then next page.

3 A. Okay.

4 Q. And then 137, please.

5 A. Okay.

6 Q. Do you recall this topic being presented at
7 the training in November of 2021?

8 A. I remember being present. I can't remember
9 any conversation, but I remember the PowerPoint being
10 presented.

11 Q. Did you know about any --

12 MS. MOGENSEN: Stop screen sharing, please.

13 Q. (By Ms. Mogensen) Did you know about the
14 content of pages 134 to 137 of [Exhibit J](#) before
15 attending the training in 2021; in other words, had you
16 heard of the case and heard of the issues?

17 A. I hadn't heard of it before the PowerPoint.

18 Q. Okay. Do you recall if you've ever -- if
19 you discussed the issues of liability related to
20 failure to retain public record with anyone, either
21 supervisors or anyone of the administration at the
22 county?

23 A. Yes, I had conversations along those lines.

24 Q. Did you specifically have conversations
25 along those lines related to content of text messaging

1 during the relevant time period, anytime actually from
2 November 2021 through November of 2022?

3 A. Yes.

4 Q. Okay. Can you tell me what conversations
5 you remember and with whom; even if you don't know the
6 exact date, just tell me what you can remember?

7 A. I relayed to the owners of the devices that
8 there was liability involved and I reinforced that
9 because they were custodians of their own phones, that
10 they would be personally liable for any records that
11 were not retained or archived. And that they should be
12 forwarding those to their e-mails so that they could be
13 maintained should there be a public records request.

14 Q. Do you remember specifically anyone that
15 you had that conversation with between November of 2021
16 and November of 2022?

17 A. The sitting commissioners, Charlie Bishop,
18 who was my boss at the time. Dr. Hopes, I had a
19 conversation with him about that.

20 Pretty much anytime there was a public
21 records for text messaging, I was reinforcing the
22 importance of it and that they really needed to be
23 conscientious with that.

24 Q. Are you familiar with the requirements for
25 archiving public records supported in Chapter 119?

1 A. I am.

2 MS. MOGENSEN: All right. If we can take a
3 look at Deposition [Exhibit K](#) for identification.

4 ([Exhibit K](#), marked for identification.)

5 Q. (By Ms. Mogensen) This is Chapter 119.021;
6 does that look familiar to you?

7 A. Yes.

8 Q. Now, were you familiar with Section 2(a),
9 that the Division of Library and Information Services
10 adopts rules and establishes retention schedules and a
11 disposal process for public records?

12 A. Yes.

13 Q. Okay. Are you familiar with those rules?

14 A. Yes.

15 Q. Now, if you know, was Manatee County doing
16 anything to ensure compliance with 119.021, with regard
17 to the public records we previously discussed in text
18 messages that were retained on private cell phones with
19 the individual user as the custodian of those records?

20 MR. POLK: During which time period?

21 Q. (By Ms. Mogensen) During the relevant time
22 period.

23 A. So the issue with that is the retention
24 schedule addresses content. So it would -- the
25 individual content of each message would have to be

1 identified and that retention applied, you know,
2 whether it's transitory and what type of content. But
3 that was not something that I was privy to or able to
4 manage.

5 Q. Okay. Do you know if anyone in the county
6 was doing anything to ensure compliance with
7 Chapter 119, with regard to the content of text
8 messages that were on private phones, making sure
9 compliance with the individual user was in compliance
10 of 119 retention, etcetera?

11 A. No, I can't say that anyone was.

12 MS. MOGENSEN: Let's take a look at
13 Discovery Deposition [Exhibit L](#), please.

14 ([Exhibit L](#), marked for identification.)

15 Q. (By Ms. Mogensen) And this is one of the
16 aforementioned rules that we talked about that you said
17 you were familiar with by the Division of Library
18 Sciences.

19 Do you agree that text messages fall in the
20 category of electronic records as defined in 3(e)?

21 A. Yes, they would.

22 Q. Okay. Let's scroll down to page 9.

23 MR. BARFIELD: Did you say 9 or
24 subsection 9?

25 MS. MOGENSEN: Subsection.

1 Q. (By Ms. Mogensen) If you just take a look
2 at 9(a) for me, please.

3 A. Okay.

4 Q. With regard to this subsection 9(a), can
5 you say that Manatee County was in compliance with 9(a)
6 during the relevant time period, let's just say in
7 2022, for the relevant time period for these questions?

8 Can you say Manatee County was in
9 compliance with 9(a) with regard to the content of text
10 messaging?

11 A. I can't say they were. I know, for
12 instance, certain employees did comply with this and
13 provided their text messages to their e-mail, but there
14 was no way to confirm that this was being complied with
15 because the individual -- it was dependant on the
16 individual who possessed the device to comply with
17 this. The county did not have a software at that time
18 that would be able to do this.

19 Q. And are you aware of the content of text
20 messages that were not retained or that were destroyed
21 or deleted during 2022, that involved county business
22 and were, in fact, public records?

23 A. I cannot confirm or deny that that was done
24 without ever having access to the individual devices.

25 Q. Okay. And do you know if there's anyone at

1 Manatee County that could confirm that?

2 A. This point no, there's no way to know that.
3 I don't believe there is.

4 Q. Do you know -- scratch that.

5 MS. MOGENSEN: Let's take a look at
6 Deposition [Exhibit M](#) for identification, please.
7 ([Exhibit M](#), marked for identification.)

8 Q. (By Ms. Mogensen) Are you familiar with
9 that, once you've had a chance to review it?

10 A. Yep.

11 Q. Let's take a look at Paragraph 6(a)2, it's
12 at the very bottom of this page.

13 A. Okay.

14 Q. It says, "Electronic recordkeeping systems
15 that maintain record copies of public records on
16 electronic media shall meet the following minimum
17 requirements. Provide a method for all authorized
18 users of the system to retrieve desired records."

19 And specifically subsection 2, "Providing
20 an appropriate level of security to ensure the
21 integrity of the records in accordance with the
22 requirements of Chapter 282," etcetera, etcetera.

23 And I just read a portion of that to make
24 sure we're identifying it. In 2022, was Manatee County
25 in compliance with this requirement?

1 A. As it relates to text messaging?

2 Q. Yes.

3 A. Not until November of 2022.

4 Q. All right. And was Manatee County in
5 compliance with 6(a)2, with regard to text messaging on
6 private phones regarding public business at anytime in
7 2022?

8 A. No.

9 MS. MOGENSEN: Mr. Barfield, if you could
10 scroll down a little bit farther on page 3.

11 Q. (By Ms. Mogensen) All right. Let's look at
12 7(b), please.

13 7(b) requires the agency to implement the
14 following procedures to enhance the legal admissibility
15 of electronic records. And substantiate that security
16 procedures provides unauthorized addition, modification
17 or deletion of a record to ensure systems are protected
18 against such problems.

19 Do you know if Manatee County was in
20 compliance with this requirement in 2022, with regard
21 to either county issued phones or privately used cell
22 phones used for public business?

23 A. Not until November of 2022, for county
24 issued cell phones. Personal devices, it was the
25 responsibility of the individual who possessed the

1 device.

2 Q. Okay. So the county was not able to
3 monitor and ensure compliance with 7(b)?

4 A. That is correct.

5 Q. Okay. Was there compliance with regard to
6 both of these rules between the end of 2022, and up to
7 when you left in 2023?

8 A. For county issued cell phones, yes. For
9 personal cell phones, no.

10 Q. All right. Let's scroll down a little bit
11 to sub 9, if you could read that paragraph 9.

12 A. So in 9(a), the county has the ability to
13 do that with the county issued device. The personal
14 devices, they do not.

15 Q. Okay. And is that the case from the
16 beginning of 2022, to the time you left Manatee County?

17 A. Well, the beginning of 2022, there was not
18 an ability to do that for county issued devices. Only,
19 I believe, not the content of the text messages, but
20 there would have been possibly a phone log, but that's
21 again an IT function. But as far as the content of
22 text messaging, that would a no until November of 2022.

23 Q. Do you know anytime during your employment
24 with Manatee County, did Manatee come into compliance
25 with the requirements we just reviewed with regard to

1 text messaging received by county employees and elected
2 officials with regard to private devices?

3 A. No, there's not. It's on the county --
4 only obtains information from personal cell phones when
5 a request is made.

6 Q. Thank you. And you are familiar with
7 Michael Barfield, as far as being a records requester
8 of Manatee County records, correct?

9 A. Correct.

10 Q. And you processed a number of requests he's
11 made over the years?

12 A. Correct.

13 Q. And during the time that you were employed
14 at Manatee County, you were the primary person
15 responsible for responding to those requests; is that
16 right?

17 A. Correct.

18 MS. MOGENSEN: Let's take a look at
19 Discovery Deposition [Exhibit N](#). And this is the
20 additional one that you don't have yet, Mr. Polk.

21 MR. POLK: Okay.

22 ([Exhibit N](#), marked for identification.)

23 Q. (By Ms. Mogensen) While we're bringing that
24 up. Did you encounter any problems -- did Mr. Barfield
25 give you any problems as a public records requester

1 over the years?

2 MR. POLK: Form.

3 THE WITNESS: Did he give me problems?

4 Q. (By Ms. Mogensen) Right. Was he hard to
5 deal with?

6 A. He wasn't hard to deal with, he was just
7 very specific and thorough.

8 Q. Can you tell me if you recognize what
9 [Exhibit N](#) is?

10 A. Yeah, it's a log of public records
11 requests. It looks like from the top that they were
12 the ones made by Mr. Barfield in a certain time frame.

13 Q. Okay. As far as fulfilling any public
14 records requests for Mr. Barfield for over the last
15 year of your employment with Manatee County, did you
16 have any difficulty fulfilling any of the requests that
17 you recall?

18 A. The only difficulty I had was obtaining
19 records from the people that possessed them. I'm at
20 their mercy, so to speak.

21 Q. Okay. And can you tell me specifically,
22 and this exhibit has helped you to refresh your
23 recollection, as far as the requests made. Can you
24 tell me specifically what difficulties you encountered
25 in obtaining records from individuals who possessed

1 them?

2 A. In the group that's listed, the main
3 difficulty was in retrieving text messages, and in some
4 cases e-mail. Only because the e-mail requester, when
5 I wasn't doing them myself, were a little bit more
6 difficult to maneuver with IT and often required me to
7 make multiple requests through IT to get where I needed
8 to be with the information that Mr. Barfield was
9 looking for.

10 But mostly the difficulty I had was with
11 text message -- text messages from personnel devices or
12 phone records for personal devices.

13 Q. Can you tell me specifically who gave you
14 difficulty, who you had difficulty with obtaining text
15 messages from their personnel device?

16 A. Elected officials and upper administration.

17 Q. Okay. As far as elected officials, which
18 elected officials did you have difficulty collecting
19 text messages from their personal devices?

20 A. I guess the difficulty would be getting
21 them to eventually respond to me. It often took a very
22 long time for them to respond, and I would often have
23 to involve the office of the county attorney as a way
24 to get compliance with the request.

25 I guess pretty much with the exception --

1 Commissioner Kruse was always compliant. I never had
2 an issue with Commissioner Kruse, he was always very
3 quick.

4 Commissioner Baugh always provided all her
5 messages. She was very transparent. Pretty much I
6 never got the text messages from Commissioner Van
7 Ostenbridge, he always told me there were no records.
8 Commissioner Rahn always stated he had none.

9 And then the rest just took a long time to
10 provide anything that I requested, and often had to be
11 prompted by the county attorney.

12 Q. When you tell me the rest, can you tell me
13 specifically who we're talking about?

14 A. The sitting commissioners would have been
15 Rahn, Commissioner Rahn, Commissioner Ballard,
16 Commissioner Bearden. Kruse was okay, Baugh was okay.
17 I'm trying to think of the previous commissioners. I
18 did not have issue with Commissioner Servia.
19 Commissioner Bellamy was transparent and Commissioner
20 Whitmore was also transparent.

21 Q. How about Commissioner Satcher?

22 A. Oh, yeah. Commissioner Satcher would
23 eventually provide the records, but they would go
24 through the county attorney.

25 Q. Okay. With regard to upper administration,

1 who did you have difficulty obtaining text message
2 content from private phones?

3 A. Charlie Bishop was difficult. Commissioner
4 -- Courtney De Pol was very transparent. Dr. Hopes was
5 not at all, and Lee Washington was transparent while he
6 was acting.

7 Q. And this case involves requests for Dr.
8 Hopes' data, his personal device, when you say he was
9 -- did you say he was not transparent at all?

10 A. No, I never saw his phones. The only
11 information he provided me was that in the time frame
12 of the requests, that he had changed providers and got
13 a -- switched from one provider to another, and any
14 messages would have been lost in that transfer. And
15 that he would only have messages available from the
16 time he got his new phone, until the requests. And,
17 again, those were never provided to me directly.

18 It wasn't until the lawsuit was filed that
19 I gave him information regarding iMazing software and
20 he did it himself.

21 Q. Okay. And did the inability to get
22 cooperation from these individual that you just
23 mentioned, cause a delay in responding to the public
24 records request?

25 A. Yes.

1 Q. Did it result in repeated requests on
2 behalf of Mr. Barfield, the requester?

3 A. Yes.

4 MS. MOGENSEN: Let's take ten minute break,
5 if we can.

6 (A recess was taken.)

7 MS. MOGENSEN: Back on the record.

8 Q. (By Ms. Mogensen) Okay. I wanted to
9 inquire. We talked a little bit about Jabber instant
10 messaging; do you recall that?

11 A. Yes.

12 Q. All right. With regard to Jabber messages,
13 if an individual requester asked for text messaging,
14 would they receive Jabber messages too or did the
15 requester have to specifically seek Jabber messages to
16 obtain them?

17 A. If they were asking for text messages, they
18 would only get text messages.

19 Q. Okay. So in order to obtain Jabber
20 records, the requester had to specifically request
21 Jabber records; is that right?

22 A. That's correct.

23 Q. And I'm assuming from your prior answers
24 that you don't know how that was perceived by the
25 individual custodians of individual private phones who

1 were making decisions about what was a responsive
2 record or not; is that also right?

3 A. Well Jabber, everything was captured.

4 Q. Right, but as far as if a requester asked
5 for text messages of a privately used phone, either
6 with a stipend from Manatee County or not, you told us
7 previously that the individual of that device would
8 sometimes make determinations as far as what was a
9 responsive record or not, correct?

10 A. Correct.

11 Q. So you don't know if any particular
12 individual records custodian of a device would include
13 Jabber records with text or not, right?

14 A. They would not include Jabber.

15 Q. Okay.

16 A. I was the only one that could get Jabber.

17 Q. Oh, I see. Okay. And we talked a little
18 bit about when you would process records requests with
19 devices, personal devices that is, and make decisions
20 which records were personal as compared to responsive
21 to public records; do you remember that?

22 A. Yes.

23 Q. Do you know if charges were charged against
24 a requester when an individual employee or individual
25 elected official went through their phone to determine

1 what were responsive records?

2 A. The process was that the individual would
3 relate to me how many messages they believed they've
4 identified on their phone, and an estimate would be
5 created based on the information provided by that
6 person, or they would simply say, no records exist.

7 Q. When an individual -- let's say
8 commissioner, if there was a request for a
9 commissioner's text messages on a private device, how
10 was it determined what the requester would be charged
11 for the retrieval time?

12 A. It would be based on the number of text
13 messages they identified that were on their phone in
14 that timeframe.

15 Q. Okay. So, was the number of text messages
16 were used to determine the number of hours it took to
17 retrieve them?

18 A. Hours it would take to review them for
19 exempt information or redact the exempt information.

20 Q. So, in that example, would an individual
21 commissioner estimate the time it took them or would
22 they just tell you the number of responsive records?

23 A. They would tell me the number of responsive
24 records and we had a basic formula that we used that we
25 could review X amount in this amount of time, and that

1 number was used.

2 Q. Okay. Do you happen to know what that
3 formula is?

4 A. When I was there, the formula was,
5 approximately -- we used the same formula that we used
6 for e-mails, and it was -- we could review 750 records
7 per hour.

8 Q. Okay. So that formula was used when an
9 employee or commissioner was reviewing their private
10 device, right?

11 MR. POLK: Object to form.

12 THE WITNESS: Correct.

13 Q. (By Ms. Mogensen) So how would it be
14 determined how many private records they had to go
15 through by the number of public records they actually
16 extracted?

17 A. Well, I can only say that when I had access
18 to a personal device, because there's no way to
19 identify who they're texting with necessarily, so every
20 record had to be opened, whether it was personal or
21 county, to even know if it was a county-related
22 message.

23 So there was no way to filter a county
24 message just by their contact information. So every
25 record -- I would open every text message and determine

1 if in that text message chain, because one text
2 message, as you know, could have 25 interactions, I
3 would have to go through every interaction to see if
4 there was a county message somewhere in that chain.

5 Q. I see. So you're saying it was the number
6 of messages that had to be gone through, as compared to
7 the number of responses?

8 A. Correct.

9 Q. I'm sorry, I misunderstand. Now, you
10 talked just now about what you did when you were
11 examining devices for text message cell phones, when
12 the employee or commissioner performed that work, who
13 determined how long it took?

14 A. They did.

15 Q. And was that -- did that generate a cost
16 for the requester?

17 A. Yes.

18 Q. And was the cost charged to the requester?

19 A. Yes, and they did not receive the records
20 until payment was received.

21 Q. All right. And how is it determined what
22 this hourly rate would be for commissioner as compared
23 to an upper level manager, as compared to employees, or
24 was there just a standard rate?

25 A. I used the standard of the lowest paid

1 individual that was available to review the messages.
2 So it would not be the level of the commissioner. It
3 would be -- I used the rate of my public records
4 assistant at the time.

5 Q. And having to sort through private messages
6 to obtain public records, did that increase the time it
7 took to retrieve the records, as compared to looking at
8 a county phone for public records?

9 A. Yes.

10 Q. And would you agree it substantially
11 increased the time?

12 A. Yes because you would have to go through
13 messages that were personal in nature, as opposed to
14 the messages on a county phone that were not.

15 Q. Now, with regard to these retrieval
16 charges, do you recall if there were any conversations
17 at Manatee County about using these costs to deter
18 requesters from making requests?

19 A. Uhm, can I refuse to answer a question?

20 Q. No, I'm sorry.

21 A. Once that happened, and it resulted in my
22 termination.

23 Q. I see. Did a particular staff member or
24 commissioner tell you that they intended to use those
25 props to deter a particular request?

1 A. A commissioner.

2 Q. Can you tell who that was?

3 A. Kevin Van Ostenbridge.

4 Q. Okay. Can you tell me specifically what
5 the conversation was?

6 A. There was a request for a text messaging,
7 he did not want the messages released. And he said
8 specifically that there -- he said, As you can imagine,
9 there will be a lot and I don't want them out there.

10 And that was the conversation, but I did
11 not comply. The messages were released ultimately and
12 I was fired within two days.

13 Q. Who was the requester of that case?

14 A. I'm not sure if it was Mr. Barfield or a
15 newspaper reporter, I can't remember.

16 Q. All right. And so that request was
17 fulfilled two days before your departure date from
18 Manatee County?

19 A. Yes, I had already had possession of the
20 text messages. So Mr. -- or Commissioner Van
21 Ostenbridge, I -- yeah, I don't even want to -- so...

22 Q. I understand. What did Commissioner Van
23 Ostenbridge specifically tell you about the use of the
24 cost to deter the request?

25 A. The request was for all text messages with

1 all the commissioners, not just his, and he wanted --
2 he was going -- he told me he was going to tell the
3 commissioners to combine all their messages into one
4 number and have me base the request off the larger
5 number to deter the person from paying for the request,
6 because ultimately -- I believe it was the newspaper
7 because they rarely pay.

8 And so with an estimate, the likelihood of
9 the text messages being released would not of happened.
10 And it was from their personal devices. But because
11 the request was already in process and the
12 commissioners, with the exception of Commissioner Van
13 Ostenbridge and Commissioner Rahn, had already produced
14 their text messages, and they had already -- there
15 weren't enough of them to even generate an estimate per
16 statute, and I released them.

17 Q. I understand. Okay. And what makes you
18 think that resulted in your termination?

19 A. They were released on a Monday. On
20 Wednesday they were published in, I think the Bradenton
21 Times. On Thursday, the sitting acting administrator
22 quit on short notice. A new acting county
23 administrator, Charlie Bishop, was appointed and the
24 first thing -- and that was on Thursday. The first
25 thing Friday morning when I walked into my office, I

1 was terminated.

2 Q. I see, I'm sorry to hear that. Did you
3 have any conversations with Mr. Hopes, Dr. Hopes, about
4 deterring requesters by means of the hourly charges?

5 A. I -- with Dr. Hopes, before he left.

6 Q. Yes.

7 A. We had a conversation about it, but I
8 explained to him what the rules were and that if it
9 didn't meet the criteria or the trigger, that I wasn't
10 able to do that.

11 Q. Okay. And was Scott Hopes encouraging a
12 charge for a particular requester at that time?

13 A. No, because Dr. Hopes really wasn't ever
14 compliant, and so I never really knew. We just had a
15 conversation about that, but I never had access to any
16 of his to even be able to approach the idea or the idea
17 of an estimate.

18 Q. I understand, thank you. Do you recall a
19 public records request relating to Daniel Delise
20 (phonetic), a weapons consultant?

21 A. No, I don't recall that one.

22 MS. MOGENSEN: Okay. Well, thank you I
23 don't have any other questions for you at this
24 time.

25 MR. POLK: I have just a few. I'll be very

1 brief.

2

3

CROSS-EXAMINATION

4 BY MR. POLK:

5 Q. The discussion with Commissioner Van
6 Ostenbridge that you discussed just prior to your
7 leaving the county, that was in 2023; is that accurate?

8 A. Yes.

9 Q. Okay. So that was not during the relevant
10 time period that we've been talking about here in this
11 case?

12 A. That's correct.

13 Q. All right. And, Miss Scaccianoce, you were
14 very active, as I recall on a state-wide level with
15 regard to public records requests and you attended
16 conferences regarding Section 119 on a state-wide
17 basis; is that true?

18 A. That is.

19 Q. And how often and where would you attend
20 these conferences?

21 A. I would attend the yearly Florida records
22 managers conference every May.

23 Q. Okay. And during your involvement on a
24 state-wide level, was the issue involving compliance
25 with Chapter 119, as it relates to text messages, was

1 that unique to Manatee County?

2 A. No, it was not.

3 Q. Was that an issue that agencies,
4 municipalities and counties throughout the state have
5 been struggling with since it really became an issue in
6 2020, 2021?

7 A. Yes.

8 Q. And there was one person, I apologize I
9 cannot recall her name, that was someone who was sort
10 of your go-to on a state-wide level, she's with the
11 AG's office. She was someone that you would consult
12 with regard to various questions regarding 119, can you
13 remind me who that was?

14 A. Pat Gleason.

15 Q. All right. And Pat Gleason, what's her
16 position and what's her --

17 A. She's general counsel. One of the general
18 counsel for the AG and the Florida Department of
19 Library Services.

20 Q. And during your conversations -- I'm sorry,
21 strike that.

22 So that was someone that you would consult
23 with regard to your difficulties and struggles in
24 complying with 119 with regard to particularly text
25 messages; is that fair?

1 A. Yes.

2 Q. And can you tell us what she told you with
3 regard to whether this was a common issue, whether this
4 was unique to Manatee, whether other municipalities
5 around the state were -- what they were doing to comply
6 with this?

7 MS. MOGENSEN: Object to form.

8 THE WITNESS: I'm sorry.

9 Q. (By Mr. Polk) She objected to form. You
10 can answer. It's probably a terrible question.

11 A. She did state that it was a common problem
12 across even at the state level and that it was not just
13 Manatee County having issues.

14 Q. All right. And I'm guessing, Miss
15 Scaccianoce, that you're not aware that the county has
16 recently adopted some new policies which prohibit the
17 use of personal cell phones, or any device, to conduct
18 county business, you don't know anything about that I'm
19 guessing?

20 A. No, I do not.

21 Q. All right. Do you recall that being an
22 issue during your time there, that there was discussion
23 about prohibiting the use completely of personal
24 devices to conduct any county business?

25 A. Yes, there were discussions.

1 Q. All right. And evidently that happened
2 after you decided to leave the county; is that correct?

3 MS. MOGENSEN: Objection.

4 Q. (By Mr. Polk) You left the county?

5 A. Yes, that was implemented after I left.

6 MR. POLK: All right. I think that's all I
7 have. Thank you very much. It's very nice to
8 see you again.

9 THE WITNESS: Nice, to see you too.

10 MS. MOGENSEN: If this is transcribed, if
11 you would like to read it. If you can give us an
12 e-mail address where it can be sent to you so you
13 can review it for accuracy and let the court
14 reporter know if there's any changes to be
15 considered.

16 THE WITNESS: My e-mail address?

17 MS. MOGENSEN: Yes, please.

18 THE WITNESS: It's Tink51959@yahoo.com.

19 THE COURT REPORTER: This is the court
20 reporter. Is anybody ordering?

21 MR. POLK: Madam Court Reporter, if it's
22 ordered, I'll take a copy.

23 MS. MOGENSEN: I usually verify the cost
24 before I order.

25 THE COURT REPORTER: Okay. And, Mr.

1 Barfield, you have possession of the exhibits,
2 I'll put my name in the chat, can you send those
3 to me so I have them?

4 MR. BARFIELD: I would be happy to do that.

5 MS. MOGENSEN: And I will order.

6 (Witness excused.)

7 (Whereupon the deposition concluded at
8 12:22 p.m.)

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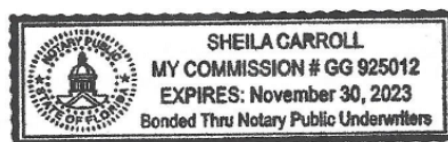
CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF PINELLAS

I, SHEILA CARROLL, the undersigned authority, certify that DEBBIE SCACCIANOCE appeared via video teleconference on October 25, 2023, at 10:00 a.m., and was duly sworn.

WITNESS my hand and official seal this 8th day of November, 2023.



Sheila Carroll

SHEILA CARROLL
Notary Public - State of Florida
My Commission No. GG 925012
Expires: November 30, 2023

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF PINELLAS

I, SHEILA CARROLL, Shorthand Reporter, hereby certify that I was authorized to and did stenographically report the deposition of DEBBIE SCACCIANOCE; that a review of the transcript was not waived; and that the foregoing transcript is a true and complete record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 8th day of November, 2023, Pinellas County, Florida.



SHEILA CARROLL

COURT REPORTER

November 8, 2023

Debbie Scaccianoce
Tink5195@yahoo.com

In Re: Deposition of DEBBIE SCACCIANOCE taken on
October 25, 2023
Florida Center for Government Accountability, Inc.
Vs. Manatee County

Dear Sir or Madam:

This letter is to advise that the transcript for the above-referenced deposition has been completed and is ready to read and sign. For your convenience, we will e-mail you a copy of the transcript. You will not be able to edit or make any changes directly in the file. Please complete this review within 30 days from the date of this letter and print/e-mail the signed errata sheet to admin@imperialcourtreporting.com for inclusion in the transcript.

In the alternative, you may sign below to waive review of the transcript and e-mail this page to admin@imperialcourtreporting.com.

Sincerely,

Imperial Court Reporting, Inc.

cc: Andrea Mogensen, Esq.,
andrea@sarasotacriminallawyer.com
Douglas Polk, Esq., douglas.polk@mymanatee.org

Waiver:

I, _____, hereby waive the reading and signing of my deposition transcript.

Deponent Signature

Date

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