

IN THE COUNTY COURT OF
THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

ESCAMBIA COUNTY, a political
subdivision of the State of Florida,

Plaintiff,

v.

Case No. 2023 _____

JONATHAN LEE OWENS; ALEXANDER
ARDUINI, and GANNETT MHC MEDIA, INC.

Defendants.

_____ /

VERIFIED COMPLAINT FOR REPLEVIN AND CONVERSION

Plaintiff, Escambia County, Florida, by and through its undersigned counsel, files this verified complaint for replevin and conversion, and sues Defendants Jonathan Lee Owens, Alexander Arduini, and Gannett MHC Media, Inc., and alleges:

I. JURISDICTION AND VENUE

1. As provided in Sections 78.03 and 78.032, Florida Statutes, jurisdiction and venue are properly with this Court based on the value and location of the property sought to be recovered, the location where the Defendants reside, and where the cause of action accrued.

II. PARTIES

2. Plaintiff, Escambia County, is a political subdivision of the State of Florida.

3. Defendant Owens is a former employee of Escambia County, where he worked as a legislative aide to former Escambia County Commissioner Douglas

Underhill; Defendant Owens resides in Escambia County, Florida.

4. Defendant Arduini resides in Escambia County, Florida.

5. Defendant Gannett MHC Media, Inc. is a Delaware corporation doing business as the Pensacola News Journal; Defendant Gannett maintains a business residence in Escambia County, Florida.

III. FACTS COMMON TO ALL COUNTS

6. Plaintiff seeks recovery of electronic data files and associated physical storage devices containing approximately 60,000 lines of text messages (the “Property”) from the personal cell phone of Escambia County Commissioner Jeff Bergosh. The text messages include public, personal, private, privileged, and confidential communications downloaded from Commissioner Bergosh’s cell phone on or about February 1, 2022, by the Escambia County Information Technology Department. To the best knowledge, information, and belief of Plaintiff, the value of the Property is less than \$50,000, and each Defendant is in unauthorized possession of the Property:

- a. Defendant Owens has publicly admitted that he possesses the Property during a radio interview on News Radio 92.3 with host Andrew McKay.¹ Defendant Owens asserts that a thumb drive containing the Property “showed up” at his office during his employment with Plaintiff. Defendant Owens retained possession of the Property after his employment with Plaintiff ended, and he subsequently conveyed a copy of the Property to an attorney handling

¹ See <https://www.newsradio923.com/pmn/episode/278b29a0/080723-jonathon-owens-responds-to-jim-little-article-in-pnj-re-flash-drive-jeff-bergosh-cell-phone>. (Transcript attached as Exhibit A.)

a lawsuit against the Plaintiff.

b. Defendant Arduini has published comments on social media admitting that he possesses the Property.²

c. Defendant Gannett has published an article in the Pensacola News Journal acknowledging that it possesses the Property.³ Defendant Gannett asserts that it obtained the Property from “an anonymous source.”

7. Plaintiff is entitled to possession based on the Property having been downloaded and compiled by the Escambia County Information Technology Department and in the Plaintiff’s possession when it was wrongfully appropriated and conveyed to the Defendants.

8. The Property is wrongfully detained by the Defendants, although the means and cause by which the Defendants came into possession remain under investigation by law enforcement.

9. The claimed Property has not been taken for a tax, assessment, or fine pursuant to law.

10. The Property has not been taken under an execution or attachment against the Property of the Plaintiff.

² Alex Arduini, Escambia Citizens Watch – Jacqueline’s Post, Facebook (August 7, 2023), <https://facebook.com/groups/EscCitizensWatch>. (Attached as Exhibit B.)

³ Jim Little, Leaked Bergosh text messages mention EMS doctor who is suing Escambia County 102 times, Pensacola New Journal, August 21, 2023. (Attached as Exhibit C.)

IV. COUNT 1 - REPLEVIN

11. Plaintiff realleges and incorporates paragraphs 1 through 10 above.

12. The foregoing facts state a claim for replevin.

V. COUNT 2 - CONVERSION

13. Plaintiff realleges and incorporates paragraphs 1 through 10 above.

14. The foregoing facts state a claim for conversion.

WHEREFORE, Plaintiff respectfully requests that the Court grant final judgment for the Plaintiff and issue orders for a pre-judgment writ of replevin directing the Defendants to relinquish possession of all electronic data files and physical storage devices containing the Property, for preliminary and permanent injunctions prohibiting the Defendants from further copying, publishing, or otherwise disseminating the Property, and together with Plaintiff's damages and costs and such other relief as the Court deems appropriate.

Respectfully submitted,
Alison Rogers, County Attorney
221 Palafox Place, Suite 430
Pensacola, Florida 32502
(850) 595-4970

/s/ Stephen G. West

By: Stephen G. West
Senior Assistant County Attorney
Florida Bar No.: 136824
sgwest@myescambia.com
Attorney for Escambia County

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief.

Escambia County, a political subdivision of
the State of Florida

By: Jeff Bergosh, Commissioner, District 1

Date: 11/16/23

Exhibit A

IN RE: Jonathan Owens responds to Jim Little in PNJ
flash drive

_____ /

News Talk Radio Conversation

Recorded News Talk Radio transcribed by Elaine
Richbourg, a Court Reporter and Notary Public, State
of Florida at Large, taken via talk radio,
Pensacola, Florida, on Monday, August 7th, 2023.

ELAINE RICHBOURG

COURT REPORTER

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Cantonment, Florida 32533

(850) 712-0984

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1

APPEARANCES

2

For the News Talk Radio:

3

ANDREW MCKAY

4

5

For the Caller:

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JONATHAN OWENS

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1 INDEX OF TRANSCRIPT

2 WITNESS:

3 News Talk Radio

4 News Talk Radio 04

5 Reporter's Certificate..... 20

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P R O C E E D I N G S

ANDREW MCKAY: Good morning. 640 here on News Radio 92.3, informative, local, dependable. I know over the last couple of months we've have had a disproportionate emphasis on Santa Rosa County and the City of Milton, in particular, because they've been having meetings. I mean, Escambia County has barely had any meetings. They cancel all their committees of the whole. They're going to have to have one coming up to deal with apartment complex issues and parking regulations and things like that, if they have. They just canceled another one. So it's been a year since we've had a committee of the whole. All that is may way of saying, this is why I haven't talked as much about Escambia County politics in the last month or two. Oh, but that is about to change. That is about to change. Jim Little, at the PNJ, has an article out this morning detailing a records requests for all of the texts off of Jeff Bergosh's personal phone on which he's apparently doing county business a lot, in conjunction with lawsuits being brought by the former Medical

1 Director, Rayme Edler, and Jonathan Owens, who
2 has gotten basically dragged into all of this
3 stuff. He joins us by phone now. Jonathan,
4 who used to be the Chief of Staff for Doug
5 Underhill, when he was a County Commissioner.
6 Jonathan also ran against Jeff Bergosh,
7 unsuccessfully, for the District 1 County
8 Commission seat three years ago, and he is with
9 us now. Jonathan, welcome back to the
10 Pensacola Morning News.

11 JONATHAN OWENS: Good morning Andrew. How
12 are you?

13 ANDREW MCKAY: I'm -- I'm good. You know,
14 just when you think it's, you know, all the
15 problems are over here, Escambia is like, hold
16 my beer. So, tell me, you tell me, what --
17 what is the back drop to this story, how did we
18 get to where we are now, where there's an
19 investigation and all kinds of other stuff
20 going, tell me what you know, and tell me how
21 we got here.

22 JONATHAN OWENS: Well, gosh, it's so much
23 to put in this short -- a short show for you.

24 ANDREW MCKAY: I know.

25 JONATHAN OWENS: Yeah. So, like you said,

1 hold my beer, Escambia County will come through
2 again for you. The -- the Medical Director,
3 obviously, as you referenced the article, has a
4 lawsuit going, and I was asked for a statement
5 or an affidavit to provide to Dr. Edler's
6 attorneys, and I did, and in that statement,
7 and after that statement, there was a
8 conversation about any other information
9 related to the case at all. I said, well, you
10 know, I have a thumb drive that showed up in my
11 office that has lots of public records on them,
12 and they seem to be from Commissioner Bergosh's
13 personal cell phone.

14 So, I sent them over to Dr. Edler's
15 attorneys, and that was sometime last year. I
16 don't remember the exact date. And then that
17 was pretty much it. I didn't really think much
18 more about it.

19 Well, fast forward, and here we are, Jim
20 Little is writing an article about that, and
21 all kinds of motions and things have been filed
22 in the case to try to block Dr. Edler's
23 attorneys from using those public records, and
24 that's -- that's pretty much how we got to
25 where we are today. This thumb drive showed up

1 in my office sometime last year, when I was
2 still an employee at the County. I assumed it
3 showed up in several people's offices, as
4 things showed up over the years, the 8 years
5 that I worked with the Board of County
6 Commissioners. I mean, we've had file folders
7 show up, you know, negative things against
8 political activists. We've had, as you
9 probably famously remember, a box showed up for
10 Commissioner Bergosh of -- as a prank.

11 ANDREW MCKAY: Yeah.

12 JONATHAN OWENS: We had all kind of things
13 that showed up in the office. I don't know if
14 we can have that conversation on your morning
15 show, if we want to keep it PG, but anyway,
16 things showed up over the years. So, I assumed
17 this showed up in my office, just like it
18 showed up in other people's offices. So, to
19 me, if something showed up in the office, it
20 was a public record, and that was it. So,
21 that's how we got to where we are today. So,
22 you know, hundreds, if not thousands of text
23 messages on there, after me going through them,
24 in relationship -- in relation to, you know,
25 County business, things that, conversations

1 during meetings between individuals. So --

2 ANDREW MCKAY: Well, yeah, that's what --
3 that's what I'm curious -- so, you have, this
4 thumb drive shows up, with what appear to be --
5 what would be public records, anything that
6 would be on Jeff Bergosh's personal cell phone,
7 that would be talking about County business;
8 right, anything that's dealing with any
9 personal matter, that's unrelated to County
10 business is a private record, but anything that
11 would be dealing with, for example, Rayme
12 Edler's employment, or OLF-8, or you know,
13 hiring and firing decisions, anything along
14 those lines that would be from, you know,
15 anybody that would deal with County business,
16 that would be a public record. So, I assume,
17 you tell me if I'm wrong, it's a mixture of
18 public records and private records on his
19 phone; is that right, or at least that's what
20 you thought it was?

21 JONATHAN OWENS: One hundred percent,
22 correct. Yes, one hundred percent. That is --
23 it's a mixture of public and private records.

24 ANDREW MCKAY: So, how, I mean, how did it
25 come to exist, in the first place, because I'm

1 pretty --

2 JONATHAN OWENS: I have no --

3 ANDREW MCKAY: -- I'm confident Jeff
4 Bergosh didn't just come to your office and
5 give you a copy of his phone, so --

6 JONATHAN OWENS: Right. I have no idea.
7 A thumb drive showed up in my office, and
8 that's what I know. That's how it came into
9 existence.

10 ANDREW MCKAY: Okay. So, I guess --

11 JONATHAN OWENS: And at least in my
12 possession. I mean, like I said, it could be
13 in -- it could have shown up in everyone's
14 office.

15 ANDREW MCKAY: Right.

16 JONATHAN OWENS: Because, like I said,
17 we've had folders show up in our offices over
18 the years of, you know, people, you know,
19 wanting to get information out to the public,
20 and I guess it's up to each individual
21 Commissioner's office whether to disregard it,
22 or do something with it.

23 ANDREW MCKAY: Yeah. And so what did you
24 do with it? I mean, when you got it, you
25 apparently opened it and read it. I'm very

1 curious to know what you saw, but what did you
2 do, at that point? I mean, did you, you know,
3 did you contact IT, did you contact law
4 enforcement, did you just hang on it it, did
5 you, you know, what did you do, at that point?

6 JONATHAN OWENS: I just -- I just held on
7 to it.

8 ANDREW MCKAY: Okay. I'm dying to know
9 what's on it --

10 JONATHAN OWENS: There's no policy --

11 ANDREW MCKAY: I mean, I'm going to
12 definitely make a public records request to get
13 a copy, because anything that's done on --

14 JONATHAN OWENS: I'm sure.

15 ANDREW MCKAY: -- anything that's done on
16 the phone is a public record. Commissioner
17 Bergosh says, I guess in this article, he said
18 that he brought his phone -- it was his
19 personal phone in -- he brought the phone in
20 for work by a County IT before he was going on
21 a vacation, because the phone had been acting
22 up, and he wanted to make sure -- this is his
23 account -- from Jim Little -- is that he wanted
24 to make sure those public records were
25 preserved, you know, and not just at the whim

1 of him having them on his phone when he's
2 overseas or whatever. So, he recognizes that
3 they're public records. You know, to the
4 extent that you believe that particular account
5 of it, that would at least validate the fact
6 that they are public records. Why does the
7 County want to prohibit them? I mean, if
8 they're public records, what's the issue?

9 JONATHAN OWENS: I have no idea.

10 ANDREW MCKAY: Okay.

11 JONATHAN OWENS: I have no idea why they
12 would want to prohibit them, other than, you
13 know, there may be some things in there that
14 are detrimental to other things that are County
15 related.

16 ANDREW MCKAY: Okay.

17 JONATHAN OWENS: I don't know. It will be
18 interesting to see how the judge rules in this,
19 because it's really similar to a previous case
20 of County records against the guy I used to
21 work with, a former Commissioner.

22 ANDREW MCKAY: Yeah.

23 JONATHAN OWENS: And it will be
24 interesting to see it.

25 ANDREW MCKAY: Yeah. We're talking

1 about --

2 JONATHAN OWENS: And if you know, we can
3 go back --

4 ANDREW MCKAY: Just a second, Jonathan,
5 we'll come back to you in a second because I
6 want to get a quick traffic on the 5 before we
7 continue, Candy.

8 (Advertisement)

9 UNIDENTIFIED SPEAKER: Come on, man, come
10 on Jonathan. Disabled vehicle, I-10 westbound
11 at exit 22, there's a safety truck on scene
12 with cones. And then almost right on the other
13 side of I-10, it's east, a disabled vehicle
14 I-10 east at mile marker 23. So, the right
15 shoulder is blocked. Other than that, good to
16 go. If you have traffic tips you can text
17 437-1620. It was brought to you by FDOT, and
18 make sure you're prepared. It's hurricane
19 season. Keep FL-511.com your emergency tool
20 kit to see helpful traffic info, before and
21 after the storm, message from FDOT. 6:48.

22 (End of advertisement.)

23 ANDREW MCKAY: All right. Thanks so much.
24 Back to Jonathan Owens, talking to about this
25 case that the PNJ has a good story on this

1 morning of the public records on Jeff Bergosh's
2 personal cell phone that were somehow or other
3 delivered to Jonathan Owens, when he worked for
4 Commissioner Underhill at the County, and now
5 have been brought up in the Rayme Edler lawsuit
6 against the County and the County is trying to
7 squash those records, for reasons that we're
8 still not sure about. Jonathan, I kind of
9 interrupted you. You were about to say
10 something though. Go ahead.

11 JONATHAN OWENS: I was just going to say,
12 Commissioner Bergosh, at the time, thanked
13 County staff in a meeting publicly, on
14 February 10th, for recovering his personal
15 phone, and he claimed responsibility for it,
16 you know. Thanks to County staff, so he used
17 County resources, County employees to recover
18 his personal phone, and all of those records on
19 it, in my opinion, of course, it's not enough
20 for me to have an opinion, you know, that's
21 legal, they all became public record when you
22 use County resources. I mean, this would be
23 the equivalent of saying I got my oil changed
24 on my car because I was using County business.
25 Now, you and I and anybody else in the public

1 would say, well, that's not right, but do you
2 know when I first started at the County, the
3 County Attorney, Allison Rogers told me, she
4 said, it's not the vehicle of which you receive
5 a public record, but the content of that record
6 is whether it's a public record or not.

7 ANDREW MCKAY: Right. Right.

8 JONATHAN OWENS: Whether it was on his
9 personal phone or County phone or on a piece of
10 paper, on a bar napkin, on whatever, it become
11 -- it became a public record. I mean, the
12 whole drive, in my opinion, became a public
13 record, when it showed up in my office. I
14 mean, how could it not be? I was -- it was in
15 my office.

16 ANDREW MCKAY: Right.

17 JONATHAN OWENS: So --

18 ANDREW MCKAY: So, how did -- so, the
19 story mentions the FBI and Jeff Bergosh says he
20 doesn't want to comment because there's an
21 active investigation. I mean, has the FBI
22 contacted you?

23 JONATHAN OWENS: No. The only person who
24 has contacted me, is the IT Director, current
25 IT Director, Scott McDonald, asking me about

1 this thumb drive, and I said, you know, he
2 said, how did I get it? And I'm telling you
3 the same story I would tell him or anyone else,
4 it showed up in my office and that's it.
5 That's how I ended up with this. So --

6 ANDREW MCKAY: So, why is the -- why is
7 the FBI involved?

8 JONATHAN OWENS: As far as the FBI, no one
9 has contacted me --

10 ANDREW MCKAY: I mean, this doesn't
11 sound -- this doesn't sound like an FBI issue
12 to me, but I don't know. Maybe there's
13 something that I'm missing.

14 JONATHAN OWENS: Well, you know -- well,
15 many people have many different opinions on the
16 FBI.

17 ANDREW MCKAY: That's fair.

18 JONATHAN OWENS: If you watch national
19 news, and that's no -- a slight against them,
20 in any way, but why the FBI would be involved
21 in something as miniscule as this, based on the
22 filings by Commissioner Bergosh, and what the
23 article says, is that I obtained these things
24 illegally. So, I'm assuming, and this is an
25 assumption, that a complaint was filed with the

1 FBI or law enforcement or FDLE or someone, that
2 these files were illegally removed from a
3 county servant. That's a guess.

4 ANDREW MCKAY: Okay.

5 JONATHAN OWENS: That, in my opinion, that
6 would be the only way that law enforcement
7 would be involved in this, that something was
8 illegally removed. Well, I mean, I had nothing
9 do with anything illegal.

10 ANDREW MCKAY: You just received --

11 JONATHAN OWENS: A thumb drive showed up
12 in my office.

13 ANDREW MCKAY: -- you received the
14 thumb -- yeah. All right. So, the question
15 I've been delayed asking: What's on them?
16 What does it say about what kind of County
17 business is being done on Jeff Bergosh's phone,
18 which by the way, I think -- I think most every
19 elected official, it may not be all, but most
20 every elected official does some degree of
21 business, official business, on their personal
22 cell phone. Just these days, it seems
23 impossible to avoid, but the point is, you're
24 supposed to turn that over. That's supposed to
25 become a public record, and at the very least,

1 if anybody asks, you're supposed to provide
2 that; right? That's sort of the basis of what
3 where we are.

4 JONATHAN OWENS: Right. And I went
5 through that while working with Commissioner
6 Bergosh, at the time. I mean, there was --
7 there's an active lawsuit right now over
8 Facebook messages that -- that someone, David
9 Bear, has filed against Commissioner Underhill,
10 former Commissioner Underhill --

11 ANDREW MCKAY: Right.

12 JONATHAN OWENS: -- in regards to the
13 contents of his text, I'm sorry, the contents
14 of his Facebook messages.

15 ANDREW MCKAY: Right.

16 JONATHAN OWENS: So, if those are
17 considered public records, public business on
18 Commissioner Bergosh's personal cell phone are
19 definitely considered public records. And to
20 your point, what all is on there, I would say
21 do a public records request --

22 ANDREW MCKAY: Yeah, I'm going to.

23 JONATHAN OWENS: -- and ask the County for
24 -- for any of the communications on
25 Commissioner Bergosh's cell phone having to do

1 with county business. I mean, that's --

2 ANDREW MCKAY: All right.

3 JONATHAN OWENS: I'm not the one that
4 should determine what public records are;
5 right?

6 ANDREW MCKAY: No, and that's fair.

7 JONATHAN OWENS: -- that should --

8 ANDREW MCKAY: Right. There might be
9 privilege, there might be, it's certainly
10 personal, you would expect. There might be
11 things that, you know, are legally protected.
12 There's all kind of categories of information
13 and that would, I assume, be up to the County
14 Attorney, to make that decision, but yeah, I
15 mean, I'll definitely call Allison later today,
16 and you know, make the request and then she'll
17 give me what we get, and we'll find out from
18 there. Okay. All right.

19 JONATHAN OWENS: I will tell you this --

20 ANDREW MCKAY: Go ahead, yeah, yeah.

21 JONATHAN OWENS: I will tell you this:
22 There are communications between Commissioner
23 Bergosh and a former County employee on there
24 that ended up getting a lawsuit and a
25 settlement that is also currently in the news

1 right now in regards to Pam Childers.

2 ANDREW MCKAY: Okay.

3 JONATHAN OWENS: The payment for --

4 ANDREW MCKAY: -- the ECMO (phonetic)
5 thing?

6 JONATHAN OWENS: -- the payment for the
7 settlement for Selover --

8 ANDREW MCKAY: Oh, the Selover case, okay.
9 All right.

10 JONATHAN OWENS: Yeah. So, there is
11 communication, lots of communication between
12 Commissioner Bergosh and Selover, the former
13 County employee, in those text messages.

14 ANDREW MCKAY: All right. Well, without
15 being able to get more at the moment, we'll get
16 more when we get the records request fulfilled,
17 assuming that we can get it. Jonathan Owens,
18 interesting stuff, the FBI, all right.
19 Jonathan, thanks --

20 JONATHAN OWENS: Yeah.

21 ANDREW MCKAY: -- thanks so much for the
22 time this morning, man. I appreciate it.

23 JONATHAN OWENS: No problem. Have a good
24 one.

25 (WHEREUPON: The recorded talk radio conversation was

concluded.)

CERTIFICATE OF TRANSCRIPTION

I, ELAINE RICHBOURG, do hereby acknowledge that
the foregoing pages are a transcription of the
electronically-recorded talk radio conversation, taken on
August 7th, 2023, and transcribed to the best of my ability.


/s/Elaine Richbourg

ELAINE RICHBOURG
Court Reporter
Notary Public, State of Florida
Commission No. GG929588
Commission Expires: 3/6/2024

Exhibit B

Jacqueline Aimee Rogers post on August 7, 2023, "Escambia Citizens Watch" page

Jacqueline's Post




Jacqueline Aimee Rogers
August 7 · 🌐

🤔

"Escambia County is alleging in legal filings that more than 60,000 of Commissioner Jeff Bergosh's text messages were illegally taken from his personal cell phone by his former political opponent Jonathan Owens.


It's the latest development in the Emergency Medical Service training scandal that upended the Escambia County government in 2019 and resulted in the arrest of four senior-level EMS personnel in 2020 for falsifying training records.... [See more](#)



PNJ.COM

Escambia's fighting for control of 60,000 texts a commissioner claims were 'stolen' by a rival

🤔👍🤔 21 127 comments 7 shares



Submit your first comment...




Exhibit B

Aug 7, 2023 FB Post on "Escambia Citizens Watch" page

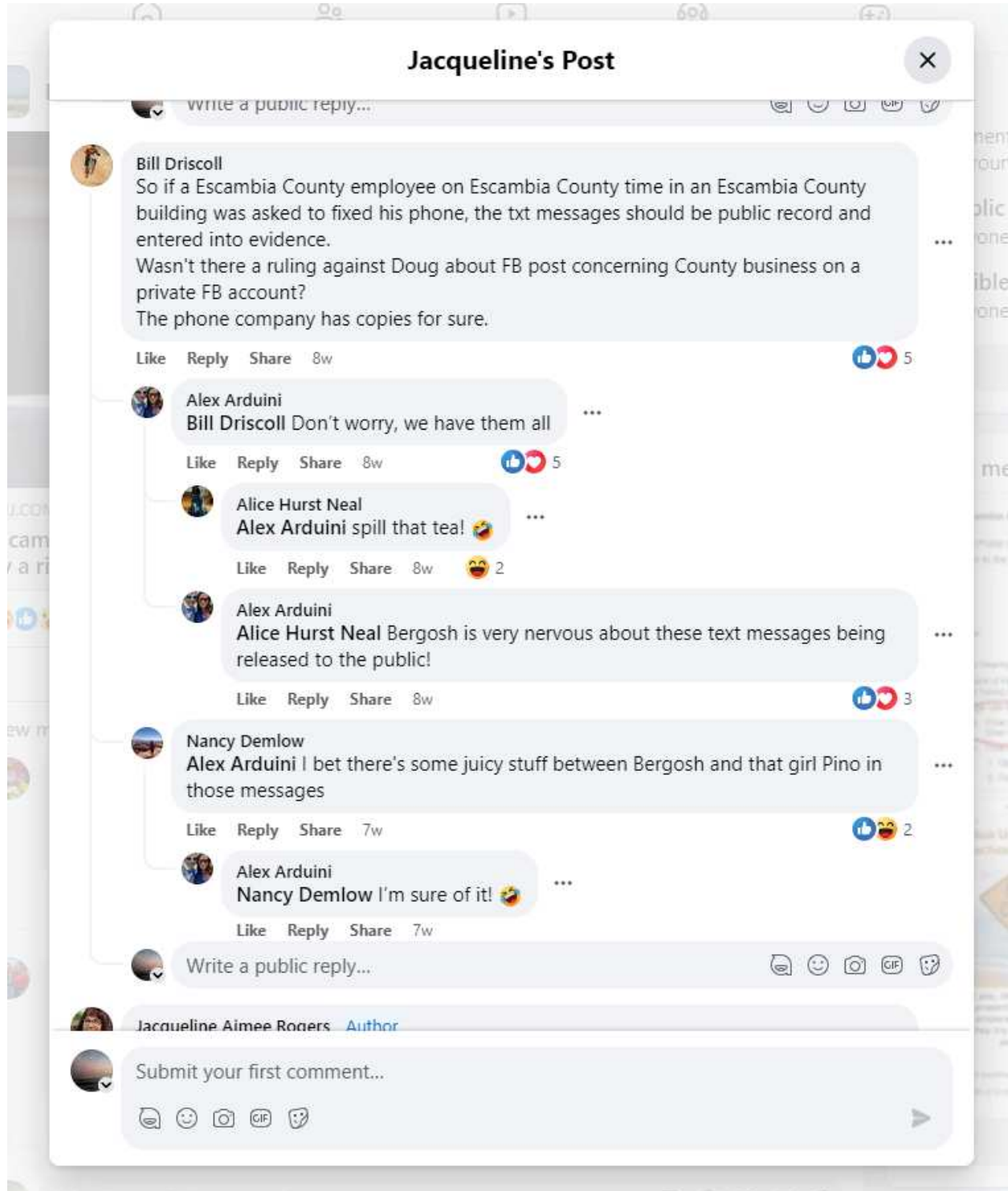


Exhibit B

Aug 7, 2023 FB Post on "Escambia Citizens Watch" page

Jacqueline's Post

Maybe someone knew it was illegal to do that so the thumb drive was a way to preserve them.
And why didn't he give them up when Alex asked the county for them from all the commissioners?
If he is doing county business on his private phone, it is his responsibility to preserve the record.
That is a violation to deny their existence in a record request.
Lots of unanswered questions from just reading the article.
And I guess it depends on what the definition of "few" is ...

Like Reply Share 8w 3

Alex Arduini

Jacqueline Aimee Rogers There are way more than a "few" messages pertaining to county business on that thumb drive!

Like Reply Share 8w 2

Joel Cotton






Alex Arduini few
determiner · adjective
1. a small number of.
"may I ask a few questions?"
Similar: not many, hardly any, scarcely any, a small number of, a small amount of, a small quantity of, one or two, a handful of, a sprinkling of, little, a couple of, a small number, a handful, a sprinkling, a couple, two or three
Opposite: many, a lot
2. used to emphasize how small a number is.
"he had few friends"
Similar: not many, hardly any, scarcely any, a small number of, a small amount of, a small quantity of, one or two, a handful ofsp

Like Reply Share 8w 2

Jacqueline Aimee Rogers Author

Joel Cotton scarcely or hardly any ... 🙄 ...
We will see what the judge says.

Submit your first comment...



pensacola news journal

Exhibit C

ESCAMBIA-COUNTY

Leaked Bergosh text messages mention EMS doctor who is suing Escambia County 102 times

**Jim Little**

Pensacola News Journal

Published 4:12 a.m. CT Aug. 21, 2023

Escambia County Commissioner Jeff Bergosh's text messages indicated he wanted former Medical Director Dr. Rayme Edler fired long before her employment ended with the county, which could contradict the county's legal argument that his messages on his phone have nothing to do with Edler's pending lawsuit.

The News Journal has obtained files of public records of Escambia County officials' communications that also included a document that contains Bergosh's text messages that is at the center of a hearing Monday in a lawsuit between the county and Edler's allegations the county made false Medicare claims to the U.S. government.

A federal judge will decide whether those messages are public record and can be used in the lawsuit.

Former county employee Jonathan Owens provided Edler's attorneys with the text messages, which he said was anonymously provided to him.

Owens worked as Commissioner Doug Underhill's aide at the county for eight years and unsuccessfully ran against Bergosh for the District 1 commission seat in the 2020 Republican primary.

Separately, an anonymous source provided the News Journal with the files after it published a story on the legal battle earlier this month. Owens verified to the News Journal the file appeared identical to the one he provided to Edler's attorneys, and the number of messages contained in the file was the same.

'Responsive text messages'

Edler's attorneys, who are seeking the court's permission to review the file as part of the lawsuit, said in their own legal filings the county has "long maintained that responsive text messages relating to public business do not exist on County employees' personal cell phones."

However, a review of the file leaked to the News Journal shows some messages could indeed be relevant to public business and Edler's claims of retaliation contained in the lawsuit.

One alleged exchange that appears to be between Bergosh and his wife, Sally, occurred after the county approved a new contract with the University of Florida to provide medical directors that made Edler's job irrelevant while she was on leave through the Family Medical Leave Act.

Lawsuit seeks text messages: Escambia's fighting for control of 60,000 texts a commissioner claims were 'stolen' by a rival

County v. Clerk lawsuit over medic fine: Escambia lawsuit weighs if clerk or commissioners have last say in paying out tax dollars

In her lawsuit, Edler alleges the contract was used as a pretext to fill her position while she was on a protected leave and she was offered a role providing medical care only to the jail. Edler refused to accept the role, and the county fired her for "job abandonment" in September 2021.

The alleged message exchanges began on July 22, 2021, when Bergosh's wife asked him how the County Commission meeting that morning went. At that point Bergosh began discussing county business with her, making the conversation a public record under Florida's Sunshine Law.

Under Florida's public records law, any written communication about county business by a county official is a public record, even on a personal device.

Bergosh responds that a discussion on the controversial local retirement plan for commissioners was dropped from the discussion before allegedly saying:

"Bergosh 12:51 p.m.: But we did get two brand new medical directors for EMS 🌐



Bergosh 12:52 p.m.: Bye bye Rayme Edler 🙏🙏

Sally 12:53 p.m.: 👍

Bergosh 12:54 p.m.: 🙌yep. It's like the SNL flight attendant skit. "Buh- Bye!!!"

Sally 1:11 p.m.: I think she wasn't fired

Bergosh 1:55 p.m.: Not technically but she's not going to be around any longer, and she's not the medical director anymore so

Bergosh 1:55 p.m.: there's that"

Escambia County argued in court filings that the possession of the file was a waste of judicial resources, a violation of Bergosh's personal privacy, and a potential violation of Florida law.

"The Excel spreadsheet contains messages that include personal identifying information, confidential medical information, family medical information, personal financial information, and other communications that do not involve, or relate to, Escambia County business or Dr. Edler's pending case," County attorneys wrote. "Critically, the Excel spreadsheet produced by Edler's counsel does not offer any information or evidence to show where, when, or how it was created, nor is there any custodian of records to verify the veracity and authenticity."

What is the file?

In a signed affidavit, Bergosh said he had turned over his personal phone to the county's IT Department in February 2022 because it was having issues, and he wanted a backup to preserve any public records before an overseas trip.

Bergosh said he was given a copy of his files and directed IT staff to delete all other copies.

The metadata of the file reviewed by the News Journal indicates it was likely created on Feb. 1, 2022, at 6:07 p.m.

The file is a spreadsheet containing 60,774 lines of messages, but some messages take up multiple lines. The approximate number of individual text messages in the spreadsheet is 52,486. Each message contains a timestamp, and the number of messages can be quickly counted by totaling the number of timestamps in the file.

The file appears to contain messages covering a period from Oct. 18, 2019, to Feb. 1, 2022.

The News Journal identified message threads of public interest in the file using keyword searches in an effort to focus on the texts concerning public business, not personal messages

involving Bergosh and his family. In total, Edler's name or the term "medical director" is mentioned in 102 messages, with most being sent to Bergosh.

When asked about the existence of the text message file in the Edler lawsuit earlier this month, Bergosh said the issue is being investigated by the Federal Bureau of Investigation and he would not comment on the issue during the investigation.

"It's an active federal investigation, and they're looking into how Jonathan Owens acquired these and how they were stolen from the county's servers," Bergosh said. "Because of that, I have no comment to make during this investigation."

The FBI has said it cannot confirm or deny the existence of any investigation into the matter.

Bergosh has since publicly commented on the issue on his blog saying that only about 10% to 15% of the text messages are public record.

"Not embarrassed about anything I did," Bergosh wrote, responding to a comment on his blog. "(I'm) disgusted about the prurient, deviant, dishonest and soul-less individual who would get his jollies reading my personal, private communications with family, children, nephews and close friends. Since you asked.....Make no mistake--this is not about any lawsuit; it is about the crime that was committed when my information was stolen."

Retaliation allegations

The primary focus of the lawsuit is alleged false claims made by the county to the U.S. government about providing ambulance services without properly certified personnel as required by Medicare and "up-coded" claims to more expensive ones than were actually provided.

A portion of the lawsuit centers around alleged retaliation against Edler while she reported training and medical care issues to the Florida Department of Health in 2019 and further claims of retaliation when she was fired from the county in 2021.

When Edler's 2019 allegations about falsified training records became public, it upended the county government and became a human resources quagmire, spawning allegations of retaliation against all sides and multiple lawsuits.

Edler filed a defamation lawsuit against a county political activist and outspoken critic of her actions. The lawsuit was later dropped and Edler ordered to pay all attorney's cost.

Paramedic Matt Selover sued the county over its handling of his retaliation complaint against Edler, which it settled for \$200,000 after Bergosh publicly and privately advocated for Selover.

A state law enforcement investigation resulted in the arrest of four senior-level EMS officials who were charged with falsifying training documents based on Edler's report.

Two of the four arrested entered a pre-trial diversion program and avoided criminal penalties, the former EMS chief pleaded no contest to two misdemeanor charges, and the training director was adjudicated guilty of seven felony charges of falsifying an official document.

Escambia County itself settled with the Florida Department of Health. The county paid a \$5,000 fine over the training issue and accepted a letter of reprimand on the county's license to operate an EMS service in the state.

Edler's lawsuit includes a timeline of events and argues they speak to evidence of the county's willingness to suppress problems raised in the county's Emergency Medical Services.

'Is the county still paying Edler? I hope not.'

One alleged exchange that may be relevant in the case involved former Interim County Administrator Matt Coughlin on Sept. 13, 2021, after Bergosh published a deposition transcript of Ed Spainhower, a County Human Resources employee, on his blog.

Spainhower wrote an initial report on paramedic Selover's May 2019 allegations against Edler and concluded there was the appearance that Edler had retaliated against Selover. The report was never finalized for months, and when it was officially provided to Selover, its conclusions were reversed after a second review, which led to Selover's lawsuit.

Coughlin resigned from the county in April 2019 amid the public disclosure of the EMS training scandal and was serving his final 90 days when Selover filed his harassment complaint against Edler.

"Coughlin 5:18 p.m.: Read your blog on Spainhower depo. Un, f'ing believable. I Always struggled with why they let it drag on forever after I had left.

I purposely pushed spainhower on his investigation, asked (former Assistant County Attorney) Charlie (Peppler) for his opinion in writing, counseled Edler in writing and tee'd it up for (former County Administrator) Janice (Gilley).

I'm still pissed, especially after she (Gilley) threw me under the bus when you all fired her. She fully knew what was happening when she walked in the door.

Tell me, is the county still paying Edler? I hope not.

Hope you're doing well.

B/Matt

Bergosh 5:19 p.m.: Thanks Matt. Yes, Unfortunately we are she (Edler) is on some form of leave but she's no longer the medical Director we hired the University of Florida and we have two professional doctors who are doing it now and doing a good job. Yes been hour was weak he was like a wet noodle doing whatever he was told I have lost a lot of respect for him after reading that deposition

Bergosh 5:19 p.m.: *spainhower

The response “*spainhower” appears to be correcting the typo “Yes been hour.”

Bergosh, Coughlin, Spainhower and Peppler are listed among 13 county officials mentioned in Edler's lawsuit she alleges participated in retaliation against her in her attempt to report unlawful activity.

Status of the case

Edler filed her lawsuit in May 2020 under the False Claims Act while she was still the county's medical director.

Under the False Claims Act, an individual with knowledge of fraud against the government can sue on behalf of the government. Anyone found liable under the FCA must repay the government triple what it was overpaid by the government, plus an adjustment for inflation and interest.

Escambia County makes thousands of claims a year to Medicare and Medicaid through its EMS service, so if it is found liable, it could face millions in penalties.

The county has already tried to have the lawsuit dismissed for “failure to state a claim” in 2021.

Senior U.S. District Judge Roger Vinson, who died earlier this year, denied the county's attempt to dismiss the lawsuit in a short two-page ruling in August 2021.

Vinson noted that under the FCA at that stage of the litigation, he was required to assume the allegations were true and had to rule on if the complaint properly stated a legal claim.

Vinson said Edler's attorney's argument for moving the lawsuit forward was "comprehensive and compelling," and he rejected the county's arguments as "unpersuasive."

Since the 2021 ruling, the lawsuit has been amended to add a second claim under the FCA related to the same issues and reassigned to U.S. District Judge Casey Rodgers. The county has sought to dismiss the new portion of the lawsuit. The county's new dismissal argument is still pending a ruling from Rodgers.

Meanwhile, the county has sought a protective order seeking the deletion of Edler's attorneys' copy of Bergosh text messages as part of the case, alleging there is a federal investigation into how Owens obtained the file.

The county turned over a copy of the file to Federal Magistrate Judge Hope Cannon on July 28 for her private review of the relevance to Edler's lawsuit.

Cannon is set to hear oral arguments on the Bergosh file and other discovery-related issues in the lawsuit on Monday.