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September 4, 2024

Escambia County Board of County Commissioners
Commissioner Jeff Bergosh, District 1
221 Palafox Place
Suite 400
Pensacola, FL 32502

Dear Commissioner Bergosh,

As we have previously discussed, this office has completed its review of the facts and circumstances surrounding the alleged theft of electronic information that had been downloaded from your personal cell phone to an Escambia County computer. Based on our review, we have determined that there is insufficient evidence to prove beyond a reasonable doubt that a crime has been committed. The reasons for that determination are set forth more fully below.

As you are aware, you use your personal cell phone for personal use as well as in your position as an elected member of the Escambia County Board of County Commissioners. As such, your cell phone may contain information that would constitute public records under Florida law. When you began having problems with your cell phone you sought the assistance of County I.T. staff to recover your data and ensure that no public records were lost. The process to recover this data was difficult and time consuming but eventually the information was recovered and transferred to a county server. This information was then downloaded to a portable storage device which was eventually provided to you. It should be noted at this time that you considered yourself the custodian of any public records in your possession and that your intention was that any data downloaded from your cell phone would be deleted from any county server.

The download of the data from your cell phone was extensive and it took overnight to complete. The following morning, James McCasland transferred the data to a portable storage device which he provided to then I.T. Director Bart Siders. Siders transferred that data to a drive on his computer. This was

done in order to verify that the download was successful. Siders determined that the data had been recovered and that it contained approximately 60,000 text messages as well as numerous videos and images. The portable storage device was then provided to your assistant and ultimately to you. The data was not deleted from Siders computer as you had anticipated.

At a later public board meeting you complimented the I.T. staff and described the work they had done in recovering the information on your cell phone. Shortly afterwards, Siders received a telephone call from a person who said they wanted to remain anonymous but were making a public request for the data downloaded from your phone. Even though the caller did not identify themselves, Siders recognized the voice as then county employee Jonathan Owens. Siders provided Owens a complete copy of the information downloaded from your phone. This took place in the parking garage adjacent to the County Office Building.

At no time did Siders discuss this public record request with any other person. The information was not reviewed to redact confidential or exempt material. Additionally, the provided information contained private communications and personal identification information not subject to public records requests.

Under certain circumstances, it is unlawful for an individual to possess the personal identification of another person. The statute applicable to this matter is a specific intent crime. This means that the State must prove beyond a reasonable doubt that the person intentionally or knowingly possessed such personal identifying information and did so without authorization. Intentionally or knowingly are generally defined as having actual knowledge and understanding or that an act was done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

There is no evidence that Owens intentionally intended to obtain personal identifying information when he made his public records request. Had Siders followed proper procedure, the public record response would have been reviewed and any exempt or nonpublic information would have been redacted.

Further, the State cannot prove beyond a reasonable doubt that Owens was even aware that the public record response contained personal identifying information. This response contained more than 60,000 text messages as well as numerous videos and images. Even if it was likely that Owens had seen the personal identifying information this would be insufficient to prove the crime beyond a reasonable doubt. Finally, it is an affirmative defense to the charge if the person obtained the public identifying information from a public record. While this information is not a public record, it was obtained through a valid public record request. This may give rise to the affirmative defense.

For the reasons stated, there is insufficient evidence to charge Jonathan Owens with any crime.

Sincerely,

Gregory A. Marcille
Assistant State Attorney