



STATE ATTORNEY'S OFFICE
FOURTH JUDICIAL CIRCUIT OF FLORIDA

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February 11, 2019

Lisa Green
Office of Inspector General
231 E. Forsyth St., Ste. 470
Jacksonville, FL 32202

Re: Criminal investigation into potential Florida Sunshine Law violations

Dear Inspector Green:

We have concluded our criminal investigation into the alleged Florida Sunshine Law violations that were reported to our respective offices on February 28, 2018. Our investigation produced insufficient admissible evidence to support criminal charges against any subject at this time. We are, therefore, closing our file.

I am providing a copy of our closing memorandum and our summary investigative memorandum. Both are self-explanatory. Although we are closing our investigation without prosecution, the records and reports we obtained and generated during our investigation are available for your office's use, if needed.

It has been a pleasure working with your Office on this matter, and we very much appreciate all of the dedication and assistance that your Office provided with this important matter. Should you have any questions, please do not hesitate to contact me or our lead investigator on this matter, Tim Adams.

Sincerely,

Mac D. Heavener, III
Chief Assistant State Attorney

Enclosures



**OFFICE OF THE STATE ATTORNEY
FOURTH JUDICIAL CIRCUIT
311 WEST MONROE STREET
JACKSONVILLE, FLORIDA 32202**

TO: File No. 18SAO15842AD
FROM: Mac D. Heavener, III, Chief Assistant State Attorney
RE: Closed Investigation
DATE: February 8, 2019

MDH

This memo outlines the initial complaint our office received about potential Florida Sunshine Law violations by Jacksonville City Council Members, the investigative steps we took, and our legal analysis and conclusion that available evidence would not support a criminal prosecution of any individual Council Member. We are, therefore, closing our investigation.

I. Initiation and Predication for the Investigation

On February 28, 2018, Chief Assistant L.E. Hutton and I met with the City of Jacksonville's Inspector General ("IG"), the Deputy Inspector General ("DIG"), and members of the Mayor's office. During the meeting, Chief Administrative Officer Sam Mousa relayed that the Mayor's office was notified that a member of City Council, John Crescimbeni, had been approached outside of a noticed meeting by Council Member Garrett Dennis about the delivery of a block vote in Crescimbeni's favor for Council President. The Mayor's office was concerned that Sunshine violations may be taking place. The specific allegation was that a source within the Mayor's Office had relayed that Council Member Dennis provided a list of names written on the back of a business card to Council Member Crescimbeni. Given the initial nature of the allegation, the IG

and this office agreed that the IG's office would conduct a preliminary review of the matter to determine if further investigation by our office was warranted.

Chief Investigator Tim Quick spoke with the DIG, Lisa Green, via phone on March 14, 2018, and she requested a phone subpoena for Council Member Dennis's phone records based on the nature of the complaint (*i.e.*, that Council Member Dennis may have been assembling a block vote). We issued the requested subpoena, and when Chief Investigator Quick obtained the subpoena results, two City IG investigators came to Investigator Quick's office to download the results on April 19, 2018.¹

On April 27, 2018, we suggested an in-person meeting with the IG's office to review their to-date findings from review of sources available to them (*e.g.*, City emails, City office surveillance records, etc.) and the phone records our office shared. On April 30, 2018, DIG Lisa Green confirmed a meeting for May 15, 2018, at 3:30 p.m.

On May 14, 2018, Deputy IG Lisa Green forwarded a written notice to Chief Assistant Hutton and me. The notice was issued by Council Member Dennis and indicated a public meeting would take place at City Hall on May 15, 2018. The stated purpose of the meeting was "to discuss allegations made by Council Vice President Bowman on the topic of Sunshine Violations for the upcoming Council Leadership Vote." The notice continued, "Additionally, the meeting will address correspondence received from the Honorable Aaron Bowman, Vice President of the Jacksonville City Council on the topic of the upcoming Council Leadership Vote."

Because the stated purpose of the called meeting potentially concerned the same subject as the initial complaint we received, SAO Investigator Tim Adams,² Chief Assistant Hutton, and I attended the meeting at City Hall on May 15, 2018, at 9:00 a.m. Council President Brosche and Council Member Dennis attended. During the meeting, Council Member Dennis exhibited a clear understanding of the Florida

¹ That subpoena (and other phone-record subpoenas issued later) showed the need to subpoena additional phone records for other Council Members when what looked to be out-of-the-ordinary phone contact with other Council Members was taking place. We issued those subpoenas as well during the course of the investigation.

² Investigator Tim Adams joined the State Attorney's Office as an investigator shortly after we received the initial complaint. Investigator Adams is a licensed attorney (although not in Florida) and retired from 21 years of public service as a Special Agent with the FBI. He has significant experience investigating public corruption matters and was ideally suited to be the lead investigator for this matter. He primarily was assisted by SAO Investigator John Zipperer, a law enforcement officer with over 40 years of experience, including investigating corruption matters as a JSO Integrity Detective.

Sunshine Law and the requirements that law placed on elected members of the Jacksonville City Council.³

Later that day, on May 15, 2018, at 3:30 p.m., Chief Investigator Tim Quick, Investigator Adams, and I attended a meeting with the IG, the DIG, and several Assistant IGs, during which they presented their preliminary findings. Those findings showed that substantial telephonic contact had taken place between Council President Brosche and Council Member Dennis and between Council Member Dennis and Council President Brosche's Council Executive Assistant, Jeneen Sanders ("Sanders"). The IG also shared that some of that phone contact took place around Council meetings.

Based upon the preliminary analysis by the IG's office, we determined that an investigation by this office was warranted to determine whether criminal violations of the Florida Sunshine laws (*i.e.* knowing violations) existed. At that point, the investigation also broadened from the initial complaint about Council Member Dennis giving a list of names to Council Member Crescimbeni to a new concern that certain Council Members were violating the Florida Sunshine Laws through non-public telephone calls or by using a conduit to illegally communicate about Council business.

II. Investigative Overview

This Office's investigation began with the covert subpoena and/or analysis of telephone toll records, including the information and analysis provided to us by the IG's office. We issued multiple phone subpoenas, and often the records we obtained showed the need for records of other Council Members. The investigation remained covert from February 28, 2018, until we openly interviewed Council Members in late August through September 2018. Those interviews were non-custodial and as close-in-time as the schedules of Council Members and knowledgeable City employees permitted. After that, we conducted or invited a number of follow-up interviews. We compelled one immunized statement by issuing an investigative subpoena to Council Member Brosche's Council Executive Assistant, Jeneen Sanders. We made an investigative decision that we would not compel interviews of Council Members identified as subjects of the investigation (*i.e.*, Council Members who had engaged in substantial telephonic contact) because compelling those interviews necessarily would grant immunity to them and likely bar any criminal charges for Sunshine Law violations or for any other criminal violations that might have been disclosed during

³ Our purpose in attending the meeting was to see if Council Member Dennis made any statements about the original complaint and to determine if he made statements demonstrating his knowledge of the Florida Sunshine Law, as those statements might prove a violation of the Sunshine Law was done knowingly.

compelled statements. A summary of the key facts uncovered from the investigation follows.⁴

A. Telephone Toll Analysis

We issued a number of subpoenas for telephone toll records,⁵ primarily covering from October 1, 2017, to September 28, 2018. Because the initial complaint focused on Council Member Dennis, the initial analysis began with his phone records. We obtained more phone records of other Council Members once additional predication became apparent.⁶ A comprehensive analysis of the phone toll records and types of phone contact is contained in Investigator Adams' investigative memo and is not produced in its entirety below.

Analysis of the toll records revealed substantial telephone activity between certain Council Members and between one Council Member and the Council Executive Assistant of another Council Member.⁷ This analysis directed our focus to those Council Members whose telephone toll records revealed substantial, non-isolated contact. Analysis of records showing more than 200 telephonic contacts between a Council Member and any other Council Member during a year is noted below.

1. Telephone activity between Council Member Dennis and Council Member Brosche, Council Member Dennis and Council Executive Assistant Jeneen Sanders, and Council Member Dennis and Council Member Katrina Brown.

Telephone toll record analysis revealed substantial telephone activity between Council Member Dennis and Sanders, the Executive Council Assistant for Council Member Brosche and between Council Member Dennis and Council Members Brosche and Katrina Brown. The relevant details consist of the following:

⁴ Investigator Adams completed investigative memo, and all interviews were documented by separate reports of those interviews. This memo summarizes the pertinent facts obtained during the investigation.

⁵ Telephone toll records are business records maintained by telephone service providers that show the dates, times, and phone numbers that communicated with a particular phone subscriber's account. By analyzing those records, law enforcement can determine what numbers contacted or were contacted by a particular number. Telephone toll records show contacts, but those records do not disclose the actual content of communications.

⁶ While we could have subpoenaed the phone records of all Council Members, we limited our investigative efforts to the subject of the initial complaint and when records showed a Council Member having what appeared to be out-of-the-ordinary contact with another Council Member.

⁷ Significant contact between a Council Member and another Council Member's Executive Council Assistant raises the potential of someone acting as a conduit. Use of a conduit to avoid Florida's Sunshine Laws is illegal.

- Council Member Dennis and Council Member Brosche's Executive Council Assistant, Jeneen Sanders. Between October 1, 2017, and September 28, 2018, **3,128 calls** took place between Council Member Dennis's phone number and the phone number used by Sanders, the Executive Council Assistant for Council Member Brosche. The total time spent during all of that contact was 1,446,191 seconds, or about **402 hours**.⁸ Some calls to Sanders also showed Council Member Dennis used a *67 function, which is selective caller identification block that would indicate some attempt to conceal identity.
- Council Member Dennis and Council Member Brosche. Between October 1, 2017, and September 28, 2018, **454 calls** took place between Council Member Dennis's phone number and Council Member Brosche's phone number. The total time spent during all of that contact was 223,890 seconds, or about **62 hours**. Of particular note was an abrupt discontinuation of calls after February 28, 2018 (the date of the initial complaint to our office and the IG's office). During the period between October 1, 2017, and February 28, 2018, 450 of the 454 calls took place. After that, only four calls took place.
- Council Member Dennis and Council Member Katrina Brown. The only other Council Member with more than 200 contacts with Council Member Dennis's phone was Council Member Katrina Brown. Between October 1, 2017, and September 28, 2018, **230 calls** took place between Council Member Dennis's phone number and the phone number used by Council Member Katrina Brown. The time spent during those calls was 65,939 seconds, or about **18 hours**.

The IG's office also compared phone contact to known City Council or Council Committee meeting times, and that analysis showed that Council Member Dennis and Council Member Brosche regularly communicated by telephone around scheduled Council meetings.

2. Telephone Activity Between Council Member Katrina Brown and Council Member Reginald Brown

⁸ By way of reference and comparison, between October 1, 2017, to October 19, 2018, Council Member Brosche had only 641 contacts with Sanders's phone with total contact duration of about 39 hours. That meant Council Member Brosche had about an eighth of the contact with her own Council Executive Assistant than Council Member Dennis had. Similarly, Council Member Dennis's phone and Council Member Dennis's spouse's phone number showed 1,941 contacts with total contact duration of about 82 hours. Stated differently, Council Member Dennis spent about a quarter of the time communicating with his spouse's number than he did with Sanders's number.

A review of Council Member Katrina Brown's telephone toll records showed significant telephonic contact between Council Member Katrina Brown and Council Member Reginald Brown.⁹ Between October 1, 2017, and July 18, 2018, **12,598 contacts** took place between Council Member Katrina Brown's phone number and Council Member Reginald Brown's phone. The time spent during those contacts was 888,751 seconds, or about **247 hours**.

3. Telephone Activity Between Council Member Katrina Brown and Council Member Reggie Gaffney

A review of Council Member Katrina Brown's telephone toll records showed significant telephonic contact between Council Member Katrina Brown and Council Member Reggie Gaffney. Between October 1, 2017, and July 18, 2018, **1,804 contacts** took place between Council Member Katrina Brown's phone number and Council Member Reggie Gaffney's phone number. The time spent during those contacts was 266,209 seconds, or about **74 hours**.

4. Telephone Activity Between Council Member Katrina Brown and Council Member Sam Newby

A review of Council Member Katrina Brown's telephone toll records showed significant telephonic contact between Council Member Katrina Brown's phone number and Council Member Sam Newby's phone number. Between October 1, 2017, and July 18, 2018, **737 contacts** took place between Council Member Katrina Brown's phone number and Council Member Sam Newby's phone number. The time spent during those contacts was 136,572 seconds, or about **38 hours**.

5. Analysis of Telephone Activity for Council Member John Crescimbeni.

We obtained toll records for Council Member John Crescimbeni's phone number based on the original allegation. Toll analysis of those records showed a much different picture than the toll analysis outlined above. A review of toll records for the period between March 1, 2018, to July 19, 2018,¹⁰ showed that Council Member Crescimbeni

⁹ Council Members Katrina Brown and Reginald Brown were indicted by a federal grand jury on May 23, 2018, in the case styled *United States v. Katrina Brown and Reginald Brown*, Case No. 3:18-cr-89-J-34-JRK. The indictment alleges serious federal felonies that include conspiracy, mail and wire fraud, and money laundering. Due to the significant federal charges pending against them, we have not pursued the telephone data further, as discussed below.

¹⁰ Because of the low volume of contact with other Council Members, no investigative reason existed to subpoena a larger date range of Council Member Crescimbeni's phone records.

had **51 contacts** with Council Member Brosche or a total duration of 6,275 seconds, or about **1.75 hours**.¹¹ That review also showed that during the same time period (March 1, 2018, to July 19, 2018), Council Member Crescimbeni had only **23 telephone contacts** with Council Member Dennis for a total duration of 1,261 seconds, or about **21 minutes**. All other Council Member telephone contacts during the same period were even less than that. In sum, Council Member Crescimbeni's toll analysis reflected what one would expect to see.

B. Interviews

Between August 29, 2018, and September 19, 2018, investigators with this office conducted overt interviews with City Council Members, select City Council employees, and select members of the Mayor's office. The interviews were directed to the initial complaint and to generally explore Sunshine Law violations, particularly among those Council Members who showed substantial telephonic activity with other Council Members. The interviews were voluntary and scheduled at convenient times and locations. Investigators used a uniform interview guide during the interviews. Investigators also requested all Council Members to sign a preservation letter, acknowledging their obligation to maintain any communications that might be pertinent to the investigation. The purpose for the preservation letter was ensure the preservation of any relevant communications. The receipt of the preservation letter followed by destruction of communications potentially would support evidence tampering charges if a Council Member subsequently destroyed relevant communications. During the first few interviews, Council Members spoke without an attorney present. After that, on September 6, 2018, the Office of General Counsel ("OGC") contacted Investigator Tommy McKenzie and advised that OGC represented "all the members of the Jacksonville City Council" and would be present for all future interviews of Council Members.

Following the initial interview of Council Member Dennis, we were contacted by Attorney David Wells who advised that he represented Garrett Dennis. Following the initial interview of Council Member Brosche, we were contacted by Attorney Hank Coxe who advised that he represented Anna Brosche. Following the initial interview of Sanders and service of a State Attorney investigative subpoena upon her, we were contacted by Attorney Geddes Anderson who advised that he represented Jeneen Sanders.

¹¹ Less than two hours of phone contact over four months would appear consistent with routine scheduling calls.

During initial interviews, investigators did not confront or challenge statements that readily appeared inconsistent with the telephone toll analysis done to date. This was an intentional investigative technique, as investigators did not want to identify the potential subjects of the investigation and did not want to disclose data to those subjects, as false statements by those subjects would be admissible consciousness-of-guilt evidence if actual violations became apparent during interviews with others. Once all interviews were completed, investigators planned to revisit misleading answers and confront subjects with the toll analysis and other information learned through interviews of others that might have been relevant to the particular subject's phone contacts. Investigators also prepared a separate report of interview for each interview that is contained in our investigative file. What follows is a brief summary of key statements provided during the interviews.

1. Interviews related to the initial complaint

Our investigation revealed that the initial information about the incident between Council Members John Crescimbeni and Garrett Dennis was provided by Ali Korman ("Korman"), the Mayor's Director of Intergovernmental Affairs. As part of her normal duties, she regularly interacted with Council Members. On January 29, 2019, Korman confirmed that she relayed information about the initial interaction between Council Member Dennis and Council Member John Crescimbeni to Mayor Curry.

We also attempted to locate individuals who might have knowledge at the Mayor's Office. On September 17, 2018, SAO investigators interviewed the Mayor's Chief Administrative Officer, Sam Mousa ("Mousa"), the person who made the initial complaint to our Office. Mousa advised that in February 2018, Korman met with him and advised him that she had recently met with Council Member John Crescimbeni. She relayed that Council Member Crescimbeni told her that Council Member Dennis had approached Council Member Crescimbeni, handed him a business card, and the card had other Council Members' names on it. After handing Council Member Crescimbeni the business card, Council Member Dennis said words to the effect of, "Here are the votes for you to become president." Korman advised Mousa that Council Member Crescimbeni took the card home. Mousa believed that Korman came to him because the situation was egregious. He advised Mayor Curry and Brian Hughes, the Mayor's Chief of Staff. He also contacted Carla Miller, the Director of the Office of Ethics, Compliance, and Oversight. Miller referred him to the IG and the SAO.

On September 19, 2018, SAO investigators also interviewed Brian Hughes ("Hughes"), the Mayor's Chief of Staff. Hughes advised investigators that in February 2018, Korman advised him that Council Member Crescimbeni had relayed to her that

Council Member Dennis approached Council Member Crescembini with a business card containing a list of Council Members who would vote for Council Member Crescembini if he wanted to be Council President. Korman advised Hughes that the card existed, and it contained four names.

On September 19, 2018, SAO investigators also interviewed Mayor Lenny Curry ("Curry"). Curry relayed that Korman approached him in February 2018. She told Curry that Council Member Crescimbeni had relayed that he met with Council Member Dennis in Crescimbeni's office. She also relayed that Council Member Crescimbeni stated that Council Member Dennis gave him a card regarding the upcoming election for Council President. The card had a list of names. After this, Curry contacted Council Member Bowman and provided the information.

Korman and three independent sources within the Mayor's Office, then, indicate that Korman relayed that Council Member Crescimbeni was approached by Council Member Dennis with a list of Council Members who would vote for Crescimbeni for City Council President. Because Korman made three prior consistent statements before we began any investigation, Korman's statement is corroborated by prior consistent statements that provide strong indicia of reliability.

Other accounts of the alleged incident were inadmissible hearsay or were based on inadmissible speculation by other Council Members, but these accounts would tend to corroborate the initial complaint. For instance, Council Member Bowman spoke with our office twice, on September 5, 2018, and on December 17, 2018. In substance, he relayed that two Council Members, Katrina Brown and Tommy Hazouri, had independently told him that Council Member Dennis was trying to sway the Council to vote against him becoming Council President. He said that Katrina Brown later told him that Council Member Dennis was saying things about him to Council Members Reggie Gaffney and Sam Newby. He contacted both Gaffney and Newby to determine if Council Member Dennis was disparaging him, but they advised him that Council Member Dennis said he was not voting for Council Member Bowman, but he never solicited or encouraged them to join him.

Similarly, on September 18, 2018, SAO investigators interviewed Council Member Tommy Hazouri. During his interview, Council Member Hazouri advised that in the spring of 2018, Council Member Dennis had questioned him about why he was supporting Council Member Bowman for Council President. Dennis advised Hazouri that he did not think Council Member Bowman could be trusted. Council Member Hazouri passed that information along to Council Member Bowman.

The primary witness to the original allegation, of course, would be Council Member John Crescimbeni. He agreed to speak with our Office twice without protections or subpoena. In-person interviews happened on September 6, 2018, and December 20, 2018. Each time, Council Member Crescimbeni denied that Council Member Dennis approached him about a group vote in his favor or that Council Member Dennis provided a business card to him with the names of other Council Members who would vote for him. He confirmed once more on February 4, 2019, that he had no recollection of that interaction with Council Member Dennis.

As noted below, Council Member Dennis requested to consult with his counsel before our investigators were able to conduct further questioning about the initial complaint. We attempted to conduct another interview, but through counsel, he refused. We therefore do not have Council Member Dennis's account of what happened regarding the initial complaint. Since Council Member Dennis would be the subject of the complaint, we are unwilling to immunize him for a further statement, as doing so would foreclose any future prosecution and would also grant immunity if he disclosed other offenses.

To review, Crescimbeni denied the initial allegation. Dennis invoked his right to counsel before any questioning about the initial complaint and will no longer speak with us, as is his Constitutional right. Thus, the initial allegation cannot be sustained with direct evidence. At best, our only evidence of this complaint consists of a prior inconsistent statement by Crescimbeni to Korman and some behavior by Dennis that would tend to corroborate efforts to keep Bowman from becoming Council President.

The remaining interviews we conducted all focused on the voluminous and frequent telephone contact between various identified Council Members.

2. Council Member Brosche

On August 29, 2018, SAO investigators interviewed Council Member Brosche. She advised that she was not aware of any alleged Sunshine Law violations and had no specific information about the topic. She advised that she had not communicated with other Council Members about Council matters outside of official hearings or proceedings, but she has communicated with them about times of meetings or their attendance. She advised that she does not regularly contact other Council Members for matters unrelated to Council business. At the time, Investigators did not specifically confront Brosche with the volume of calls and duration of contact between her and Council Member Dennis or between Sanders and Council Member Dennis.

Investigators similarly did not confront her about why her own contact with Dennis abruptly stopped. This was intentional, as explained above.

We did make contact with Ms. Brosche's counsel on January 16, 2019, and requested the opportunity to ask additional questions and provide further explanation. Through her counsel, Ms. Brosche declined that invitation on January 25, 2019. Thus, we are unable to question her further about the frequency and duration of her calls with Council Member Dennis, the frequency and duration of Council Member Dennis's calls with her Council Executive Assistant, the timing of those calls in relation to Council meetings, and the abrupt stop in phone activity between her and Council Member Dennis.

Since Council Member Brosche would be the subject of potential violations (from either her own contact with Council Member Dennis or her Council Executive Assistant's contact with Council Member Dennis), we are unwilling to immunize her for a further statement, as doing so would foreclose any future prosecution and would also grant immunity if she disclosed other offenses.

3. Council Member Dennis

On August 29, 2018, SAO investigators interviewed Council Member Dennis. He said he knew all about the Sunshine Law and had nothing to hide. When asked if he was aware of any communication between Council Members after hours on the phone, he stated that "all he did was play golf, and he didn't have time for all of that." When presented with a form preservation letter, he advised that he needed to speak with legal counsel before talking further. Based upon his request for counsel, investigators were unable to question him further about the initial complaint. As investigators left, Council Member Dennis advised that he "would be in touch."

Subsequently, on January 17, 2019, this office advised Council Member Dennis's attorney that we wished to ask additional questions. Through counsel, on January 23, 2019, Council Member Dennis declined the invitation. Thus, investigators are unable to question him about the frequency and duration of his contacts with Council Member Brosche and her Council Executive Assistant, his use of selective caller identification during some of those calls, and the abrupt discontinuation of phone contact between his number and Council Member Brosche's number shortly after the initial complaint that began this investigation.

4. Council Members Katrina Brown and Reginald Brown

Based upon their pending federal charges, this Office did not pursue interviews of Katrina Brown and Reginald Brown. We did, however, indicate to the United States Attorney's Office a desire to speak with them about Sunshine Law violations in the event that either agreed to cooperate and provide a protected statement under Rule 11 of the Federal Rules of Criminal Procedure or under the protections of a Federal plea agreement with standard cooperation language. To date, neither has spoken with Federal authorities pursuant to proffer letters or plea agreements. Given their status, any information they might provide would be subject to heightened attacks on their credibility based upon the serious nature of their pending Federal charges and the substantial Federal prison time they are facing.

5. Council Member Reggie Gaffney

On September 13, 2018, SAO investigators interviewed Council Member Reggie Gaffney. Council Member Gaffney advised that he had no knowledge about potential Sunshine Law violations. When asked about whether other Council Members had contacted him about Council matters outside of official hearings or proceedings, he did state that he had heard information "on the street" that someone was going to run against another person. When asked to clarify who he heard that from, he advised that he could not remember. He did acknowledge being contacted by Council Member Bowman about the matter. He specifically stated that he did not contact any other Council Members for matters unrelated to Council business. Investigators did not confront Council Member Gaffney about the volume of calls between him and Council Member Katrina Brown at the time for the reasons outlined above.

At the time of the initial interviews, OGC attorney John Phillips appeared on behalf of most Council Members. On January 26, 2019, we advised attorney Phillips that we wished to determine if Council Member Gaffney could provide additional information about the investigation. On January 29, 2019, attorney Phillips relayed to Investigator Adams that Council Member Gaffney's explanation would be that he spoke with other Council Members, but he did not speak about Council business and would be willing to answer questions about specific calls if requested.

6. Council Member Newby

Council Member Newby was interviewed on September 7, 2018. Newby stated that he did not contact other Council Members outside of official meetings and hearings, with the exception of other Council Members may have contacted him to ask when specific meetings started. He advised that he does not regularly have contact

with other Council Members unrelated to Council business, with the exception of having a social dinner with Council Member Danny Becton two to three years ago. Investigators did not confront Council Member Newby about the volume of calls between him and Council Member Katrina Brown for the reasons outlined above.

At the time of the initial interviews, OGC attorney John Phillips appeared on behalf of most Council Members. On January 26, 2019, we advised attorney Phillips that we wished to determine if Council Member Newby could provide additional information about the investigation. On January 29, 2019, attorney Phillips relayed to Investigator Adams that Council Member Newby's explanation would be that he spoke with other Council Members, but he did not speak about Council business and would be willing to answer questions about specific calls if requested.

7. Council Executive Assistant Jeneen Sanders

Council Executive Assistant Jeneen Sanders was interviewed on September 10, 2018. She had no knowledge about any Sunshine Law violations. She advised that most of her communications related to City Council matters were with other Council Executive Assistants. By design, investigators confronted her during the interview with the volume of calls between her and Council Member Dennis with the expectation that she would either relay the existence of an offense or would provide some credible explanation for why Council Member Dennis was contacting her far more than Council Member Brosche was. She advised that she and Council Member Dennis were friends, but she did not want to provide further information. She did state that none of her communications related to City business. She did not know of any changes in the relationship between Council Member Brosche and Council Member Dennis that would explain the abrupt stop in contact.

C. Compelled Statements

As part of the investigation, this office compelled the sworn testimony of Jeneen Sanders, the Executive Council Assistant for Council Member Brosche. During her interview, Sanders did not want to relay why she spoke so often with Council Member Dennis. Our concern was that Sanders may have served as a conduit for communications between Council Member Brosche and Council Member Dennis based on the volume of calls and the abrupt stop in calls between Council Member Brosche and Council Member Dennis on February 28, 2018. As noted above, Sanders spent substantially more time on the phone with Council Member Dennis than she did with her own Council Member and spent more time on the phone with Council Member Dennis than he spent on the phone with his own spouse. A State Attorney's

investigative subpoena¹² for Ms. Sanders commanded her appearance on December 3, 2018. At request of her counsel, we rescheduled that statement for January 7, 2019. She appeared on that date with Attorney Geddes Anderson and provided a sworn statement under penalty of perjury.

In substance, Ms. Sanders denied knowing anything about the initial complaint. She denied ever acting as a conduit between Council Member Brosche and Council Member Dennis. She did not recall if she had ever discussed Council business on her phone with Council Member Dennis. She denied ever hearing Council Member Brosche discussing Council business with Council Member Dennis. As an explanation for the level of telephone contact between her phone and Council Member Dennis's phone, she advised that the two are friends. She testified that they generally discuss topics like children, school, career, health, and family. The only explanation she could provide about the level of telephone contact between Council Member Dennis and Council Member Brosche was that the two were also friends. She had no explanation for why the telephone contact between Council Member Brosche and Council Member Dennis abruptly ceased after February 28, 2018. During her statement, Sanders answered that she "did not recall" in response to eleven different questions and made clear at the end of the statement that her testimony was to the best of her recollection. In sum, no evident Sunshine Law violations could be established through Sanders' testimony.

While we could compel involuntary statements from Council Members, we consciously decided not to compel statements from those Council Members whose substantial telephone activity with other Council Members made them subjects of the investigation. To compel that testimony with a State Attorney investigative subpoena would necessarily grant use and derivative use immunity under Florida law to the subjects of the investigation, and doing so would prevent our ability to pursue future criminal charges. *See Fla. Stat. § 914.04 (2017)*. Also, without knowing what the subjects might say, granting that level of immunity potentially could provide immunity for offenses beyond Florida Sunshine Law violations.

D. Limitations on Normal Investigative Techniques

Due to the offenses at issue being second-degree misdemeanors, the law limited investigative tools we could use. We necessarily relied on telephone toll analysis, voluntary interviews, and voluntary disclosures by subjects of the investigation.

¹² By compelling Ms. Sanders's testimony, we granted her immunity in accordance with Florida law. *Fla. Stat. § 914.04 (2017)*.

The essential evidence needed to prove a knowing violation of the Florida Sunshine Law is the actual content of communications that should have been in the open. Simple evidence of contact between identified people, standing alone, does not establish what they communicated about. Normally, we obtain content through voluntary disclosure by witnesses, consent searches, compelled searches by search warrant, or real-time interception by Court-authorized electronic surveillance.

Because the suspected offenses here are second-degree misdemeanors, Florida law limits our ability to use search warrants. Unless we can establish that the phones were used “as a means to commit any crime,” we must show that the phones constitute “evidence relevant to proving that a felony has been committed.” § 933.02(2)(a) and (3) (2017). We did not develop sufficient probable cause to establish that particular phones were used as a means to commit particular criminal Sunshine Law violations. The only articulable facts that we could specify in a warrant application would be the contested facts about an in-person meeting between Council Member Dennis and Council Member Crescimbeni, and that allegation did not involve a phone.

Another useful tool for obtaining content of private communications is the real-time interception of wire or electronic communications, a tool commonly referred to as a wiretap. Florida law, however, does not authorize the use of wiretaps to investigate Florida Sunshine Law offenses. *See* Fla. Stat. § 934.07(1)(a) (2017) (listing authorized crimes for which electronic surveillance can be used).

The level of offense, therefore, limited what we could use lawful process to obtain in this investigation.

III. LEGAL ANALYSIS

Our investigation focused upon whether potential prosecutions for violating Florida’s Sunshine Law, Section 286.011(3)(b), Florida Statutes, were sustainable. Based upon the currently known facts and existing law, we conclude that they are not. Our legal analysis follows.

The Florida Constitution makes clear that “[a]ll meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public ...” Fla. Const. Art. I § 24(b).

Florida statutory law implements the public's right to open government and directs that "[a]ll meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision ..., at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings." Fla. Stat. § 286.011(1) (2017). This statutory provision is commonly known as the Florida Sunshine Law.

Open government is the expected norm. "The principle to be followed is very simple: When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State." *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974). The Sunshine Law applies to any gathering between two or more Council Members who meet and discuss some matter on which foreseeable action may be taken. See *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 698 (Fla. 1969) (intent of the Sunshine Law is to "cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board").

The Florida Attorney General has noted a few exceptions that might apply here. Council Members may "prepare and distribute their own position statements to other council members ... so long as the council members avoid any discussion or debate among themselves on these statements. However, to the extent that any such communication is a response to another commissioner's statement, it may constitute a violation of the Government in the Sunshine Law to circulate the responsive statement." Op. Att'y Gen. Fla. 2001-21, 2001 WL 276607 (2001). Also, "a city commissioner may, outside a public meeting, send documents that the commissioner wishes other members of the commission to consider on matters coming before the commission for official action, provided that there is no response from, or interaction related to such documents among, the commissioners prior to the public meeting." Op. Att'y Gen. Fla. 2007-35, 2007 WL 2461925 (2007).

An unintentional violation of the Florida Sunshine Law is a civil matter subjecting the offender to a fine of up to \$500. See Fla. Stat. § 286.011(3)(a) (2017). A *knowing* violation of the Florida Sunshine Law, though, is a criminal offense and constitutes a second-degree misdemeanor punishable by up to 60 days in jail and a fine of up to \$500. See Fla. Stat. § 286.011(3)(b) (2017).

Two potential Florida Sunshine Law violations exist here. The first is the original allegation that Council Member Dennis brokered votes to offer to Council Member

Crescimbeni if he ran for Council President. The second is the substantial telephone activity between various Council Members, coupled with their denials about the level of their communications with other Council Members.

With regard to the initial complaint about the contact between Council Member Dennis and Council Member Crescimbeni, our investigation produced insufficient admissible proof to support a prosecution. Council Member Crescimbeni denies the allegation. The initial report identified no potential witnesses to the exchange other than Council Member Crescimbeni and Council Member Dennis. We know of no admissions by Council Member Dennis to any other person in which he admitted that the exchange took place. We do not have the purported business card (if it even exists) that might be subject to fingerprint analysis, DNA analysis, or handwriting analysis. Council Member Dennis made no admissions to our investigators when they interviewed him, and through his counsel, he now refuses to answer additional questions.

Several Council Members did, in fact, relay that Council Member Dennis told them he was not voting for Council Member Bowman or made derogatory comments about Council Member Bowman. These statements would corroborate that Council Member Dennis was speaking to others about opposing Council Member Bowman as Council President, but they would not establish beyond a reasonable doubt that Council Member Dennis committed the conduct at issue. Also, although the Florida Attorney General's Office has indicated it "would strongly discourage such activity," merely stating what a Council Member plans to do without seeking input or dialogue is not a Sunshine Law Violation. Op. Att'y Gen. Fla. 2001-21, 2001 WL 276607 (2001). We simply cannot prove a knowing violation of the Sunshine Law based on those statements.

Korman's account of what Council Member Crescimbeni told her would not be admissible during the State's case in chief. Council Member Crescimbeni denies that Council Member Dennis approached him as reported. Korman's testimony in a prosecution against Dennis would be hearsay. See Fla. Stat. § 90.801 (2017). Additionally, we cannot call Council Member Crescimbeni to testify about what did not happen, if our primary purpose in calling him would be to impeach him with inconsistent statements he made to Korman. See, e.g., *Bradley v. State*, 214 So.3d 648, 655-56 (Fla. 2017) (reiterating that "a party may not call a witness primarily for the purpose of getting an inadmissible statement before the jury as impeachment").

The second potential Sunshine Law violation is the hours of yet-unexplained telephone activity between Council Members. Phone toll analysis shows that a number

of Council Members spent many hours on the phone with one another. When asked, they denied talking about City business (other than routine scheduling matters) and initially denied any personal business that would generate that level of activity. Unfortunately, we do not have the content of their communications. Because of the level of the potential offense, we cannot use normal investigative tools to secure that content. We are unable to seek search warrants or wiretaps, and we cannot otherwise compel testimony without granting immunity.

Our analysis would be remiss, though, without discussing the use of potentially false or misleading statements by Council Members as admissible consciousness-of-guilt evidence. By way of review, between October 1, 2017 and September 28, 2018, telephone toll analysis showed 454 calls between Council Member Dennis and Council Member Brosche for a total duration of about 62 hours, with an abrupt stop shortly after we received the original complaint. Council Member Dennis, when asked if he was aware of any communication between Council Members after hours on the phone, stated that "all he did was play golf, and he didn't have time for all of that." Council Member Brosche told investigators that she had not communicated with other Council Members outside of official hearings or proceedings, but she has communicated with them about times of meetings or their attendance. She advised that she does not regularly contact other Council Members for matters unrelated to Council business.

Similarly, telephone toll analysis showed that between October 1, 2017, and July 18, 2018, 1,804 contacts took place between Council Member Katrina Brown's phone number and Council Member Reggie Gaffney's phone number with a total duration of about 74 hours. When asked about talking on the phone about Council business, Council Member Gaffney relayed only the incident involving Council Member Bowman. He specifically stated that he did not contact any other Council Members for matters unrelated to Council business. Through his counsel, we now understand that he would state he never discussed Council business with Council Member Katrina Brown.

Telephone toll analysis showed that between October 1, 2017, and July 18, 2018, 737 contacts took place between Council Member Katrina Brown's phone number and Council Member Sam Newby's phone number with a total duration of about 38 hours. When questioned, Council Member Newby stated that he does not regularly have contact with other Council Members unrelated to Council business, with the exception of having a social dinner with Council Member Danny Becton two to three years ago. Through his counsel, we now understand that he would state he never discussed Council business with Council Member Katrina Brown.

Common sense dictates that Council members do not spend 62 hours, 74 hours, and 38 hours on the phone with other Council Members discussing simple scheduling matters or irregular personal matters. Council Members' initial denials of having substantial telephone contact with other Council Members *before* being confronted with the actual records provides some evidence—perhaps compelling evidence—of knowledge and intent. Because we are unable to show the actual content of the communications, though, we could never establish beyond a reasonable doubt that any one call or any group of particular calls violated the Florida Sunshine Law.

For these reasons, we are unable to prove a *prima facie* case that any particular Council Member violated the Sunshine Law by their telephone activity without more.

IV. CONCLUSION

For the reasons outlined above, I am taking no further action and closing this investigation.