

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 502019CA003513XXXMB AG

AZURE DEVELOPMENT, LLC, a
Florida Limited Liability Company,

Plaintiff,

v.

CITY OF BOCA RATON, Florida
Municipal Corporation,

Defendant.

FINAL JUDGMENT

This cause came before the court on June 7, 8 and 9, 2022 and August 5, 2022 for a non-jury trial¹ on the Amended Complaint filed April 14, 2021² of Plaintiff Azure Development, LLC (“Azure”), who sued the Defendant City of Boca Raton (the “City”) for violating Florida’s Public Records Act, Chapter 119, Florida Statutes (the “Act”). The court considered the testimony of the witnesses, the documentary evidence presented, and the parties’ joint pretrial stipulation filed June 6, 2022, as well as the argument of counsel. The court hereby finds as fact, concludes as law and adjudges as follows:

¹ The trial transcript is in four volumes. It will be cited as “Tr. [DATE] at page:line.”

² The Amended Complaint was further amended by interlineation by order dated September 22, 2021.

FINDINGS OF FACT

1. The City is a municipal corporation existing under the laws of the State of Florida and an “agency” within the meaning of Section 119.011 of the Act. Pretrial Stip. ¶

1.

2. Azure is a Florida limited liability company. It is an affiliate of 2600 North Ocean, LLC which owns property at 2600 North Ocean in Boca Raton (the “2600 Property”). Pretrial Stip. ¶ 2.

3. The 2600 Property is one of two privately owned parcels of land south of a beachfront park in the City that are zoned residential, but have not yet been developed. Tr. 6/7/22 at 110:16-23. The owners of the neighboring property at 2500 North Ocean Blvd. had been attempting with the City to develop for more than a decade. See *id.* at 110:23-111:1.

4. At all times pertinent through trial, 2600 had a pending variance application (filed September 2016) before the City, seeking to develop the 2600 Property. Pl.’s Tr. Ex. 1.

5. It is undisputed that Azure made three public records requests to the City:
- a. A first request on March 27, 2018 (the “First Request” or “March 2018 Request”);
 - b. A second records on November 28, 2018 (the “Second Request” or “November 2018 Request”); and
 - c. A third request on January 28, 2019 (the “Third Request” or “January 2019 Request”).³

³ The court entered a judgment on March 28, 2023 determining that the Third Request was not at issue in this case.

Pretrial Stip ¶¶ 3-6.

6. Azure filed its initial complaint in this case on March 15, 2019.

7. By the March 2018 Request, Azure sought private device communications, such as emails, text messages and social media records, as follows:

1. Any and all documents, including emails, text messages, social media accounts, or official or unofficial reports regarding or referencing 2600 North Ocean Blvd in Boca Raton, Florida, also identified as PCN# 06 43 47 16 01 000 0310, hereinafter referred to as “the Property.”

3. All communications between any public elected officials, staff of the City Boca Raton, or any third-party, referencing “the Property” or development of houses on the beach front or coast of Boca Raton.

Azure sought records from January 2010 to the date of the request. Pl.’s Tr. Ex. 2.

8. The First Request alerted the City: **“THE ABOVE REQUEST SHALL INCLUDE TEXT MESSAGES AND EMAILS FROM PRIVATE ACCOUNTS.”** *Id.*

9. When the City failed to produce any records to Azure by May 31, 2018, two months after the First Request, Azure authorized its counsel to issue a 5-day notice to the City (“First Five-Day Notice”). Tr. 6/7/22 at 124:16-125:2; Pl.’s Tr. Ex. 9.

10. The November 2018 Request also requested writings, including private device communications, from City officials:

8. Any writing between any third party and any Boca Raton employee or elected official concerning development on Boca Raton beaches from January 2015 to the present.

Azure sought records from January 2010 to the date of the request. Pl.’s Tr. Ex. 16.

11. As previously, the November 2018 Request alerted the City: **“THE ABOVE REQUEST SHALL INCLUDE TEXT MESSAGES AND EMAILS FROM PRIVATE**

ACCOUNTS.” *Id.*

12. On February 7, 2019, counsel for Azure sent the City another five-day notice (“Second Five-Day Notice”). Pl.’s Tr. Ex. 34. Azure alerted the City to deficiencies in its limited initial production, specifically quoting items 1 and 3 from the First Request and item 8 from the Second Request. It also highlighted the City’s failure to provide City Official communications, specifically, social media communications for Deputy Mayor Jeremy Rodgers and Council Member Andrea O’Rourke, text messages, and Environmental Advisory Board “EAB” communications.

13. On January 10, 2019, the City’s EAB held a hearing on 2600’s variance application. Tr. 6/9/22 at 171:2-5.

14. The City’s Records Manager at all material times was Mary Siddons. Tr. 6/8/22 at 62:8-10. Ms. Siddons testified that the City’s elected Council Members receive City-issued cell phones. *See id.* at 77:9-78:5. No evidence was presented that the City archives the records created on these City-issued devices. Ms. Siddons was unaware that elected Council members were also using private email accounts and telephones to conduct official city business. *See id.* at 67:1-15.

15. All of the EAB members’ official communications, including with one another and members of the public, were occurring on their own private devices. *See id.* at 66:6-11; 68:1-7. The appointed EAB members were not given City-issued phones. *See id.* at 78:3-10. Nor were EAB members provided with a City email address at the times pertinent to this dispute. *See id.* at 67:22-25.

16. Ms. Siddons knew that any responsive EAB communications would be located on those private devices. *See id.* at 67:16-21. And she confirmed that such

communications, if about official City business, were the City's official records as to which the Clerk is the custodian. *See id.* at 73:16-23.

17. Yet Ms. Siddons admittedly never asked about the location or type of devices EAB members were using, their social media accounts, cell phone numbers or email addresses used to conduct City business. *See id.* at 68:8-14; 74:11-16; 76:22-77:1

18. In fact, the City has no inventory of the devices or the social media pages, private email addresses and text messages, that its elected and appointed officials are using to conduct City business. Tr. 6/8/22 at 77:3-8; Tr. 8/5/22 at 80:11-83:19. Ms. Siddons testified that the only way she knew to locate official City records on private devices was to ask the official and trust that he or she would voluntarily produce records when asked. *See id.* 6/8/22 at 73:124-74:5.

19. With respect to former and unavailable officials, the City has no mechanism for locating its official records if an official is unavailable or fails to respond to a request. *See id.* at 74:6-76:21. And even then, Ms. Siddons admitted that the City does not "have anything that's called an official address for our board members." *Id.* at 32:5-9.

The City's Responses to Azure's Records Requests

20. Upon receipt of the March 2018 Request, Ms. Siddons met with Nora Fosman, an environmental officer for the City and the EAB liaison; Michael Woika, Deputy City Manager; and Lynn Boder from the City's Development Services Department. Development Services was assigned to obtain responsive records. Tr. 6/8/22 at 70:22-25; 71:1-25, 72:1-3. Ms. Fosman was the EAB liaison, yet no one asked her about email addresses or phone numbers EAB members were using to create official City records. *See id.* at 72:24-73:6. The only individuals asked about responsive text messages were

Ms. Fosman, Ms. Boder and Dr. Kirt Rusenko. *See id.* at 72:16-23.

21. Furthermore, although No. 3 on the March 2018 Request sought all communications regarding “development of houses on beachfront or coast of Boca Raton,” Ms. Siddons did not recall ever discussing with Development Services which properties on the beach had submitted a development application during the time period. Tr. 6/8/22 at 182:9-18. As a result, she did not learn that the only other beachfront property in the City with development rights was the 2500 Property, which had spent the past decade actively seeking to develop. Development Services was provided the March 2018 Request, yet only produced its file on 2600. *See id.* at 166:18-169:11. Ms. Siddons conceded the Development Services files may not have even been located on the City server and thus would not have been captured by search of the emails on that server. *See id.* at 182:1-8.

22. Deputy City Manager Woika instructed Ms. Siddons to focus her efforts on reviewing 50,000+ emails generated in response to a search of the City’s electronic databases. *See id.* at 170:11-23; 200:17-201:10. Mr. Woika and Ms. Siddons, who was not trained in creating email searches, came up with the search parameters. *See id.* at 178:11-179:1. Ms. Siddons had no experience processing such searches. *See id.* at 171:25-172:7; Tr. 6/9/22 at 60:21-24. She was admittedly “overwhelmed” by the assignment, yet not provided any assistance. Tr. 6/8/22 at 171:11-24; Tr. 6/9/22 at 60:21-61:13.

23. Ms. Siddons notably never contacted elected officials or appointed EAB members after receiving the March 2018 Request to inform them of the request or the need to preserve their private device communications. Tr. 6/8/22 at 162:21-163:17. Yet

she knew the request sought all official records that referenced the 2600 Property and that responsive records located on EAB members' private devices were the City's official records. *See id.* at 78:21-24. Private device communications would have been captured by her email search only if they had been forwarded to an official City account. *See id.* at 72:6-12.

24. Ms. Siddons agreed that her work processing the City server email search did not prevent her from notifying the Council members and EAB officials of Azure's public records requests, which would have taken just a few minutes. Tr. 6/9/22 at 54:21-55:19. Mr. Woika added that he could have emailed the elected officials re item No. 1 of the March 2018 Request in one sentence but did not. *See id.* at 144:17-25.

25. Ms. Siddons would never contact City officials without instructions from a superior like Mr. Woika. Tr. 6/8/22 at 80:12-16. But Mr. Woika, who supervised Ms. Siddons as she processed Azure's requests, never instructed Ms. Siddons to do so upon receipt of the March 2018 Request--or for months thereafter. *See id.* at 158:9-17; 166:4-14.

26. Nor did Mr. Woika ask elected officials for any responsive documents that may have been outside of the City system. *See id.* at 166:8-14; Tr. 6/9/22 at 36:1-4. He was fully aware that the Clerk's office had not sent the March 2018 Request to Council members at any time between March 28, 2018 and January 2019. Tr. 6/9/22 at 97:5-98:11. And he intentionally never transmitted the March 2018 or November 2018 Requests to officials, only contacting staff members he believed might have responsive information. Tr. 6/8/22 at 166:4-7; Tr. 6/9/22 at 94:18-25, 95:1-2, 100:5-10, 103:6-11.

27. The City failed to produce any documents to Azure in response to the March

2018 Request and, on May 28, 2018, Azure sent its Five-Day Notice. In response, the City on June 1, 2018 emailed Azure's counsel to advise the First Request was "in process" and provided 3 disks with documents responsive to only items 1, 2, 17, 18 and 19. Pl.'s Tr. Ex. 10; Tr. 6/8/22 at 175:12-20. Thereafter, the City failed to communicate with Azure further about the March 2018 Request for another six (6) months, as its own timeline reflects. Def.'s Tr. Ex. 26.

28. On December 7, 2018, after Azure made its November 28, 2018 Request, the City emailed Azure's counsel to advise that it had unilaterally "combined both requests into a single response" containing over 4,000 emails. Pl.'s Tr. Ex. 18. Among the records produced was a July 17, 2017 email from former Mayor Susan Haynie to lobbyist Jessica Gray advising that the mayor had no intention of approving Azure's variance application. Pl.'s Trial Ex. 53; Tr. 6/8/22 at 192:3-193:8. Ms. Siddons conceded the email was responsive to the March 2018 Request. *See id.*

29. In early December 2018, the City represented to Azure that, except for certain records provided to the State of Florida, it had fully complied with the First and Second Requests Tr. 6/9/22 at 101:25, 102:1-8; Pl.'s Tr. Ex. 18. As Mr. Woika confirmed, the City's response "said that we provided the information we think that you're looking for under this request." Tr. 6/9/22 at 102:20-22. Yet the City had not yet even contacted its elected or appointed officials to obtain their responsive communications. And Mr. Woika confirmed that no search had been done of the City's numerous social media accounts for responsive documents. *See id.* at 147:21-24.

The EAB Hearing on January 10, 2019

30. On January 10, 2019, the EAB held a quasi-judicial hearing on 2600's variance application. Tr. 6/9/22 at 171:3-5. A member of the public presented an email sent by Mayor Scott Singer, from his re-election campaign account, that counsel for 2600/Azure indicated he had not seen. See *id.* at 171:14-172:24; 173:7-8. The City conceded that the email "certainly was the Mayor expressing... a position in connection with preservation of the beaches." *Id.* at 173:16-19.

31. The email's introduction into evidence caused Deputy City Attorney, Joshua Koehler, who attended the hearing as counsel to the EAB and was aware of Azure's public records requests, to meet the next day with the City Attorney, City Manager, and a member of the Clerk's office. See *id.* at 171:13-174:1. Mr. Koehler sought to determine if further inquiry should be made and specifically, whether current and former elected officials should be asked about their communications about 2600. See *id.*

The City Clerk First Notifies City Officials of the Azure Requests in January 2019

32. Only *after* informing Azure on December 7, 2018 that it had processed the March 2018 and November 2018 Requests (with the exception of the State of Florida records) and *after* the January 10, 2019 EAB hearing, did Mr. Woika finally instruct Ms. Siddons to contact past and present City Council members regarding the March 2018 and November 2018 Requests. Tr. 6/9/22 at 101:19-24. The Council members were notified only because Mr. Koehler had flagged a document Azure's counsel had held up at the EAB hearing. See *id.* at 101:15-22. Mr. Woika conceded that the City had never even considered securing and reviewing communications located on the private device records of its elected officials until that time. See *id.* at 151:14-21. And he still did not instruct Ms. Siddons to notify EAB members. See *id.* at 151:1-5.

33. Ms. Siddons' **January 15 and 16, 2019** emails to Council members, drafted by Mr. Woika, did not attach the record requests or quote them. See *id.* at 25:17-22; Pl.'s Tr. Ex. 24. Nor did it mention that Azure sought writings about the construction or development of houses on the beach. Tr. 6/9/22 at 25:12-16. Even Ms. Siddons conceded that a Council member reviewing the notice would believe that Azure only sought records regarding the development of homes on the 2600 Property. See *id.* at 25:7-11.

34. On January 28, 2019, Plaintiff served the City with its January 2019 Request, which again requested private device communications. Pl.'s Tr. Ex. 28. Only upon receipt of that request did the City first contact certain EAB members -- on January 29 and 30, 2019. Pl.'s Tr. Exs. 30, 31; Tr. 6/8/22 at 70:8-12.

35. As with the prior two requests, when the City notified its Council members and EAB members about the January 2019 Request, it did not forward any of the requests to them. Pl.'s Tr. Exs. 30, 31. The emails just provided a short list of topics and allowed about a week for responses. See *id.* In fact, the email failed to accurately reflect the content of the requests--it notably did not mention Ms. Gray, eminent domain, due process, lighting concerns related to turtle nesting, the taking of any private land or quasi-judicial hearing procedures. Tr. 6/9/22 at 27:8-25; 281-17.

36. On February 21, 2019, the City's Records Manager, Phil Daly, sent a letter responding to the Second Notice. The City represented that it was still working on obtaining social media posts, was aware of no responsive text messages to the requests and all EAB member emails on the City server had been provided to Plaintiff on February 7, 2019. Pl. Tr. Ex. 41. Yet the City was aware that private device communications would have been captured by an email search only if they had been forwarded to an official City

account. Tr. 6/8/22 at 72:6-12

Responsive Public Records Held by Former EAB Member Gray

37. One former member of the EAB that Ms. Siddons attempted to contact about Azure's records requests in late January 2019 was Jessica Gray. Pl.'s Tr. Exs. 31-33. Ms. Gray had served on the EAB from May 8, 2018 until she resigned on August 7, 2018 (Pl.'s Tr. Ex. 14), the same time 2600's application was pending EAB and Council approval. Tr. 6/8/22 at 89:23-90:5.

38. Ms. Gray is the founder of Boca Save Our Beaches, which is focused on preservation of the oceanfront, and has served as its president since its founding in 2017. Tr/ 6/8/22 at 87:6-14. The City Attorney had cautioned Ms. Gray at the outset of her EAB service about her contemporaneous advocacy efforts. Pl.'s Tr. Ex. 8; Tr. 8/5/22 at 106:1-21. It is apparent, including from records produced after Azure filed suit, that Ms. Gray actively lobbied elected officials and other residents against the 2600 Property's application prior to and during her service on the EAB. See, e.g., Pl.'s Tr. Exs. 59, 60, 61, 68, 86-87, 88-89, 97.

39. Ms. Gray had herself made public records requests to the City regarding the 2600 Property and 2500 Property in 2017 and 2018, asking for communications by Council members. Tr. 6/8/22 at 87:24-88:5; Pl.'s Tr. Exs. 76, 98, 99. One of those requests was made on June 6, 2018, while Ms. Gray served on the EAB and sought communications regarding building houses on the beach. Pl.'s Tr. Ex. 99; Tr. 6/8/22 at 196:16-24. Contrary to her actions here, Ms. Siddons promptly wrote to the Mayor and Council members—with Mr. Woika's permission—on June 11, 2018 to notify them of Ms.

Gray's records request. Pl.'s Tr. Ex. 12; Tr. 6/8/22 at 198:11-199:23. Ms. Siddons advised the officials:

We are reviewing the City system for responsive emails. However, if you have any correspondence, including paper correspondence or email on your personal systems that would be responsive to this request, please forward those documents to me. Pl.'s Tr. Ex. 12.

Ms. Siddons could not explain why she was permitted to notify Council members of Ms. Gray's request, but not of Azure's request. Tr. 6/8/22 at 200:8-13.

40. Although the November 2018 Request sought all writings between any third party and any City employee or elected officials concerning development on Boca Raton's beaches from January 2015 to the present (No. 8) and the January 2019 Request specifically sought communications between *any* EAB member and the public from 2010 to the present including with respect to the 2600 Property (No. 10), the City never made contact with its former EAB member Ms. Gray about Azure's requests until January 2021, nearly two years after Azure filed this suit.

41. When Ms. Siddons attempted to send a January 29, 2019 group email about the requests to the EAB members, including Ms. Gray, several of the emails bounced back as undeliverable. Pl.'s Tr. Exs. 31-33. Ms. Siddons resent the notice the next day to all of the same email addresses she used initially--except as to Ms. Gray. Instead of re-sending to Ms. Gray's known email, jgray@appliedcorp.com, Ms. Siddons attempted to contact Ms. Gray using a different email address belonging to Jesse Patterson, Ms. Gray's then-boyfriend, jesse.alliance1117@gmail.com. Tr. 6/9/22 at 33:23-34:12.

42. Ms. Gray uses the email address jgray@appliedcorp.com 98% of the time, had communicated monthly with Ms. Fosman (the liaison to the EAB) prior to her service on the EAB, and assumed Ms. Fosman had her email address. Tr. 6/8/22 at 87:18-23,

89:21-90:8. She did not monitor her boyfriend's email address and did not learn that the City had directed the January 2019 email to her boyfriend until she was deposed in the instant case in February 2022. See *id.* at 105:20-106:7.

43. Ms. Siddons has been trained to perform follow-up on her requests for public records and had to do so routinely. Tr. 6/9/22 at 38:12-40:5. However, even after receiving a bounce back from Ms. Gray's original email, sending the email to Mr. Patterson's email, receiving no response from Ms. Gray, and having a phone number on the prior records requests (Pl.'s Tr. Ex. 33), Ms. Siddons did not follow up to confirm receipt by Ms. Gray, let alone whether Ms. Gray possessed responsive records. Tr. 6/9/22 at 41:9-17.

44. The City failed to make contact with Ms. Gray about Azure's records requests until *two (2) years later*, in January 28, 2021 and August 16, 2021, when the City met with Ms. Gray regarding her private device communications. Tr. 6/8/22 at 103:4-104:9, 108:2-109:5, 120:21-25, 121:1-5; Pl.'s Tr. Ex. 52, 55. Even then, the City only sought her communications with Council members as a "backstop" to ensure it had the elected officials' communications and still did not seek to obtain her communications as an EAB member with the public. Tr. 6/9/22 at 100:1-17.

45. It was not until April 2022, after Azure took the deposition of the City's corporate representative that the City contacted Ms. Gray to obtain her private device communications as an EAB member and former public official herself. Tr. 6/9/22 at 101:81-103:13.

Documents Produced After Suit was Filed

46. Even after suit was filed in March 2019, the City's trial counsel wrote to Azure on April 10, 2019 that, "we are unaware of anything responsive to the requests that was not produced." Pl.'s Tr. Ex. 42. Yet the Timeline created by Deputy City Attorney Koehler itself recites that the City provided Plaintiff with an additional **3,542 documents and 190,754 emails** from the time of filing of the Complaint through April 4, 2022. Def.'s Tr. Ex. 26. The City's "most significant production" occurred in May 2019, at least six (6) weeks after suit was filed. Tr. 8/5/22 at 12:12. The evidence demonstrated that the City unreasonably withheld numerous public records responsive to Azure's requests. The Court highlights various categories of those withheld public records below.

Social Media of former Deputy Mayor Rodgers

47. The City admitted that it failed to produce Facebook Messenger communications between Ms. Gray and Deputy Mayor Rodgers until well after this suit was filed and only after Ms. Gray first provided those records to Azure in February 2022. Tr. 8/5/22 at 111:11-112:9; Pretrial Stip. ¶17.

48. Jeremy Rodgers was the Deputy Mayor and Council member at the time 2600's application was pending, until he left office in late 2018/early 2019. Tr. 8/5/22 at 26:3-21, 122:9-13.

49. On September 1, 2018, the City implemented a Personnel Policy & Procedure Memorandum ("Mobile Device Policy"), which required that, "when a User leaves City employment and have any public records on their Mobile Device that are not archived by the City, they shall make a copy of all City Mobile Device Public Records and provide them to the IT Division." Pl.'s Tr. Ex. 15. The City subsequently issued an Administrative Repeal of the Mobile Device Policy on May 6, 2022, stating, "After

issuance in 2018, the Personnel Policy was not generally distributed to employees (and was not provided to non-employees, including City elected and appointed officials), was shared with Department Heads for informational purposes, and many of the policies, programs and mobile device options set forth in that policy were not utilized/instituted...” PI.’s Tr. Ex. 58.

50. Notwithstanding the Mobile Device Policy, Mr. Koehler confirmed that the City does not archive private device public records when an official leaves public service. Tr. 8/5/22 at 84:18. Ms. Siddons testified that none of Deputy Mayor Rodger’s private device public records were given to the Clerk’s office when he left office. Tr. 6/8/22 at 164:16-19.

51. Ms. Gray’s production in this suit includes protracted Facebook Messenger conversations with Deputy Mayor Rodgers in which he specifically discussed the 2600 Property. Pretrial Stip. ¶¶17-18; PI.’s Tr. Ex. 97. Those communications include an August 24, 2017 exchange where Mr. Rodgers states, “I’m of course *going to continue going NO on 2500 and likely NO on 2600.*” PI.’s Tr. Ex. 97 (emphasis added). Later, he states, “Yeah I’d expect it to be a no *unless there is absolutely no legal way we can vote no on it.and even then..prob still a no.* we don’t need any more big private residences on our beach, our beaches makes us special.” PI.’s Tr. Exs. (emphasis added). The City stipulated that it never provided this communication to Azure. Pretrial Stip. ¶ 17.

52. The City produced additional Facebook Messenger communications of Ms. Gray, which the court finds responsive to Azure’s requests, in early May 2022. Pretrial Stip. ¶ 18; PI.’s Tr. Exs. 86-87.

53. And it was not until May 19, 2022 that the City first produced additional Facebook Messenger conversations obtained from former Deputy Mayor Rodgers. Pretrial Stip. ¶ 19. Mr. Rodgers was “trying to get B+P [the City] to buy 2500-2600” and advising on how to challenge the application. Pl.’s Tr. Ex. 88. The court finds these communications would have been also responsive to Azure’s requests.

54. The City’s actions in failing to secure the Rodgers Facebook Messenger communications until the spring of 2022 are entirely unreasonable. The City knew prior to the filing of this suit that Plaintiff sought to disqualify Council members on the grounds that they had prejudged 2600’s variance application; Azure/2600’s counsel requested recusal of Mayor Scott Singer and Councilmembers Andrea O’Rourke and Monica Mayotte on February 19, 2019. Pl.’s Tr. Ex. 39. A Petition for Certiorari filed by 2600 on March 28, 2019, just two weeks after suit was filed, made this clear. See Petition for Certiorari filed 3/28/19 in *2600 N. Ocean, LLC v. City of Boca Raton*, Case No.: 502019CA004116XXXXMB AY (15th Jud. Cir. in and for Palm Beach Cnty, App. Div.) (“2600’s Certiorari Matter”). Deputy City Attorney Koehler confirmed the City’s knowledge that 2600’s Certiorari matter was pending contemporaneously with this suit. Tr. 8/5/22 at 119:18-120:3. The City’s December 2018 production, nine (9) months after the March 2018 Request included an email between former Mayor Susan Haynie and Ms. Gray dated July 15, 2017 regarding “Beach Development” wherein former Mayor Haynie states: “I have no intention of approving a variance to the CCCL for these properties [the 2500 and 2600 Properties].” Pl.’s Tr. Ex. 59.

55. On September 16, 2020, the Appellate Division of this Court ultimately quashed the final decision of the City Council denying 2600’s application after determining

that two (2) Council members had “express[ly] prejudged” that application, as evidenced by their communications with residents. The Fourth District denied second-tier review on August 18, 2021.⁴ Certainly, the court rejects the City’s claim that Azure persisted in seeking full compliance with its records requests for an improper purpose where timely production of the Rodgers Facebook Messenger exchanges might well have led to a determination that a majority of Council members had prejudged 2600’s application.

56. The court further finds that the Rodgers Facebook messages would have been responsive to all three of Plaintiff’s requests yet unreasonably withheld from Azure until *four (4) years after* requested. Even then, it appears that these messages were located by a search for “2500” (referring to the only other undeveloped beachfront property), as the top of the messages reflect. Pl.’s Tr. Ex. 88. The City presented no evidence at trial that it or former Deputy Mayor Rodgers ever searched his Facebook Messenger communications for “2600” or topics mentioned in the January 2019 Request.

Official Records of Former EAB Member Gray

57. During Ms. Gray’s EAB service in 2018, she communicated with members of the public and City officials via both text message and social media. Tr. 6/8/22 at 113:9-16. All of Ms. Gray’s official communications on the EAB were conducted on her private devices. *See id.* at 120:4-7. In 2022, in response to Azure’s subpoena and motion to compel, Ms. Gray produced private device communications that included documents the City has stipulated it did not previously produce in response to any of Azure’s public records requests. Pretrial Stip. ¶ 17. These include the Facebook Messenger

⁴ Pursuant to Florida Statutes § 90.202(6), this Court may take judicial notice of “[r]ecords of any court of this state or any court of record of the United States or of any state, territory, or jurisdiction of the United States.”

communications with former Deputy Mayor Rodgers, Pl.'s Tr. Ex. 97, as well as numerous other emails responsive to Azure's public records requests and authored while Ms. Gray served on the EAB. See, e.g., Pl.'s Tr. Exs. 90-96. The withheld emails reflect Ms. Gray's opposition to 2600's application and guidance to others on how to challenge the application. **The Court finds them responsive to Azure's November 2018 and January 2019 Requests and unreasonably withheld.**

Deleted/Destroyed Text Messages of Former EAB Member Gray

58. The court also finds that the City unreasonably failed to preserve official public records maintained by its former EAB member Ms. Gray.

59. On May 25, 2018, after being appointed to the EAB, Ms. Gray had a telephone conference with City Attorney, Diana Grub Frieser, regarding serving on the EAB. Tr. 6/8/22 at 128:1-25; 129:1-3. Ms. Frieser's notes from that meeting contain a list of topics discussed, but do not mention preservation of public records. Pl.'s Tr. Ex. 8. Ms. Gray doesn't think anyone from the City ever told her that her communications while on the EAB could be public records; certainly no one told her a text message could be a public record. Tr. 6/8/22 at 96:8-97:2; 98:12-15.

60. Upon leaving the EAB, the City did not ask Ms. Gray to archive or preserve her records. See *id.* at 120; 4-16. It was undisputed that Ms. Gray did not preserve her text messages from her time on the EAB. See *id.* at 95:12-21. Instead, her phone was set to auto-delete and all texts were *automatically deleted*. See *id.* at 99:4.

61. It was not until January 28, 2021 and August 16, 2021, **years after** the requests were made, that the City met with Ms. Gray regarding her private device communications. See *id.* at 120:21-25; 121:1-5; Pl.'s Tr. Exs. 52, 55. Even then, the City

only sought her communications with City officials, and did not request or obtain her communications with the public while she was on the EAB. While Ms. Gray's text messages were deleted from her phone, review of text messages produced by the City post-suit clearly demonstrate that she was communicating by text to advocate against the 2600 project. See, e.g., Pl.'s Tr. Ex. 60, 61 and 68. Yet no text messages involving Ms. Gray have been produced during the time she served on the EAB.

Ms. Gray's Prior Public Records Request

62. The Court finds that Ms. Gray's own three (3) public records requests, made in 2017 and in 2018, were responsive to the March 2018 and November 2018 Requests by Azure yet two of the three were unreasonably withheld until months after suit was filed. Pl.'s Tr. Exs. 98 (7/24/17) and 99 (6/6/18). Ms. Siddons conceded that Ms. Gray's 2017 public records requests regarding the 2600 Property were responsive to Azure's records requests at issue here. Tr. 6/9/22 at 23:2-7; Pl.'s Tr. Ex. 76. She had no explanation as to why Ms. Gray's records requests regarding the 2500 and 2600 Properties were not produced until August 2019, five (5) months after Azure filed suit. Tr. 6/9/22 at 23:8-10.

Additional Text Messages of Council Members O'Rourke and Mayotte Responsive to the Plaintiff's Requests

63. All the public records requests served by Azure included the following language, "**THE ABOVE REQUEST SHALL INCLUDE TEXT MESSAGES AND EMAILS FROM PRIVATE ACCOUNTS.**" The City does not archive private device records, including text messages. Tr. 6/9/22 at 153:12-14; 8/5/22 at 83. Yet the City did not contact any official to ask about personal device communications until January 2019, as previously noted. Instead, the City affirmatively represented to Azure that there were *no*

text messages responsive to the requests after Azure's counsel alerted the City to their absence. Pl.'s Tr. Ex. 34,41.

64. On February 7, 2019, the same day that Azure sent its Second Five-Day Notice, Ms. Siddons emailed Council member O'Rourke and former Deputy Mayor Rodgers, requesting text messages and private device communications, and referencing social media posts highlighted in the Notice. Pl.'s Tr. Ex. 36-37. A similar email was sent to the remaining elected officials on February 8, 2019. Pl.'s Tr. Ex. 38.

65. When Mr. Woika emailed Council member O'Rourke on February 20, 2019 to see if she would be producing further documents, she replied: "no :)" (no, followed by a happy face). Pl.'s Tr. Ex. 40. However, on May 1, 2019, *after* the lawsuit had been filed, Ms. O'Rourke emailed City Attorney Frieser and Ms. Siddons to advise, "I have been working on my emails on beach all night. I have forwarded a bunch to my city email address. *Still have more to do plus texts.*" Pl.'s Tr. Ex. 43. Council member O'Rourke ultimately found more responsive text messages including how to launch a salvo attack against the applicant, which the City produced to Azure after suit was filed. Pretrial Stip. ¶ 15; Pl.'s Tr. Exs. 66, 68-70.

66. Specifically, in a text message conversation with Councilwoman Monica Mayotte on September 10, 2018, Ms. Gray coached Ms. Mayotte on what questions to ask candidates for the spot she resigned from on the EAB to ensure they were against the 2600 project. While discussing a possible candidate, Ms. Gray writes:

When it comes up for his evaluation pose questions about his clients, who he represents. Are any of them related to 2500 and 2600? Something like: "Have you or your firm ever done work or will do work for X, X, X, X (2500/2600 – I can provide you with all names and businesses associated) and will you, your firm or anyone you are related to or are financially involved with do work for these entities in the future?"

Pl. Tr. Ex. 61

Despite being responsive to the public records request, this message was not produced by Councilwoman Mayotte until after Azure filed suit.

Development Services Records on the 2500 Property

67. By item No. 3 of the March 2018 Request, Azure sought “all communications between any ...staff of the City ... referencing ... development of houses on the beach front or coast of Boca Raton.” Although Ms. Siddons reviewed the March 2018 request line-by-line with Ms. Boder from Development Services, she did not recall asking what other properties, if any, had applied to develop houses on the beach. Tr. 6/8/22 at 71:8-16, 159:7-14, 167:9-11, 182:9-14. As a result, no one determined that records relating to the 2500 Property, the only property that had also applied to develop on the beach were responsive. Yet Ms. Gray had herself made records requests to the City that would have been maintained by Development Services regarding both the 2500 and 2600 Properties.

68. On July 24, 2017, Ms. Gray made a public records request to the City for:

1. Any document regarding any building permit, grant or approval of an extension of time and any requests for extension of time on the December 2015 variance approved for 2500N Ocean Blvd.
2. Any and all correspondence, emails, and other documents regarding planning, zoning, coastal zone permits, variances, or applications, or building permits or applications for 2500 N Ocean Blvd.
3. Any documents identifying the owner(s) or ownership interest of 2600 N Ocean Blvd.
4. Any and all correspondence, emails, and other documents regarding planning, zoning, coastal zone permits, variances, or

applications, or building permits or applications for 2600 N Ocean Blvd.

Pl. Tr. Ex. 98

69. Subsequently, on August 28, 2017, Ms. Gray requested, “Any documents identifying the City’s consultant report on recommendation of building on the grounds of 2600 N. Ocean Blvd.” Pl. Tr. Ex. 76.

70. On June 6, 2018 she mimicked her July 2017 request and again requested,

1. Any documents identifying the owner(s) or ownership interest of 2500 N Ocean Boulevard in the time frame of July 2017 to present.

2. Any and all correspondence, emails, and other documents regarding planning, zoning, architectural renderings, attorney communications, coastal zone permits, variances, or applications, or building permits or applications for 2500 N Ocean Boulevard in the time frame of July 2017 to present.

3. Any documents identifying the owner(s) or ownership interest of 2600 N Ocean Boulevard in the time frame of July 2017 to present.

4. Any and all correspondence, emails, and other documents regarding planning, zoning, architectural renderings, attorney communications, coastal zone permits, variances, or applications, or building permits or applications for 2600 N Ocean Boulevard in the time frame of July 2017 to present.

Pl. Tr. Ex. 13.

A staff member in Development Services recalled on March 30, 2018 that a similar request had been processed (Pl.’s Tr. Ex. 6) and Assistant City Attorney Joshua Koehler emailed on April 23, 2018 that the Plaintiff’s Request seemed duplicative (Pl.’s Tr. Ex. 7).

71. On December 7, 2018, the City provided Plaintiff with a CD containing Development Services files for only the 2600 Property. Pl.’s Tr. Ex. 18. No part of the development files for 2500 were provided until well *after* suit was filed. Tr. 8/5/22 at 9:6-8. These records were responsive to the March 2018 Request.

General Findings Of Fact

72. The Court takes no issue with the City's overall, substantial effort in responding to either the First Request or the Second Request, which included the production of about 122 gigabytes of data which equates to approximately 500,000 pages of information to Azure.

73. However, the Court finds that 42 documents were produced after the lawsuit was filed and that a reasonable finder of fact could determine that the late produced and non-produced records were damning to the City at a time when the City was going through a significant amount of turmoil and which could have led to further embarrassment.

74. The court wishes to make clear that it does not want the foregoing to, by any means, be construed as an indictment of the City of Boca Raton when it finds that the First and Second request would have been inclusive of the six emails that have been demonstrated to be relevant relating to Ms. Gray, the Facebook Messenger communications of Mr. Rogers, and the O'Rourke communications that have been documented as it relates to their advocating that the Beachfront Development be stopped.

75. The Court is not suggesting that any records were purposely withheld. However, the Court finds that whomever it was, be it the city attorney, be it the clerk, be it the elected officials themselves, that the production was late, untimely, led to the filing of this lawsuit and the non-production was prejudicial to the Plaintiff and its business pursuits.

76. There is not a requirement of bad faith on the part of the City, and the court is not finding the City to be in bad faith.

CONCLUSIONS OF LAW

1. Azure's Amended Complaint filed April 14, 2021, amended by interlineation on July 22, 2021, seeks declaratory and equitable relief under the Act in four (4) counts: Count I for unlawful withholding of public records; Count II for unreasonable delay in producing public records; Count III for unlawful destruction of or failure to retain public records; and Count IV for declaratory judgment, including equitable relief in the form of an order directing that the City, its public officials and staff immediately make available all responsive records and that the court compel an independent forensic examination to ensure compliance with Azure's records requests.

2. In response to the Amended Complaint, the City asserted a number of affirmative defenses, including that Azure brought suit for an improper purpose (Third Affirmative Defense), that private device communications not produced are not public records (Fourth Affirmative Defense), that any failure is excused as inadvertent (Fifth Affirmative Defense) and that the City acted reasonably and in good faith in light of "inherent technical limitations" associated with searching the City's own server (Tenth Affirmative Defense). The City also asserted that Azure's claims are moot because "Plaintiff has received all records responsive to its numerous requests" (Sixth Affirmative Defense).

3. At trial, Azure had the burden to prove that it made specific requests for public records, the Town received it, the requested public records exist, and the City improperly refused to produce them in a timely manner. *Grapski v. City of Alachua*, 31 So. 3d 193, 196 (Fla. 1st DCA 2010). "Where delay is at issue . . . the court must determine whether the delay was justified under the facts of the particular case." *Jackson v. City of S. Bay, Fla.*, 358 So. 3d 18 (Fla. 4th DCA 2023) *Citizens Awareness Found., Inc. v.*

Wantman Grp., Inc., 195 So. 3d 396, *Citizens Awareness Found., Inc. v. Wantman Grp., Inc.*, 195 So. 3d 396,399 (Fla. 4th DCA 2016) (citation omitted).

4. These elements have been satisfied. The court concludes that the City failed to conduct a reasonable investigation to locate and obtain private device and social media records maintained by its public officials and other records in its possession, which failure resulted in the unlawful withholding of and unreasonable delay in producing public records responsive to and expressly sought by Azure for months—and even years—after this suit was filed. The evidence further demonstrated that the City unlawfully destroyed or failed to preserve public records.

5. Article I, Section 24(a) of the Florida Constitution grants “[e]very person ... the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons action on their behalf.” Those with custody of public records must permit records “to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions.” Fla. Stat. § 119.07(1)(a). *Town of Manalapan v. Rechler*, 674 So.2d 789, 790 (Fla. 4th DCA 2014) (“The production of public records requests is ministerial, as it is a duty imposed by Chapter 119. ... [requestors] have a legally vested right to the production of those documents, and their production is nondiscretionary.”).

6. “The Public Records law implements a right guaranteed to members of the public under the Florida Constitution and it therefore promotes a state interest of the highest order.” *NCAA v. AP*, 18 So. 3d 1201, 1212 (Fla. 1st DCA 2009). The right of access to public records is a “cornerstone of our political culture.” *Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 124 (Fla. 2016).

7. The Act must therefore be liberally construed in favor of open access to public records. See *id.* at 125; *Palm Beach Cnty. Sheriff's Office v. Sun-Sentinel Co., LLC*, 226 So. 3d 969, 972 (Fla. 4th DCA 2017); Op. Att'y Gen. Fla. 80-57 (“[W]here the Public Records Law is concerned, all doubts about the construction of the statute should be resolved liberally in favor of openness and the access by the public”). “If there is any doubt about the application of the law in a particular case, the doubt is resolved in favor of disclosing the documents.” *NCAA*, 18 So. 3d at 1206 (citation omitted).

Electronic Documents and Private Device Communications as Public Records

8. The private device emails and text messages and social media communications of elected and appointed officials that the City stipulated to not producing until after Azure filed suit are the City’s official public records. The Act broadly defines “public records” as “all documents, papers, ... or *other material, regardless of the physical form, characteristics, or means of transmission*, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Fla. Stat. § 119.011(12).

9. With respect to text messages, the Fourth District has held that “[a]n elected officials’ use of a private cell phone to conduct public business via text messaging can create an electronic written public record subject to disclosure.” *O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040 (Fla. 4th DCA 2018). “To comply with the dictates of the Act, the governmental entity must proceed as it relates to text messaging no differently than it would when responding to a request for written documents and other public records in the entity’s possession—such as e-mails—by reviewing each record, determining if some or all are exempted from production, and disclosing the unprotected records to the

requestor.” *Id.* at 1041-42. “Strong public policy reasons” support this conclusion, because the Act’s purpose “to ensure that citizens may review (and criticize) government actions” “would be defeated if a public official could shield the disclosure of public records by conducting business on a private device.” *Id.* at 1042.

10. As to social media, there is likewise no exception from producing such communications if they constitute official public records. See Fla. Atty. Gen. Op. 2009-19 (Apr. 23, 2009) (opining that communications on city Facebook page connected to official city business would likely be subject to disclosure under Chapter 119); Fla. Atty. Gen. Op. 2008-07 (Feb. 26, 2008) (addressing postings on private website unaffiliated with City and concluding, “To the extent that the council member is publicly posting comments relating to city business, this office cannot conclude that such posting are not made in connection with the transaction of official business.”).⁵ See also *Nucci v. Target Corp.*, 162 So. 3d 146 (Fla. 4th DCA 2015) (recognizing that “social networking sites can provide a ‘treasure trove’ of information in litigation” and finding a limited privacy interest, if any, in materials posted on social networking sites).

11. A public official or employee creates a public record “in connection with the transaction of official business” when “their job requires it, the employer or principal directs it, *or* it furthers the employer or principal’s interests.” *O’Boyle*, 257 So. 3d at 1041. A public record communication need only have been “prepared in connection with the official business of an agency” and “intended to perpetuate, communicate, or formalize knowledge of some type.” *Butler*, 68 So. 3d at 281. This test is easily satisfied where the

⁵ *State v. Family Bank of Hallendale*, 623 So 2d 474, 478 (Fla. 1993) (stating attorney general opinions are “entitled to careful consideration and generally should be regarded as highly persuasive”).

communications unlawfully withheld by the City concerned—and furthered--official City business including on matters pending before its Council and EAB members.

12. The court rejects the City’s argument that its admittedly belated production was exclusively comprised of private, not public, records. The private device, social media and e-mail communications at issue here nowhere approximate the “uniformly personal and private” text messages of the county commissioner to her husband during a commission meeting in *City of Sunny Isles Beach v. Gatto*, 338 So. 3d 1045, 1048-49 (Fla. 3d DCA 2022). This case does not involve texts to a spouse about working late, keeping a diary solely for private use, or general discussion about a public official’s job on social media. *O’Boyle*, 257 So. 3d at 1041 (citing *Nissen v. Pierce Cnty.*, 357 P.3d 45, 54 (Wash. 2015)). Nor does it involve facts like *Butler v. City of Hallandale Beach*, in which the mayor had written a weekly newspaper column for more than four years and forwarded three of those articles from her personal computer and personal email address friends and supporters. 68 So. 3d 278, 279-80 (Fla. 4th DCA 2011).

The City’s Unreasonable Delay in Producing Public Records

13. The Act requires a custodian of public records to respond to public records requests “in good faith.” Fla. Stat. § 119.07(1)(c). “A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.” *Id.* The addition of this good faith language to Section 119.07 in 2007 “was actually meant *to strengthen* the responsibilities of records custodians by imposing an explicit requirement on public agencies that they act in good faith in responding to public records requests.” *Lee*, 189 So. 3d at 127-28.

14. The *only* delay in producing records permitted by the Act is “the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt.” *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1078-79 (Fla. 1984). See also *Barfield v. Town of Eatonville*, 657 So. 2d 223, 224 (Fla. 5th DCA 1996) (“An unjustified delay in complying with a public records request amounts to an unlawful refusal under section 119.12(1), Florida Statutes”); *Office of the State Atty. for the Thirteenth Judicial Circuit v. Gonzalez*, 953 So. 2d 759, 764 (Fla. 2d DCA 2007) (“unjustified delay in complying with the requests until after a suit was brought amounted to an ‘unlawful refusal’ [under chapter 119...]”).

15. Tardy production of responsive records does not cure a violation of the Act. *Grapski*, 31 So 3d at 198. “A holding otherwise would allow a covered body to delay meaningful access to public records, only to disclose them belatedly and after the utility of such records had faded. In that instance, an assertion of mootness because the violation had been ‘cured’ once the requesting party gained access to the records would disguise a breach of public records law.” *Id.*

16. The City’s unreasonable failures to search and unjustified delays in producing records responsive to Azure’s requests until well after the need for them had passed were established at trial. Azure repeatedly made clear to the City that it sought private device communications, including emails from private accounts, social media communications, and text messages. The City had issued private devices to its Council members precisely to transact official City business⁶ and knew that its EAB members, who

⁶ Indeed, the Mobile Device Policy reflects that Council members and others issued devices were *not* to use them for personal use, except in an emergency. Pl.’s Tr. Ex. 15.

did not have City-issued devices or official email addresses, were using their own private devices to conduct official City business.

17. By the Act, the Florida Legislature directs governmental entities like the City that they cannot allow the automation of public records to erode the public's right of access to those records:

(a) Automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained...

(f) Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to this chapter, a copy of any public record in that system which is not exempted by law from public disclosure. ...

Fla. Stat. § 119.01(2).

18. Further, the Act requires that public records be delivered to the Records Custodian at the expiration of an official's term in office:

(4)(a) Whoever has custody of any public records shall deliver, at the expiration of his or her term of office, to his or her successor or, if there be none, to the records and information management program of the Division of Library and Information Services of the Department of State, all public records kept or received by him or her in the transaction of official business. Fla. Stat. § 119.021.

19. The City's Mobile Device Policy effective September 2018 acknowledges that "[a]ll Mobile Device Public Records [including those on "City-issued" and "Personally-owned" devices] are subject to the provisions and requirements of Chapter 119, Florida Statutes." Pl.'s Tr. Ex. 5 at 4. The Mobile Device Policy reflects the City's awareness of Act's requirements and the issues presented by private device communications located outside the City's server. The City mandated that "Text Messages and phone records of

Category 1... Mobile Devices ***shall be archived by the City. The City will maintain these records in accordance with the Public Records Law.***” Pl.’s Tr. Ex. 15.

20. The City did not make a good faith effort to determine where the requested private device communications were located and to maintain those records so as not to erode public access in violation of the Act. Azure made clear and repeated requests for such private device communications and social media communications about the 2600 Property, which had a pending application before the EAB and City Council at all pertinent times. Yet the City failed to notify its elected and appointed officials of the March 2018 and November 2018 Requests until long *after* those requests were made, *after* the City had represented to Azure that it had already complied with those requests, and *after* the City represented that it had no responsive text messages. Even when it did notify Council and EAB members in January 2019, the City did not forward the requests and instead misparaphrased them. Ms. Siddons simply asked the City’s officials to look and let her know what records they might have. As to Ms. Gray, a former EAB member who resigned after being warned by the City Attorney about issues presented by her ongoing advocacy efforts with Boca Save Our Beaches, the City failed to ensure contact with her regarding the requests until years after Azure filed suit.

21. More generally, the City did not educate itself as to how its officials maintained private device communications, whether they were using social media to communicate with constituents or lobbyists like Ms. Gray, or what efforts those officials had taken to ensure the City’s public records would be preserved and not deleted (the City having declined to do so itself). For instance, even though Azure’s November 2018 Five-Day Notice specifically notified the City that Deputy Mayor Rodgers appeared to be using

Facebook to transact official business, the City failed to point this out to him, simply asking if he had any responsive records and doing nothing more to inquire when he said no. The City's blind reliance on assurances from self-interested officials like Deputy Mayor Rodgers led to unlawful delays in production of records—like the production of Rodgers Facebook message to Ms. Gray assuring her that he would “**vote no**” on the 2600 variance application, which was only produced as a result of a subpoena issued to Ms. Gray.

22. The City's failure to act in good faith in response to Azure's public records requests was established at trial, including by the following:

- Azure unambiguously requested all private device communications, including “**TEXT MESSAGES AND EMAILS FROM PRIVATE ACCOUNTS**”;
- the City denied the existence of responsive text messages and maintained that position through the time Azure filed suit;
- the City had issued mobile devices to its elected officials and knew that its EAB members were conducting all of their official City business on private devices and email accounts;
- the City maintained no inventory of the private devices used by its officials to conduct official City business;
- the City failed to archive the mobile device communications of either its elected or appointed officials;
- the City failed to obtain private device communications from its officials, like former Deputy Mayor Rodgers and former EAB Member Gray, when they left their positions;
- former EAB member Gray sent text messages while serving on the EAB yet was automatically deleting her text messages;
- the City delayed approximately 10 months before even asking its officials to produce their records and even then, failed to forward the actual records requests or to properly summarize them;
- the City never made contact with former EAB member Gray to obtain her public records; and

23. On quite similar facts, the circuit court in *Raydient LLC v. Nassau County*, that the county violated the Act by failing to conduct a reasonable investigation. 2021 WL 4208764, at *1-2 (Circuit Court in and for Fourth Judicial Circuit, Nassau Cnty., Fla. Aug. 24, 2021). The court finds *Raydient's* application of Section 119.07 and its reasoning persuasive. See *id.* (“If public agency employees and officials transact public business on their privately-owned accounts or devices, then the agency has an affirmative duty in response to public records requests to do what is reasonably necessary to promptly retrieve any public documents from those employees or officials.”).

24. The City’s reliance on federal cases addressing “the technological limitations of modern data management” and the “use of Boolean search terms,” City Supp. Trial Memo at 12-15, is inapposite. The City’s failure lies principally in not timely and competently retaining, gathering and searching responsive electronic data from private devices maintained by its elected and appointed officials where Azure’s records requests plainly sought such information. See *EEOC v. M1 5100 Corp.*, 2020 WL 3581372, at *3 (S.D. Fla. July 2, 2020) (quoting *In re Abilify (Aripiprazole) Prod. Liab. Litig.*, 2017 WL 9249652, at *3 (N.D. Fla. Dec. 7, 2017)) (“[a]pplicable case law informs that ‘self collection by a layperson of information on an electronic device is highly problematic and raises a real risk that data could be destroyed or corrupted.’”). That concern is magnified in a case like this one, involving private device records of public officials, many of whom have political constituents advocating against beachfront development like that pursued by 2600.

25. The City unreasonably focused on quantity not quality when it failed to take obvious steps like notifying its public officials of the pending public records request and

simply asking its Development Services personnel what properties other than the 2600 Property had sought to develop along its beachfront. Ms. Siddons instead became enmeshed in an admittedly overwhelming, months-long search exclusively focused on email communications located on the City's email server. After representing to Azure in December 2018 that it had completed its response to the March 2018 and November 2018 Requests, the City then improperly attempted to shift the burden to Azure to identify records the City was withholding.

26. The City offered no reasonable explanation as to why it was able to both search its City server records and request that its public officials provide private device communications in response to public records requests regarding the 2500 and 2600 Properties made by Ms. Gray in June 2018, but not in response to Azure's March 2018 and November 2018 requests.

27. The Court declines to excuse the City's failure to timely produce all records responsive to Azure's requests as "inadvertent." Citing *Jackson-Shaw Co. v. Jacksonville Aviation Authority*, the City asserts that an inadvertent omission in an "otherwise timely and substantial response" does not amount to an "unlawful refusal" under the Act. 510 F. Supp. 3d 691, 738 (M.D. Fla. 2007). Yet nearly a decade after *Jackson-Shaw*, resolving a conflict among state appellate courts, the Florida Supreme Court held in 2016 that there is no good faith or honest mistake exception for violating the Act. *Lee*, 189 So. 3d at 122. There is no "inadvertent" or "good faith" exception to liability under the Act and, even if there were, the Court finds the City did not act in good faith, nor were its failures merely inadvertent.

28. This court finds as a matter of law that the City unlawfully withheld and unreasonably delayed in the production of numerous crucial, material records to Azure, in violation of Chapter 119, Florida Statutes. Judgment shall be entered for Azure on Counts I and II.

29. The court denies the requests for declaratory, injunctive or other supplemental equitable relief sought in Counts III and IV and finds judgment shall be entered in favor of the City on these counts.

Azure's Entitlement to Reasonable Costs of Enforcement

30. Because the City violated the Act by unlawfully withholding and unreasonably delaying the production of public records in response to the two requests at issue, because Azure sent the City five-day notices in advance of asserting claims as to each of those requests and because Azure's requests were not made for any improper purpose, Azure is the prevailing party with regard to statutory attorney's fees and costs under Section 119.12. The court will await a motion in that regard, and will further take up that issue more fully when appropriate.


ADJUDICATION

I. Final Judgment hereby is entered in favor of Plaintiff, Azure Development, LLC, and against Defendant, the City of Boca Raton on Counts I and II, as the City unlawfully withheld and unjustifiably delayed in the production of numerous crucial, material records.

II. The court denies Azure's claims for relief against the City in Counts III and IV and enters judgment for the City only as to those counts.

III. The Court will await a motion for reasonable costs of enforcement including reasonable attorneys' fees, and will further take up that issue when it is appropriate.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida.

 THE
502019CA003513XXXMB 02/01/2024
15TH JUDICIAL CIRCUIT
ADMINISTRATIVE OFFICE OF THE COURT
Donald Hafele Circuit Judge

502019CA003513XXXMB 02/01/2024
Donald Hafele
Circuit Judge

**AZURE DEVELOPMENT v CITY OF BOCA RATON
CASE NO: 502019CA003513XXXXMB AG
SERVICE LIST**

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