

JOHNSTON DESTRUCTION OF EVIDENCE AND PUBLIC RECORDS

A. Introduction

The following timeline and fact exhibits will demonstrate that:

1. Parkville Mayor Nan Johnston admitted to frequently using private messaging services to conduct and communicate about public business and that the city sanctioned use of these messaging services;
2. That these communications about public business were public records and were protected from destruction under RSMO 109.180 and RSMO 109.255.
3. Parkville Mayor Nan Johnston was under multiple and overlapping orders of preservation to protect any documents and communications in her possession or control regarding the Maki v Parkville matter and Mr. Jason Maki's Sunshine Requests – this included her duty to preserve any records related to Mr. Maki's Sunshine Requests while under investigation by the Missouri Attorney General's office;
4. Parkville Mayor Nan Johnston was **Ordered** by the Court to produce all emails responsive to the Maki v Parkville Subpoena going back to September 7, 2018;
5. **That the day after the Court Ordered** Mayor Johnston to comply with a Subpoena in the Maki v Parkville mater, and five hours after Mr. Maki contacted the city to inform them he was proceeding with the Subpoena, Mayor Johnston took steps to **permanently delete all emails** from one of her Google email accounts – likely a criminal violation of RSMO 575.100 for destroying, suppressing, and concealing any records or documents with purpose to impair its verity, legibility or availability in any official proceeding or investigation;
6. Parkville Mayor Nan Johnston produced **exactly zero emails** in response to the Court Order – claiming that she had no emails in her possession regarding the Maki v Parkville or Mr. Maki's Sunshine Requests -- evidence on its face that she destroyed public records and documents in her possession and control regarding Mr. Maki's Sunshine Requests – likely a criminal violation of RSMO 109.180; and
7. During a hearing on the Maki v Parkville matter, attorneys for the mayor admitted that the mayor destroyed emails and records in her possession and control - disregarding the Court's Order to comply with the Subpoena, the multiple orders of preservation, and the State's law prohibiting tampering with evidence and the destruction of public records.

B. Background facts and relevant State statutes

RSMo Section 109.210(5) — Definition of a public record

A "record" is defined as any "document, book, paper, photograph, map, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official business". This definition includes those records created, used and maintained in electronic form (emails).

RSMo Section 109.180 — Refusal to permit inspection of public records — penalties.

Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen [*this may be construed to include refusal through the deliberate destruction of public records*]

Any official who violates the provisions of this section shall be subject to removal or impeachment and in addition shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars, or by confinement in the county jail not exceeding ninety days, or by both the fine and the confinement.

RSMo Section 575.100. Tampering with evidence — penalties.

A person commits the offense of tampering with physical evidence if he or she:
(1) Alters, destroys, suppresses or conceals any record, document or thing with purpose to impair its verity, legibility or availability in any official proceeding or investigation

The offense of tampering with evidence is a class A misdemeanor, unless the person impairs or obstructs the prosecution or defense of a felony, in which case tampering with physical evidence is a class E felony.

C. Material Facts

1. Around January of 2019, the Mayor was aware that an investigation by the Missouri Attorney General regarding alleged Sunshine Violations was forthcoming. The City acknowledged and discussed the pending investigation during a February 5, 2019, Board of Aldermen meeting. (Exhibit Maki-170 at 22). Having knowledge of a

forthcoming investigation by a governmental/regulatory body, the City and its Officials were without question aware of their duty to preserve any records related to Mr. Maki's Sunshine Requests. This would go on to include Mr. Maki's June 10, 2019, request for public records stored on their private messaging services.

2. On January 22, 2019, during an interview with "The Kansas City Star", Parkville Mayor Nan Johnston admitted that the City Officials frequently use private emails to discuss public business stating:

"We use private emails a lot because all of us are part time, especially our aldermen".
(Exhibit Maki-169 at 2)

3. Around March 22, 2019, the Missouri Attorney General's office opened its investigation into the City of Parkville's response to Mr. Maki's Sunshine Requests.

Note: From this point on, any destruction of evidence or public records would have occurred while the AG investigation was underway.

4. On April 15, 2019, in a letter to the Missouri Attorney General, the city admitted its use of private messaging services to conduct and discuss public business stating:

"As has previously been publicly acknowledged, some of the elected officials have used their private e-mail addresses for correspondence related to City business. We are unaware of any prohibition on them doing so". (Exhibit Maki-165 at 5)

5. On June 10, 2019, Mr. Maki asked that the City of Parkville produce the emails discussing public business which are responsive to his Sunshine Requests; specifically, those from the private messaging services of the Mayor and each Alderman. Included in the request was a Preservation Order for the City and its Officials to preserve all records responsive to Mr. Maki's requests—including the public records and emails

stored in the City Officials' private email boxes—and any material that may be relevant to future litigation on this issue. (Exhibit Maki-166 at 4).

Note: From this point on, any destruction of evidence or public records regarding item #5 could be construed as a tampering / destruction of evidence, spoliation, and destruction of public records.

6. Around June 12, 2019, City Administrator Joe Parente authored a memo to the Mayor and Board of Aldermen in preparation for an upcoming June 18, 2019, Board of Aldermen Executive Session to discuss Mr. Maki's June 10th Request and the related Preservation Order.

7. On June 13, 2019, the city responds via City Attorney Chris Williams, acknowledging the request and Preservation Order stating they will review and respond to the request to produce emails discussing public business which are responsive to his Sunshine Request within one week. No response is received.

8. On June 18, 2019, the Board of Alderman entered into an executive session to discuss Mr. Maki's June 10, 2019, Request.

9. On June 25, 2019, after the city exceeds their promised response date, a follow-up request for a response is made. On June 28, 2019, Chris Williams responds to the June 25th follow- up request promising again that the city will respond the following week. No response is received. On July 15, 2019, the city is contacted again for a response to the original June 10th request. No response is received.

10. On September 3, 2019, the Board of Aldermen enter into a second executive session to discuss Mr. Maki's June 10, 2019, Request. During the meeting the

Board of Aldermen instruct the Mayor, City Administrator and Clerk to release the records withheld from Mr. Maki's 17-26 requests. Ultimately that instruction is not carried out by the Mayor and City staff.

11. On September 17, 2019, the city, its officers, staff, and employees, were served with a second Preservation Order for any documents or communications related to Mr. Maki's Sunshine Requests. The letter informed the city to take all steps necessary **to preserve any documents or electronically-stored information (emails)—regardless of form or format—that would be relevant to any litigation arising out of or related to Mr. Maki's Sunshine Requests or the City's response thereto or relevant to any investigation or litigation by the Missouri Attorney General concerning the City's responses to Mr. Maki's Sunshine Requests.** (Exhibit Maki-174 at 1-2). [\[Note: The City was still under investigation by the State Attorney General\]](#)

12. On September 17, 2019, at a City Board of Aldermen meeting, the City Attorney informed the Board of Aldermen that State Attorney General had just contacted the city and instructed them not to destroy any communications or documents "relate[d] to records that were requested or in, or related to the Sunshine Law Complaint that was filed earlier this year ". (Exhibit Maki-200 at 3).

13. On December 5, 2019, during an interview with "The Pitch", Parkville Mayor Nan Johnston re-confirmed that City Officials continue to frequently use private emails to discuss public business stating:

"We're a small city, and it's not illegal for us to use our personal email, so I don't know why he's making such a big deal out of it," and;

"Johnston says **that it's typical for herself and city alderman** to use personal emails to communicate." (emphasis added). (Exhibit Maki-173 at 2).

14. On March 2, 2020, Mr. Maki serves the city with his lawsuit regarding Parkville's Sunshine Law Violations. (See Case.net docket for 20AE-CC00060)

15. On May 22, 2020, Mr. Maki serves the City with Notice of Subpoenas of the City Officials. (See Case.net docket for 20AE-CC00060)

16. On August 24, 2020, after hearing oral arguments regarding the City's motion to quash Mr. Maki's Subpoenas of the City Officials, the Court Orders that Mr. Maki's Subpoenas may proceed in accordance with the findings of the Court Order.

17. On August 25, 2020, at 11:58 am, Mr. Maki transmits a letter to the City stating that "I will be issuing new Rule 58.02 Subpoenas later this week in accordance with [the Court's] findings." (Exhibit Maki-151; Exhibit Maki-177)

18. On August 25, 2020, at 5:22 pm, **the day after the Court Ordered compliance with Mr. Maki's Subpoenas**, and merely five hours after Mr. Maki informed the city that the re-issued Subpoenas are imminent, Parkville Mayor Nan Johnston takes steps to **permanently delete all emails** from one of her Google email accounts. (Exhibit Maki-175). *[Note This example, obtained from public records, provides evidence showing she took action to destroy at least one mailbox while under a Court sanctioned Subpoena to produce all documents and communications in her custody or control; the Platte County Sherriff is currently investigating this and may be in possession of other examples.]*

19. On September 15, 2020, Mayor Nan Johnston is served with a Subpoena Ordering her to produce any documents or communications from her private messaging

services regarding the open records request submitted by Mr. Maki to the City under the Sunshine Law. (Exhibit Maki-155)

20. On October 27, 2020, Mayor Nan Johnston made her production in response to Mr. Maki's subpoenas issued between 9/21/2020 and 10/6/2020. Mayor Johnston produced six (6) SMS messages **and produced no emails**. *[Note: Given Mayor Johnston's complete lack of any email production in response to the Subpoena's coupled with her numerous comments about using private emails to discuss public business it is likely other email boxes or emails were destroyed by her as well – it is implausible to think she had no emails regarding this matter. Furthermore, the fact that the mayor produces exactly zero emails is evidence that she destroyed public records and documents in her possession regarding Mr. Maki's request. During a follow-up hearing regarding the mayor's lack of production, the mayor's attorneys admit to this fact (see below)]*

21. On March 1, 2021, during a Court hearing regarding the Maki v Parkville lawsuit, attorneys for the mayor provide an admission that the mayor destroyed evidence and public records in her possession. These records were under a Court Order to be produced and protected by multiple preservation orders and State statutes regarding the prohibition of the destruction of public records. During the hearing they admit:

"Some people retained the email, and some people deleted it." (Exhibit Maki-154 at 35)

". . . they've already given Mr. Maki everything they have. He may not like it. He may wish that they would've preserved emails from way back when." (Exhibit Maki-154 at 43).

"Your Honor, it's not that I'm saying that if they had it, it's not discoverable . . . [I]t would be absolutely discoverable." (Exhibit Maki-154 at 46).