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DEVELOPMENT

Parkville residents think their government's too secretive with development project

BY STEVE YOCKBROT

JANUARY 22, 2019 05:30 AM; UPDATED: JANUARY 22, 2019 06:30 AM



Parkville Mayor Nan Johnston FILE PHOTO.

A Kansas City attorney has asked the Missouri attorney general to look into Parkville city officials' alleged violations of the Missouri Sunshine Law regarding a proposed development that includes a baseball complex, apartments and a grocery store.

Edward Greim, a Graves Garrett LLC attorney, represents Jason Maki, a Parkville resident who, along with several other residents, have objections to the [proposed development project](#) near Interstate 435 and Missouri 45.

Greim sent a nine-page letter to Attorney General Eric Schmitt's office outlining claims that Parkville elected officials and professional staff have used private emails to conduct public business, structured meetings with a developer to avoid making them open to the public and insufficiently responded to several requests for public records. The law requires government records and meetings be accessible to the public, with some exemptions.

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Maki and others say Parkville officials sought to minimize public input and scrutiny to allow the development to proceed.



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"I think we're very concerned about hiding the ball," Greim said. "That is a problem that exists in state and local government. Trying to do as much as possible under the radar and springing a fully developed plan at the last moment is a problem."

Parkville Mayor Nan Johnston said the city is trying to cooperate with voluminous records requests from Maki's attorney and that the complaint to Schmitt's office is another attempt at fulminating political opposition to elected leaders.

"They're just accusing us of all kinds of things," Johnston said.

Maki, who referred questions to Greim, is one of several contributors to a newly formed political action committee called Citizens for a Better Parkville. It submitted its first campaign finance report on Jan. 15 that showed \$21,000 in contributions. Maki is the committee's largest donor with \$8,024 in contributions, records show. The committee has spent \$2,500 on consulting from the political consulting firm Axiom Strategies.

Greim's letter said Parkville officials appeared to be using private emails to communicate about city business. Private emails are subject to disclosure under the Missouri Sunshine Law, but the use of private email addresses can make it more difficult for the public to access the records and relies on an honor system for public officials to produce them.

Johnston admitted that city officials had used private emails but said it was not an intentional means to sidestep disclosure laws.

"We use private emails a lot because all of us are part time, especially our aldermen," Johnston said. "We all have city emails but when you're responding on your phone and you're not set up, it defaults to personal (email)."

She acknowledged that using private emails could make recovering public records more difficult.

"It's not intentional and we have gotten better about that since it came to our attention," Johnston said.

Parkville elected officials were also accused of meeting with developers in small groups to avoid forming a quorum, which would constitute a public meeting that would have to be publicized.

"It's not unusual for a developer to come in and talk to elected officials," Johnston said. "Every other city does this."

A spokesperson for Schmitt acknowledged receiving Greim's letter but would not comment on any subsequent steps that the office would take.



STEVE VOCKRODT

Twitter Email Phone 816-234-4277

Steve Vockrodt is an award-winning investigative journalist who has reported in Kansas City since 2005. Areas of reporting interest include business, politics, justice issues and breaking news investigations. Vockrodt grew up in Denver and studied journalism at the University of Kansas.

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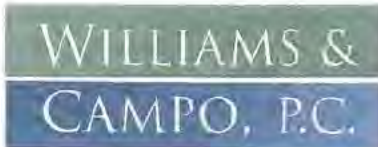
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VIA E-MAIL TO: SunshineLaw@ago.mo.gov

April 15, 2019

Ms. Casey Lawrence
Director of Sunshine Law Compliance
Office of the Attorney General
207 W. High Street
P.O. Box 899
Jefferson City, Missouri 65102

Dear Ms. Lawrence:

I serve as the city attorney for the City of Parkville, Missouri. I am writing in response to your letter to the City's mayor, Nan Johnston, dated March 20, 2019, regarding a complaint received by your office contending that the City has violated the Sunshine Law. This letter serves as the City's written response to the complaint. Our response below is specific to the issues identified in the two letters you provided to the City from Mr. Edward Greim dated January 9, 2019 and March 8, 2019. In addition, to aid in your review of the complaint and our response, we have provided a brief background of the circumstances surrounding these issues.

Background

As noted in the January 9, 2019 letter, the complaint is rooted in opposition by Mr. Greim's client, Mr. Jason Maki, to proposed developments near the intersection of Interstate 435 and Missouri Highway 45 in the City. The properties at issue are adjacent to I-435, a multi-lane interstate highway, and Highway 45, the major east-west route through the City. The City has long desired to see a master planned, coordinated development occur at this interstate highway interchange for the benefit of the City's citizens and taxpayers. In 2006, the City approved Neighborhood Improvement Districts on the properties to finance major sanitary sewer and street infrastructure improvements. At this same time, the City approved development plans for the area. However, due to a variety of factors including the economic recession, private development of the properties did not occur as planned. In 2016, the City acquired ownership of a portion of the properties in conjunction with a judicial foreclosure proceeding due to the failure of the property owners to pay the annual NID special assessments. Thereafter, the City issued a request for proposals for private parties to submit development concepts for the area

Ms. Casey Lawrence

April 15, 2019

Page 5

retained by the City. In addition, telephone billing records related to the City Hall phone system retained by the City were made available to Mr. Maki on January 28.

Section I.B.

This section of the letter relates to use of private or business e-mail accounts by the City's elected officials. 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. Elected officials have indicated that was done as merely a matter of convenience by the officials who noted that they monitored their private or business e-mail accounts more frequently than their City e-mail account. The use of these e-mail accounts was in no way an attempt to evade requirements of the Sunshine Law in spite of the unsupported speculation in the letter regarding their intent. In response to request number nine from Mr. Maki, on January 14 and 28, the City provided over 5,000 open public records of e-mails retained by the City where an elected official used a private e-mail address. Many of these e-mails involved distribution of documents by the City staff such as Board of Aldermen meeting packets and documents to the elected officials. As required by Section 610.025 RSMo, e-mails including a quorum of the members of the Board of Aldermen including those using a private e-mail account were copied to and received by the City Clerk.

The letter also makes reference to use of private e-mail accounts to "piecemail" the entire body into meetings or discussion to avoid forming a quorum but does not specify the e-mails where this is alleged to have occurred. In any event, we are unaware of any basis to support the speculation in the letter regarding any intent by the City's elected officials to evade the Sunshine Law in this manner.

Finally, the letter references emails from a "private email list" used by Mayor Johnston called "nj1000list@gmail.com." The e-mail address nj1000list@gmail.com is not a private e-mail list. Mayor Johnston's private business involves the commercial sale of mailing lists to customers. This e-mail address is simply her business e-mail address which she has used at times to communicate a quorum of Aldermen. When she has done so these e-mails have also been copied to and retained by the City on its e-mail system as required by Section 610.025 RSMo. Again, there is no prohibition in the law on her using a private e-mail account in this situation.

Section I.C.

This section of the letter refers to e-mail correspondence regarding meetings held by the developer and his representatives with less than a quorum of some of the City's aldermen in June 2018 and attempts to characterize these meetings as a violation of the Sunshine Law because public notice of the meetings was not provided. As one of the e-mails makes clear, the purpose of these meetings was for the exchange of information. The courts in Missouri have made it clear that such meetings are not improper. See *Defino v. Civic Center Corp.*, 780 S.W.2d 665, 671 (Mo. App. E.D. 1989) ("there is no evidence any official actions were taken. From all that appears in the record, some



Andrew P. Alexander
Attorney
Direct Dial: 816.285.3880
Facsimile: 816.256.5958
aalexander@gravesgarrett.com

June 10, 2019

Via E-Mail and U.S. Mail

Ms. Melissa McChesney
City Clerk and Custodian of Records
City of Parkville
8880 Clark Avenue
Parkville, MO 64152
mmcchesney@parkvillemo.gov

**Re: Request for supplemented Sunshine Request production
regarding the use of personal emails to discuss public
business.**

Dear Ms. McChesney:

On behalf of Mr. Jason Maki, we hereby request that the City of Parkville (the “City”) supplement its previous production in response to Mr. Maki’s Sunshine Requests by producing responsive emails from private email boxes of the Mayor and each Alderman. The City should produce those records because: (1) it has a legal duty to do so; (2) production would be consistent with public policy and emerging practice Sunshine Law compliance; and (3) production would be consistent with the City’s stated and codified intent to operate beyond ethical reproach.

As you know, Mr. Maki has submitted to you a series of requests for public records under Missouri’s Sunshine and Public Records Laws. Many of his requests included communications to and from the City’s Mayor and Aldermen. Those requests—and perhaps others—include any responsive emails about the relevant public business that may have been sent or received on the Mayor’s or Aldermen’s personal email accounts. However, it appears that the City has not produced responsive emails from private email accounts—despite its legal duty and its assurances to the Attorney General.



Graves Garrett LLC

We accordingly request that the City promptly supplement its productions to include responsive emails from its officials' private email boxes, at no extra cost to Mr. Maki. We further request that the City preserve all records responsive to Mr. Maki's requests—including those in private email boxes—and any material that may be relevant to future litigation on this issue.

Sincerely,

Andrew P. Alexander



Graves Garrett LLC

Andrew P. Alexander
Attorney
816.285.3880
aalexander@gravesgarrett.com

September 17, 2019

Via E-Mail and U.S. Mail

Ms. Melissa McChesney
City Clerk and Custodian of Records
City of Parkville
8880 Clark Avenue
Parkville, MO 64152
mmcchesney@parkvillemo.gov

**Re: Preservation of Documents Related to Jason Maki's
Sunshine Requests**

Dear Ms. McChesney:

As you know, our firm represents Mr. Jason Maki in connection with requests for open records has made to the City of Parkville pursuant to Missouri's Sunshine law ("Sunshine Requests"). It has come to our attention that the City plans to destroy certain public records pursuant to Resolution No. 19-007 or other similar Resolutions. We write out of concern for documents and information that might be responsive to Mr. Maki's request or relevant to litigation related thereto.

As the City's Custodian of Records, please take all steps necessary to preserve any documents or electronically-stored information—regardless of form or format—that may be:

- Responsive to Mr. Maki's Sunshine Requests dated on or after September 7, 2018;
- Relevant to any litigation arising out of or related to Mr. Maki's Sunshine Requests or the City's response thereto; or



Graves Garrett LLC

- Relevant to any investigation or litigation by the Missouri Attorney General concerning the City's responses to Mr. Maki's Sunshine Requests.

The date range for documents subject to this notice are as defined in Mr. Maki's Sunshine Requests and, in any event, include from September 7, 2018, onward.

Please let me know if you have any questions.

Sincerely,

Andrew P. Alexander

cc: Chris Williams
cwilliams@publiclawfirm.com

Chris Williams (00:05:34):

Yes. I received a letter earlier today from one of the attorneys at the attorney General's office. Just asking us to confirm that the record's scheduled to be destroyed did not relate to records that were requested or in, or related to the sunshine law complaint that was filed earlier this year. Alyssa and I, and Joe, Matt and Melissa had already done that confirmation, but I verified that I sent a letter back this afternoon to electronically to the, the attorney at the attorney General's office, confirming that the records to be destroyed do not relate to the sunshine law request.

Brian Whitley (00:06:16):

See the letter from the ag. And we have your letter, you sent to the the deputy ag subsequent, but we haven't seen a response and the AGS office based on your letter, correct? No, so I guess so I could go for postponing or I could also go for something along the lines of, we give then this list of records that we intend to destroy and get their agreement that it's okay to do you know, give them 30 days or what have you whatever our next running event is after October and say, Hey, this is what our you know, we already have this in policy. We already own in this place. This is our inventory. This is what we intend to destroy AGS office. Do you have a problem with that? Because right now it's kind of, I think they got a complaint about this, or they saw something like that.

Brian Whitley (00:07:00):

And they said this generic, this letter, and it was specific to the agenda item, but I don't, I doubt they got the list of all the records. And so those records could be subject to a person that's not familiar with the city. Some of this stuff could look like, well, they're trying to destroy something that maybe they shouldn't. We know that we're destroying things that are, that are entirely appropriate, but from a person that's not in the know in the city, they could come to other potentially come to other conclusions on that. So my thought was either postpone it till the resolution Agee complaint or send them a notice of what we intend to destroy and get their concurrence on all of it or portion of it. And then destroy that. I just, my concern as to destroy something prior to resolution of the AIG complaint, the optics associated with that, I believe are aren't the best. That's fine. And Ryan, when you see optics, I'm sorry, when optics, I think of glasses. So the appearance that's correct. Yes. Okay. Yeah.

Dave Rittman (00:07:57):

Yeah. I, I, I agree also in this particular case, even though, you know, this was, and when you're a business, you know, these are mundane things that are done on schedule. All of the time, everything I've seen is our records document our position of compliance with all aspects of what we need to be doing. So I'm old, I'm absolutely fine with postponing this for a couple of months until this is done. And then we'll go back on our normal, rapid retention schedule that every city in, or almost every city does as well as most businesses,

Marc Sportsman (00:08:33):

I tend to agree with them. I think that, you know, our guidance to staff has been go out and do the job that you've been you're paid to do represent the city's best interests like you're asked to do and do things like you would normally do, even in light of the constant harassment that the city staff and the city in general receives. But in this particular case, we know exactly it's going to be spun by those who are trying to spin it their way as well as the local newspaper. And so it's like, even though we were asking you to do your job, keep doing your job as you have over the last many years in this particular case, I think it would be in everybody's best interest, not to do anything relative to the ongoing record-


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In Parkville, gadflies are buzzing and state investigations are underway

December 5, 2019 by [Emily Park](#)

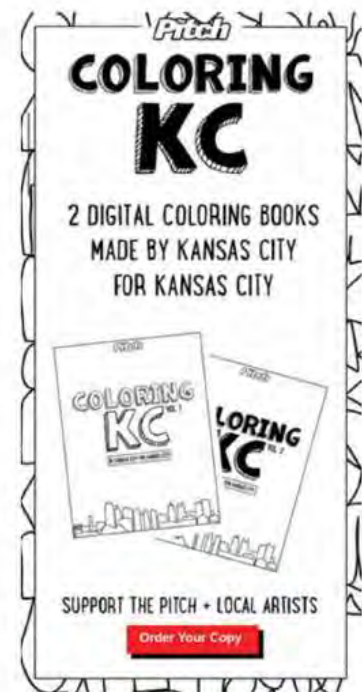


Photo by Zach Bauman

Jason Maki doesn't even live in Parkville, Missouri. He resides in an unincorporated part of Platte County that borders Parkville. But Maki has paid more than \$10,000 for open records requests from the city in the last year. Something's rotten, Maki believes, in this quiet river hamlet, population 6,700.

Maki first detected an odor of pernicious secrecy last fall, when he learned about plans for something called the Creekside Project. The development, which includes commercial, residential, and industrial components, plus a private baseball complex, is planned for a site at the intersection of Interstate 435 and State Highway 45. It would impact not just Parkville but also nearby unincorporated neighborhoods of Platte County. Maki lives in one of those neighborhoods.

The Creekside plan was to be heavily subsidized by taxpayers. The developers of the project would receive \$52 million in tax breaks through the handy civic instrument known as tax increment financing, or TIF. Under a TIF deal, a developer agrees to build something new on a blighted property; in exchange, the city freezes the taxes on that property for a certain period of time (often as long as 23 years). Maki thought that was a lot of future tax revenue to be siphoning away from Northland schools toward a private developer. He was also



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mitted that neither he nor his unincorporated neighbors were ever contacted about the development.

"Three sides of my house are surrounded by Parkville," Maki tells *The Pitch*. "I'm part of the Parkville community. We're paying taxes for this development, but we don't have any voting power, and the aldermen don't feel like they have to listen to our concerns."

Maki was not alone in opposing the Creekside development. "Half of Platte County would be blighted if those pictures [of the proposed site] are indicative of blight," one Parkville TIF Commissioner said of Creekside's request at a commission meeting. Ultimately, though, the TIF Commission **voted in favor of Creekside, 7-4**. (Both Park Hill school board representatives opposed it.) The Parkville Board of Alderman subsequently approved it.



Maki of Citizens for a Better Parkville. The group has aggressively sought public records from local officials.

After he learned of the development, Maki formed Citizens for a Better Parkville—a political action committee that describes itself as "committed to bringing forth an accountable and transparent government." In September 2018, Maki began sending records requests to the city under Missouri's Sunshine Law, seeking information about the development. When he analyzed what he got back in return, he grew even more certain that something didn't smell right.

Using software that identifies incomplete email threads, Maki says he learned over 3,000 emails were missing from the produced records. Some of the emails contained redactions with no explanation provided and were produced in a non-native, PDF format that can't track underlying records. The records also showed that Mayor Nan Johnston and city

aldermen used private email accounts to correspond, which Maki found suspicious; all elected officials have city email accounts.

Maki filed a complaint with Missouri Attorney General Eric Schmitt's office in January 2019 requesting that the AG investigate Parkville's possible violations of Sunshine Laws. An investigation into those claims is currently underway.

Johnston says the city has given Maki all of the documents he requested in his early records requests, released the emails in their native format, and that it's typical for herself and city alderman to use personal emails to communicate.

"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," Johnston tells *The Pitch*. "We are required to copy either our city manager or our city clerk on every single email we send so it gets captured on our server."

Johnston herself is also a target of Maki's group. A letter Maki sent in August to the Missouri Ethics Commission has sparked an investigation into Johnston's campaign finances.

Corporate campaign contributions are illegal in Missouri. But in the most recent mayoral election, the Committee to Elect Nan Johnston accepted over \$6,400 in monetary and in-kind contributions from for-profit corporations. One of those, a \$5,000 contribution from Don Julian Builders, was given on April 4; it was missing from a report the committee filed on April 16 and undisclosed until a financial report filed on July 15.

"Given the training and guidance available to the Committee's Treasurer, as well as Nan Johnston's political experience, she and the committee likely knew that these contributions were prohibited," Maki wrote in a letter to the MEC.

Johnston acknowledges that her committee accepted the donations.

"The last time I ran was three years ago," Johnston says, "and since that time there were some changes made with elections law, and one of those that I didn't catch was we can't accept corporate donations. So that is my fault, I should have thought to look." She adds that as soon as she found out the contributions were illegal, she immediately returned the donations. The Ethics Commission investigation is still ongoing.

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August 25, 2020

VIA EMAIL

Steven F. Coronado
Paul F. Gordon
Lauren L. Nichols
Baty Otto Coronado PC
4600 Madison Avenue, Suite 210
Kansas City, MO 64112
scoronado@batyotto.com
pgordon@batyotto.com
lnichols@batyotto.com

Re: 58.02 Subpoenas – Judge Van Amburg Ruling & Next Steps

Dear Mr. Coronado, et al.:

I am in receipt of Judge Van Amburg's order dated August 24, 2020. I will be issuing new Rule 58.02 Subpoenas later this week in accordance with his findings.

His instructions included a timeframe specification from *"time Plaintiff made his Sunshine Law request to the time the Defendant retained counsel"*. My initial Sunshine request was made on September 7, 2018. As per your April 7, 2020 invoice to the City of Parkville your engagement with the City began on March 12, 2020. According to his instructions, the timeframe will be limited in scope from September 7, 2018 to March 12, 2020.

If you have any input on a location, date and time for production of the documents that will be the most accommodating to you and the recipients, whom you also represent, I am open to suggestions. Alternately, let me know if you agree to excuse the recipients from appearance at a specified location.

Please provide your response by end of day August 26, 2020.

Subject: Maki v Parkville - 58.02 Subpoenas – Judge Van Amburg Ruling & Next Steps
Date: Tuesday, August 25, 2020 at 11:58:32 AM Central Daylight Time
From: Jason Maki
To: Steve Coronado, Paul Gordon, Lauren Nichols
CC: Andy Rizzo, Connie Thomas
Attachments: 2020-08-25 - 58.02 Subpoenas – Judge Van Amburg Ruling & Next Steps.pdf

Mr. Coronado et. Al,

Please see the attached letter regarding the above matter.

Regards,

Jason Maki

Gmail Deletion Confirmation

Sent Tue Aug 25, 2020 at 10:22PM UTC / Tue Aug 25, 2020 at 5:22PM CDT
From Google <no-reply@accounts.google.com>
To njohnston@parkvillemo.gov
CC
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State of Missouri

County of Platte

Circuit Court

Case Number: 20AE-CC00060 Court Date: 10/27/2020

Plaintiff:

JASON R. MAKI ET AL

vs.

Defendant:

CITY OF PARKVILLE, MISSOURI ET AL

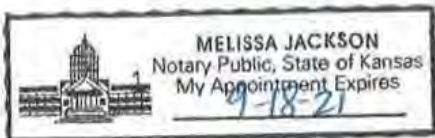
For:

JASON MAKI
6955 NW SCENIC DRIVE
KANSAS CITY, MO 64152Received by ARISTOCRAT PROCESS SERVING/KIS on the 11th day of September, 2020 at 9:58 am to be served on
NANETTE JOHNSTON, 8103 NW REDBUD CT., PARKVILLE, MO 64152.I, BRANDON FISHER, being duly sworn, depose and say that on the **15th day of September, 2020 at 9:52 am, I:****PERSONALLY SERVED** by delivering a true copy of the SUBPOENA ORDER TO APPEAR/PRODUCE DOCUMENTS/GIVE DEPOSITION, RULE 58.02 SUBPOENA FOR PRODUCTION OF DOCUMENTS to: NANETTE JOHNSTON at the address of: **8103 NW REDBUD CT., PARKVILLE, MO 64152.**

I certify that I am over the age of 18, have no interest in the above action, and am a process server in good standing in the judicial circuit in which the process was served. I declare under the penalty of perjury that the foregoing is true in substance and in fact to my best information and belief.

Subscribed and Sworn to before me on the 18 day
of September, 2020 by the affiant who is
personally known to me.
NOTARY PUBLIC
BRANDON FISHERARISTOCRAT PROCESS SERVING/KIS
115 E. Park St.
Ste. D
Olathe, KS 66061
(913) 780-2007

Our Job Serial Number: AIL-2020025630



HONORABLE JAMES VAN AMBURG, JUDGE

Defendant.)

20AE-CC00060

On March 1, 2021, the above cause came on for hearing before the HONORABLE JAMES VAN AMBURG, Judge of Division 2 of the Platte County Circuit Court at Platte City, Missouri.

1 turns out that, like normal people, maybe there's
2 a group email. Some people retained the email,
3 and some people deleted it. And I don't think
4 there's anything wrong with deleting it. And it
5 certainly -- before the Court is only an order --
6 order for contempt under -- for not complying
7 with the subpoenas. Well, the subpoenas ordered
8 that if you possess something, you must produce
9 it. They did that.

10 His arguments deal with whether or not
11 they should have, a year or so ago or whenever it
12 was, held on to those. So he sent out an email.
13 There was an email sent to, let's say, five of
14 these people, and maybe three of them produced
15 it. And the other two didn't. And he is saying
16 "Well, see. There you go. They clearly are
17 defying this Court's order, the subpoena. And
18 they should be held in contempt." But that's not
19 true because maybe those other two people just
20 didn't keep their emails. Most people just don't
21 keep emails in their personal accounts
22 indefinitely.

23 MR. CORONADO: Your Honor, if I may, just
24 for a moment, give a little background to -- just
25 so the Court understands that there was a time

1 me in ten days.

2 I would ask the Court to find them, the
3 recipients in contempt, for their failure to obey
4 those subpoenas served on them and consider fines
5 for producing documents in redacted or truncated
6 formats or documents -- not producing documents
7 at all as I've outlined when I was requesting the
8 Court, previously, and on the 11th of December.

9 My request to the Court is the same.
10 Thank you.

11 MR. GORDON: Your Honor, so my
12 understanding is that Mr. Maki wants you to enter
13 an order ordering the production of documents
14 that have already been produced. And that's what
15 a subpoena is. It is a court order to produce
16 these documents; so it's already been done. And
17 they've already given Mr. Maki everything they
18 have. He may not like it. He may wish that they
19 would've preserved emails from way back when, but
20 that doesn't mean they didn't have -- they had it
21 and didn't produce it.

22 MR. MAKI: Your Honor, if they've produced
23 everything they have, then an order shouldn't be
24 a problem for them. It should just be an
25 affirmation that "Yes, I did produce it all."

1 it," especially when they know that it's all
2 being preserved at the city level because it's
3 also on their service. So it's duplicative
4 documents.

5 And, again, Your Honor, it's not that I'm
6 saying that if they had it, it's not -- it's not
7 discoverable. That's -- we're absolutely -- it
8 would be absolutely discoverable, and that's why
9 we gave it to him. All we're saying is -- is
10 that it's not proper to hold them in contempt of
11 court, which is quite an extraordinary remedy.
12 But there's no evidence that they possessed it at
13 the time of the subpoenas and just failed to
14 produce them.

15 MR. CORONADO: Your Honor, may I make a
16 comment here real quick?

17 THE COURT: Mr. Coronado.

18 MR. CORONADO: Your Honor, I would just --
19 I think we may be -- I hope we're not losing the
20 direction here. This is an open records
21 violation. It's not an individual violation.
22 It's whether the City did something wrong or
23 didn't do something wrong, not the individuals.
24 And so we've got to keep that in mind, I think,
25 when we talk about these individuals and the