

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2009-4050

DIVISION "E"

SECTION: 7

**THE COUNCIL OF THE CITY OF NEW ORLEANS, ET AL**

VERSUS

**PENYA MOSES-FIELDS**

FILED: \_\_\_\_\_  
DEPUTY CLERK

**RULE TO SHOW CAUSE WHY**

**WVUE-TV, WGNO-TV, THE TIMES-PICAYUNE, THE ASSOCIATED PRESS, WDSU, WBOK, AND STEVEN BEATTY SHOULD NOT SPECIFY MORE PARTICULARLY THE PUBLIC RECORDS SOUGHT TO BE PRODUCED AND FOR CONSTITUENT PROTECTION AND/OR WHY THEY SHOULD NOT PAY ATTORNEY'S FEES FOR REVIEW OF DOCUMENTS AND FOR OTHER RELIEF AND INCORPORATED MEMORANDUM OF LAW**

NOW INTO COURT, through undersigned counsel comes plaintiff, The New Orleans City Council, who respectfully requests that this Honorable Court order WVUE-TV, WGNO-TV, The Times-Picayune, The Associated Press, WDSU, WBOK, and Steven Beatty to show cause why they should not be ordered to specify more particularly the documents sought to be produced and for constituent protection, and/or, why they should not pay the fees and costs incurred in the review of documents sought by them in a public records request and or other relief, for the following reasons, to-wit:

1.

On March 3, 2009, WGNO/ABC26 requested that the New Orleans City Council produce to WGNO the following documents:

All emails and email exchanges between the public and all members of the New Orleans City Council between 7/1/08 and 2/15/09.

Same emails requested by and turned over to attorney Tracie Washington.

2.

On March 4, 2009, WVUE requested that the New Orleans City Council produce to WVUE the following documents:

All emails sent and received by all New Orleans City Councilmen from 3/1/08 until 3/1/09.

3.

On March 4, 2009, The Times-Picayune newspaper requested that the New Orleans City Council produce to them the following documents:

All e-mail communications to and from the New Orleans City Council and their staff members from July 1, 2006 to the present.

4.

On March 9, 2009, The Associated Press requested that the New Orleans City Council produce to The Associated Press the following documents:

All emails sent and received by New Orleans City Council members and their staff members between 7/1/06 and 2/28/09.

5.

On March 13, 2009, WDSU requested that the New Orleans City Council produce to WDSU the following documents:

Copies of all emails sent and received by members of the city council dated from 7/1/06 to 12/3/08.

6.

On April 14, 2009, WBOK requested that the New Orleans City Council produce to WBOK the following documents:

All email files, sent and received, for Councilmembers James Carter, Jackie Clarkson, Arnie Fielkow, Stacey Head, Cynthia Hedge Morrell, Shelly Midura, and Cynthia Willard Lewis for the time periods of January 1, 2007 through December 31, 2007; January 1, 2008 through December 31, 2008, and January 1, 2009 through March 31, 2009. Please provide the emails for each year on a separate disk or CD-ROM.

All email files, sent and received, for the respective Chiefs of Staff for Councilmembers James Carter, Jackie Clarkson, Arnie Fielkow, Stacey Head, Cynthia Hedge Morrell, Shelly Midura, and Cynthia Willard Lewis for the time periods of January 1, 2007 through

December 31, 2007; January 1, 2008 through December 31, 2008, and January 1, 2009 through March 31, 2009. Please provide the emails for each year on a separate disk or CD-ROM.

7.

On May 13, 2009, Steven Beatty requested that the New Orleans City Council produce to him the following documents:

All records responsive to the public-records request granted to Tracie Washington, which were the subject of a 4<sup>th</sup> Circuit Court of Appeal ruling on 5/12/09. Please provide these records in electronic form if they have been stored in electronic form.

8.

It is respectfully submitted that each one of the above-mentioned requests are vague, overbroad and/or overly burdensome, and should be limited to a topic, issue, keyword, or other identifying feature/search term to make the document request reasonable under Louisiana law.

9.

Pursuant to this Honorable Court's judgment of June 3, 2009, the New Orleans City Council received from the New Orleans City Attorney approximately 440,000 E-mails comprising approximately 2,500,000 pages. It is believed that some of the documents responsive to the public records requests made to the New Orleans City Council by defendants-in-rule, are included in the 440,000 E-mails and in order to make a response, all of the E-mails must be reviewed by undersigned counsel and his law firm prior to production unless an alternative means of identifying specific topics is made.

10.

The Council has found it to be extremely time consuming to review the voluminous number of E-Mails such that it threatens to impede the members of the City Council from performing their constitutional duties. It is not possible for members of the Council to review 2,500,000 pages of E-mails and, at the same time, attend Council meetings; committee meetings; neighborhood meetings; etc. In short, having to review 2,500,000 pages of documents to identify constituent private information and/or otherwise privileged information impedes the

City Councilmembers from performing the duties for which they were elected.

11.

The public records requests made by the defendants-in-rule are exceedingly vague, burdensome, and overbroad.

12.

The public records requests at issue are exceedingly vague, burdensome, and are overbroad because they require the review of millions of pages of documents at a cost of hundreds of thousands of dollars while seeking nothing in particular and everything in general. There is no issue, individual, subject matter, or other reasonable delineation as to the type of information sought to be produced. The magnitude of the request is such that it interferes with the operation of the City Council, their constitutional and legal duties. Obviously, the determination as to vagueness, burdensomeness, and overbreadness of the request is a question of discretion for this court to decide, and the request for specificity is made by the City Council in good faith.

13.

Because of the overburdensomeness of the document request, the Council finds itself having to review every single one of the 440,000 E-mails, some of which are innocuous, redundant and meaningless in terms of any rational public records request. Requestors should be required to make a more precise document inquiry which will reduce the burden of reviewing 440,000 E-mails.

14.

As in any document production, the party requesting the documents should not be permitted to engage in a fishing expedition with no pre-conceived notion as to the substance of the document sought to be produced.

15.

The New Orleans City Council retained the services of a Forensic Software Analyst, Barbara Frederiksen-Cross, as an expert who, pursuant to the attached affidavit previously introduced at trial on May 6, 2009, confirmed that it would take between 2252 and 11260 hours to review the 2,500,000 pages of E-mails. (Exhibit 1.)

16.

Undersigned counsel estimates that the fees and costs to be incurred in a review of 440,000 E-mails (2,500,000 pages) will be in the range of \$250,000 to \$500,000.

17.

Only this Honorable Court can decide whether public funds should be spent to pay for the page-by-page review of 2,500,000 pages of E-mails. The New Orleans City Council does not want to incur attorneys bills in this matter and spend up to \$500,000 in public funds for the review of documents that may be responsive to a public records request that is so overly broad, vague, and burdensome. Even one of the public records requestors agrees that the public should not bear the cost of the review in question. Therefore, the Council suggests that the public records requestors limit the scope of their request to a more defined area of inquiry and that the public records requestors pay the fees and costs incurred per the Louisiana Public Records Act.

18.

The Louisiana Public Records Act provides that a fee can be charged for examination or review of documents to determine if a record is subject to disclosure. Such a determination is to be made by a court of competent jurisdiction which, in this particular case, is this Honorable Court. La. R.S. 44:32(C )(3).

19.

The City Council is also concerned that absent the requested relief in terms of payment of fees and costs and more specificity in the request for production, the New Orleans City Council will forever be subject to public records requests seeking each and every E-mail received or sent by the Council for time immemorial without any rhyme or reason as to the basis or purpose of the request.

20.

Pursuant to this court's judgment, undersigned counsel sent letters to each public records requestor asking to meet and/or confer regarding the possible payment of attorneys fees and costs in connection with the review of the records request at issue. As of the filing of this motion, none of the defendants in rule have agreed to pay counsel's fees or costs.

21.

Based upon all of the above, it is respectfully submitted that defendants-in-rule should show cause as to why they should not be ordered to pay the attorney's fees and costs necessary to review and produce the documents requested. Further, this Court should order defendants-in-rule to specify more particularly the documents they seek to be produced.

22.

In addition to the issues of the scope of the document requests and the cost of reviewing documents, at least one of the defendants in rule have made an issue as to whether the City Council should be protecting the names of the constituents who have communicated with the City Council.

The City Council is concerned about the privacy rights of the many citizens who communicate with the council on a daily basis concerning personal, financial, medical and other issues. The council is also concerned that the constituents who write to the City Council have an expectation of privacy that their personal emails would not be shared with others and certainly not be made public on the internet.

Out of an abundance of caution, undersigned counsel has been protecting the name, address and phone numbers of constituents and even asked for guidance from Louisiana Attorney General Buddy Caldwell, to no avail (see Exhibit 2 attached).

Given the desire of at least one of the defendants in rule to make public the name and/or address and/or phone number of private citizens, undersigned counsel asks that this Honorable Court order defendants in rule to show cause why such information should be made public because it is the intent and desire of the City Council not to make such information public unless ordered to do so.

WHEREFORE, it is respectfully requested that defendants-in-rule appear and show cause on a date and time to be set by this Court why they should not be ordered to specify more particularly the documents sought to be produced and/or why they should not pay the fees and costs incurred in the review of documents sought by them in their public records request and/or

why the name and/or address and/or phone number of those private citizens communicating with the City Council should be made public.

Respectfully submitted,

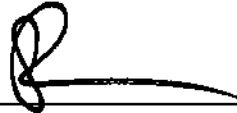


---

STEVEN J. LANE, Bar No. 07554  
LEONARD A. DAVIS Bar No.  
SOREN E. GISLESON, Bar No. 26302  
Herman, Herman, Katz & Cotlar LLP  
820 O'Keefe Avenue  
New Orleans, Louisiana 70113-1116  
Telephone: (504) 581-4892  
Facsimile: (504) 561-6024  
**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing pleading has been served on all counsel of record by facsimile, hand delivery and/or by placing same in the U. S. Mail, postage prepaid, on this 22<sup>nd</sup> day of June, 2009.



---

STEVEN J. LANE

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2009-4050

DIVISION "E"

SECTION: 7

THE COUNCIL OF THE CITY OF NEW ORLEANS, ET AL

VERSUS

PENYA MOSES-FIELDS

FILED: \_\_\_\_\_  
DEPUTY CLERK

**ORDER**

Based on the foregoing motion:

IT IS ORDERED, ADJUDGED AND DECREED that defendants-in-rule appear and show cause on the \_\_\_\_ day of \_\_\_\_\_, 2009 at \_\_\_ o'clock \_m., why they should not be ordered to specify more particularly the documents sought to be produced and/or why they should not pay the fees and costs incurred in the review of documents sought by them in their public records request and/or why the name and/or address and/or phone number of those private citizens communicating with the City Council should be made public.

New Orleans, Louisiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
JUDGE

PLEASE SERVE:

WVUE  
LOUISIANA MEDIA COMPANY, LLC  
through registered agent:  
C T Corporation System  
5615 Corporate Blvd., Suite 400B  
Baton Rouge, LA 70808

ABC26 - WGNO  
TRIBUNE TELEVISION NEW ORLEANS, INC.  
Corporation Service Company  
320 Somerulos St.



Baton Rouge, LA 70802-6129

THE TIMES-PICAYUNE

through registered agent:

Loretta G. Mince

201 St. Charles Ave., Suite 4600

New Orleans, LA 70170

THE ASSOCIATED PRESS

through registered agent:

Mike McQueen

1515 Poydras St.

New Orleans, LA 70112

WDSU

NEW ORLEANS HEARST-ARGYLE TELEVISION, INC.

Through registered agent:

C T Corporation System

5615 Corporate Blvd., Suite 400B

Baton Rouge, LA 70808

WBOK

BAKEWELL MEDIA OF LOUISIANA, LLC

through registered agent:

C T Corporation System

5615 Corporate Blvd., Suite 400B

Baton Rouge, LA 70808

STEVEN BEATTY

7537 Freret St.

New Orleans, LA 70118

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NUMBER: 2009-4050

DIVISION: "E"

SECTION: 7

THE COUNCIL OF THE CITY OF NEW ORLEANS, ET AL

VERSUS

PENYA MOSES-FIELDS

FILED: \_\_\_\_\_

DEPUTY CLERK

**AFFIDAVIT OF BARBARA A. FREDERIKSEN-CROSS**

STATE OF OREGON

COUNTY OF MULTNOMAH

BEFORE ME, the undersigned Notary Public, came and appeared

**BARBARA A. FREDERIKSEN-CROSS**

who, first being deposed, did state the following:

1. I am a Forensic Software Analyst retained as an expert consultant by the New Orleans City Council for the purposes of providing expert analysis of computer based information and specifically in relation to the production and possible redaction for privilege of City Council emails which the City Attorney for New Orleans has indicated an intent to produce in response to numerous public records requests. My professional experience, credentials and expertise are included in my Curriculum Vitae attached to this Affidavit.

2. In preparing this affidavit, I have been asked to address two specific issues: the adequacy of the search terms proposed by the City Attorney for New Orleans, and whether the time frame proposed by the City Attorney allows adequate time for the review of emails.

//

//



3. The aforementioned production involves a significant amount of electronic data which will require time to process and review. The electronic data contains emails which also have attachments and will require extensive searches to determine if any of the data may be protected from production by a privilege.

4. I have had an opportunity to review the following documents in preparation for this affidavit:

- a. The Public Records Request of the Louisiana Justice Institute, made by Tracie L. Washington, Managing Director, on December 3, 2008.
  - b. The Public Records Request of ABC26, made by Bob Noonan, News Director, on March 3, 2009.
  - c. The Public Records Request of WVUE-TV Fox 8 News, made by Mikel Schaefer, News Director, on March 4, 2009.
  - d. The Public Records Request of The Times-Picayune, made by Michelle Krupa, Staff Writer, on March 4, 2009.
  - e. The Public Records Request made by Morris Seymour on March 4, 2009.
  - f. The Public Records Request of The Associated Press, made by Becky Bohrer, on March 9, 2009.
  - g. The Public Records Request of WDSU TV Channel 6, made by Richard Angelico, on March 13, 2009.
  - h. The Public Records Request of WBOK 1230-AM, made by Cheryl A. Charles, General Manager, on April 13, 2009.
  - i. The April 17, 2009 letter from City Attorney Penya Moses-Fields to Steven Lane advising that City Council emails had been compiled and were going to be produced on Tuesday, April 21, 2009, giving the New Orleans City Council and/or its special legal counsel less than 24 hours to review all the documents for privilege and/or other protections, and stating that all emails containing the keywords lists captioned "legal" and "medical" were to be saved in separate file from those without these keywords.
  - j. The Temporary Restraining Order filed by the New Orleans City Council against City Attorney Pena Moses-Fields on April 20, 2009.
  - k. Electronic email files produced April 21, 2009 (in the form of 43 separate Microsoft Outlook repositories) for the seven City Council members. These mail repositories include five separate (but overlapping) date ranges and one "Redacted" repository for each council member.
  - l. Four sets of electronic emails, produced on March 4, 2009, in the form of 109,655 separate email files, which purport to correspond to the emails released to Ms. Tracie Washington.
  - m. Email repositories for all seven council members as they existed in the Outlook mailboxes accessible from council members' computers in late March, 2009.
5. Based upon my knowledge of the electronic data and the production that is

contemplated, it is my opinion that the methodology, including the redaction terms used

by the City Attorney's office as identified in the letter of April 17, 2009, are wholly inadequate in order make a production of documents in response to the public records requests. The search terms proposed by the City Attorney's office include only general terms relating to legal and medical issues (e.g. terms such as legal, lawyer, crime, doctor, hospital, and patient.) After careful analysis, I have determined that, among other things, the search terms used by the City Attorney's Office are not sufficient to identify:

- a. Emails to individual attorneys and law firms for the City Council;
- b. The names of specific doctors, nurses, patients, or other health care providers with whom City Council Members may have corresponded;
- c. The names of law enforcement officers or investigative agencies with whom City Council Members may have corresponded;
- d. Case-specific references to ongoing investigations or current litigation matters;
- e. Correspondence between City Council Members and their personal contacts (family members, clergy, counselors, health care providers, teachers, personal attorneys, or accountants);
- f. Emails which may contain sensitive information such as social security numbers and credit card numbers.

6. Based on my analysis, it is my opinion that in order to make a proper production of the electronic data responsive to the public records request, it will require, at a minimum, the identification of additional search terms to address the categories of email described above, automated searches of each email repository to identify potentially privileged email responsive to all search criteria, **manual** review of the emails found to contain search terms to determine actual privilege status, separation of privileged emails from non-privileged emails for production, and creation of a privilege log to record the specific emails withheld along with the basis for the assertion of privilege.

7. The thirty-five email repositories which the City Attorney for New Orleans proposes to produce represent email from five date ranges for each council member. These data ranges have considerable overlap, resulting in many duplicate emails. To reduce the time and costs associated with the final privilege review, I strongly recommend that emails subject to such review should be de-duplicated prior to the review process so that each discrete email will be examined only once.

8. My analysis shows that some of the attachments associated with City Council Members' emails on the City of New Orleans servers contain active viruses. In order to protect the reviewers and the requestors, I strongly recommend that the emails and their associated attachments be produced in PDF or TIF format, which will neutralize these threats.

9. To avoid confusion during review, production, or in the context of any subsequent discussion relating to specific emails I also recommend that all emails be Bates Stamped prior to review and production.

10. The email production of March 4, 2009, includes a total of 109,655 emails for four members of the New Orleans City Council. The emails produced on April 21, 2009 include at least 434,664 emails for seven members of the New Orleans City Council. These numbers do not include duplicate emails that were produced multiple times in the context of the April 21<sup>st</sup> production<sup>1</sup>.

11. Based upon my experience, expertise, and review of the information set out above, it is also my opinion that the emails which were provided to Council Members by the City Attorney's office on March 4, 2009<sup>2</sup> are an incomplete subset<sup>3</sup> of the emails and other documents produced to the City Council by the City Attorney's office on or about April 21, 2009; and therefore, the fact that the New Orleans City Council had in its possession emails on or about March 4, 2009 is irrelevant to the additional time, effort, and procedure that would have to be employed for the New Orleans City Council to review the documents and emails provided to them by the City Attorney's office on or about April 21, 2009.

---

<sup>1</sup> For each Council Member, the April 21<sup>st</sup> production included one file of emails flagged as potentially privileged (based on the search terms provided by the New Orleans City Attorney) and five files containing emails for each of five different date ranges. The number I cite here reflects only the count of emails for each Council Member's most inclusive date range and the emails which were flagged for potential privilege. I have omitted counts for the remaining date ranges to avoid inclusion of duplicate emails that were produced in multiple date ranges.

<sup>2</sup> The March 4, 2009 production included an incomplete subset of email from four council members, and no email from the remaining three council members.

<sup>3</sup> For some council members whose email was produced on March 4<sup>th</sup> and again on April 21<sup>st</sup> the difference is striking. For example, Council Member Head had 37,089 emails in the March 4<sup>th</sup> production, and 155,358 emails in the April 21<sup>st</sup> production – a difference of over 100,000 emails. These numbers do not include duplicates caused by the multiple overlapping date ranges of the April 21<sup>st</sup> production.

12. Beyond these inconsistencies with respect to the number and scope of email produced in the March 4<sup>th</sup> and April 21<sup>st</sup> productions, these productions are also in different formats and require use of different software to view. The March 4<sup>th</sup> production consists of 109,655 individual files, one per email, which can be viewed with Microsoft Outlook Express. The April 21<sup>st</sup> production consists of 43 files in a different proprietary Microsoft format. Each file in the April 21<sup>st</sup> production contains a collection of many thousands of emails which can only be viewed using Microsoft Outlook<sup>4</sup> or other specialized software. Because of their differing file formats, there is no easy way that members of the New Orleans City Council or their attorneys can compare the contents of the two productions.

13. The April 21<sup>st</sup> production includes at least 135,144 emails (in 8 separate Microsoft repositories) which have already been flagged for potential redaction based on the search terms used by the New Orleans City Attorney's office. Manual review of so many e-mails is a tedious and time consuming process, especially since the attachments associated with these e-mails must also be reviewed.

14. Based upon my experience, expertise, and review of information as set out above, it is my opinion that proper use of additional search terms (beyond those suggested by the New Orleans City Attorney) will also be required.

15. Even when aided by automated searches, the manual review, and redaction of privileged or otherwise protected communications will take substantially longer than the brief time period which was offered to the New Orleans City Council by the City Attorney's office. This can be illustrated with a simple hypothetical: assume that each e-mail and associated attachments (if any) will require one to five minutes for review and logging of the appropriate privilege status. Even using this comparatively optimistic

//

//

//

---

<sup>4</sup> Microsoft Outlook and Microsoft Outlook Express are separate products which use different internal data formats to store email.

estimate, which does not include actual redaction efforts, the 135,144 emails already identified for review will require between 2252 and 11260 hours to review and categorize.

Barbara A. Frederiksen-Cross  
BARBARA A. FREDERIKSEN-CROSS

Subscribed and Sworn to BEFORE ME, this 29<sup>th</sup> day of April, 2009.

Margaret R Anderson  
NOTARY PUBLIC for Oregon  
My commission expires: Oct 26, 2012



# HERMAN, HERMAN, KATZ & COTLAR

L.L.P.  
Attorneys at Law

820 O'KEEFE AVENUE, NEW ORLEANS, LOUISIANA 70113-1116  
TELEPHONE: (504) 581-4892 FACSIMILE: (504) 581-8024  
HTTP://WWW.HHLLP.COM

Harry Herman (1914-1987)  
Russ M. Herman\*  
Maury A. Herman\*  
Morton H. Katz\*  
Sidney A. Cottlar\*  
Steven J. Lane  
Leonard A. Davis\*  
James C. Klick†

Stephen J. Herman  
Brian D. Katz  
Soren E. Gisleson  
Joseph E. Cain  
Jennifer J. Greeney  
John S. Creevy  
Joseph A. Kott, M.D. J.D. (Of Counsel)

Offices in New Orleans and  
Covington, Louisiana

\* A Professional Law Corporation  
† Also Admitted in Texas  
‡ Also Admitted in Arkansas

This Firm and its Partners Are Also  
Partners in Herman Gerel, LLP (Formerly  
Herman, Mathis, Casey, Kitchens & Gerel, LLP)

May 26, 2009

Honorable James D. "Buddy" Caldwell  
Attorney General  
Louisiana Department of Justice  
P. O. Box 94005  
Baton Rouge, LA 70804-9005

Dear Attorney General Caldwell:

Re: Public Records Requests

On behalf of the New Orleans City Council, I am seeking an advisory opinion on two issues related to ongoing litigation and document production pursuant to the Louisiana Public Records Act. In order for your office to answer the questions posed, it is necessary for me to give you some background information leading to the decision to send this letter.

On April 21, 2009, with only 24-hours notice, the New Orleans City Council received hundreds of thousands of E-mails comprising millions of pages from the Office of the City Attorney of New Orleans. On April 21, 2009, undersigned counsel for the New Orleans City Council sent the E-mails to a forensic expert retained by undersigned counsel. The forensic expert noted that the City Attorney's office had created 43 separate E-mail repositories, and that each repository contained tens of thousands of E-mails. (See attached Affidavit of Barbara Frederiksen.)

Even after removing duplicate E-mails (E-mails with the exact same sender, recipient, date, time, subject and content), there were a total of 434,629 E-mails comprised of 2,483,000 pages and an additional 388,000 pages of attachments.

According to the forensic expert, the format of the E-mail repositories was such that they could only be accessed using special E-mail software. In addition, the E-mail repositories produced by the City Attorney's office included other non-E-mail content, such as calendars and other documents which were not the subject of the public records request. These documents had to be separated from the millions of pages of E-mails.





May 26, 2009

Page 2

The E-mails produced to the City Council by the City Attorney's office contained viruses. It was determined that these viruses could potentially delete files or cause other damage to a reviewer's computer. To protect the reviewers and the public, it was necessary for our forensic expert to remove the viruses that were found within more than 2 1/2 million pages of documents.

Besides E-mails infected with viruses, many of the E-mails produced by the City Attorney's office included damaged attachments which could not be opened for viewing. E-mails with such damaged attachments required special handling as well as research to confirm that the damage was already present when the forensic expert had first received the E-mails.

In addition, the forensic expert had to perform additional redaction searches because the search terms used by the City Attorney did not include names of attorneys, law enforcement officers, Councilmembers' family, personal contacts, names of doctors, accountants, etc. In order to perform these searches, it was necessary for each member of the New Orleans City Council to provide lists of contacts. Once these lists were provided, a preliminary search was performed in order to identify those E-mails containing the additional privilege search terms.

Finally, because of the millions of pages of documents that needed to be reviewed, the forensic expert was requested to develop a simplified review system in an attempt to expedite review of documents by undersigned counsel and members of the New Orleans City Council.

It took several weeks after April 21, 2009 for the forensic expert to be in the position to return the E-mails to undersigned counsel and the New Orleans City Council to begin review of the millions of pages of E-mails.

The services of undersigned counsel were enlisted to review the millions of pages of documents after the City Attorney's office stated its intent to produce E-mails without performing any of the above services and without performing a visual page-by-page review of each E-mail subject to production.

Undersigned counsel is of the opinion that it is necessary to review visually each and every page of the millions of pages of E-mails produced in order to maximize the prospect that no privileged or otherwise protected information is divulged.

The vast majority of E-mails are those received by the Council from constituents who are requesting anonymity or otherwise had an expectation of privacy that their names, addresses and cell phone numbers would not be made public.

The members of the City Council and I have received numerous phone calls from private citizens advising that they intended their communications with the Council to be private and that they do not want their name, address, cell phone and other personal information to be made public.

Finally, the members of the City Council and their staff are overworked and overburdened as it is. They currently must attend committee meetings, Council hearings, community meetings,

etc. They perform much of their work out of their office and simply cannot be sitting in front of a computer reviewing page after page of documents which are the subject of a public records request.

The City Council's efforts to review the E-mails in question will or may affect their ability to perform their duties. Under the Public Records law, compliance with the Public Records law should interfere as little as possible with the work of the officials whose records are being inspected, and the public records request should not be of such a magnitude that it disrupts the normal office procedure to the point where the office ceases to operate.

Given all of the above, undersigned counsel seeks an advisory opinion on behalf of the New Orleans City Council as to the following:

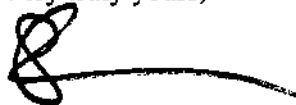
- 1) As millions of pages of E-mails may be subject to production pursuant to the Public Records Act and assuming that it is necessary for undersigned counsel to review each page of the millions of pages of E-mails produced, what is a "reasonable time" under the Public Records Act for the New Orleans City Council to produce the millions of pages of documents at issue?
- 2) As to the issue of privilege, is any of the below identified information considered privileged or otherwise exempt under the Louisiana Public Records law?
  - A) Names, addresses, E-mail addresses, home telephone numbers and/or cell telephone numbers of individuals, including constituents, who have sent E-mails to members of the New Orleans City Council.
  - B) Comments made in E-mails concerning criminal activities.
  - C) Discussions in E-mails related to medical conditions of non-City Council members, including constituents.
  - D) Discussions of potential and/or ongoing investigations involving the Office of Inspector General of the City of New Orleans.
  - E) E-mail discussions between Councilmembers and their friends or family wholly unrelated to City business, including religious service, child care, exercise and social activities.

Although the City Council is making every effort to review the millions of pages of E-mails as quickly as possible, the Council seeks guidance as to whether and to what extent it needs to act more quickly. Secondly, the Council is concerned about exposing the City of New Orleans and/or the City Council to liability if private, privileged, or otherwise protected information of constituents/private citizens is divulged if the Council is forced to produce documents without having had the opportunity to review each of the approximately 2,500,000 pages produced to them by the City Attorney's office.

May 26, 2009  
Page 4

While the Council is still in the process of reviewing the documents in question, it seeks guidance on the two issues set out above as promptly as possible. In the meantime, the Council will make every effort to produce documents as they review them, with the exception of those that are privileged or otherwise protected/exempted under the Public Records Act.

Very truly yours,

A handwritten signature in black ink, consisting of a stylized, cursive 'S' followed by a horizontal line that extends to the right.

Steven J. Lane

SJL/oa

cc: All E-mail Records Requesters



JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

State of Louisiana  
DEPARTMENT OF JUSTICE  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

May 29, 2009

Steven J. Lane  
Herman, Herman, Katz & Cotlar  
820 O'Keefe Avenue  
New Orleans, LA 70113-1116

Re: Public Records Requests  
Attorney General Advisory Opinion Request

Dear Mr. Lane:

This office is in receipt of your opinion request dated May 26, 2009. The request is made on behalf of the New Orleans City Council for an advisory opinion "on two issues related to ongoing litigation and document production pursuant to the Louisiana Public Records Act."

The Louisiana Supreme Court has issued a stay over the recent decision by the 4<sup>th</sup> Circuit Court of Appeals about whether Ms. Washington could release the e-mails at issue in your letter to our office, and you have also provided us with an affidavit for a case captioned *The Council of the City of New Orleans, et al v. Penya Moses-Fields*, No. 2009-4050, Division "E", Section 7, filed with the Civil District Court for the Parish of Orleans concerning the release of such e-mails.

Please be advised that it is the policy of the Attorney General not to furnish opinions on questions that may be the subject of litigation or which are scheduled for determination by the courts. The issues raised in your opinion request are currently before a court of law to determine, and therefore this office must decline to respond to your request.

Should you have any questions please contact me at your convenience.

Very truly yours,

JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

BY:

  
EMALIE A. BOYCE  
ASSISTANT ATTORNEY GENERAL

JDC

cc: Ken DeJean

