CODE OF SILENCE

U.S. Department of Justice

Criminal Division

Washington, DC 20530-0001

August 10, 2020

Mr. Brian Higgins
Code of Silence
442 Corporation Aly
Cincinnati, OH 45202-0989

Dear Mr. Brian Higgins:

Thank you for writing the Department of Justice. This is in response to your letter to Attorney General William P. Barr, dated May 29, 2020, requesting an investigation into alleged corruption of City of Chicago public officials. We assure you that the Department of Justice takes allegations of criminal conduct very seriously and will handle all such matters fairly and appropriately.

Again, thank you for writing the Attorney General. We hope this information has been helpful.

Sincerely,

Correspondence Management Staff
Office of Administration

Reference Number: SB301209651
For further correspondence please email criminal.division@usdoj.gov. Should you wish to speak to a representative please call (202) 353-4641 and provide the reference number.

May 25, 2022

The Honorable Chuck Grassley
Ranking Member, United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510
SENT VIA USPS 7021272000015563586

Honorable Grassley,

As our country is at an all time boiling point and on the eve of a critical election, there is yet another crisis brewing. The Department of Justice and the Federal Bureau of Investigation are protecting sexual predators.

For over the past 10 years I have been sounding the whistle on a wide spread coverup taking place in Chicago, Illinois. This criminal activity has been carried out by multiple elected officials in Illinois- to include former Chicago Mayor Rahm Emanuel, current Ambassador of Japan along with Mayor Lori Lightfoot and her administration. What my journey has unearthed is now a much bigger coverup. The DOJ along with the FBI protecting sexual predators. On April 10, 2019 I went to my local FBI office (Dayton, Ohio) to report crimes against children (Chicago) along with a multi-billion dollar procurement scheme related to the O'hare Modernization Project- a 8 billion dollar federally funded program, led by Jamie Rhee. I was asked to come back at a later date so the Chicago FBI could interview me in Dayton, Ohio.

The morning of April 30, 2019, I arrived at the resident office of the FBI with over 3000 pages of documented evidence- in which I thought I was turning over 10 years worth of criminal activity to federal authorities, however, it was a ruse. I was arrested and charged in connection with public corruption in Dayton, Ohio. A case connected to a ruptured fish tank and insurance proceeds that I allegedly misappropriated. Since my indictment in 2019 and my ultimate January 2022 conviction the AUSA in my case has not only deceived the court (Ohio Southern District), he has engaged in prosecutorial misconduct, manufacturing evidence to include forgery. In addition to the DOJ, the FBI (Dayton and Chicago) have been covering up crimes against children.

August 8, 2019 in a meeting with the FBI and the AUSA, I was asked to give damning information on US Congressman Michael Turner along with other local (Dayton) elected officials in exchange for probation and no restitution in my criminal case. I declined the Government's generous offer. The FBI and the DOJ have since allowed Nan Whaley

(former Dayton Mayor) to not only remain in office, they have allowed her to run for Governor (Ohio) after it was documented that she had committed crimes while in office.

In 2021, your Committee held tense hearings coined, "Dereliction of Duty." The DOJ Inspector General's report identified several government officials within the FBI mishandling the USA Gymnastics team athletes' pleas for help. My criminal docket (3:2018cr00186) will shed light into the coverup of which I speak. I am requesting that your Committee investigate the Code of Silence.

Attached (X-Files) are a sample of the documents to include audio/video that you may glean. I am certain there will be a national conversation

Respectfully,

Brian Edward Higgins

WWW.CORRUPTGMEN.COM

May 25, 2022

The Honorable Dick Durbin
Chairman, United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510
SENT VIA USPS 70212720000015563586

Chairman Durbin,

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For over the past 10 years I have been sounding the whistle on a wide spread coverup taking place in Chicago, Illinois. This criminal activity has been carried out by multiple elected officials in Illinois- to include former Chicago Mayor Rahm Emanuel, current Ambassador of Japan along with Mayor Lori Lightfoot and her administration. What my journey has unearthed is now a much bigger coverup. The DOJ along with the FBI protecting sexual predators. On April 10, 2019 I went to my local FBI office (Dayton, Ohio) to report crimes against children (Chicago) along with a multi-billion dollar procurement scheme related to the O'hare Modernization Project- a 8 billion dollar federally funded program, led by Jamie Rhee. I was asked to come back at a later date so the Chicago FBI could interview me in Dayton, Ohio.

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Respectfully,

Brian Edward Higgins

WWW.CORRUPTGMEN.COM

FEDERAL BUREAU OF INVESTIGATION

Date of entry 04/18/2019

On 4/18/2019, Special Agent Patrick Gragan called (937[redacted]5, a number Brian HIGGINS had provided SA Gragan on 4/10/2019. SA Gragan left a voicemail requesting HIGGINS to call back.

On the same day, HIGGINS returned the call and spoke telephonically to SA Gragan. SA Gragan informed HIGGINS that the FBI was interested in talking to him and hearing what he had to say and wished to interview him again in the near future about his allegations regarding Ed Burke. HIGGINS advised that he would make himself available and be flexible for whenever the interview could be conducted.

[Agent Note: Attached to the 1A section of this document are the interview notes from the previous interview of HIGGINS on 4/10/2019 which was documented as Guardian Incident 538461_CI]

Investigation on 04/18/2019 at Centerville, Ohio, United States (Phone)

File # [redacted] Date drafted 04/18/2019

by Patrick A. Gragan

FEDERAL BUREAU OF INVESTIGATION

Date of entry 04/29/2019

On 4/25/2019, Special Agent Patrick Gragan made telephonic contact with Brian HIGGINS. SA Gragan scheduled an interview with HIGGINS for 0730 on 4/29/2019 at the Dayton Resident Agency in Centerville, Ohio.

Investigation on 04/25/2019 at Centerville, Ohio, United States (Phone)

File # [redacted] Date drafted 04/29/2019

by Patrick A. Gragan

May 29, 2020

The Honorable William Barr
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

The Honorable Christopher Wray
Federal Bureau of Investigation
935 Pennsylvania Avenue NW
Washington, DC 20530-0001

Dear Attorney General Barr and Director Wray,

There is a crime of epic proportions (City of Chicago) that I have been reporting for the past 10 years. This vile crime is being carried out by numerous government officials, to include federal, state and local authorities. SEE FLOW CHART With no alternative, I am reaching out to you because it is certain to be of national interest as this may go down as one of the largest public corruption scandals in Chicago's history at a time when the nation is in peril. SEE WHAT ABOUT THE CHILDREN, RAHM? In full disclosure, it should be stated that I am currently awaiting trial in Dayton, Ohio in what the federal government has dubbed, Culture of Corruption. SEE DAYTON DRAGNET OPERATION

From 2004-2011, I was tasked with the sensitive task of transporting the deceased bodies for the City of Chicago, Department of Police. In 2009 the once powerful alderman Ed Burke attempted to extort me in a pay to play demand of 100K. I declined the offer and when my contract came up for renewal, there was a sham evaluation committee that was directed by top City officials, to deem my proposal unresponsive. SEE CODE OF SILENCE DOCS

Since 2010, I have been unearthing a wide spread cover-up that includes a multi-billion dollar federally funded O'hare Modernization Program lead by Jamie Rhee, City of Chicago Aviation Commissioner SEE RAHM LETTER I have met with the local AUSA and federal agents who appear to be in on the cover up. The indictments that have been announced locally have garnered much attention as they all appear to be racially and politically motivated. SEE ESRATI POST It is for these reasons that I am requesting a meeting with your office. You will see that I have reached out to my senator as well as the White House, (Caroline Moore Special Assistant to the President

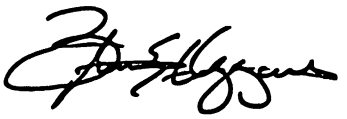
and Director of the Office of the Chief of Staff) who is monitoring this matter. SEE WHITE HOUSE/SHERROD BROWN LETTER

The irony is that the AUSA in my case who is in on the coverup, received the DOJ award for Outstanding Performance by an Assistant U.S. Attorney two days after a meeting that he requested on January 21, 2020 to discuss the coverup. It should also be noted that on May 22, 2020, the AUSA made an informal proffer to my counsel of dismissing all charges. This dismissal is contingent upon me taking a plea of witness intimidation for filing a civil suit against the CHS who stole insurance funds with the knowledge and blessings of the government. CHS 2003 CONVICTION

In closing, the Office of Professional Responsibility investigated a similar case (2013 Investigative Summary 1) in which the OPR determined that the DOJ attorney violated multiple obligations under the United States Constitution, federal statute and case law, DOJ policy and state bar rules. SEE 2013 OPR SUMMARY 1

I am requesting that your office look into this crisis.

Respectfully,



Brian Higgins

Fwd: The Gang That Couldn't Shoot Straight

From: brian higgins (brianehigginsceo@yahoo.com)

To: brianehigginsceo@yahoo.com

Date: Monday, May 16, 2022, 01:54 PM EDT

From: brian higgins <brianehigginsceo@yahoo.com>
Date: January 6, 2022 at 3:29:04 AM EST
To: Ron.A.Klain@gmail.com
Cc: corey.ellis@usdoj.gov, kenneth.parker@usdoj.gov, brent.tabacchi@usdoj.gov, rob.painter@usdoj.gov, Tamara Sack <tsacklaw@gmail.com>, Paul <plaufman@ln-lawfirm.com>, rose_chambers@ohsd.uscourts.gov, criminal.division@usdoj.gov
Subject: The Gang That Couldn't Shoot Straight

Ron-

A man once said, "never avoid a good crisis, it's your opportunity to do the big things you never thought possible and make them possible."

I'm trying to help, not hurt. I fear that you are going to be on the wrong side of history as things are eroding fast. The nation will be watching

Brian

www.whataboutthechildrenrahm.com

Crisis

From: brian higgins (brianehigginsceo@yahoo.com)

To: brianehigginsceo@yahoo.com

Date: Monday, May 16, 2022, 01:56 PM EDT

>
>> On Apr 15, 2022, at 3:20 PM, brian higgins <brianehigginsceo@yahoo.com> wrote:
>>
>> Ron-
>>
>> I think we may have gotten off to a bad start. I am not trying to add to the plate of mess that you already have as I do not envy the seat that you occupy. Soon, I predict the turbulence your administration is currently experiencing is going to intensify as the AUSA, Mr. Brent Tabacchi- Barrister of the Month, (January 2021 Dayton Bar Briefs Report) has put your administration in peril. What has been dubbed, "slam dunk" case, centered around Public Corruption/Accountability here in Dayton, Ohio has turned a muck. The FBI never investigated the 130 million that went unaccounted for at Wright State, only to top it by allowing former mayor of Dayton, Nan Whaley to run for governor of Ohio- when she was the main target in Operation Demolished Integrity.
>>
>> I propose a meeting, to discuss resolution of this matter. If no response by Friday, April 22, 2022, I will assume that there is no interest in your administration discussing the Children. Ambassador Emanuel will be recalled to address the Code of Silence.
>>
>> Respectfully,
>>
>> Brian
>>
>> WWW.WHATABOUTTHECHILDRENRAHM.COM

December 1, 2020

The Honorable Attorney General
William Barr
United States Department of Justice
950 Pennsylvania Ave NW
Washington, DC 20530-0001
VIA USPS70181130000177001195

The Honorable Christopher Wrey
Federal Bureau of Investigation
935 Pennsylvania Ave NW
Washington, DC 20530-0001
VIA USPS70181130000177001201

U.S. Department of Justice Code of Silence Ref # SB301209651

Dear Attorney General Barr and Director Wray,

I realize that my writings are coming at a time when our country is in peril. In the words of the late Dr. Martin Luther King taken from the Birmingham Jail House Letter, "Justice too long delayed, is justice denied." I have bided for someone to address sex crimes against our children. Unfortunately to date, all I have witnessed is the Department of Justice turning a blind eye by protecting sexual predators. What about the children?

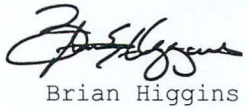
Since my last correspondence, we have had many new developments. First, my case has been deemed "extremely complicated," and thus the Honorable Judge Thomas Rose has assigned yet another CJA to my case. SEE 7/14/20 COURT TRANSCRIPT In addition to this, there has been another judge (Magistrate), Michael Merz deemed an "Interested Party." But the most egregious of all, is my forged signature on an alleged "proffer" for a meeting date yet to occur. SEE PROFFER DATED 1/21/21.

In addition to this spurious document, is a copy of SA Tyler Freeman's 302. What is interesting about this document is that an hour and a half meeting with seasoned FBI agents and a AUSA present yielded such a poorly written 302. There is no mention of me being asked to wear a wire on the sexual predator, being assured a meeting with the Chicago FBI within two weeks, or for me to testify against the once powerful Chicago Alderman Edward Burke. In fact, the 302 is fatally flawed as it contains numerous inaccuracies and mis-statements. What is abundantly clear is that the whitewash that your Department of Justice, FBI and the Chicago Police Department (under consent decree for the Laquan McDonald murder) are in on what will go down as one of the largest public corruption schemes of modern times. SEE SA GRAGEN 302 SEE SA FREEMAN/KEPPLE 302

I petition your office for yet another meeting. The Department of Justice and the Chicago Police Department covering up sex crimes against children may be one of the most vile coverups one could imagine.

I pray these words do not fall on deaf ears.

Respectfully,



Brian Higgins

WWW.WHATABOUTTHECHILDRENRAHM.COM

U. S. Department of Justice
United States Attorney
Southern District of Ohio

Brent G. Tabacchi
Assistant United States Attorney
Phone: (937) 225-2910
Facsimile: (937) 225-2564

602 Federal Building
200 West Second Street
Dayton, OH 45402

January 21, 2021

BY: HAND DELIVERY
Anthony Cicero, Esq.

Re: Brian Higgins

Dear Mr. Cicero:

You have advised me that your client, Brian Higgins, wishes to meet with the United States Attorney's Office for the Southern District of Ohio ("this Office") for the purpose of making a proffer in connection with the above-referenced matter. This Office is willing to meet with you and your client under the following terms and conditions:

(1) You and your client understand that:

(a) this agreement binds only you, your client, and this Office; it does not bind any other law enforcement or prosecuting authority;

(b) law enforcement personnel will be present at the meeting as invited by this Office;

(c) this agreement is limited to the statements made by your client at meetings to be held on January 21, 2021, and does not apply to any statements made by your client at any other time, whether oral, written or recorded;

(d) any information provided by you on behalf of your client is covered by this agreement as if it had been provided by your client;

(e) this agreement does not provide any protections to your client not expressly set forth herein.

(2) Your client will respond truthfully and completely to any and all questions put to your client at the meeting;

(3) Except as otherwise provided in paragraphs four, five, and six herein, in the above-captioned case and in any other prosecution that may be brought against your client by this Office, this Office will not offer in evidence in its case-in-chief during any civil proceeding or criminal prosecution, or offer in evidence in connection with any sentencing proceeding for the purpose of determining an appropriate sentence, any statements made by your client at the meeting;

(4) Notwithstanding paragraph three above, this Office may use:

(a) information derived directly or indirectly from the meeting for the purpose of obtaining and pursuing leads to other evidence, which evidence may be used for any purpose, including any prosecution of your client; and

(b) statements made by you or your client at the meeting and all evidence obtained directly or indirectly from those statements for the purpose of cross-examination should your client testify, or to refute or counter at any stage of any criminal or civil proceedings (including this Office's case-in-chief at trial) any evidence, argument, statement or representation offered by or on behalf of your client in connection with any criminal or civil proceeding.

(5) This Office reserves the right to use any statements or information provided by your client in any prosecution for false statements, obstruction of justice or perjury;

(6) Your client's complete truthfulness and candor are express material conditions to the undertakings of this Office set forth in this letter. Therefore, if this Office should ever conclude that your client has knowingly withheld material information from this Office or otherwise not been completely truthful and candid, this Office may use against your client for any purpose (including sentencing) any statements made or other information provided by your client during the meeting. If this Office so concludes, it will notify you before making any use of such statements or other information.

(7) No plea discussions or negotiations will occur during the meeting, and any statements made by your client during the meeting will not be "plea discussions" or any "related

statement" within the meaning of Rule 11(f) of the Federal Rules of Criminal Procedure or statements "made in the course of plea discussions"
within the meaning of Rule 410(4) of the Federal Rules of Evidence.

(8) No understandings, promises, agreements and/or conditions have been entered into with respect to the meeting or with respect to any future disposition of the charges or any civil action pending against your client other than those expressly set forth in this agreement and none will be entered into unless in writing and signed by all parties.

DAVID M. DEVILLERS
United States Attorney

BRENT G. TABACCHI
Assistant United States Attorney

I, Brian Higgins, have read this agreement contained in this letter and carefully reviewed it with my attorney. I understand it, and I voluntarily, knowingly and willfully agree to it without force, threat or coercion. No other promises or inducements have been made to me other than those contained in this letter. I am satisfied with the representation of my attorney in this matter.

Brian Higgins — 1-21-20
Date

I am Brian Higgins's attorney. I have carefully reviewed every part of this agreement with my client. To my knowledge, my client's decision to enter into this agreement is informed and voluntary.

Anthony Cicero, Esq. — 1-21-20
Date

NAN WHALEY
CRIMINAL ACTIVITY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

IN THE MATTER OF THE APPLICATION
OF THE UNITED STATES OF AMERICA
FOR A WARRANT AUTHORIZING THE
INSTALLATION AND MONITORING OF
A TRACKING DEVICE IN OR ON A 2-DOOR 2005
CHEVORLET COBALT, ORANGE IN COLOR
BEARING OHIO LICENSE PLATE NUMBER
FSY-8551, VEHICLE IDENTIFICATION
NUMBER 1G1AL12F957623479

AFFIDAVIT

I, Todd H. Burkart, Special Agent, Federal Bureau of Investigation ("Affiant"), being duly sworn, herby depose and say:

INTRODUCTION

1. I am a Special Agent with the United States Department of Justice, Federal Bureau of Investigation ("FBI").

2. I have been employed as a Special Agent with the FBI since 2004 and am currently assigned to the FBI resident office in Dayton, Ohio. Prior to my employment with the FBI, I was employed as a Special Agent with the Drug Enforcement Administration ("DEA") from 1999 to 2004. During my time as a law enforcement officer, I have participated in numerous investigations that have resulted in the execution of Federal search warrants and arrest warrants; the seizure of firearms, narcotics, and related contraband; as well the seizure of proceeds directly related to the violation of Federal laws. In connection with my official duties as a Special Agent, I currently investigate violations of federal criminal laws, including offenses involving wire and mail fraud, public corruption, and money laundering.

3. The facts in this Affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses, including from the Ohio

Organized Crime Investigative ("OOCIC") Task Force and other law enforcement officers involved in this investigation. This Affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

PURPOSE OF AFFIDAVIT

4. This affidavit is in support of a warrant authorizing the installation and use of a GPS tracking device on a vehicle driven by WILLIS E. BLACKSHEAR SR ("BLACKSHEAR"), described as an orange 2-door 2005 Chevrolet Cobalt (according to open source databases, Chevrolet replaced the Cavalier with the Cobalt in 2005), further identified by VIN 1G1AL12F957623479 and Ohio License Plate FSY-8551 ("**SUBJECT VEHICLE**"). The **SUBJECT VEHICLE** was initially believed to be a Chevrolet Cavalier and later determined to be a Chevrolet Cobalt. Subsequent references to a "Cavalier" in this Affidavit are referring to the **SUBJECT VEHICLE**. According to the Ohio Law Enforcement Gateway ("OHLEG") database, the only orange Chevrolet currently registered to BLACKSHEAR is the **SUBJECT VEHICLE**. Based on our investigation to date (as detailed below), I believe there is probable cause to believe that the **SUBJECT VEHICLE** driven by BLACKSHEAR is presently being used in furtherance of violations of federal law, including bribery concerning programs receiving Federal funds, in violation of 18 U.S.C. § 666.

5. Affiant further states that there is probable cause to believe that the installation of a tracking device in or on the **SUBJECT VEHICLE**, and use of the tracking device, will lead to evidence of a crime, contraband, fruits of crime and instrumentalities of the aforementioned crimes as well as to the identification of additional individuals who are engaged in the commission of those related crimes.

FACTS ESTABLISHING PROBABLE CAUSE

6. In January 2013, the FBI opened an investigation based in part on allegations that STEVE RAUCH ("RAUCH"), owner of STEVER RAUCH INCORPORATED ("SRI"), a Dayton-based demolition company, bribed state and local politicians in exchange for federally funded demolition contracts in and around the City of Dayton.

7. In April 2013, a former SRI Project Manager (hereafter referred to as Confidential Human Source One "CHS-1") was interviewed. CHS-1 stated that former Dayton Mayor RHINE MCLIN ("MCLIN") and RAUCH had a "tight" relationship and CHS-1 often heard jokes about them being "together." CHS-1 saw pictures of RAUCH and MCLIN together in RAUCH'S office as well as gifts from MCLIN. RAUCH often threatened to "call the Mayor" when he faced issues on Dayton projects. CHS-1 also heard RAUCH state, "I'm going to call the Mayor" on multiple occasions when RAUCH thought SRI wasn't the lowest bidder and therefore unlikely to get a demolition contract. CHS-1 recalled a City of Dayton federally funded demolition contract in excess of $1 million issued to one of SRI's competitors. RAUCH told CHS-1 the competitor had the lowest bid, but failed to meet the city of Dayton's minority subcontractor requirement. The City of Dayton subsequently reassigned the contract to SRI, which CHS-1 suspected occurred because of RAUCH'S relationship with MCLIN rather than the minority subcontractor requirement.

8. In July 2013, a former project estimator and manager (hereinafter referred to a Confidential Human Source Two "CHS-2") of a now defunct demolition company that directly competed with SRI was interviewed. CHS-2 stated that he began bidding on federally funded demolition projects from the City of Dayton in approximately 2009. At the time, SRI did the majority of demolition work for Dayton and it was "very hard to compete" with them in the

bidding process. CHS-2 heard then Dayton Mayor RHINE MCCLIN was RAUCH'S girlfriend at the time. CHS-2 suspected MCCLIN used her influence to ensure RAUCH obtained federally funded demolition contracts because SRI won virtually all bids.

9. In August 2013, a second former SRI Project Manager (hereafter referred to as Confidential Human Source Three "CHS-3") recorded a meeting with DAN FEUCHT ("FEUCHT"), SRI's current controller. During their conversation, FEUCHT stated RAUCH gave MCLIN a "shit ton" of money while she was the Mayor of Dayton. FEUCHT continued that MCLIN used an individual (later identified by FEUCHT as two individuals with one being the current Montgomery County Recorder, WILLIS BLACKSHEAR SR) to pick up the money at SRI's headquarters once every few weeks, "so she [MCLIN] didn't have to ever touch it." While MCLIN was mayor, FEUCHT estimated that RAUCH gave her $100,000 a year. FEUCHT recalled specific occasions when RAUCH would order him to leave money out for MCLIN as follows: "Steve would say, and you know, we need to get $10,000 in cash. So we would get the money, put it in the envelope, seal the envelope, and put it on the front counter. Steve . . . front counter? You know this was at like 5:30 at night. You sure? And he goes, when the door makes the noise. . . or . . . you know, you hear the bell...we used to have a bell on the front door, and he goes, when you . . . when you hear the bell, he goes, let it go."

10. In September 2013, CHS-3 placed an outgoing recorded telephone call to FEUCHT. During a pertinent portion of the conversation, CHS-3 asked FEUCHT to name of the individual who used to come to SRI and get money for MCLIN. FEUCHT reported that there were two individuals, and identified one of them as BLACKSHEAR (the current Montgomery County Recorder). FEUCHT continued that MCLIN used BLACKSHEAR to pick up her money because he was not directly related to her office and, "she couldn't come in herself." FEUCHT

stated that BLACKSHEAR still comes into SRI's headquarters and "Steve still pays his campaign and gives him a little money."

11. On September 21, 2013, the OOCIC Task Force conducted surveillance at the Town and County Shopping Center, Kettering, Ohio. The surveillance was based on CHS-3 information that RAUCH was hosting an annual party and attending guests would park at the Town and County Shopping Center before being bused to his residence. For approximately two hours, agents photographed vehicles and individuals who arrived and were believed to be attending the party. Upon reviewing the photographs, agents observed the **SUBJECT VEHICLE** parked in the lot (see attached photograph).

12. In October 2013, CHS-3 placed an outgoing recorded telephone call to FEUCHT. During a pertinent portion of the conversation, the CHS stated he/she was driving and observed BLACKSHEAR driving an "orange Cavalier." FEUCHT responded, "Yeah, yeah that's what he drives dude." CHS-3 then asked FEUCHT if that is what BLACKSHEAR drives to get his "little pay-offs." FEUCHT responded, " Uh-ha . . . that's what he drives up here. Yeah, you're exactly right." Later in the conversation, FEUCHT stated, "What he [BLACKSHEAR] does is he acts as the intermediary, so NAN (current City of Dayton Commissioner and Mayor Candidate NAN WHALEY) doesn't have to come out here. You know, the City of Dayton Commission doesn't have to come out here. So he [BLACKSHEAR] does all the running. He [BLACKSHEAR] comes out here and collects all the money." Later CHS-3 asked if "even NAN WHALEY is in on that deal?" FEUCHT responded, "Oh yeah. Very much so." Later FEUCHT continued, "He [BLACKSHEAR] comes in here in his little orange Cavalier and he [BLACKSHEAR] takes the money to go to her [NAN WHALEY]."

13. In May and July 2013, United States Magistrate Judge Sharon L. Ovington and United States Magistrate Judge Michael R. Merz signed separate orders authorizing the FBI to install and monitor a pen register for a cellular phone subscribed to and believed to be used by RAUCH. An analysis of pen register data has revealed that the RAUCH's cellular phone had approximately 5 contacts with (937) 416-7953, approximately 2 contacts with (937) 263-5618, and approximately 15 contacts with (937) 222-7978, between June 3, 2013 and August 9, 2013. A review of Dayton Police Department MIS Database revealed that BLACKSHEAR filed a property damage report on October 12, 2011. The report lists BLACKSHEAR's daytime telephone number as (937) 416-7953, home phone number as (937) 263-5618, and work number as (937) 222-7978.

14. Based upon the information above, Affiant believes that there is probable cause to believe that BLACKSHEAR is using the **SUBJECT VEHICLE** described above to pick-up and deliver bribe payments from RAUCH to one or more current and former City of Dayton officials, including members of the City of Dayton Commission, in violation of federal law. As such, the use of a mobile tracking device would allow investigators to track the movement of the **SUBJECT VEHICLE** which may provide evidence of his travel, places where meets with individuals believed to receiving bribes from RAUCH, as well as potential other co-conspirators.

15. In order to track the movement of the **SUBJECT VEHICLE** effectively and to decrease the chance of detection, Affiant seeks to place a mobile tracking device in or on the **SUBJECT VEHICLE** while it is in the Southern District of Ohio. Because BLACKSHEAR parks the **SUBJECT VEHICLE** in his driveway and potentially on other private property, it may be necessary to enter onto private property in order to effect the installation, repair, replacement, and removal of the tracking device. To ensure the safety of the executing officer(s)

and to avoid premature disclosure of the investigation, it is requested that the court authorize installation and removal of the tracking device during both daytime and nighttime hours. The installation of the vehicle during daytime visibility may compromise the investigation.

16. In the event that the Court grants this application, there will be periodic monitoring of the tracking device during both daytime and nighttime hours for a period of forty-five (45) days following the issuance of the requested warrant. The tracking device may produce signals from inside private garages or other such locations not open to the public or visual surveillance.

17. It is requested that the warrant and accompanying affidavit and application in support thereof, as they reveal an ongoing investigation, be sealed until further order of the Court in order to avoid premature disclosure of the investigation, and better ensure the safety of agents and others, except that copies of the warrant in full or redacted form may be maintained by the United States Attorney's Office, and may be served on Special Agents and other investigative and law enforcement officers of OOCIC, federally deputized state and local law enforcement officers, and other government and contract personnel acting under the supervision of such investigative or law enforcement officers, as necessary to effectuate the warrant.

18. In accordance with 18 U.S.C. § 3103a(b) and Federal Rule of Criminal Procedure 41(f)(3), I request that the warrant delay notification of the execution of the warrant for a period not to exceed 30 days after the end of the authorized period of tracking (including any extensions thereof) because there is reasonable cause to believe that providing immediate notification would seriously jeopardize the investigation.

WHEREFORE, your Affiant respectively requests that the Court issue a warrant authorizing members of the FBI and OOCIC Task Force or their authorized representatives,

including but not limited to other law enforcement agents and technicians assisting in the above-described investigation, to install a tracking device in or on the **SUBJECT VEHICLE** within the Southern District of Ohio within 10 calendar days of the issuance of the requested warrant, and to remove said tracking device from the **SUBJECT VEHICLE** after the use of the tracking device has ended; to enter private property to effect the installation, repair, replacement, and removal of the tracking device; and to monitor the tracking device, for a period of 45 days following the issuance of the requested warrant, including when the tracking device is inside private garages and other locations not open to the public or visual surveillance, both within and outside the Southern District of Ohio.

Todd H. Burkart
FBI Special Agent

Sworn to before me this 22nd day of October, 2013

Honorable Michael R. Merz
United States Magistrate Judge

DISCIPLINARY COUNSEL
*EXCLUDES MOST RECENT FILES

OFFICE OF DISCIPLINARY COUNSEL
THE SUPREME COURT OF OHIO

Joseph M. Caligiuri, Disciplinary Counsel
65 East State Street, Suite 1510
Columbus, Ohio 43215-4215
(614) 387-9700 I 1-800-589-5256 I (614) 387-9709 Fax
https://www.odc.ohio.gov

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INSTRUCTIONS

The Office of Disciplinary Counsel investigates allegations of unethical conduct against attorneys and judges, and allegations that an individual or entity has engaged in the unauthorized practice of law. Please understand that our office has no jurisdiction over and cannot involve itself in the legal merits of your case. The disciplinary process will not affect court decisions made in your case. Disciplinary Counsel cannot give legal advice.

ELECTRONIC SUBMISSION: If you are completing this form electronically using the Online Grievance Portal, you must check the box attesting that you are the person listed as the grievant in the "Your Name" portion of the form, or that you have permission from the person listed as the grievant in the "Your Name" portion of the form. When saving the form to your computer, save it as "Last name Grievance." For instance, if your name is Lisa Smith, save the grievance form as "Smith Grievance." Grievances that contain audio or video files, or are over 200 megabytes must be sent via US mail.

SUBMISSION BY US MAIL: If you are submitting this form via the Unites States mail, the form must be completed and signed. Unsigned grievances will be returned. You may attach additional sheets of paper, if necessary, in order to complete the "Facts of the Grievance" portion of the form. If you wish to file a grievance against more than one attorney or judge, please use one form per attorney or judge. You may make additional copies of the form and you may enclose all forms in one envelope. Please complete the form in black ink only and do **not** use pencil, write in between the lines or in the margins of the form, affix post-it notes or stickers to the form, or use staples. If you include documentation with your grievance, send copies only. **PLEASE DO NOT SEND ORIGINALS.** If additional pages are needed, please use only 8 ½ x 11" size paper. After you have legibly completed the form, please sign and date the form.

The Rules of the Supreme Court of Ohio require that investigations be confidential. You are requested to keep confidential the fact that you are filing this grievance. Only the attorney or judge against whom you are filing your grievance may waive confidentiality. In filing a grievance, you are waiving the attorney-client privilege.

The attorney or judge against whom you are filing your grievance are entitled to receive a copy of your grievance and **may** be asked to respond to your allegations. Your grievance may result in your attorney withdrawing from your case. Disciplinary Counsel cannot prevent an attorney from withdrawing from representation.

Once received, please allow up to 90 days to review and respond to your grievance. During that time, we will advise you if we dismiss your grievance or open the matter for investigation. We may or may not contacted you by mail or telephone to provide additional information. We will only respond to inquiries from the person(s) who completed the form.

The Grievance Process

A grievance sent to the Disciplinary Counsel or a local bar association's certified grievance committee will be reviewed to determine whether the grievance alleges a violation of the Ohio Rules of Professional Conduct or the Code of Judicial Conduct. If there is evidence supporting a violation, the grievance will be investigated. Following the investigation, if substantial, credible evidence of a violation exists, a formal complaint may be filed with the Board of Professional Conduct. A three-member panel of the Board will review the complaint and determine whether probable cause exists to certify it. If the complaint is certified by the Board, a hearing may be held before a different three-member panel of the Board. The panel considers the evidence and makes a recommendation to the entire Board. The Board then makes a recommendation to the Supreme Court of Ohio. The Court has the final say on whether to discipline an attorney or judge and what sanction should be imposed. A grievance is confidential until the Board certifies it as a formal complaint. A grievance or complaint can be dismissed at any point in the process. **Please keep this page for your records.**

Grievance Form

Ms. ☐ Mrs. ☐ Miss. ☐ Mr. ☑

YOUR NAME: Higgins (Last) | Brian (First) | E (MI) | 937-671-1995 (Phone No.)

PERMANENT ADDRESS: 865 N. Main Street (Street) | brianehigginsceo@yahoo.com (Email Address)

Dayton (City) | Montgomery (County) | Ohio (State) | 45405 (Zip Code)

ABOUT WHOM ARE YOU COMPLAINING?

(Please circle) ATTORNEY or JUDGE or UPL

NAME: Yost (Last) | Dave (First) | A (MI) | 614-466-1339 (Phone No.)

ADDRESS: 30 E. Broad Street 14th Floor (Street)

Columbus (City) | Franklin (County) | Ohio (State) | 43215 (Zip Code)

Have you filed this grievance with any other agency or bar association? ■ Yes ☐ No

If yes, provide name of that agency and date of filing: SEE EXHIBIT A date: February 27, 2021

Did you receive a response?: ☐ Yes ■ No IF YES, PLEASE ATTACH A COPY

Did this attorney represent you? ☐ Yes ■ No Type of case: Criminal

Date the attorney was hired: N/A Does s/he still represent you?: ☐ Yes ■ No

Did you pay the attorney a fee/retainer? ☐ Yes ■ No If yes, how much?: _____

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If yes, provide name of court and case number _____

Result of court action: _____

Name and contact information for attorney currently representing you, if different than attorney about whom you are complaining:

Paul Laufman 513-621-4556 Tamara Sack 513-225-2887

Does this grievance involve a case that is still pending before a court? ■ Yes ☐ No

If yes, provide name of court and case number: United States Southern District 3:18-CR-00186

What action or resolution are you seeking from this office? EXPOSE THE CODE OF SILENCE THAT PROTECTS SEXUAL PREDATORS

WITNESSES:

List the name, address, and daytime telephone number of persons who can provide information, IF NECESSARY, in support of your grievance.

NAME	ADDRESS	PHONE NO.
Ron Klain	1600 Pennsylvania Avenue Washington, DC	202-776-1405
William P. Barr	950 Pennsylvania Avenue Washington, DC	202-841-7925 (CELL)
Corey Ellis	950 Pennsylvania Avenue Washington, DC	202-252-1300
David DeVillers	200 W. Second Street Dayton, Ohio	937-225-2910

FACTS OF THE GRIEVANCE

Briefly explain the facts of your grievance in chronological order, including dates and a description of the conduct committed by this legal professional. Attach copies (DO NOT SEND ORIGINALS) of any correspondence and documents that support your grievance.

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On January 21, 2020, I met again with Mr. Tabacchi. This time the AUSA was accompanied with FBI Special Agent Lance Keemple (Dayton Office) and SA Tyler Freeman (Chicago Office). In this meeting I was asked to wear a wire on the convicted sexual predator (I declined) and to testify against the once powerful Chicago Alderman, Edward Burke (I agreed). There was to be a followup meeting within 2 weeks at the Chicago Field Office. On December 15, 2020 nearly a year to the date, I met again with Mr. Tabacchi, this time with SA Kepple and Ohio Violent Crime Task Force (BCI) SA Brent Kilpatrick. In this meeting, that I requested, I wanted to know the status of the "two week Chicago meeting" that never took root. From the onset of the meeting, Mr. Tabacchi scolded by telling me that, "I had no right to meet with Chicago FBI or any law enforcement agency." In fact, Mr. Tabacchi stated that he spoke with the Chicago FBI and that they were not interested in hearing what I had to say about sexually abused Children.

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www.whataboutthechildrenrahm.com

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Signature (If submitting by US mail)

Hand Delivered

February 27, 2021

Date

Grievance Form

Ms. ☐ Mrs. ☐ Miss. ☐ Mr. ☑

YOUR NAME: Higgins (Last) | Brian (First) | E (MI) | 937-671-1995 (Phone No.)

PERMANENT ADDRESS: 865 N. Main Street (Street) | brianehigginsceo@yahoo.com (Email Address)

Dayton (City) | Montgomery (County) | Ohio (State) | 45405 (Zip Code)

ABOUT WHOM ARE YOU COMPLAINING?

(Please circle) ATTORNEY or JUDGE or UPL

NAME: Glassman (Last) | Benjamin (First) | C (MI) | 513-361-1248 (Phone No.)

ADDRESS: 201 E. Fourth Street, Suite1900 (Street)

Cincinnati (City) | Hamilton (County) | Ohio (State) | 45202 (Zip Code)

Have you filed this grievance with any other agency or bar association? ■ Yes ☐ No

If yes, provide name of that agency and date of filing: SEE EXHIBIT A date: February 27, 2021

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Harold Deliveneo

Signature (If submitting by US mail)

February 27, 2021

Date

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Dayton (City) | Montgomery (County) | Ohio (State) | 45405 (Zip Code)

ABOUT WHOM ARE YOU COMPLAINING?

(Please circle) ATTORNEY or JUDGE or UPL

NAME: DeVillers (Last) | David (First) | M (MI) | 614-469-5715 (Phone No.)

ADDRESS: 303 Marconi Blvd. Suite 200 (Street)

Columbus (City) | Franklin (County) | Ohio (State) | 43215 (Zip Code)

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Signature (If submitting by US mail)

Hans Deliverer

February 27, 2021

Date

COVER UP DOCUMENTS

EXTREMELY SENSITIVE

January 1, 2019

cc: Ed Siskel

Dear Mayor Emanuel,

A wise man once said, "Never allow a good crisis to go to waste, it is the opportunity to do the big things you never thought possible and make them possible!" By the time you finish reading this, I'm sure you will have mixed emotions as do I. The City has a crisis brewing of epic proportions. Since 2011, the City and CPD has partnered for Transportation of Deceased, with a convicted sexual predator JOHN KLACZAK. A former Thornton, Il. fire chief who had a propensity for hosting cocaine and alcohol parties to 13-year old boys and then performing oral sex on his victims.

This well-orchestrated procurement shift (headed by Jamie Rhee) was the brainchild of Alderman Burke. A Code of Silence set in place (2010) has continued throughout your administration and has grown in complexity and scope. The sexual predator is entering citizens of Chicago's homes to perform the very sensitive task of caring for the deceased. While undertaking this service, medications and money have gone missing, and even ID theft has taken place.

Yet this Code of Silence among certain individuals within your cabinet (as well as current alderman) have allowed this despicable scheme to continue until recently when the City came under fire for the 1000 plus CPS students that have been sexually assaulted over the last 10 years. This opened the door to how the City and your administration protects child predators.

My mother always told me that, I'm judged by the company I keep. We informed the City in 2011 that we had grave concerns regarding the bid that was submitted (they have since been awarded multiple contracts) and that the City should reconsider the company they have partnered with for the sensitive task of caring for the deceased. In our numerous communications we shared that there were stakeholders of this vendor that had been convicted of money laundering, forgery and identity theft. Over the last 8 years, this Code of Silence has enabled this contractor to create an underground international Ghosting

scheme (identity theft of the deceased) to create passports using the identity of the deceased dating back to 2011.

Taylor Made Industries owner Althea Taylor who wrote the 2010 bid for KLACZAK and was a WBE under the City's contract was recently charged in 2018 with fraud by the Cook County States Attorney's for Consumer Fraud and Deceptive Business Practice Act. Furthermore, in October 2018, Mr. KLACZAK attempted to host a birthday gathering of twenty 13 year-old boys at his home. Luckily, one of the parents discovered (Cook County Predator Search) that he was a registered Sexual Predator and cancelled the party.

When this is exposed, the city will face even more scrutiny, which may include:

John Lausch begins an immediate investigation of multiple City departments, including the 5th floor;

Aldermanic offices will be investigated;

All contracts signed under Rhee as DPS chief would immediately come under review;

All pending contracts with the O'Hare Modernization would immediately face federal review due the federal money under Rhee's controls;

Sexually assaulted CPS students will file a class action lawsuit against the schools and the city leaders citing the code of silence discovery;

Riots erupt when families discover that a sexual predator has been allowed to enter their homes as a trusted city vendor charged with the sensitive task of caring for their loved ones;

A total disintegration of trust with the community and CPD as Superintendent Johnson has been willing participant in this code of silence;

The city is forced to notify all family members of the deceased that their loved one's identity has been potentially compromised (dating back to 2011);

The cost to investigate 30,000+ deceased identities would be well above $100M;

2019 Mayorial/Aldermanic races take a drastic turn as several elected officials are implicated in this elaborate scheme;

City officials get charged with RICO violations as members of Burkes and the unofficial City Code of Silence;

45 gets a distraction handed to him and proceeds to blast this great City with devastating results;

Rev Pfleger shuts the City down with a sit-in at City Hall;

Protesters from national sex abuse organizations along with #kidstoo, occupy Michigan Ave;

Stephen Wragg Jr. will become the face of #kidstoo movement as he is a married father of beautiful daughter but was one of Mr. KLACZAK's 13 y/o victims as a fire cadet. The wounds that this will open up for him and many others is unconscionable;

You resign from office within 72hrs of Pfleger's sit-in and Deputy Mayor Robert Rivkin is sworn to finish your term;

I watched your press conference on June 5, 2018 and thought that you were being sincere when you asked for "anyone that has an idea on how 'we' can tighten things up, please come forward, anyone!" I stepped up and have attempted to give your office a pass (incompetent cabinet) but now believe that you not only have had knowledge, but you had sanctioned the Code of Silence.

Recently you denounced Ginger Evans for not coming forward to disclose Alderman Burke's involvement in airport contracts, saying "every person, regardless of position or title, has an ethical and professional and legal responsibility if they see anything that they do not think follows the letter and spirit of the law and report it." I have attempted to report these issues since 2011 which have been swallowed up by the Code of Silence.

There were many good people that tried to assist me in this matter, including the late Alderman JoAnn Thompson and Desiree Tate, along with Tarrah Cooper and Lisa Duarte. Unfortunately, Joe and Ed didn't take my pleas seriously. I want to believe that you are the good human being that teaches 8th grade civics and leads this GREAT City but I'm no longer sure and that, saddens me.

This whole Code of Silence reminds me of the movie, "The Gang That Couldn't Shoot Straight," led by Alderman Burke and Jamie Rhee, instead of "Mr. Smith Goes To Washington."

Perhaps Jasmine should schedule a game of pool at Biggs to discuss.

Best Regards,

"The Higgins Matter"

Here to help, not hurt.
Matthew 10:14

HIGHEST PRIORITY

Carrie M. Austin

Works at City of Chicago
Lives in Chicago, Illinois

2 mutual friends: Montel Michael Gayles and Karen Eng

JAN 29, 6:46 PM

Ald. Austin.. I am the late Ald JoAnn Thompson as well as the late Desiree Tate. I have been attempting to make contact with you for over 6 months as Ms Coleman in your office will attest. Is there anyway we can meet for coffee/lunch?

*friend

MAR 8, 7:27 AM

Brian I've met with you. I have my own priorities I sat and listen to you for 2 1/2 hours. I've tried to connect the appointments that you asked for. However My election was more important to me at the time. Now that the election is over I've spoken to our cooperation council he stayed he have spoke regarding this case The city went to court for it. They see no other reason to meet with you.

MAR 8, 5:55 PM

I respect and appreciate you trying to assist in this sensitive matter. It is unfortunate that the City would not sit down to discuss as there have been many new developments since the 2013 court filing. The Code of Silence within the 5th floor is real! Thank you again for your time. Below is the link that will be going out, perhaps someone should give Ms Preckwinkle a heads up as this will be the fatal blow to her campaign. She appears to be a decent person, I had hoped she would have had a chance to reform the City.

Matthew 10:14
www.whataboutthechildrenrahm.com

What about the children, Rahm? | Chicago Muckrake
whataboutthechildrenrahm.com

Seen

Missed Call Mar 12, 10:49 AM

Carrie missed your call.

Call Back

MAR 27, 5:22 PM

https://youtu.be/qumwVbxx_98

What about the children Rahm?
youtube.com

Wave to Carrie

Allied Services Goup, Inc.

Fire • Water • Mold • Bio-Hazard Cleaning
Reconstruction • Power Washing • Property Preservation
"Your Green Cleaning & Restoration Service"

Cover Letter

Company Background:
Allied Services Group, Inc (ASG) was originally formulated as Stamps Construction in 2008. The company performed General Construction, Project Management and Consulting. In 2009, the name was changed to Allied Services Group, Inc to better serve our customers. Also in 2009, Allied Services Group, Inc acquired Allied Cleaning Services which specialized in the removal/transport of deceased persons. This acquisition was done to once again offer more services to our customers. With the combination of these companies, it has allowed ASG to become one of the largest, full-service removal/transport companies in the Chicagoland/Cook County area.

ASG currently operates 24 hours a day, seven days per week with 40 personnel. The services we provide include: Removal/Transport of Deceased Persons, Biohazard/Crime Scene Cleaning, Mold Remediation, Water/Flood/Fire Damage Cleaning, Property Preservation Services, Bed Bug Inspection/Removal as well as Full Reconstruction Services. Our client base for removal/transport of deceased persons consists of Cook County Sheriff's Department, Metra Commuter Rail, Union Pacific Railroad, Belt Railway and several local Police Departments. ASG's geographic coverage area includes the City of Chicago, the entire south suburbs and entire Cook County area.

Company Principles:

Chief Executive Officer:	John Stamps	25 years
Chief Operations Officer:	Dan Wondaal	10 years
Chief Financial Officer:	Mohammed AbuGhoush	20 years
Site Supervisors:		
1.	Robert Slager	20 years
2.	Dan Newton	20 years
3.	Charles Zohfeld	10 years
4.	Joseph McGowan	10 years

Driver's Licenses: Will be provided upon award of contract via a print out from the Illinois Secretary of State website.

Legal Name of Company and Location:
Allied Services Group, Inc.
14150 S. Western Avenue
Posen, IL 60469

DEPARTMENT OF PROCUREMENT SERVICES

CITY OF CHICAGO

MAY 08 2014

John Klaczak
Allied Services Group, Inc.
14150 S. Western Ave.
Posen, IL 60469

Subject:	Transportation of Deceased Persons
Specification Number:	78727
Contract Number:	25150
Modification Number:	80048
Re:	365 Day Time Extension

Dear Mr. Klaczak:

This is to advise you that the City of Chicago elects to extend the above-referenced Contract for 365 days under the same terms and conditions as the original Contract, all in accordance with the provisions in Article 4 Duration of Agreement, Section 4.3 entitled Agreement Extension Option. The extension will be effective September 1, 2014 through August 30, 2015. Your Agreement requires that you notify the City of any changes in ownership. Complete the online Economic Disclosure Statement (EDS) which includes a Disclosure of Retained Parties. Submit an electronically signed, one page EDS Certificate of Filing which validates that the EDS has been filed. Additionally, the Municipal Code of Chicago requires the disclosure of Familial Relationships with Elected City Officials and Department Heads. The web address to submit your EDS and Familial Relationships Disclosure is: https://webapps.cityofchicago.org/EDSWeb. Furthermore, transmit a current certificate of insurance naming the City of Chicago as an additional insured as required by your Agreement. Submit these documents within seven (7) calendar days of receipt of this letter

If you have any questions concerning this matter, contact Larry L. Washington, Procurement Specialist at 312-744-8981, larry.washington@cityofchicago.org.

Sincerely,

Jamie L. Rhee
Chief Procurement Officer

JLR/llw

cc: File (Specification No. 78727)
Monica Jimenez, Department of Procurement Services
Zainab Adio-Saka, Department of Procurement Services
Jero Medical Equipment Supplies
C & O Auto Rebuilders, Inc.
Taylor Made Industries
Joel Brown

DEPARTMENT OF PROCUREMENT SERVICES

CITY OF CHICAGO

VIA FACSIMILE 708-396-0202 AND U S. FIRST CLASS MAIL

December 16, 2011

Mr. John Stamps
Allied Services Group, Inc.
14150 S. Western Avenue
Posen, IL 60469

Re: Request for Information regarding Contract No. 25150 – Transportation of Deceased Persons (the "Contract")

Dear Mr Stamps:

I am requesting that Allied Services Group, Inc. ("Allied") clarify some issues in regards to its proposal and performance regarding the Contract.

1. Please clarify the relationship between Allied and Allied Cleaning Services, Inc. ("Allied Cleaning") Is Allied Cleaning a separate and distinct company from Allied, or did Allied acquire Allied Cleaning?

2. Please confirm that Allied's Economic Disclosure Statement ("EDS") discloses the names of all its executive officers.

3. Please inform the City of any lawsuits involving Allied, Allied cleaning or any of its officers, especially any lawsuits currently pending before the U.S. District Court for the Northern District of Illinois for alleged violations of the Fair Labor Standards Act

4. Please state any role that John W. Klaczak has in regards to Allied or Allied Cleaning, especially in regards to the services performed under the Contract.

5. Finally, the City has received allegations that Allied employees have not received payment for the first month of services provided to the City of Chicago and that all employees associated with the Contract have been told that they will not receive any payment from Allied for an additional 30 days.

I respectfully request that Allied provide a detailed written response to each of the above issues to my attention, within ten (10) days of receipt of this letter. If you have any questions or concerns regarding the foregoing, please contact me at (312) 742-5080

Sincerely,

James M. McIsaac
General Counsel
Department of Procurement Services

LAW OFFICES
SCHAIN, BURNEY, BANKS & KENNY
Three First National Plaza
70 West Madison Street, Suite 4300
Chicago, Illinois 60602-4252
Telephone (312) 345-5700
Fax (312) 345-5701

Via facsimile 312.744.6810
December 23, 2011

James McIsaac
Dept. of Procurement Services
121 N. LaSalle St.
Room 403
Chicago, IL 60602

RE: Contract no. 25150

Dear Mr. McIsaac:

The undersigned represents Allied Service Group, Inc. ("Allied")

This is in response to your letter dated December 19, 2011.

Allied Cleaning Services, Inc. ("Allied Cleaning") provides certain resources to Allied for which Allied reimburses Allied Cleaning. Allied Cleaning and Allied are separate entities with separate shareholders.

John Stamps is the president of Allied.

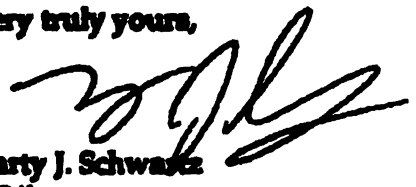
Allied is not involved in any lawsuit except the one filed by GSSP pending in Cook County. Allied does not have any knowledge whether Allied Cleaning is involved in any lawsuits.

John Klaczk has no involvement in Allied. Allied does not know what if any involvement John Klaczk has with Allied Cleaning.

Allied employees have been paid. Allied does not know when or if Allied Cleaning has paid its employees.

Please call me if you have any questions.

Very truly yours,



Marty J. Schwartz
MJS/kr

DEPARTMENT OF PROCUREMENT SERVICES

CITY OF CHICAGO

Via U.S.P.S. and facsimile transmission

February 27, 2012

Marty J. Schwartz
Schain, Burney, Banks, & Kenney
Three First National Plaza
70 West Madison Street, Suite 4500
Chicago, IL 60602-4252
Facsimiles: 312-345-5701

Re: Contract No. 25150 (your letter of December 23, 2011)

Dear Mr. Schwartz:

Your referenced letter raises certain questions set forth below. The City requires comprehensive answers to these questions not later than 10 business days from the date of this letter.

1. Your letter states that "Allied Cleaning Services, Inc. ("Allied Cleaning") provides certain resources to Allied [Service Group, Inc.] for which Allied [Service Group, Inc.] reimburses Allied Cleaning."

- Describe in complete detail the "resources" provided by Allied Cleaning Services, Inc. to Allied Service Group, Inc.

- Detail the form(s) and all amount(s) of reimbursement provided by Allied Service Group, Inc.. to Allied Cleaning Services, Inc.

- Provide all documents authorizing or evidencing the provision of these resources by Allied Cleaning Services. Inc., to Allied Service Group, Inc., including, but not limited to, contracts between the two entities.

- Provide all documents authorizing or evidencing any reimbursement provided by Allied Service Group. Inc., to Allied Cleaning Services, Inc., including. but not limited to, invoices from either entity to the other, and payments by either entity to the other.

2. Your letter states that "Allied Cleaning [Services, Inc.,] and Allied [Service Group, Inc.,] are separate entities with separate shareholders."

- Did Allied Service Group, Inc., incorporate, acquire, or, by another means, become the parent company of Allied Cleaning Services, Inc., before, on, or since August 4, 2010 (the date on which Allied Services Group, Inc., submitted its proposal to the City)?

- If Allied Services Group, Inc., did not incorporate, acquire, or, by another means, become the parent company of Allied Cleaning Services, Inc., before, on, or since August 4, 2010, provide a response that accurately and completely describes the legal relationship of Allied Services Group, Inc., and Allied Cleaning Services, Inc., during each of the following periods:

    - Before August 4, 2010;

    - On August 4, 2010; and

    - Since August 4, 2010.

3. As noted above, your letter states that "Allied Cleaning [Services, Inc.,] and Allied [Service Group, Inc.,] are separate entities with separate shareholders." For the period dating from August 4, 2010, through the date of this letter, please provide the following information:

- Identify each and all shareholders in Allied Service Group, Inc., and each and all shareholders in Allied Cleaning Services, Inc.

- Identify any shareholder of Allied Service Group, Inc., who is (or which is) or has been at any time a shareholder of Allied Cleaning Services, Inc.

- State whether Allied Service Group, Inc., is or has been at any time a shareholder of Allied Cleaning Services, Inc.

- Identify any shareholder of Allied Cleaning Services, Inc., who is (or which is) or has been at any time a shareholder of Allied Service Group, Inc.

- State whether Allied Cleaning Services, Inc., is or has been at any time a shareholder of Allied Service Group, Inc.

- If not disclosed by your response(s) to the previous questions, please identify any other person or entity that owns or controls Allied Service Group, Inc., Allied Cleaning Services, Inc., or any majority or minority interest in either entity or both entities.

4. At any time since the execution of Contract 25150, did Allied Service Group, Inc., sub-contract to any person or entity the transport of deceased persons in the City of Chicago?

Thank you for your prompt attention to this request for information. Please call me at 312-742-5080 if you have any questions.

Sincerely,

James M. McIsaac
General Counsel
Department of Procurement Services
312-742-5080

cc: Diane M. Pezanoski, Department of Law
Alan H. Neff, Department of Law

LAW OFFICES
SCHAIN, BURNEY, BANKS & KENNY
Three First National Plaza
70 West Madison Street, Suite 4300
Chicago, Illinois 60602-4252
Telephone: (312) 345-5700
Fax: (312) 345-5701

Via facsimile 312.744.0010
March 19, 2012

James McIsaac
Dept. of Procurement Services
121 N. LaSalle St.
Room 403
Chicago, IL 60602

RE: Contract no. 25150

Dear Mr. McIsaac:

This is in response to your letter dated February 27, 2012.

1. Please note that Allied Cleaning Services, Inc. ("Allied Cleaning") no longer provides resources to Allied Service Group, Inc. ("Allied Service"). The resources were previously being provided pursuant to an oral agreement. In light of that fact, do you still need the information requested in paragraph 1 of your letter?

2. Allied Cleaning and Allied Service did not and have not had common shareholders, directors or officers. From time to time, some employees of Allied Cleaning worked for Allied Services and vice versa. At one time, there was an oral agreement for Allied Services to acquire Allied Cleaning. However, the parties were never able to agree on the terms of a written agreement, and therefore abandoned the oral agreement.

3. John Stamps is and always has been the sole shareholder, corporate officer and director of Allied Service. Stamps was president of Allied Cleaning in 2010. Neither Stamps nor Allied Services are shareholders, officers or directors of Allied Cleaning. John Stamps owns and controls and has always owned and controlled Allied Service. Stamps does not know the current corporate structure of Allied Cleaning.

4. Allied Service has never subcontracted the transport of deceased persons in the City of Chicago.

Please call me if you have any questions and if you still need the information for question no. 1.

Very truly yours,

Marty J. Schwartz
MJS/lz

September 12, 2011

Ms. Jamie Rhee
Chief Procurement Officer
Department of Procurement Services
City of Chicago - City Hall
121 North LaSalle Street, Fourth Floor
Chicago, IL 60602

Re: Post-Award Protest Regarding Contract Number 25150 To Conduct the Transportation of Deceased Persons Within and for the City of Chicago.

Dear Chief Procurement Officer Rhee:

As you aware, GSSP Enterprise, Inc. (hereinafter "GSSP") previously transported deceased persons under City of Chicago contract Specification No.: 41469 B. This contract expired on August 31, 2011. As you are also aware, on August 26, 2011, you awarded Allied Services Group, Inc. (Allied Services) a new contract to transport deceased persons for the City of Chicago under Contract Number 25150.

This correspondence is GSSP's "Post-Award Protest" of the award to Allied Services. Respectfully, GSSP requests that after review of this letter and the arguments contained within, that you deem Allied Services' recent award to performed the transportation of deceased persons for the City of Chicago Null and Void. Moreover, GSSP requests that upon your determination nullifying the subject contract, that your office issue a new Request of Proposal (RFP) that insures the next solicitation is fair for all potential bidders by abiding by the instructions, terms, conditions and rules presented in that future RFP.

Background:

GSSP filed a Pre-Award Protest on June 10, 2011 and you subsequently denied that protest. On August 26, 2011, you awarded Allied Services Group, Inc. with the contract to perform such services as provided in Specification No. 78727, or Contract Number 25150. GSSP makes this Post-Award Protest pursuant to Section I(C)(3) of the Solicitation and Contract Process Protest Procedures. The protest is made within ten (10) working business days of the award.

Basis for Protest

GSSP submits that the evaluation and Award of Contract No. 25150 to Allied Services Group, Inc. was conducted erroneously and resulted in an unlawful award to Allied Services for the following reasons:

Allied Services' Bid Submission Was Late:

Allied Services' bid response should not have been accepted by your office because it was late, or untimely per the instructions provided in Specification Number 78727 (the RFP). The subject RFP stated that "Proposals must be received [in the Department of Procurement Services' Bid and Bond Room] no later than 4:00 p.m., Central Standard Time, on Thursday, July 27, 2010".

Allied Services' bid response was not received by the Bid and Bond Room on July 27, 2010 by 4:00 p.m. In fact, you did not receive a correspondence from Allied Services until August 2, 2010. In that correspondence Allied Services asked that you accept its late bid response by stating that its was confused as to where bid responses should have been delivered. You responded immediately to Allied Services'

letter on August 2, 2010. In your letter you informed Allied Services that the law was clear that bids must conform to the advertised requirements of the invitation to bid. However, you went on to state that because the bids had not been read out loud you believed no vendor would receive a competitive advance by allowing Allied Services to submit its bid late. You further stated in your letter to Allied Services that you would accept Allied Services' late bid as long as it was received by you by the close of business on August 3, 2010.

As you know, you did not receive Allied Services' bid response on August 3rd. You received Allied Services' bid response on August 4, 2010 at 11:10 a.m. Consequently, Allied Services was allowed to miss two dates before submitting its bid response to your office.

GSSP's Argument:

GSSP argues that the test that you should have applied in determining whether to accept Allied Services' late bid response was not whether the bids had been read out loud. Rather, the test that you should have applied was once the bids were read by anyone and/or shared with anyone else in your department, the door to receive bids from any other firms interested in this procurement should have been closed forever. This action should have taken place to prevent even good intentioned people within your department from inadvertently sharing this information with others, or intentionally sharing this information with others outside of your department prior to your award of the contract.

With all due respect to you and your office, you erred in allowing Allied Services to submit their bid late because there was a strong likelihood that once the bids were opened someone could have easily shared this information with Allied Services or any other vender interested in this contract opportunity.

The question therefore, is not whether someone did share this information. The question that should have been considered was "if I allow others to respond late to this RFP could the previously received pricing information be shared with others who have not yet submitted their bid responses"?

Because of the number of days that went by before Allied Services submitted its bid response to your office, the likelihood was great that someone in your office could have share pricing information with a fellow department employee, someone at the Police Department, or someone at Allied Services. Life experience dictates, that someone communicated with Allied Services prior to submittal of its bid response. If this were not the case, Allied Services would have submitted its response, that they claim was ready to be submitted on July 27, 2010 (but for their inability to find the Bib and Bond Room), before the close of business on the 27th, or submitted it the first thing in the next morning on the 28th, or on the 29th , or on the 30th, or even on the 2nd of August. The facts tend to favor that Allied Services waited until it had enough information regarding the previously submitted bids before submitting its own bid.

We therefore contend that the longer you provided Allied Services with time to submit its bid, the greater the likelihood someone within your department, or within the ultimate user department, could have shared competitive details regarding this procurement with Allied Services either intentionally, or unintentionally. Therefore, if the potential existed that such information could have been shared with Allied Services or other interested firms, late bids should not have been accepted. This is the test that you

should have been applied in determining whether to accept any bids beyond the stated date presented in the RFP.

In light of this argument, GSSP requests that you reconsider its protest and deem the Allied Services contract Null and Void and move to engage GSSP on an emergency basis to transport deceased persons in Chicago until a new RFP can be issue, evaluated and awarded.

Allied Services' EDS Information is Incorrect:

In addition to the error that occurred in accepting Allied Services' late bid, your office also failed to properly investigate and validate the information provided by Allied Services on its Economic Disclosure Statement. If such an investigation and validation had taken place your office would have learned that Allied Services had provided false information to the City of Chicago regarding its corporate structure and key personal.

Specifically, the contract that you have signed on behalf of the City of Chicago is with Allied Services Group, Inc. However, the business license you received from Allied Services Group, Inc. was for Allied Cleaning Services which conducts business out of the Village of Posen. In fact, much of the information provided by Allied Services relative to its references were submitted under the name Allied Cleaning Services, Inc. The President of Allied Cleaning Services, Inc. is Joseph McGowan, who is also part of the corporate structure of Allied Services Group, Inc. Based on the references provided and the personnel identified by Allied Services in its organization chart present to the City, it appears Allied Cleaning Services, Inc. will perform much of the work associated with the City's contract for the removal of deceased persons.

In conducting our research on this matter, we have determined that John W. Klaczak, one of Allied Cleaning Services, Inc.'s owners, was recently convicted of Aggravated Criminal Sex Abuse of a Victim 13 to 18 years old. (Information regarding this matter has been provided for your review). No where in the EDS provided by Allied Services did we find this relationship disclosed by the Allied Services. This is a clear violation of the City's procurement award process as it relates to disclose of information associated with business affiliates. Consequently, Allied Services' contract with the City must be nullified and voided.

Moreover the compiled financials provided by Allied Services were inaccurately presented in their current form. Per the Secretary of States database, Allied Services was incorporated in 2008 yet they have provided financials for 2007. On its face, this is a clear fabrication and as a result, Allied Services should have been disqualified for this willful and blatant fabrication of its financial history.

Additional Factors To Consider:

Respectfully, you also erred in awarding Allied Services the subject contract when you allowed it to amend its MBE participant based on the owner's prior felony record. Specifically, you allowed Allied Services to change its MBE subcontractor when it was communicated to you by GSSP that she had a prior felony record and had served time in prison. Presumably, in determining the eventual vendor to be selected for this contract award, the Evaluation Committee would have reviewed the entire "team" in reaching its award decision. The Evaluation Committee should have been allowed to considered the

entire compliment of vendors in making its decision. Had it known of this MBE's criminal background, the Committee likely would not have selected Allied Services.

Communications in violation of the Specifications:

As you are also aware, the specifications in the RFP also required that all communications between a proposer and the City be conducted by and through the Procurement Department. Unfortunately, based on facts known to us, direct communication occurred between Allied Services and the user department, the Chicago Police Department. This is a clear violation of the City's Procurement processes and procedures.

Summary:

As you can discern from the facts provided in this correspondence, errs and omissions to the procurement process were made throughout the course of this procurement and its award. It is not our intention to embarrass you or the City of Chicago. We simply request that you use the powers granted to you in your capacity as the City's primary contracting officer to nullify and void this contract and reissue the associated RFP so that the process may be conducted in a fair and open manner. GSSP stands ready to assist the City as you prepare your new RFP for their critical service.

Respectfully Submitted,

Montel Gayles
Hinshaw & Culbertson LLP
222 N. LaSalle Street, Suite 300
Chicago, IL 60601

Anthony R. Cicero
General Counsel for GSSP Enterprise Inc.
500 E. Fifth Street
Dayton, Ohio 45402
(937) 424-5390 phone
(937) 424-5393 fax

Brian E. Higgins
CEO of GSSP Enterprise Inc.
175 North Harbor Drive
Chicago, Illinois 60601
(312) 297-0013

Enclosures

October 7, 2011

Ms. Jamie Rhee
Chief Procurement Officer
Department of Procurement Services
City of Chicago – City Hall
121 North LaSalle Street, Fourth Floor
Chicago, IL 60602

Re: Post-Award Protest Regarding Contract Number 25150 to Conduct the Transportation of Deceased Persons within and for the City of Chicago

Dear Chief Procurement Officer Rhee:

GSSP Enterprise, Inc. (GSSP) thanks you and the City of Chicago for allowing us to amend our Post-Award Protest of Contract Number 25150, a contract that was awarded to Allied Services Group, Inc. (Allied Services) for the transport of deceased persons within the City of Chicago. Documents that should be considered and which are referenced in this Protest are:

1. All supplemental material provided with the Post-Award Protest filed September 12, 2011.
2. All bid proposals submitted in response to the solicitation (Available on request)
3. All Illinois Secretary of State public records pertaining to Allied Services and Allied Cleaning (previously submitted, but available again on request)
4. Fair Labor Standards Act lawsuit information in the Northern District of Illinois against Allied Cleaning (previously submitted, but available again on request)
5. Criminal conviction and Sexual Predator designation information of an Executive of Allied Cleaning, John Klaczak (previously submitted, but available again on request)
6. Vendor Selection Recommendation, dated March 9, 2011 (Attached)
7. Evaluation Summary vote tabulations of the EC (Attached)

GSSP believes that the decision you made to award the subject contract to Allied Services Group, Inc. was based on an erroneously conducted evaluation by the City Evaluation Committee, which resulted in an unlawful and unfair contract award to Allied Services. Moreover, GSSP also believes Allied Services' bid response should not have been accepted by your office considering it was submitted nine days after the deadline mandated by the expressed language of the Request for Proposal (RFP). Respectfully, in choosing to accept Allied Services' late bid, you abused your discretion as the City's primary purchasing agent and undermined the integrity of the sealed bidding process.

However, even assuming an Illinois court would grant you the power and discretion as the City's Chief Procurement Officer to accept late bid submittals, Allied Services' bid response should have never have been deemed responsive because it was incomplete, misleading and inaccurate relative to the mandates established in the RFP. In particular, Allied Services failed to disclose its relationship with Allied Cleaning Services, Inc. (Allied Cleaning) and that

company's existing litigation in a U.S. Northern District Court. Moreover, Allied Services failed to provide any client references that would evidence or offer proof of its capacity and ability to provide the transport of deceased persons on the scale required by the City of Chicago.

GSSP argues through this protest that it should have been awarded the subject contract, as it was the most responsive and responsible bidder. Further, per the language of the RFP, the City sought through the issuance of the RFP to locate and contract with a firm who possessed the expertise, experience and capability to perform the services required. GSSP believes that had there been an objective evaluation by the City's Evaluation Committee of all the vendors participating in the RFP process Allied Services, Bud Specialties, Midwest Medical Services and GSG Consultants would have all been deemed non-responsive and at a minimum, had the City not awarded the contract to GSSP, it would have elected to re-bid the RFP. However, based on GSSP's expertise, experience and capacity to perform the services requested, as evidenced by our past seven year performance of this service for the City, it is clear that GSSP was the most responsive and responsible respondent to the RFP.

Consequently, GSSP requests that you declare the current contract with Allied Services, number 25150, to be deemed null and void and determine the remaining bidders non-responsive and award this contract to GSSP. Alternatively, GSSP would request a re-issuance of the RFP for the services in question, so that this contract may be lawfully and fairly awarded.

GSSP recognizes the highly important nature of the services performed under the contract and the harm to the City that would result from an abrupt cessation of services. Thus, we are willing to enter into an emergency contract with the City of Chicago to transport deceased bodies for 180 days or for as long as it would take the City to re-issue, evaluate and award a new contract to a qualified, responsive and responsible bidder.

ALLIED SERVICES GROUP, INC. SHOULD NOT HAVE BEEN CONSIDERED FOR THE CONTRACT AWARD OWING TO ITS LATE BID SUBMISSION

The Chicago Department of Procurement Services and its Chief Procurement Officer enjoy some degree of discretion in decisions relating to the awarding of public contracts.1 Neither the Municipal Purchasing Act2 nor the Chicago Municipal Code3 prohibit the acceptance of late bids.4 Thus, the decision to accept Allied Services' late bid was a discretionary decision. However, the decision to accept Allied Services' late bid in this instance was an abuse of discretion.

---

1 Ch. Mun. Cd. § 2-92-010 *et seq.*

2 *But see* 44 Ill. Adm. Code 1400.2505(a)(2) (prohibiting the acceptance of late bids or proposals unless received prior to the contract award and the late bid or proposal would have been timely but for the fault of personnel of the Treasure's office).

3 *Williams Bros. Const. v. Public Bldg. Com'n of Kane Cnty.*, 612 N.E.2d at 895 (quoting *Leo Michuda & Son Co. v. Metropolitan Sanitary District of Greater Chicago*, 422 N.E.2d 1078 (Ill. App. Ct. 1981)).

4 *Id.* "Although a 'minor' variance does not require rejection of the proposal, a 'material' variance will require rejection of the proposal."

The front page of the RFP asserted that all "proposals must be received no later than 4:00 p.m., C.S.T., on Thursday, July 8, 2010." As you are aware, the submittal date for this RFP was later amended to July 27, 2010 by the City with notice provided to all interested parties.

Allied Services failed to submit its bid by the July 27, 2010 deadline as required by the language of the RFP. In fact, Allied Services failed to submit its bid response on August 3, 2010 after being informed by the you that its bid proposal must be delivered to you by the close of business on August 3, 2010 to be accepted. Allied Services subsequently submitted its bid response to the City on August 4, 2010. Consequently and unfairly to the other vendors who spent the time, effort and money to meet the requirements mandated by the RFP, Allied Services was given three bits at the submittal apple before it decided on its own terms to submit its RFP to the City.

ALLIED SERVICES GROUP, INC. SHOULD NOT HAVE BEEN CONSIDERED FOR THE CONTRACT AWARD OWING TO ITS NONRESPONSIVE BID

All bids must conform to the requirements of the invitation to bid, or the RFP.5 Nonconforming, or nonresponsive, bids cannot be accepted. All participants in the sealed bidding process must meet the requirements of the RFP. Arbitrarily allowing certain parties to deviate from the requirements undermines the integrity of the process. To ensure equality, when a bid materially varies from the invitation, it must be rejected.6 If a bid contains a material variance, the purchasing agency cannot allow the mistake to be corrected after the bids have been unsealed.7

Allied Services Group, Inc. did not meet the requirements of Section 5.2 of the RFP to be deemed responsive during Phase I (Preliminary Proposal Assessment) of the Evaluation Committee's review of the bids based on material defects to its Cover Letter, Economic Statement, Exhibits 1 and 2, and because of Allied Services' omission of other critical information requested through the bidding process.

Allied Services Group, Inc.'s Cover Letter misrepresented its experience and background relative to its ability to transport deceased persons. Allied Services Group, Inc. also misrepresented its business relationship with Allied Cleaning Services relative to the role this company would assume in the implementation of this City contract.

Allied Services Group, Inc.'s Cover Letter included in its RFP bid response states that it "acquired" Allied Cleaning Services, Inc. in 2009. The use of the word "acquired" leads one to reasonably assume that after purchasing Allied Cleaning Services, Inc. this company and all its functions and operations were legally merged into Allied Services Group, Inc.'s operational structure and that as a result of this acquisition the two companies became one legal recognized entity in the eyes of the State of Illinois. However, upon a review of the Illinois Secretary of State's database it can quickly be determined that after being "acquired" by Allied Services,

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5 *Id. See also City of Chicago v. Mohr*, 74 N.E. 1056, 1058 (Ill. 1905) ("It is obvious that to allow the change of a bid in any material respect after the bids are open is a clear violation of the purpose, intent, and spirit of the law.")
6 In what appears to be an intentional deception by Allied, it only provided its own telephone number and email address as contact information for its references, making them more difficult to verify.
7 65 ILCS 5 § 8-10-4.

Allied Cleaning Services, Inc. remained a separate and distinct company from Allied Services Group, Inc.

As of this writing, Allied Cleaning maintains its own office headquarters at a separate business address than that of Allied Services. Moreover, Allied Cleaning also has its own management structure in which its President is Joseph McGown. Per the Secretary of State's database, Allied Services Group, Inc. and Allied Cleaning Services, Inc. are in fact two separate and distinct companies under Illinois Corporation law.

The fact that Allied Services and Allied Cleaning are separate legal entities is important because Allied Services' Cover Letter attempts to convey that by "acquiring" Allied Cleaning in 2009, Allied Services now possesses the specialized services to remove and transport deceased persons when in fact, this is not true. Allied Services Group, Inc. and Allied Cleaning Services are two different companies operating out of two different headquarter offices with two different addresses and two different Presidents. Thus stated, as a business, Allied Services has never transported a deceased person in its short three year history. As indicated in Allied Services Group, Inc.'s Cover Letter, any experience in the transport of deceased persons rests and resides in total with a separate business entity, known as Allied Cleaning Services, Inc.

Accordingly, Allied Services Group, Inc.'s Cover Letter fails to provide the "true" nature of its relationship with Allied Cleaning and whether Allied Cleaning is a joint partner, subcontractor or affiliate that will be used and subcontracted to satisfy the requirements and fulfillment of this City contract. Allied Services' Cover Letter also fails to provide the City with the names of the principals and executive officers involved in the management and operations of Allied Cleaning.

As previously stated, the State of Illinois' Secretary of State database indicates Joseph McGown is the President of Allied Cleaning. Moreover, it is also important to note that the Secretary of State's database does not indicate Allied Services Group, Inc. has filed for permission with the state to "do business as" Allied Cleaning Services, Inc. Therefore, there is little confusion, Allied Services and Allied Cleaning are not the same company and as a result, Allied Services should have provided the City with information regarding the nature of their relationship with Allied Cleaning pursuant to the RFP. Because Allied Services failed to provide this information in its bid and EDS, the Evaluation Committee, as well as you, should have deemed Allied Services' bid non-responsive.

Allied Services Group, Inc.'s bid should have also been deemed non-responsive because its Economic Disclosure Statement did not, and currently does not, provide the names of its own executive officers, or the nature of its relationship with Allied Cleaning.

Although Allied Services Group, Inc. provided the name of its Chief Executive Officer (John Stamps) and included the names of Allied Services Chief Operations Officer (Dan Wondaal) and its Chief Financial Officer (Mohammed AbuGhoush) in its Cover Letter to the City, these names and title of its executive officers were omitted from its EDS. Failing to provide the names of these parties was no oversight by Allied Services Group, Inc. On several separate occasions Allied Services had an opportunity to provided these names and executive officer titles in its EDS but failed to do so as required by City ordinance. Allied Services failed

to provide this information when it initially submitted its Economic Disclosure Statement (EDS) on June 22, 2010 under EDS Number 7280, it failed again to provide this information in a second EDS submittal filed on August 18, 2011 under EDS Number 24305; it failed once again to submit this information to the City when it amended its EDS under EDS Number 24305 on September 29, 2011. Because of its failure to provide this mandatory information to the Department of Procurement Services, Allied Services should have been deemed non-responsive for this bid opportunity.

Allied Services Group, Inc. also failed to inform the City of the nature of its relationship with Allied Cleaning Services, Inc. in its EDS response.

By failing to inform the City of its "true" relationship with Allied Cleaning Services, Inc., Allied Services greatly impeded and diminished the City's ability to conduct the necessary and required due diligence of Allied Cleaning Services, Inc.'s background, as well as the background of its executive officers. It is likely that had the City known that Allied Cleaning Services, Inc. was a separate and distinctly different company from that of Allied Services Group, Inc., the City would have learned that Allied Cleaning Services, Inc. and two of its executive officers, Joseph McGown (President) and John W. Klaczak were currently defendants in a U.S. Northern District Court case for an alleged violation of the Fair Labor Standards Act, 29 U.S.C. Section 201, et. seq. Moreover, further research into this matter may have lead the City to learn that John W. Klaczak, who is a current Allied Cleaning Services executive, was also convicted on September 28, 2005 of Criminal Sexual Assault on a Minor in which the victim was between the age of 13 and 18. Further, the City would have also learned that Mr. Klaczak's conviction was a First Degree Felony in Illinois.

The City was not allowed the opportunity to learn of these critical facts because Allied Services Group, Inc. failed to provide details of its true relationship with Allied Cleaning Services, Inc. This critical omission of required EDS requested information likely lead to the Evaluation Committee's conclusion that Allied Services was a responsive vendor under Section 5.2 of the RFP. Alternatively, Allied Services likely did not provide this information to the City because it wanted the City to view them in the most favorable and responsible light.

Further, Allied Services should have been deemed non-responsive because it failed to provide a Company Profile (Exhibit 1) that profiled critical information about its business. The information that Allied Services did provide on its Exhibit 1 response was all related to Allied Cleaning Services, Inc., it failed to provide information relative to Allied Services. As previously argued by GSSP, Allied Services and Allied Cleaning are two separate companies under two different corporate file numbers maintained by the Illinois Secretary of State; Allied Cleaning is listed by the Secretary's Officer under Corporate File Number 66933814 and Allied Services is listed under Corporate File Number 66047563. Each of the file numbers is an active number currently being maintained by the Secretary of State.

Allied Services should have also been deemed non-responsive because it failed to provide accurate Company Reference/Client Profile Information on the Exhibit 2 forms it submitted to the City of Chicago along with its bid response. Specifically, each Exhibit 2 that Allied Services provided to the City as proof of their ability to perform the requested service contained the contact name of an Allied Cleaning Services project manager, Dan Newton. One of these

references, pertaining to the Oak Forest Police Department also failed to include the initial and final contract amounts of the work allegedly being performed for this client. A failure to provide this information surely prohibited the Evaluation Committee from determining whether Allied Cleaning had the required experience and capacity to perform the services requested in the City's RFP. What Allied Services presented on the Exhibit 2 forms certainly did not allow the Evaluation Committee to determine it had the required experience and capacity to perform the services in question.

Page 14 of the specifications, Section 5.2(3)(B) sets forth the requirements for a respondent's Exhibit 2. It specifically states, in underlined emphasis, that "experience will not be considered unless complete reference data is provided. At a minimum, the following information must be included for each client reference." The section continues by setting forth the detailed requirements. As set forth above, Allied's Exhibit 2 failed to meet these requirements.8 This section of the bid specifications does not give the Evaluation Committee the discretion to ignore these requirements. However, the EC, and you in concurring with it, did ignore the requirements of the specifications, as illustrated by the attached votes Allied Services garnered for its "experience."

If the specifications provide for no discretion on a matter contained therein, and the requirements on that matter are not followed, that action is an arbitrary and unreasonable, if not capricious abuse of discretion.

8 *Compass Health Care Plans v. Bd. of Ed.*, 617 N.E. 2d 6, 9 (Ill. App. Ct. 1992).

ALLIED SERVICES GROUP, INC. SHOULD NOT HAVE BEEN AWARDED THE CONTRACT BECAUSE IT WAS NOT THE MOST RESPONSIBLE BIDDER

As the contract at issue is a professional contract, the Department of Procurement Services (DPS) was not obligated to award the contract to the bidder with the lowest price.9 When an award is made without fraud, unfair dealing, or favoritism, the award can be granted to the most responsible bidder regardless of price.10 The purchasing agency determines what criteria the bidders must meet to be considered responsible candidates.11 In the instant case, DPS asserted that it was seeking solicitations from financially solvent companies possessing "expertise, experience and the capability" to perform under the contract. Those companies failing to meet this standard should have been excluded.

The Evaluation Committee failed in its evaluation of the bidders to select the most responsible bidder amongst those eligible bidders. Allied Services was not a responsible bidder because it was and is not financially solvent, nor did it demonstrate in its bid response that it has the capacity to provide the level of service required in the RFP.

GSSP has learned from Allied Services employees that they have not received payment for the first month of services provided to the City of Chicago. Further, GSSP has also learned that all employees associated with this City contract have been told that they will not receive any payment from Allied Services for an additional 30 days. Consequently, Allied Services employees are being asked to wait 60 days before they receive their first payment from this contract.

Allied Services inability to pay its workers on a timely basis is clear and convincing evidence that it did not and does not have the financial solvency to implement the terms and conditions of the City's contract to transport deceased persons.

Moreover, had the Evaluation Committee properly reviewed the Client References provided in Exhibit 2 of Allied Services' bid package, it would have learned that Allied Services did not have the needed experience to carry out the terms and conditions of the services requested. Per the annual revenue and expense reports provided by Allied Services in its bid package submitted to the City, Allied Cleaning had only earned $13,741.00 in revenue associated with the transport of deceased persons in 2007, $21,500 in 2008 and $22,635 in 2009. (Of special note, Allied Services provided the City of Chicago with Client Reference Information for the Oak Forest Police Department in which Allied Services claims Allied Cleaning was awarded this contract in 2002. Please be aware that Allied Services was incorporated in 2008 and Allied Cleaning was incorporated in 2009. It is not possible that either of these companies was awarded the contract from the Oak Forest Police Department in 2002, neither company existed at that time).

It defies logic that the Evaluation Committee would award Allied Services with four (4) Highly Qualified votes in the area of "experience" in the transport of deceased persons when their combined revenue earned for such a service was little over $50,000 for a combined three (3) year period. Moreover, it also defines logic that the Evaluation Committee did not challenge

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9 *Id.*

Allied Services on the references it provided when each reference provided was in the name of a separate and distinct third party vendor with one reference alleging that Allied Cleaning provided transport of deceased persons services dating to 2002 at a time when neither Allied Services nor Allied Cleaning existed.

As set forth above, the actions of the Evaluation Committee defy logic. Attached is the Vendor Selection Recommendation submitted to the Interim Superintendent of CPD, Terry Hillard. The recommendation is dated March 9, 2011. This is almost 8 months after the original deadline for the submission of bids, yet only 2 meetings are referenced in the report, and maybe a third could be inferred. Regardless of the number of meetings, the report illustrates that the committee did nothing other than review the proposals submitted and cast votes based upon that review. There was no independent investigation.

The fact that there was no independent verification of the information included in proposals may be justified for some types of contracts. However, due to the nature of this contract, the requirements of the specifications, and the circumstances that presented themselves even from a simple review, as was allegedly done, the failure to do so in this instance renders an award to Allied Services unlawful.

The simple review that the Evaluation Committee claims to have done should have raised questions. The EC could see that Allied was presenting financial information for a company that by its own admission was not even in existence the years referenced in the financials. The EC could see from the information submitted that Allied Services and Allied Cleaning appeared to be two separate companies. The EC could see that all experience seemed to come from Allied Cleaning as opposed to Allied Services. And, the EC could see that Allied did not comply with the mandatory requirements of Section 5.2(3)(B). The questions should have been investigated. The failure to have done so has resulted in a non-responsive and irresponsible company being awarded the contract.

Because of the aforementioned facts, evidence and the case law presented in support of GSSP's Post-Award Protest, GSSP requests that you deem Allied Services was neither a responsive nor a responsible bidder at the time of its bid submittal, or as of this writing and consequently, render its contract with the City of Chicago null and void.

GSSP ENTERPRISES, INC. SHOULD HAVE BEEN AWARDED THE CONTRACT BECAUSE IT WAS THE MOST RESPONSIVE AND RESPONSIBLE BIDDER

Except for GSSP, none of the remaining bidder who submitted responses to this bid should have been determined responsible bidders by the Evaluation Committee. As the Vendor Selection Recommendation letter to the Interim Superintendent of Police, Terry Hillard stated, none of the remaining bidders (Midwest Medical Services and GSG Consultants had the required experience to perform the massive task of transporting more than 3,000 deceased persons each year. Amazingly, Midwest and GSG scored higher than GSSP although combined, neither had ever transported one deceased person in a professional capacity. The Evaluation Committee should have found each of these vendors "Not Qualified" using the same rational it used to reach the conclusion that Fellowship Fleet was not qualified, none of the other vendors to submit bids were in the business of transporting dead people.

Even granting the fact that a Procurement Department generally has broad discretion in matters of this nature, the Evaluation Committee's votes, as illustrated by the attached vote sheet utilized to make the Vendor Selection Recommendation, are a conglomeration of arbitrariness, irrationality, and capriciousness. These are the hallmarks of an abuse of discretion. There can be no legitimate explanation for why Allied's proposal got 4 Qualified votes for meeting the MBE/WBE requirements when it did not meet the requirements. There can be no logical explanation for why Allied got 4 Highly Qualified votes on experience when it did not comply with the requirements of the specification. There is no rational explanation for how Allied Services' key personnel received 2 Highly Qualified and 2 Qualified votes, when Allied Services has never transported a deceased person. There is no reasonable explanation of how Allied was considered financially stable when its financials pertained to a time period when neither it, nor the separate entity Allied Cleaning, was even in existence.

In advancing this Post-Award Protest, GSSP is relying on your experience and common sense to reach the rather obvious conclusion that the Evaluation Committee failed to conduct a thorough review of bidders' evaluations. Specifically, they failed to thorough review Allied Services proposal. Had they done a thorough review of the bids the Committee would have asked and answered, who is Allied Cleaning and what will be their role in implementing this contract? Where is the Company Profile for Allied Services? How can a company that was only incorporated in 2008 (Allied Cleaning) claim to have client references and contracts dating back 2002? Is it safe to contract with Allied Services when its EDS does not tell us who their executive officers are or who the officers are of a company called Allied Cleaning? How can a company that has only earned slightly more than $50,000 on paper perform the critical task of transporting more than 3,000 deceased persons in one year?

In the Background statement provided on page two of the subject RFP, the Department of Procurement Services states that it has "contracted out all services related to the transport of deceased persons to contractors possessing the necessary resources, expertise and experience in the area of specialty". The company that your department is referring to in this statement is GSSP. Since 2007, GSSP had performed in your department's own words with the necessary resources, expertise and experience to transport deceased persons in Chicago. However, per the committee's recommendation and scoring, GSSP was deemed the lowest qualified vendor from a pool of vendors that had never performed the service being requested by the City. Something went wrong with this selection process and it must be corrected in the interest of fairness to all the bidders involved and to maintain the integrity of the City's procurement process.

CONCLUSION

GSSP requests that after reviewing the law and the issues it has presented in this letter, that you take another look at the bid response submitted by Allied Services paying particular attention to the material defeats GSSP has presented in this letter. GSSP is confident that after your review of the bids submitted you will reach the conclusion that at a minimum a new RFP is necessary to protect the integrity of the City's procurement process and to maintain the faith of vendors who want to believe the City will always be fair in its awarding of City contracts.

GSSP is not angered by the outcome of the award of this contract to Allied Services, it only seeks fairness and a level playing field in which to compete and demonstrate its talents,

experience, expertise and capacity to provide the City of Chicago with a critical service it so desperately requires. In this light, GSSP stands ready to assist the City on an emergency basis, to stand in and supply the City with deceased person transport services while you and your staff prepare a new RFP for re-issuance. If you should choose to re-issue a new RFP for these services, we would ask that you select evaluators from outside the Police, Fire and Budget departments so that the new evaluation process could provide all bidders with a greater sense of fairness and equity.

GSSP again thanks you for this opportunity to present its concerns and our prayer for relief and remedy and it looks forward to doing business with the City of Chicago again in the very near future.

Respectfully Submitted,

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Enclosures

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January 3, 2017

Via FedEx	**Via FedEx**
Charisse Valente	Richard Butler
General Counsel	1st Deputy Procurement Officer
Chicago Police Department	City of Chicago
Office of Legal Affairs	Department of Procurement Services
3510 S. Michigan Avenue, 5th Floor	121 N. LaSalle Street, Suite 403
Chicago, Illinois 60653	Chicago, Illinois 60602

Re: **Contract Between Police Department and Allied Services Group, Inc. (Contract No. 25150) for Transportation of Deceased Persons**

Dear Ms. Valente and Mr. Butler:

This firm represents GSSP Enterprise, Inc. and its principal, Brian Higgins (collectively "GSSP"). GSSP is a former Consultant for the Police Department that was awarded and performed Contract 12453 for the Transportation of Deceased Persons between 2004 and 2011. We write because GSSP has recently learned that the City is preparing to award another contract (Bid No. 187673) for the Transportation of Deceased Persons on or about February 27, 2017 (the "2017 Contract"). GSSP is concerned that a potentially unqualified entity may be awarded the work which could be detrimental to the City.

GSSP Believes Evidence Establishes that Allied is Unqualified for the 2017 Contract.

GSSP has learned that Allied Services Group, Inc. ("Allied"), the current Consultant transporting deceased persons for the Police Department pursuant to Contract No. 25150 (the "2011 Contract") submitted a bid to receive the 2017 Contract. (Ex. 1.) As you review and analyze Allied's bid submission, you should be aware of alarming, yet public, issues regarding Allied's principal, as well as facts demonstrating that Allied likely materially breached the 2011 Contract that may necessitate the City not permitting Allied to be considered for the 2017 Contract.

***First*, Allied is controlled by John Klaczak, a convicted child sex offender, whose true affiliation with Allied was hidden from the City when Allied was awarded the 2011 Contract. (*See* Group Ex. 2.)** Allied intentionally withheld its relationship with Klaczak to prevent the City from knowing that it was partnering with a pedophile to perform the sensitive

work of transporting deceased persons. Klaczak, the former chief of the Thornton, Illinois Fire Department, was the owner of Allied Cleaning Services, Inc. ("Allied Cleaning"), a firm specializing in biohazard and crime scene cleaning, between 2003 and 2009. Shortly before Allied bid on the 2011 Contract, Allied Cleaning purportedly became a subsidiary or affiliate of Allied – which was formed in 2009. Prior to 2009, Allied did business as Stamps Construction, Inc., performing construction work, and had zero experience dealing with transporting deceased persons.

Allied never disclosed Klaczak as one of its principals despite being required to do so as part of its Economic Disclosure Statement, and requirement to disclose key company personnel. (Ex. 3.) In fact, Allied, through its counsel, in response from an inquiry from the Department of Procurement Services, stated that "Klaczak has no involvement in Allied." (Group Ex. 4.) Yet, as recent as May 2014, Klaczak had become Allied's primary contact for the City, controlled Allied's operations, and was actively involved in the company's daily activities. (Ex. 5.) Klaczak's relationship with Allied did not suddenly occur in 2014. Rather, there are a number of videos showing Klaczak performing removal of deceased bodies for the Police Department, dating back to the early days of the 2011 Contract. Allied's failure to disclose its relationship with Klaczak was intentional and done to conceal their association with him. This is likely because of the public relations problems that certainly exist if the public became aware that the City was openly partnering with a convicted pedophile, who was to perform a sensitive role interacting with people at their most vulnerable time, and at a not-insignificant cost to taxpayers. Consequently, Klaczak is certainly not the type of person who the City should be openly doing business with in such an important role.

***Second*, GSSP has reason to believe that Allied made several materially false statements in its bid package to obtain the 2011 Contract regarding its ownership structure, its prior experience, and its financial statements.** Article 9.1(a) of the 2011 Contract provides, that "[a]ny material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by [Allied] to the City," is considered an event of default which could allow the City to terminate the contract with Allied. Allied made several misrepresentations to induce the City to enter the 2011 Contract.

As discussed above, Allied failed to disclose its relationship with Klaczak and Allied Cleaning. Rather, Allied misrepresented that it had the necessary experience, expertise, and capacity to perform the services required under the 2011 Contract. Those statements were false as most of the documentation Allied provided with its bid package referenced Allied Cleaning's personnel and their collective experience – and not its own. As part of Allied's bid package, it was also required to provide the number years it had been in business, provide an overview of its experience and background, and identify its key personnel who would be committed to the project. The only individuals that Allied listed as having experience transporting deceased persons had actually been employed by Allied Cleaning. (Ex. 6.) Yet, Allied never disclosed that those individuals were employed by a different entity. (Compare Exs. 3 and 6.) Allied

also did not disclose in its Economic Disclosure Statement that it would be utilizing Allied Cleaning to perform its contractual duties. These are all material omissions.

Allied made additional material misrepresentations in its bid package. Allied submitted unaudited financial information for 2007 and 2008 – *years for which Allied did not exist* – without disclosing the entity for which the unaudited statements applied – presumably Allied Cleaning. Allied also submitted Allied Cleaning's business license as its own; made false claims regarding the body removal contracts it had executed with other governmental bodies; and provided misinformation regarding its references. Allied certainly made these material misrepresentations to induce the City to execute the 2011 Contract.

***Third*, GSSP has reason to believe that Allied has subcontracted the work that was to be performed under the Contract to another entity in violation of the 2011 Contract.** Article 3.12 of the 2011 Contract provides that Allied "must not assign, delegate or otherwise transfer all or any part of its rights or obligations under this Agreement: (i) unless otherwise provided for elsewhere in this Agreement; or (ii) without the express written consent of the Chief Procurement Officer and the Department. [ ] **Consultant shall not subcontract, in any respect, the transport of deceased persons.**" (Emphasis added.) Furthermore, Exhibit 1, Section 3.1 of the 2011 Contract states that "[Allied] **must not subcontract the transport of deceased persons.**" (Emphasis in original.) For the absence of doubt, Article 2.1 of the 2011 Contract defines a subcontractor as "any person or entity with whom [Allied] contracts to provide any part of the Services, including subcontractors and subconsultants of any tier, suppliers and materials providers, **whether or not in privity with Consultant.**" (Emphasis added.)

GSSP has evidence that Allied subcontracted the work it performed to, at least, Allied Cleaning. On March 19, 2012, in response from an inquiry from the Department of Procurement Services, Allied's counsel stated that "Allied Cleaning Services, Inc. [] no longer provides resources to Allied Services Group, Inc." (Group Ex. 7.) Allied's counsel further told the Department of Procurement Services that "Allied Cleaning and Allied Service did not and have not had common shareholders, directors or officers. From time to time, some employees of Allied Cleaning worked for Allied Services and vice versa." (*Id.*) Counsel also stated that "[a]t one time, there was an oral agreement for Allied Services to acquire Allied Cleaning. However, the parties were never able to agree on the terms of a written agreement, and therefore abandoned the oral agreement." (*Id.*) Allied's statements were either false or intentionally misleading. Substantial video evidence exists, including a July 9, 2012 edition of WGN News, depicting Klaczak and other individuals wearing uniforms bearing the name "Allied Cleaning" transporting deceased persons for the Police Department. Thus, there is no question that Allied continued its business relationship with Allied Cleaning. Even if Allied Cleaning is a subsidiary or otherwise related entity to Allied, such a relationship does not permit Allied to "assign, delegate, or otherwise transfer" any portion of its contractual duties to another entity.

Allied's relationship with Klaczak and its breaches of the 2011 Contract are material matters that the City should consider as it evaluates awarding the 2017 Contract.

GSSP is Prepared and Qualified to Handle Task of Transporting Deceased Persons.

If the City chooses to not permit Allied to bid on (and be awarded) the 2017 Contract, the City should temporarily award an emergency contract for this task while rebidding occurs, pursuant to the Municipal Purchasing Act, 65 ILCS 5/8-10-5. GSSP is a strong candidate to be awarded such an emergency contract, and is prepared to step in and handle this task in as little as 30 days. No other potential candidate is a suitable alternative.[1]

GSSP is an Experienced Provider.

GSSP has been in business for over 21 years, and specializes in the forensic transportation of deceased persons for coroner/medical examiners offices in the Midwest. GSSP transported over 25,000 deceased persons for the City between 2004 and 2011. GSSP has also transported over 55,000 forensic/coroner office removals of deceased persons for several other municipalities, including, Cleveland, Ohio (Cuyahoga County), Cincinnati, Ohio (Hamilton County), Toledo, Ohio (Lucas County), Dayton, Ohio (Montgomery County), and Logan County, Ohio. It is certain that none of the current bidders on the 2017 Contract have as much experience.

GSSP and the City Have Been Partners Since 2002.

Mr. Higgins co-authored the Police Department's directive on Transportation of Deceased Persons in 2003. Mr. Higgins worked closely with multiple City departments, and over 30 hospital officials in the city and suburbs, to develop the pilot program and protocol for the transportation and handling of deceased persons in 2003. This monumental work led the City to become the largest municipality to privative the transportation of deceased persons, and led the City to request GSSP to become the first privatized transporter of deceased persons in 2004.

During the seven years that GSSP transported deceased persons for the City, Mr. Higgins led monthly meetings with Police Department officials in the finance and patrol divisions to address issues and concerns regarding all work that was performed during the preceding month. GSSP also met quarterly with each of the Police Department's district commanders (or designees) to discuss concerns regarding deceased removal within said district.

[1] Fellowship Fleet, LLC and Joint Venture On Call Properties Inc. are the only other two bidders for the 2017 Contract, and both bids exceed Allied's bid submission. (Ex. 8.) Additionally, the City previously declared Fellowship Fleet "Not Qualified" following its bid for the 2011 Contract in part because it had no experience transporting deceased persons. On Call Properties also appears unqualified, as it is a property restoration company and there is no indication it is qualified or experienced to transport deceased persons. (http://www.oncallp.com/index.html)

GSSP is Committed to the City.

GSSP is an active corporate citizen. Mr. Higgins has been a Chicago Police Memorial Gold Star Society member since 2008. GSSP and Mr. Higgins are Chicago Community Trust donors, and Mr. Higgins is a member of the Board of Trustees of the Illinois College of Optometry. GSSP is committed to the City and in doing what is in its best interest relative to the 2017 Contract.

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To be clear, the purpose of this letter is not for GSSP to "fight the last war." Rather, GSSP believes that the City's ongoing relationship with Allied is detrimental, potentially controversial, and ultimately injurious to the City's reputation at a time when it cannot afford more unnecessary problems. Thus, GSSP suggest that the City take the following path:

(a) Conduct a thorough investigation of Allied to determine the appropriateness of terminating the 2011 Contract pursuant Article 9.3(a);

(b) Postpone awarding a recipient of the 2017 Contract, and instead rebid the contract to solicit additional competitors;

(c) Authorize the transportation of deceased persons to be a temporary non-competitive procurement contract until the work can be rebid, in accordance with the Municipal Purchasing Act (65 ILCS 5/8-10, *et. seq.*);

(d) Issue an emergency contract pursuant to 65 ILCS 5/8-10-5, and award such emergency contract to GSSP while rebidding occurs, or in the alternative, appoint GSSP to be the consultant for the new, non-competitive contract while the rebidding occurs; and

(e) Disallow Allied from submitting a bid for the 2017 Contract.

These requests are not extraordinary and are in the best interest of the City. As time is of the essence, we would appreciate speaking with you concerning the matter outlined above at your earliest possible convenience.

Sincerely,

Nicholas A. Gowen

cc: Brian Higgins, CEO
GSSP Enterprise, Inc.

Enclosures

KLACZAK DOCUMENTS

Chicago Tribune

Former fire chief faces test for HIV: Thornton police say teens abused

Chicago Tribune - July 23, 2002

Carlos Morales and Rudolph Bush, Tribune staff reporters

John Klaczak, chief of the Thornton Fire Department until he was fired Sunday, posted bail Monday on charges of sexually assaulting two members of a cadet program he supervised.

Klaczak, a former member of the cadet program, was charged with criminal sexual assault, aggravated criminal sexual abuse and official misconduct in connection with the alleged assaults of the two boys.

Judge Paul Nealis also agreed to a request by Cook County Assistant State's Atty. Mary Mallo that Klaczak be tested for HIV, according to a spokesperson for the state's attorney's office.

Klaczak, 38, was arrested Thursday at the fire station, which is just a few blocks from his home in the 300 block of South Hunter Avenue, where the alleged assaults took place.

Klaczak is accused of abusing one cadet over the course of a year and a half, Thornton Police Chief Phillip Arnold said Monday. Klaczak allegedly abused another cadet, who was 16, once in late 2001 or early this year, Arnold said.

The investigation of Klaczak began two months ago when police learned that a suspect in a Georgia child molestation case had contact with a Thornton cadet, Arnold said. The cadet told police he had not been abused by the suspect but then gave them information that led to Klaczak, Arnold said.

On Monday, Arnold identified the suspect in the Georgia molestation case as Kenneth Joseph Cassity, 43, who was arrested in May in Florida.

Cassity is a Lansing native who has spent much of the last 10 years working as a youth director for Catholic churches from Maryland to Florida. Cassity is charged with molesting three boys while working as a youth director at St. Ann's Catholic Church in Marietta, Ga.

His roommate in Florida, John Jenkins, said Cassity had worked in late 2000 as a dispatcher for the south suburban Lynwood Police Department. A spokeswoman for the village clerk's office confirmed that Cassity was employed as a dispatcher from October 2000 to March 2001. No one at the Police Department was available for comment.

Arnold said police are going through the Fire Department's personnel files and plan to interview current and former volunteer firefighters and cadets to learn if there have been other incidents involving Klaczak.

Thornton Deputy Fire Chief Jim Swan said Monday he's been ordered by Village President Jack Swan, his father, not to comment on the case. He did say the cadet program has been suspended.

A sign that read "Welcome Home John, We Believe" was signed with 10 first names and placed on Klaczak's door.

A neighbor of Klaczak's, Glenn Gray, 37, said Monday: "I have to have all the evidence. I can't pass judgment until I know the whole truth."

Another neighbor, who did not want her name used, said flatly: "He didn't do it. ... He's still family to us." The neighbor said Klaczak

lived alone.

Klaczak was appointed fire chief in 1999, the department's only full-time position, at an annual salary of $42,000. The village employs about 40 on-call firefighters.

Klaczak went through the cadet program when he was a teenager in the late '70s and early '80s, Jack Swan said. He became a part-time Thornton police officer in 1996 and resigned about a year later to work as a Fire Department volunteer.

The cadet program teaches high school students the fundamentals of firefighting.

020723
CT020709

Klaczak Hosting Teen's B-Day

From: brian higgins (brianehigginsceo@yahoo.com)

To: brianehigginsceo@yahoo.com

Date: Tuesday, May 17, 2022, 02:03 PM EDT

Sent from my iPhone

Begin forwarded message:

From: brian higgins <brianehigginsceo@yahoo.com>
Date: September 25, 2018 at 4:38:35 PM EDT
To: dawn[redacted]
Subject: Draft

Dear John,

My name is Dawn, I believe you had spoken to my sister ..... She informed me that she visited your facility over the weekend and that you were willing to accommodate reserving the grounds for my twin sons 14th B-Day on October 14. I sincerely appreciate you accommodating this date as I know that this is last min and 25-30 teenage boys can be a little overwhelming but she mentioned that you have plenty of space and that the boys can also go fishing on your property, which they will absolutely love!

Please let me know the cost associated as I am currently looking into securing food (..... said that you recommended catering), do you have someone that you prefer working with? I estimate there may be as many as 40-50 people as the list continues to grow. Also any deposit that you need, I will forward to you. She also mentioned that you take in rescued dogs. As an avid animal lover, I will be sure to include a sizable donation to go toward your rescue.

I look forward to hearing from you soon!

Dawn

Fwd: Oct 14th Birthday Party

From: brian higgins (brianehigginsceo@yahoo.com)

To: brianehigginsceo@yahoo.com

Date: Tuesday, May 17, 2022, 01:52 PM EDT

Sent from my iPhone

Begin forwarded message:

From: brian higgins <brianehigginsceo@yahoo.com>
Date: May 16, 2022 at 6:44:51 PM EDT
To: brianehigginsceo@yahoo.com
Subject: Oct 14th Birthday Party

From: Dawn [redacted]
Date: October 18, 2018 at 3:16:45 PM EDT
To: Brian Higgins <brianehigginsceo@yahoo.com>
Subject: Fwd: Oct 14th Birthday Party

---------- Forwarded message ---------
From: **Dawn** [redacted]
Date: Sat, Oct 13, 2018 at 1:00 PM
Subject: Re: Oct 14th Birthday Party
To: <info@pawpalace.com>

Good morning John,

I'm not sure how to approach this so I'm just going to be frank. One of the mothers of a friend that will be attending apparently found your name on a sex offender list? Is this true?

I'm not sure what the situation is but unfortunately we won't be able to have the party at Paw Palace. True or not true, even the idea has caused friction between the parents and I have to change party location.

I apologize, as you have been very accommodating.

Thank you for your time and again I apologize for the last minute changes but I have to do what is best for the unity of my family and their friends and family.

Regards,
Dawn

Sent from my iPhone

> On Oct 12, 2018, at 6:05 PM, Info <info@pawpalace.com> wrote:
>
> Dawn,
> Can u give me a call please?
> Thanks
> John
> 708-935-5341
>
> Sent from my iPhone
>
>> On Oct 11, 2018, at 6:01 PM, Dawn [redacted]
wrote:
>>
>> Hi John,
>>
>> My apologies for the late delay. Everything sounds great!
>>
>> Party time: 2pm - 5pm
>>
>> Would you mind if we showed up around 1pm to set-up? There will be 20-25 guests.
>>
>> Let me know if you need a deposit and how much.
>>
>> Thanks a bunch.
>>
>> Regards,
>> Dawn
>>
>>
>>
>> Sent from my iPhone
>>
>>> On Oct 10, 2018, at 7:39 PM, Info <info@pawpalace.com> wrote:
>>>
>>> Dawn,
>>> Honestly, I thought you made other arrangements when I haven't heard from you! I am still ok with having the Party here! Can you tell me what times you were thinking? Approximately how many are attending!
>>> We can provide:
>>> 1- boat
>>> 1 lg tent 20x30, several pop up tents.
>>> Grills
>>> Coolers
>>> DJ equipment
>>> A minimal amount of fishing equipment, I would recommend bringing fishing equipment. Note: catch and release fishing only! Please no minows! Night crawlers or wax worms work great!
>>> Lg. Bon Fire!
>>> All terrain vehicle/golf cart.
>>> Rescue Dogs to walk and play with!
>>> Let me know how this sounds? I'm thinking cost wise, I would ask $750.00. I have plenty of tables and chairs.
>>> Please let me know!
>>> Thanks
>>> John
>>>
>>>
>>> Sent from my iPhone
>>>
>>>> On Oct 10, 2018, at 10:10 AM, Dawn [redacted]
<dawn[redacted]> wrote:

[redacted]

[redacted]

[redacted]

>>>>
>>>> Good morning John,
>>>>
>>>> My apologies for not getting back to you sooner. With regards to the twins birthday party on October 14th, 2018, would you be able to provide us with 3-4 tents & 4 long tables (picnic)? Also, do you provide fishing equipment or should we bring our own? Looking forward to locking this in as I have let time slip away from me a bit. Would you be able to get me a total amount for your services? If you could email me back with prices I will get the necessary deposit to you.
>>>>
>>>> Hope you are having a great day & I look forward to hearing from you.
>>>>
>>>>
>>>> Kind regards,
>>>> Dawn
>

In the
United States Court of Appeals
For the Seventh Circuit

No. 08-3766

STEPHEN J. WRAGG, JR.,

Plaintiff-Appellant,

v.

VILLAGE OF THORNTON, a municipal corporation, JOHN KLACZAK, individually and as a agent of Village of Thornton, and BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF THORNTON,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 02 C 7680—**Robert M. Dow, Jr.**, *Judge.*

ARGUED APRIL 5, 2010—DECIDED MAY 7, 2010

Before EASTERBROOK, *Chief Judge*, and BAUER and WOOD, *Circuit Judges*.

BAUER, *Circuit Judge*. The Village of Thornton's fire chief John Klaczak molested Stephen Wragg, Jr., a sixteen-year-old in the Village's fire cadet program. Wragg sued the Village under 42 U.S.C. § 1983, asserting that

the Village violated his substantive due process rights under the Fourteenth Amendment by deliberately retaining Klaczak as fire chief despite knowledge of his prior improprieties with other minors. The district court granted summary judgment to the Village. We affirm.

I. BACKGROUND

We begin our review of the district court's grant of summary judgment by reciting the factual background in the light most favorable to Wragg, construing all facts and reasonable inferences in his favor. *See, e.g., Ekstrand v. Sch. Dist. of Somerset*, 583 F.3d 972, 974 (7th Cir. 2009). We review only those facts whose substance would be admissible at trial under a form permitted by the Federal Rules of Evidence, although the form produced at summary judgment need not be admissible. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 327 (1986); *Johnson v. Weld County, Colo.*, 594 F.3d 1202, 1209-10 (10th Cir. 2010); *Alexander v. CareSource*, 576 F.3d 551, 558-59 (6th Cir. 2009); *Macuba v. Deboer*, 193 F.3d 1316, 1323-24 (11th Cir. 1999). Neither party has suggested that the district court either considered evidence it shouldn't have or failed to consider evidence it should have, so we recite the facts as the district court has given them to us, *see, e.g., O'Neal v. City of Chicago*, 588 F.3d 406, 409 (7th Cir. 2009) ("[A]rguments not raised on appeal are waived."), and as we otherwise find them in the record.

The Village of Thornton is home to about 2,400 people and is organized under the Illinois Municipal Code, 65 Ill.

Comp. Stat. 5, with six elected trustees and one elected president. At all times relevant to this appeal, the Village's president was Jack Swan.

President Swan learned in 1997 that the Village's police department had received a phone call from two anonymous parents claiming that Village police officer John Klaczak had molested their minor son. Five months later, Klaczak resigned his post as a police officer, seeking rehabilitation for cocaine addiction, a fact which Swan also learned.

Swan appointed Klaczak as the Village's fire chief in 1999. Later that year, Klaczak molested minor fire cadet Eric Bruinsma in a bathroom bar. During this act, another member of the fire department walked in on them. Klaczak molested Bruinsma on other occasions as well.

Stories of Klaczak's "propensity and his like for boys and oral sex and anal sex [and] booze parties" circulated throughout the fire department, R. 115-2 at 27, and on at least one occasion the stories were related to President Swan. *Id.* at 26-27. Fire department member Charlie Ryan once expressed to Swan that he should look into the fire cadet program, although he doesn't remember whether he asked Swan to investigate only Klaczak's hosting alcohol and drug parties that cadets attended, R. 115-3 at 36-39, or also "a rumor of [Klaczak] having sexual contact" with Bruinsma *Id.* at 79-80.

Klaczak molested Stephen Wragg in 2001, and was arrested about six months later; Swan removed Klaczak the same day he was arrested.

Wragg sued the Village (and others not relevant to this appeal) under 42 U.S.C. § 1983. He claimed that the Village deliberately retained Klaczak despite his known propensity to molest minors, and that the Village's deliberately indifferent employee retention policy caused a violation of Wragg's substantive due process rights.

The district court granted summary judgment to the Village, finding that the Village's final policymaker with respect to Klaczak's retention was the board of trustees, and that only one trustee had knowledge of Klaczak's sexual propensities. The court concluded that there could be no municipal liability for the isolated acts of only one member of a multi-member board. *Doe ex rel. Doe v. V. of T.*, No. 02-C-7680, 2008 WL 4450317, at **7-8 (N.D. Ill. Sept. 30, 2008) (citing *Rasche v. Vill. of Beecher*, 336 F.3d 588, 601 (7th Cir. 2003)). Moreover, the district court found that even were President Swan the Village's final policymaker, Wragg could not show that Swan's inaction "rose to the level of deliberate or reckless indifference as is required for municipal liability." *Id.* at *9.

II. DISCUSSION

We review the district court's grant of summary judgment de novo. *Ekstrand*, 583 F.3d at 974. Summary judgment is proper if the pleadings, discovery materials, disclosures, and affidavits demonstrate no genuine issue of material fact such that the Village is entitled to judgment as a matter of law. Fed R. Civ. P. 56(c). We may affirm the district court's grant of summary judgment for any reason supported by the record. *See Capocy v.*

Kirtadze, 183 F.3d 629, 632 (7th Cir. 1999); *Fairchild v. Forma Scientific, Inc.*, 147 F.3d 567, 577 (7th Cir. 1998).

The Fourteenth Amendment mandates that a state shall not "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend XIV. A state usually need not protect its citizens from "private actors," *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 195 (1989); *cf. Nabozny v. Podlesny*, 92 F.3d 446, 459 n.13 (7th Cir. 1996) (outlining factors indicating a custodial relationship in which states have an affirmative duty to protect from private actors), but it may not violate due process via one of its own actors. *Collins v. City of Harker Heights*, 503 U.S. 115, 126 (1992); *DeShaney*, 489 U.S. at 195; *Stoneking v. Bradford Area Sch. Dist.*, 882 F.2d 720, 723-24 (3d Cir. 1989). Klaczak was a governmental actor, not a private actor, as he undisputedly committed the abusive acts against Wragg in the line of his duty as fire chief. See Appellant's Br. at 5-6. So Wragg had a substantive due process right not to be harmed by Klaczak. *See Stoneking*, 882 F.2d at 725 (citing *City of Canton v. Harris*, 489 U.S. 378 (1989)) ("Nothing in *DeShaney* suggests that state officials may escape liability arising from their policies maintained in deliberate indifference to actions taken by their subordinates.").

The remainder of our inquiry concerns whether Klaczak's violation of Wragg's rights can impute liability to the Village. A village or other municipality may be found liable under § 1983 when it violates constitutional rights via an official policy or custom. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). (Or via a conspiracy, but

Wragg's evidence that a conspiracy occurred here is so lacking that we need not address it.) To establish an official policy or custom, a plaintiff must show that his constitutional injury was caused "by (1) the enforcement of an express policy of the [village], (2) a widespread practice that is so permanent and well settled as to constitute a custom or usage with the force of law, or (3) a person with final policymaking authority." *Latuszkin v. City of Chicago*, 250 F.3d 502, 504 (7th Cir. 2001) (citing *McCormick v. City of Chicago*, 230 F.3d 319, 324 (7th Cir. 2000)).

Wragg has pointed to no Village policy that was express. Nor has he established a practice so permanent, well-settled, and widespread as to constitute custom or usage, because the moving force behind Wragg's injury is at least as likely to be the Village's "one-time negligen[ce] . . . peculiar to" Klaczak. *Bd. of County Comm'rs v. Brown*, 520 U.S. 397, 407-08 (1997) (citing *City of Canton*, 489 U.S. at 390-91); *see also Daniels v. Williams*, 474 U.S. 327, 328, 330 (1986) (finding that a denial of due process requires demonstrating a deprivation of liberty or property that is more than merely negligent); *Davidson v. Cannon*, 474 U.S. 344, 348 (1986) (same).

So Wragg is left with the third avenue of establishing municipal liability in which he must show that he was injured by a municipal official with "final policymaking authority." *City of St. Louis v. Prapotnik*, 485 U.S. 112, 123 (1988) (plurality opinion); *id.* at 142 (Brennan, J., concurring); *Latuszkin*, 250 F.3d at 504. Whether a particular official has final policymaking authority is a question of

state law, *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989) (citing *Prapotnik*, 485 U.S. at 123); *Rasche* , 336 F.3d at 600, including positive state law and "customs and practices having the force of [state] law." *Valentino v. Vill. of S. Chicago Heights*, 575 F.3d 664, 676 (7th Cir. 2009).

The Village contends that neither in the district court nor here did Wragg present "any argument as to which individuals in the Village possess final policymaking authority," *Doe*, 2008 WL 4450317, at *7, and that therefore his *Monell* claim is waived. *See, e.g., Bus. Sys. Eng'g, Inc. v. Int'l Bus. Machs. Corp.*, 547 F.3d 882, 889 n. 3 (7th Cir. 2008) ("Arguments not raised before the district court are waived on appeal."); *O'Neal*, 588 F.3d at 409 ("[A]rguments not raised on appeal are waived."). Another way to interpret Wragg's briefs, however, as he explained to us at oral argument, is that *all* the higher-ups he claims to have acted with deliberate indifference were final policymakers. We need not enter this debate about waiver because Wragg's *Monell* claim fails for other reasons. But in any event, trying to accuse every Village official, as a strategy to establish municipal liability, is unhelpful; it distracts the parties and courts from focusing on the particular final policymaker whose actions are essential to the claim.

The district court found conclusively that the final policymaker on the decision to retain Klaczak was the board of trustees. In *Rasche* we held that the board of trustees was the final policymaker "concerning zoning policy and enforcement." 336 F.3d at 600 (citing 65 Ill. Comp. Stat. 5/11-13-1). And we stated, "*Generally*, . . . the

policymaking authority in the city structure will be the city council, or here, the Board of Trustees." *Id.* at 601 (emphasis added) (citing *Auriemma v. Rice*, 957 F.2d 397, 399-400 (7th Cir. 1992)). But to cite *Rasche* for the proposition that the board of trustees, not the president, is the final policymaker on *every* policy decision is to miss the fact that we look to various factors in determining whether a certain individual or group has policymaking authority on any *particular* policy decision. They are: (1) lack of "constrain[ts] by policies" made by others; (2) lack of "meaningful review"; and (3) a "grant of authority" to make the policy decision. *Valentino*, 575 F.3d at 676, 677-78 (finding that the mayor, not the board of trustees, had final policymaking authority to hire and fire employees); *see Prapotnik*, 485 U.S. at 123; *Randle v. City of Aurora*, 69 F.3d 441, 448, 450 (10th Cir. 1995) (finding an issue of fact as to whether individual city officials or the city council had final policymaking authority in the area of personnel matters).

Although the board of trustees had final power to *appoint* and *remove* appointed officers, 65 Ill. Comp. Stat. 5/3.1-30-5, 35-10, there remains an issue of fact as to whether only President Swan had final power to *retain* appointed officers he had not removed. Swan's decision to retain Klaczak by not removing him was solely within his authority, 65 Ill. Comp. Stat. 5/3.1-35-10, and not subject to meaningful review. *Id.* So whether Swan had the final power to retain Klaczak turns on whether his non-removal of Klaczak was constrained by any policy made by others. *Prapotnik*, 485 U.S. at 123; *Valentino*, 575 F.3d at 676.

We cannot tell from the record whether Swan was so constrained by the Village's policy against sexual harassment. *Cf. Auriemma*, 957 F.2d at 399 (finding that the city's anti-discrimination policy constrained executive action "unequivocally"). The policy states that those found to be offenders will face "appropriate disciplinary action," not necessarily removal. R. 99-3 at 2. Moreover, the Village does not argue that the policy required Swan to actively investigate Klaczak's behavior in lieu of retaining him. Nor can we tell from the written policy whether the duty to investigate fell on Swan or some other official(s) or whether such a duty was triggered by the information Swan received. *See id.* (requiring "the Village" to investigate "sexual harassment complaints"). If the Village's sexual harassment policy imposed a duty on Swan to investigate Klaczak after receiving the information he had learned, then the policy's enactor, the board of trustees, was the Village's final policymaker on the decision to retain Klaczak. If it imposed no such duty, Swan was thus unconstrained, so he was the final policymaker. *Prapotnik*, 485 U.S. at 123; *Valentino*, 575 F.3d at 676.

In any event, Wragg's claim fails. Wragg presents no evidence from which a reasonable jury could find that either the board of trustees or Swan *knew* that maintaining Klaczak in employment would pose a "substantial risk" of a constitutional violation. *Frake v. City of Chicago*, 210 F.3d 779, 782 (7th Cir. 2000); *see Bd. of County Comm'rs*, 520 U.S. at 407 (finding that municipal liability attaches only where the final policymaker acts "with deliberate indifference as to . . . known or obvious

consequences") (internal quotation marks omitted); *Riccardo v. Rausch*, 375 F.3d 521, 526 (7th Cir. 2004) (noting that the "deliberate indifference" standard requires "subjective awareness.... It is not enough that the [defendant] *ought* to have recognized the risk.") (emphasis in original).

As to the board of trustees, we agree with the district court that there can be no municipal liability for the isolated acts of only one member of a multi-member board. *See Mason v. Vill. of El Portal*, 240 F.3d 1337, 1340 (11th Cir. 2001); *Church v. City of Huntsville*, 30 F.3d 1332, 1343 (11th Cir. 1994). Wragg presents evidence relevant to the knowledge only of one trustee, and makes no effort to impute knowledge of Klaczak's prior misbehavior to a quorum of the board. Such evidence is insufficient to find inaction by the board giving rise to the Village's liability.

As to Swan, no reasonable jury could find that he acted with such knowledgeable, deliberate indifference that the Village could be liable for his inaction. Swan encountered various storm warnings about Klaczak, but none sufficiently alerted Swan such that Klaczak's propensity to molest minors could be found "known or obvious" to him. *Bd. of County Comm'rs*, 520 U.S. at 407.

First, Swan heard about a complaint that Klaczak had molested a child while Klaczak was on the police force, but the parents remained anonymous, provided no specifics, and enabled no investigation. *Cf. Jones v. City of Chicago*, 787 F.2d 200, 207 (7th Cir. 1986) (finding no deliberate indifference where the city doubly inves-

tigated a prior complaint). No reasonable jury could find that the anonymous parents' unsubstantiated accusation made Klaczak's tendencies known or obvious to Swan, who testified that he knew Klaczak his whole life, disbelieved that Klaczak was a child molester, and was unaware of any sexual misconduct between Klaczak and the Village's fire cadets until Klaczak was arrested.

Second, Swan witnessed various fire department members commenting to each other on Klaczak's propensity to molest young boys. But numerous witnesses testified that such stories circulated about other fire department members as well, and that the stories were generally understood to be nothing but banter, cruel humor, and typical firehouse antics. Wragg makes no effort to rebut this testimony, and so again no reasonable jury could find that Swan was actually aware of Klaczak's tendencies.

Third, Swan might have heard from Ryan that Klaczak engaged in sexual contact with cadets—Ryan doesn't recall whether he told Swan. *Compare* R. 115-3 at 36-39 *with id.* at 79-80. Moreover, Ryan admits that the basis of his knowledge of Klaczak's sexual misconduct was only "through rumors." *Id.* at 35:12-18. Ryan's deposition testimony is both too "ambiguous" and too "speculative" as to whether Swan actually knew about Klaczak's sexual misconduct, such that it cannot defeat summary judgment. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 595 (1986).

Finally, Swan heard from Ryan about Klaczak's alcohol and drug-related misbehavior with cadets. However,

Swan's knowledge of Klaczak's alcohol and drug-related misbehavior with cadets, coupled with his knowledge of Klaczak's prior cocaine addiction, do not give rise even to speculation about sexual misconduct, which is unrelated.

III. CONCLUSION

The Village is not liable for retaining Klaczak because: (1) a quorum of the Village's board of trustees had no knowledge of his prior sexual misconduct; and (2) even if the Village's policy against sexual harassment lacked the teeth to constrain President Swan such that he wielded the Village's ultimate power to retain Klaczak, Wragg presented insufficient evidence for a reasonable jury to find that Swan knew that retaining Klaczak posed a substantial risk to Wragg. Swan might have acted negligently, but Wragg presented insufficient evidence to find that he acted more culpably as is required to find liability against the Village. Therefore, we AFFIRM.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN DOE, a minor, by and through his father and next best friend, BILL DOE, Plaintiff, v. V. of T., a municipal corporation, J.K., Individually and as an agent of V. of T., and V. of T. BOARD OF FIRE AND POLICE COMMISSIONERS, Defendants.	)	CASE NO. 02-C-7680 Judge Robert M. Dow, Jr.

MEMORANDUM OPINION AND ORDER

In November 2001, then sixteen-year-old John Doe ("Plaintiff") participated in the Village of Thornton's ("Village") fire cadet training program, an extracurricular program offered to minors who are between the ages of fourteen and eighteen. The program was run by J.K., the Village's fire chief at the time. In December 2001, J.K. asked Plaintiff to accompany him to pick up an ambulance from another fire station. However, after J.K. and Plaintiff left the Village fire station, J.K. drove Plaintiff to J.K.'s house, where he sexually assaulted Plaintiff. On July 18, 2002, J.K. was arrested, and on July 21, 2002, J.K. gave written statements to the police in which he admitted to having a sexual relationship with Plaintiff while he was fire chief and Plaintiff was a cadet and also admitted to having a sexual relationship with another cadet while serving as fire chief.

At the outset, it is important to note what is and is not before the Court at this time. Plaintiff has sued J.K. alleging five state law causes of action – assault, battery, reckless infliction of emotional distress, invasion of privacy, and negligence. In his third amended

complaint, he also alleges two causes of action against the Village and the Village's Board of Fire and Police Commissioners ("Fire and Police Board") for a constitutional deprivation pursuant to 42 U.S.C. § 1983 and for municipal and supervisory liability under *Monell*, and one cause of action against the Village, Fire and Police Board, J.K., and the Village president for civil conspiracy under Section 1983. The pending motion for summary judgment [97], filed by the Village and the Fire and Police Board, targets Counts VI (42 U.S.C. § 1983), VII (*Monell* claim), and VIII (Section 1983 conspiracy claim) of Plaintiff's operative third amended complaint. The state law claims against the individual Defendant, J.K., set forth in Counts I through V of the operative complaint, are not at issue. As explained in greater detail below, nor is any Section 1983 claim against J.K. in his individual capacity, because no such claim is fairly presented on the current complaint. For the following reasons, the Court grants Defendants' summary judgment motion [97] as to Counts VI, VII, and VIII.

I. Background[1]

A. Factual Background

The Village of Thornton is an Illinois municipal corporation located in Southwestern Cook County with a population of approximately 2,400. The Village is organized under the Illinois Municipal Code, 65 ILCS 5, and has six elected trustees and one elected village president. At all times relevant to this action, the Village president was Jack Swan.[2] The Village has a paid-on-call volunteer fire department which consists of one full-time fire chief who is

[1] The following does not include any fact that was unsupported by the record or that would not comply with the Federal Rules of Evidence. See *Mihalovits v. Village of Crestwood*, 2003 WL 1745513, at *1 (N.D. Ill. March 31, 2003); *Domka v. Portage County, Wis.*, 523 F.3d 776, 782 (7th Cir. 2008) (stating that evidence presented in support of or opposition to summary judgment can be considered to the extent that it is admissible under the Federal Rules of Evidence).

[2] While serving as Village president, Jack Swan also served as a paid on-call member of the Village fire department.

appointed, pursuant to Village ordinances, by recommendation of the Village president with the Village Board of Trustees' advice and consent. Def. Ex. 5.

For many years, the Village maintained a fire cadet program. Through that program, high school students ages fourteen through eighteen were eligible, with the approval of their parents, to receive training and to participate in certain activities of firefighting.[3] After turning eighteen, cadets would be eligible to serve as full-time volunteer firefighters. Defendant J.K. was a cadet in the fire cadet program and then served as a paid-on-call firefighter for the Village from August 1989 until July 1991.

Defendant J.K. served as an auxiliary police officer for the Village from February 1994 until his resignation in December 1997.[4] Upon his resignation, J.K. disclosed to police chief Peter Belos that he had a cocaine addiction for which he had entered and completed a program of rehabilitation. Def. Ex 36. at 32-36. Belos testified that right after J.K. resigned, Belos met with the Village manager, Jim Marino, and Village trustee Edward Baumgart, the trustee in charge of the police department, and notified them of J.K.'s resignation and reasons behind it. *Id.* Belos also advised Village president Jack Swan of J.K's cocaine addition and the fact that J.K. had lied to obtain a leave of absence to attend rehab and expressed his desire to file charges against J.K. *Id.* at 36. The parties dispute Swan's response, but it is clear from the record that J.K. was never fired or prosecuted by the Village; rather, he resigned and moved on to the Village fire department. *Id.* at 42.

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[3] The minimum age requirement was originally sixteen, however, Defendant J.K. lowered the minimum age from sixteen to fourteen when he became fire chief.

[4] The parties dispute whether J.K. was ever promoted to a full-time officer. Defendants argue that he was never promoted from an auxiliary position to a full-time position; however, Plaintiff contends that J.K. was promoted to a full-time officer on November 30, 1997, without having been administered a drug test as required by the Village's standard operating procedures.

In February 1998, then-acting fire chief, Mike McCrary,[5] recommended to Village president Swan that J.K. be hired as a paid-on-call firefighter. J.K. was hired and rose to the rank of captain in June 1998. In September 1998, J.K. was appointed fire chief administrator. In early 1999, Jim Swan, son of Village president Jack Swan, recommended to his father that J.K. be appointed fire chief.[6] In April 1999, the Village merged the position of fire chief administrator and fire chief into the single, full-time position of fire chief, and J.K. was the first person to hold that position. Def. Ex. 26 at 49-51. J.K. served as fire chief until his arrest on July 18, 2002. At the time J.K. became fire chief, the Village had in place policies prohibiting sexual misconduct and mandating a drug free work place.

Defendant J.K. testified that during his tenure as fire chief, he discovered various inefficiencies and irregularities in the way the fire department was run. Def. Ex. 25 at 76-78. He claims that he removed some individuals from their positions within the fire department because of "illegal" activity. *Id.* However, the individuals whom J.K. terminated testified that the tensions within the department arose from J.K.'s treatment, demotion, prosecution, and termination of individuals who raised concerns regarding J.K.'s inappropriate sexual conduct with minor cadets. Pl. Ex. 2 at 23, 30-31; Pl. Ex. 3 at 6. James Bruinsma stated that he joined the fire department in the fall of 1999 due to concerns that his son was involved in narcotics and inappropriate sexual conduct with J.K. Pl. Ex. 2 at 23, 30-31. Bruinsma was terminated in or around April 2000 by J.K. due to unsubstantiated charges of "insubordination." *Id.* at 30. Bruinsma testified that when he was terminated, he told J.K., "I don't want you to touch my son again and I don't want my son ever to be in your presence alone. I don't want my son at your

[5] McCreary had served alongside J.K. as a cadet in the fire cadet program.

[6] Jim Swan has known J.K. since 1976, when they lived in the same neighborhood and were both part of the Village fire cadet program.

house and I don't want you giving him another ounce of alcohol." *Id.* at 31. Another member of the fire department, Wayne Braley, gave a statement to police in May 2002 that he witnessed J.K. involved in sexual activity with Bruinsma's son during a bachelor party. Pl. Ex. 4. In February 1999, Braley was suspended from the department by J.K. due to allegations that Braley was having inappropriate conduct with an underage female. Braley was later reinstated when the allegations proved to be unfounded. Pl. Ex. 3 at 66.

While serving as a police officer and later as fire chief administrator and fire chief, various rumors circulated about J.K.'s former drug addition and alleged sexual activity with male cadets. Several cadets also testified to being teased in a sexual manner in which they had not been teased prior to J.K. becoming fire chief. On July 21, 1997, while J.K. was still an auxiliary police officer for the Village, two citizens met with police chief Belos. Def. Ex 36. at 11. During the meeting, the two citizens advised the chief that their minor son was involved in narcotic and sexual activity with J.K. *Id.* at 12. The parents refused to press charges or make their son available to talk. *Id.* Belos advised Village president Jack Swan of the complaint but the parties dispute what action, if any, was taken by the Village president. Although Swan was aware of drug allegations and had a conversation with J.K. regarding his resignation from police duty as a result of that drug use (Def. Ex. 26 at 70-71), Swan testified that prior to J.K's arrest for sexual assault in July 2002, he was unaware of any sexual misconduct between J.K. and minor fire cadets from the Village of Thornton (*Id.* at 94-95).

During J.K.'s tenure as fire chief, he also owned and operated at least two private businesses – Quality Mobile Power Wash in South Holland, Illinois, and "MBR," both car washes. J.K. retained a number of part-time employees for his private businesses, including Plaintiff and other fire cadets. In addition to supervising cadets at the fire station and at his

private businesses, J.K. would also have parties at his house where alcohol was available and which were attended by members of the fire department, including minor cadets.

Plaintiff was born in March of 1985. He applied for admission to the fire cadet program at the age of fourteen, in or around 1999, and ended his involvement with the program in early 2003. During the time that he was involved with the cadet program, Plaintiff also worked with J.K. at his car washes. Plaintiff testified that in the fall of 2001, J.K. asked him if he could "blow him off," to which Plaintiff responded, "I don't know." Pl. Ex. 8 at 48-49. In November or December 2001, on a night in which Plaintiff planned to sleep at the fire station, Defendant J.K. asked Plaintiff to leave the fire house and accompany him to pick up an ambulance. *Id.* at 50-53. According to Plaintiff, J.K. then drove him, in his village-issued vehicle, to J.K's house where J.K. took off Plaintiff's pants and performed oral sex on Plaintiff in exchange for either $250 or $300. *Id.* at 52, 94. Plaintiff testified that he told J.K. to stop and pushed him away, but that J.K. did not stop. *Id.* at 52. According to Plaintiff, although J.K. asked Plaintiff on one more occasion if J.K. could perform oral sex on Plaintiff, the 2001 incident was the only sexual contact between Plaintiff and J.K. *Id.*

While he was fire chief, J.K. also had a sexual relationship with James Bruinsma son, E.B., when E.B. was a seventeen year-old cadet. E.B. testified that he and J.K. had sexual contact at a bachelor party in a bar (although the extent of that contact is disputed), in J.K.'s village-issued vehicle, and in a hotel room in Indianapolis during a firefighter's convention. Pl. Ex. 12 at 67-69, 76-88; Pl. Ex. 13, at 21-25; Pl. Ex. 4. He never discussed his involvement with J.K. with any official from the Village while he was a member of the fire department, either as a cadet or probationary firefighter. Def. Ex. 28 at 139. The first time that he discussed his relationship with J.K. was with police chief Arnold approximately one month prior to J.K.'s arrest. *Id.*

Louis Dal Santo was a trustee for the Village from 1995 until 2003. As a trustee, Dal Santo sat in on the executive session when Village president Swan presented J.K. for consideration as fire chief and also was involved in a discussion concerning J.K.'s prior position as a police officer for the Village. Dal Santo testified that he recalled an anonymous letter that made character and drug accusations (none of which were of a sexual nature) against J.K. while he was fire chief administrator. Pl. Ex. 37 at 63-67. According to the deposition testimony of James Bruinsma, Dal Santo also was present at his departure meeting when Bruinsma ordered J.K. to stay away from his son. Pl. Ex. 2 at 31. And, according to the deposition testimony of Brian Smith, another Village firefighter, Smith also told Dal Santo about Bruinsma's concern that something inappropriate was going on between his son and J.K. Pl. Ex. 14 at 54-59. Smith testified that he told Dal Santo about the "speculation" that J.K. might be acting inappropriately with the minor cadets. *Id.*

Sometime in early 2000, former police chief Philip Arnold met with Bruinsma and Brian Smith. Bruinsma expressed concern that his son had been spending a lot of time with J.K. and that, because of J.K.'s reputation, drugs might be involved. Def. Ex. 35 at 33-38, 59, 65-66. Arnold wanted to speak with Bruinsma's son and told Bruinsma that without his son's cooperation, nothing could be done. Def. Ex. 29 at 66-70. Although Bruinsma expressed his concerns to Arnold, a formal investigation concerning J.K.'s activities did not occur until approximately May or June 2002, after a psychologist (who had interviewed a Village cadet) advised Arnold that he should look into matters pertaining to the fire department and, specifically, J.K.'s involvement with minor cadets. After J.K.'s arrest, Arnold took written statements from J.K. wherein J.K. admitted to having a sexual relationship with Plaintiff and Bruinsma's son while both were cadets.

II. Discussion

A. Summary Judgment Standard

Summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In determining whether there is a genuine issue of fact, the Court "must construe the facts and draw all reasonable inferences in the light most favorable to the nonmoving party." *Foley v. City of Lafayette, Ind.,* 359 F.3d 925, 928 (7th Cir. 2004). To avoid summary judgment, the opposing party must go beyond the pleadings and "set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 250 (1986) (internal quotation marks and citation omitted). A genuine issue of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 248. The party seeking summary judgment has the burden of establishing the lack of any genuine issue of material fact. See *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986). Summary judgment is proper against "a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Id.* at 322. The non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986). "The mere existence of a scintilla of evidence in support of the [non-movant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-movant]." *Anderson,* 477 U.S. at 252.

B. Plaintiff's Section 1983 Claim (Count VI)

Plaintiff has sued Defendants for deprivation, under color of state law, of his liberty interest in bodily integrity as guaranteed by substantive due process under the Fourteenth Amendment to the United States Constitution. Section 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress * * * *

42 U.S.C. § 1983. Section 1983 "creates a federal cause of action for 'the deprivation, under color of [state] law, of a citizen's rights, privileges, or immunities secured by the Constitution and laws of the United States.'" *Ledford v. Sullivan*, 105 F.3d 354, 356 (7th Cir. 1997) (quoting *Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994)). "Section 1983 is not itself a source of substantive rights; instead it is a means for vindicating federal rights conferred elsewhere." *Id.* To state a claim under section 1983, a plaintiff must show (1) an action taken under color of state law, and (2) a deprivation of a right protected by the Constitution. See *Brown v. City of Lake Geneva*, 919 F.2d 1299, 1301 (7th Cir. 1990).

While Defendants argue that Count VI fails because Plaintiff cannot establish that J.K. acted under color of state law, the Court finds that Count VI fails because it is duplicative of Plaintiff's *Monell* allegations in Count VII. Both Counts VI and VII are brought pursuant to Section 1983 and are brought against the Village and the Fire and Police Board. Although Defendants approach Count VI as if it alleges a Section 1983 claim against J.K. in his individual capacity (see Def. Mem. at 4 ("In order to establish his claim against J.K. under § 1983, Doe must * * *")), the allegations in Count VI clearly are directed at the Village and the Fire and Police Board. See *Stoneking v. Bradford Area School Dist.*, 882 F.2d 720, 724 (3rd Cir. 1989)

("It is immaterial * * * whether Wright's sexual abuse is viewed as attributable to the state. This consideration would be relevant had Stoneking sued Wright under Section 1983, alleging that he acted under color of state law. She did not. Instead, the suit is against the School District and its supervisory officials, and they were incontestably acting under color of state law.").[7] It is well accepted that "a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978). Accordingly, a municipality can only be held liable under Section 1983 if a custom or policy of the municipality was a cause of the plaintiff's injury. *Latuszkin,* 250 F.3d at 504-05. Therefore, Plaintiff's allegations against the Village and Fire and Police Board can only support his *Monell* claim (Count VII) and not a separate Section 1983 action (Count VI) against the Village and Fire and Police Board.

C. *Monell* Claim (Count VII)

In order to state a Section 1983 claim against a municipality, the complaint must allege that an official policy or custom not only caused the constitutional violation, but was "the moving force" behind it. *City of Canton, Ohio v. Harris,* 489 U.S. 378, 389 (1989); see also *Arlotta v. Bradley Center,* 349 F.3d 517, 521-22 (7th Cir. 2003); *Gable v. City of Chicago,* 296

[7] The Court finds the absence of a Section 1983 claim against Defendant J.K. to be somewhat puzzling, particularly in view of the facts that (i) the parties' briefs appear to address matters that would be relevant to such a claim and (ii) in the final paragraph of Count VI of his third amended complaint, Plaintiff prays for judgment against all Defendants, including J.K., individually and as an agent of V. of T. However, the Court has undertaken a detailed examination of Counts VI and VII and finds no basis for reading those counts as pleading a Section 1983 claim against J.K. in his individual capacity. To begin with, the captions of Count VI and Count VII plainly state that those counts are against the Village and the Fire and Police Board, and the allegations set forth in the numerous paragraphs are consistent with a claim for municipal liability. The answer of the Village and the Fire and Police Board similarly treats Counts VI and VII as having asserted claims only against the municipal defendants and not J.K. Parenthetically, the Court notes that Counts VI and VII of the third amended complaint largely mirror Counts XV and XVI of Plaintiff's original complaint, as to which the judge previously assigned to this case commented: "While [P]laintiff has brought two claims (15 and 16) against the defendants under [42] U.S.C. § 1983, the court cannot make out a difference between the two * * *." Finally, and perhaps most notably, Count VI is devoid of any allegation that Defendant J.K. acted under color of state law, which would seem to be a necessary predicate for placing J.K. (and, indeed, all of the Defendants) on notice that Plaintiff sought Section 1983 relief against J.K. in his individual capacity. The Court is unwilling to read an individual capacity claim against J.K. into the current complaint when Plaintiff has failed to properly allege such a claim.

F.3d 531, 537 (7th Cir. 2002). Unless there is an unconstitutional policy, there cannot be official capacity liability; only individual-capacity liability is possible. The "official policy" requirement for liability under Section 1983 is to "distinguish acts of the *municipality* from acts of *employees* of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible." *Pembaur v. City of Cincinnati,* 475 U.S. 469, 479 (1986). "Misbehaving employees are responsible for their own conduct[;] 'units of local government are responsible only for their policies rather than misconduct by their workers.'" *Lewis v. City of Chicago,* 496 F.3d 645, 656 (7th Cir. 2007) (quoting *Fairley v. Fermaint,* 482 F.3d 897, 904 (7th Cir.2007)). To establish a custom or policy, a plaintiff must show that his constitutional injury was caused "by (1) the enforcement of an express policy of the City, (2) a widespread practice that is so permanent and well settled as to constitute a custom or usage with the force of law, or (3) a person with final policymaking authority." *Latuszkin,* 250 F.3d at 504.

Plaintiff has not pointed to an express policy of the City nor has he alleged "a widespread practice that is so permanent and well settled as to constitute a custom or usage with the force of law." Plaintiff briefly asserts in his response that "Defendants maintained a policy of inadequate procedures regarding the investigation of complains [sic] of sexual abuse by Village officers, such that summary judgment is not proper with respect to Plaintiff's claim of municipal liability." See Pl. Resp. at 11. However, Plaintiff's evidence is limited to J.K.'s actions and the Village's response to rumors regarding J.K.; Plaintiff has not pointed to any other instances of the Village turning a blind eye to the alleged improprieties of other employees or failing to investigate citizen's complaints. The evidence in this case – which focuses solely on the Village's response to the actions of one employee – is far too sparse to establish "a widespread practice that is so permanent and well settled as to constitute a custom or usage with the force of law." See *Montano v. City of Chicago*, 535 F.3d 558, 570-71 (7th Cir. 2008).

Instead, Plaintiff appears to be relying on the third potential avenue for establishing *Monell* liability – that his constitutional injury was caused by a final policymaker. He maintains that J.K., as fire chief, was a final policymaker and thus his assault on Plaintiff gives rise to liability against the Village. Alternatively, he contends that either Village president Jack Swan, trustee Louis Dal Santo, or Philip Arnold or Peter Belos (former Village police chiefs) were aware of a significant risk that Plaintiff would be assaulted, were deliberately indifferent to that risk, and that the deliberate indifference of any one of them, as a final policymaker, is the basis for imposing liability against the Village.

The Supreme Court has charged the trial judge with identifying "those officials or governmental bodies who speak with final policymaking authority for the local government actor concerning the action alleged to have caused the particular constitutional or statutory violation at issue." *Jett v. Dallas Ind. Sch. Dist.*, 491 U.S. 701, 737 (1989). Whether a particular official has final policymaking authority is a question of state law. See *Duda v. Board of Ed. of Franklin Park Public Sch. Dist. 84*, 133 F.3d 1054, 1061 (7th Cir. 1998). The determination of the actual function of a municipal official is "dependent on the definition of the official's functions under relevant state law." *Id.* Simply because an official may have discretion to act or "authority to make administratively final decisions" does not make that individual a final policymaker for purposes of *Monell* liability. *Radic v. Chicago Transit Authority*, 73 F.3d 159, 161 (7th Cir. 1996).

"In order to have final policymaking authority, an official must possess '[r]esponsibility for making law or setting policy,' that is, 'authority to adopt rules for the conduct of government.'" See *Rasche v. Village of Beecher*, 336 F.3d 588, 599 (7th Cir. 2003) (quoting *Auriemma v. Rice*, 957 F.2d 397, 401 (7th Cir. 1992)). Under Illinois' statutory scheme, a city's board of trustees (or city council) is considered the policymaking authority. See *Rasche*, 336

F.3d at 600-01. The board of trustees consists of the trustees as well as the president and has the authority to "pass ordinances, resolutions, and motions * * *."[8] 65 ILCS 5/3.1-45-5. A village president shall "perform all duties which are prescribed by law, including ordinances, and shall take care that the laws and ordinances are faithfully executed." 65 ILCS 5/3.1-35-5. Generally, a person holding only executive power – like a village president – does not have policymaking authority for purposes of Section 1983; rather, the policymaking authority rests within the legislative powers of the board of trustees. See *Rasche*, 336 F.3d at 601.

Plaintiff has failed to present evidence that final policymaking authority had been delegated by the Village Board of Trustees to a single trustee, the fire chief, the Village president, or the chiefs of police. In fact, Plaintiff has not presented any argument as to which individuals in the Village possess final policymaking authority. Instead, Plaintiff focuses his argument on the "deliberate indifference" of the various officials to the hiring, retention, or termination of a fire chief with a history of drug use and about whom rumors of sexual misconduct had circulated. But what these various officials did or did not do can constitute liability under *Monell* only if those officials had final policymaking authority. Clearly, J.K. was not responsible for his own hiring, retention, or termination. Nor has Plaintiff put forth any evidence that the Fire and Police Board have anything to do with his employment.[9] Instead, it is clear from the deposition testimony of various individuals as well as the Village's ordinances that the fire chief is appointed by president, but only if the Board of Trustees consents. Thus, it is the Board of Trustees, collectively, that has final policymaking authority for *Monell* purposes.

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[8] In the Village of Thornton, the president votes only to break ties among the six trustees.

[9] Based on the record of admissible evidence before the Court, Plaintiff has not submitted sufficient evidence or arguments regarding the Fire and Police Board. Rather, it appears as if Plaintiff uses the Fire and Police Board interchangeably with the Village's Board of Trustees. In addition to the lack of evidence about the Fire and Police Board (including who is on it, what it does, how it functions, etc.), based on the evidence submitted by Defendants and the record as a whole, its clear that the focus should be on the Board of Trustees and what it knew or, perhaps more tellingly, did not know.

There is no evidence that any issue relating to J.K.'s alleged sexual misconduct with minors was ever brought to the attention of the Board of Trustees collectively – for example, at a regular Board of Trustees meeting or in a letter to the Board that was reviewed at a meeting. If there were such evidence, Plaintiff would have a much stronger claim under his "final policymaker" theory of municipal liability. Instead, Plaintiff must try to show that the one trustee and the other Village officials who are alleged to have possessed relevant information had some obligation to pass that information on to the Board of Trustees and that the Board of Trustees either failed to investigate and uncover J.K.'s wrongdoing or actually condoned (or "ratified") J.K.'s actions.

Under the "final policymaker" theory of liability, "a municipality may also be liable for the actions of an employee who lacks final policymaking authority if that employee's actions were 'ratified' by the municipality." *Killinger v. Johnson,* 389 F.3d 765, 772 (7th Cir. 2004) (citing *Baskin v. City of Des Plaines,* 138 F.3d 701, 705 (7th Cir. 1998)). To state a claim under this theory, a plaintiff "'must allege that a municipal official with final policymaking authority approved the subordinate's decision and the basis for it.'" *Id.* (citing *Baskin v. City of Des Plaines,* 138 F.3d 701, 705 (7th Cir.1998)).

Here, Plaintiff attempts to show that the Village "approved" of J.K.'s actions through the Village's inaction – essentially by failing to investigate or terminate him. In regard to such a claim, the Seventh Circuit has held that "a plaintiff cannot establish a § 1983 claim against a municipality by simply alleging that the municipality failed to investigate an incident or to take punitive action against the alleged wrongdoer." *Baskin,* 138 F.3d at 705; see also *Wilson v. City of Chicago,* 6 F.3d 1233, 1240 (7th Cir. 1993). Rather, "[d]eliberate or reckless indifference to complaints must be proved in order to establish that an abusive practice has actually been condoned and therefore can be said to have been adopted by those responsible for making

municipal policy[;]" the mere failure to eliminate a practice does not constitute an approval of the practice. *Id.*

In order for Plaintiff to show that the alleged customs were attributable to the Village and thus had the force of law, he must show that Village policymakers were "deliberately indifferent as to known or obvious consequences." *Bd. of County Comm'rs v. Brown*, 520 U.S. 397, 406-07 (1997). The Supreme Court has defined deliberated indifference in this context to mean that "a reasonable policymaker [would] conclude that the plainly obvious consequences" of the City's actions would result in the deprivation of a federally protected right. *Id.* at 411. The Seventh Circuit has stated that a finding of deliberate indifference requires a showing that policymakers "were aware of a substantial risk" of a constitutional violation and "failed to take appropriate steps to protect [plaintiff] from a known danger." *Frake v. City of Chicago*, 210 F.3d 779, 782 (7th Cir. 2000).

Plaintiff argues that Village president Swan, trustee Dal Santo, or police chiefs Belos and Arnold knew or should have known that J.K. was sexually abusing minors or at least was a risk to do so. In an effort to establish that the Village president was deliberately indifferent to a risk of injury, Plaintiff highlights a conversation in July 1997 between Peter Belos (at the time the chief of police) and Swan in which Belos told Swan that anonymous parents had accused J.K. of having a sexual relationship with their son. However, the parents refused to identify themselves or their son and stated that they did not want any action taken. Swan responded that he had known J.K. all his life and did not believe the accusations. Belos testified that he kept an eye on J.K. and also pressed the parents of the unknown boy to give him additional information. Plaintiff also points out that Swan was aware of allegations about J.K. using drugs and had a conversation with J.K. regarding his resignation from police duty as a result of that drug use. However, Swan testified that prior to J.K's arrest for sexual assault in July 2002, he was unaware

of any sexual misconduct between J.K. and Village of Thornton fire cadets. Finally, Plaintiff argues that trustee Dal Santo was aware of the rumors about J.K. and should have taken steps to have him terminated.

Despite the grievous circumstances surrounding the issues in this case, the facts that have been established do not demonstrate that any action or inaction by Swan, the police chiefs, or the Village Board of Trustees rose to the level of deliberate or reckless indifference as is required for municipal liability. To the extent that Plaintiff seeks to impose liability on the Village for its decision to hire J.K., there is insufficient evidence to charge the Board of Trustees or the Village president with knowledge of any prior sexual misconduct by J.K. at the time he was hired as fire chief. Perhaps it could be said that Village officials and policymakers did not act prudently when they had clear notice of J.K.'s drug problems or when they received information (albeit anonymously) about J.K.'s then-alleged (now admitted) sexual impropriety. But the standard for imposing municipal liability is not what a reasonably prudent person would do in the circumstances. It is a much more stringent standard, requiring that policymakers behave in a manner that is "deliberately indifferent as to known or obvious consequences." *Brown*, 520 U.S. at 406-07. It is not obvious that a person with a drug problem will engage in sexual misconduct with minors. Nor was it an act of "deliberate indifference" not to have reported to the full Board of Trustees the rumors and unverifiable reports of sexual misconduct by J.K. that some Village officials received.

The main problem with Plaintiff's argument against the municipality is that the evidence submitted does not demonstrate that the individuals with policy-making authority had concrete, personal knowledge of wrongdoing. "[A]lthough personal knowledge may include reasonable inferences, those inferences must be 'grounded in observation or other first-hand personal experience. They must not be * * * speculations, hunches, intuitions, or rumors about matters

remote from that experience.'" *Payne v. Pauley*, 337 F.3d 767, 772 (7th Cir. 2003) (quoting *Visser v. Packer Eng'g Assoc.*, 924 F.2d 655, 659 (7th Cir. 1991)). Plaintiff's argument that the Village knew or should have known what J.K. was doing is based on speculation and rumors. To be sure, if the extent of the officials' knowledge had been greater – either in quality or quantity – there might have been a fact question as to "deliberate or reckless indifference to complaints" or "aware[ness] of a substantial risk" that could have given rise to a triable claim. *Frake*, 210 F.3d at 782. But the facts as they have been adduced at the summary judgment stage do not permit such a conclusion here as to the municipal defendants.

At the same time, the Court hastens to add that entry of summary judgment on Plaintiff's attempt to impose municipal liability under Counts VI and VII by no means leaves Plaintiff without a possible remedy against J.K. himself for his alleged wrongdoing. As the Seventh Circuit has stressed, "[m]isbehaving employees are responsible for their own conduct," while "units of local government are responsible only for their policies rather than misconduct by their workers." *Lewis*, 496 F.3d at 656.

C. Civil Conspiracy Pursuant to § 1983

Defendants also have moved for summary judgment on Plaintiff's Section 1983 conspiracy claim, arguing that Plaintiff has insufficient evidence to establish a conspiracy. However, even before reaching the typical elements of the conspiracy claim – such as whether there was an express or implied agreement among Defendants to deprive Plaintiff of his constitutional rights and whether Defendants committed overt acts in furtherance of any agreement – the Court considers decisions in the Seventh Circuit and this district that indicate that the Court need not reach those elements in the circumstances of this case. The Seventh Circuit recently has explained that "'[t]o establish § 1983 liability through a conspiracy theory, a plaintiff must demonstrate that: (1) a state official and *private individuals(s)* reached an

understanding to deprive the plaintiff of his constitutional rights; and (2) those individual(s) were willful participant[s] in joint activity with the State or its agent.'" *Reynolds v. Jamison*, 488 F.3d 756, 764 (7th Cir. 2007) (emphasis added) (quoting *Williams v. Seniff*, 342 F.3d 774, 785 (7th Cir. 2003)); see also *Wright v. Village of Franklin Park*, 2008 WL 820560, at *28 (N.D. Ill. June 8, 2007) (granting summary judgment in favor of defendants on Section 1983 conspiracy claim based on plaintiff's failure to allege that private individuals were involved in the conspiracy); *Thayer v. Chiczewski,* 2007 WL 3447931, at *5 (N.D. Ill. Nov. 13, 2007) (dismissing § 1983 conspiracy claim for failure to allege that private individuals were involved in the conspiracy). Plaintiff has failed to offer any evidence that any of the Defendants sued in Count VIII – the Village, J.K., Village president Swan, and the Fire and Police Board – were private individuals, rather than state actors at the time of the events at issue. Under the decisions cited above, that omission is fatal to any civil conspiracy claim.

In any event, even beyond that apparently fatal flaw, the Court concludes that Plaintiff has failed to demonstrate that Defendants "reached an understanding" to deprive Plaintiff of his constitutional rights. See *Reynolds*, 488 F.3d at 764; *Scherer v. Balkema*, 840 F.2d 437, 441 (7th Cir. 1988); *Thurman v. Village of Hazel Crest*, 2008 WL 3249523, at *7 (N.D. Ill. Aug. 6, 2008). To sustain a claim that defendants conspired to deny a plaintiff's constitutional rights, a plaintiff must allege that defendants "directed themselves toward an unconstitutional action by virtue of a mutual understanding[,]" and support such allegations with facts suggesting a "meeting of the minds." *Amundsen v. Chicago Park Dist.,* 218 F.3d 712, 718 (7th Cir. 2000). A conspiracy claim cannot survive summary judgment based on vague conclusory allegations that include no overt acts reasonably related to promoting the conspiracy. *Id.*

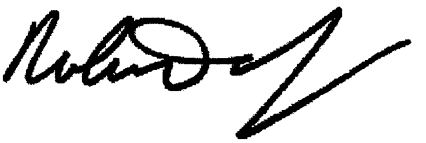
At the onset, the Court notes the inconsistency of Plaintiff's position with respect to his municipal liability and his conspiracy claims. In arguing that municipal liability exists, Plaintiff

contends that a final policymaker was aware of the obvious risk to Plaintiff that J.K. could harm him. However, in arguing his conspiracy claim, Plaintiff argues that anything the police chiefs or the Village president knew should have been brought to the attention of the Board of Trustees, and a conspiracy can be inferred from the fact that it was not. Beyond this incongruity, in order to sustain a Section 1983 conspiracy claim, "there must be some evidence of some concerted effort or plan between the [conspiring parties]." *Moore v. Marketplace Restaurant, Inc.*, 754 F.2d 1336, 1352-53 (7th Cir. 1985). Upon examination of the parties' briefs and supporting evidence, the Court finds no evidence to support the theory that a customary plan existed between Defendants to conspire to violate Plaintiff's rights. That the alleged prior misconduct may not have been brought to the attention of the Board of Trustees is insufficient to establish that there existed any agreement between the former chiefs of police and Village president Swan to conceal the information.

III. Conclusion

For the foregoing reasons, the Court grants Defendants' summary judgment motion [97] as to Counts VI, VII, and VIII of Plaintiff's third amended complaint. In addition, because that disposition results in the dismissal of all claims over which the Court has original jurisdiction (see 28 U.S.C. § 1367(c)(3)), the Court must address whether to retain jurisdiction over Plaintiff's state law claims. As the Seventh Circuit consistently has stated, "it is the well-established law of this circuit that the usual practice is to dismiss without prejudice state supplemental claims whenever all federal claims have been dismissed prior to trial." *Groce v. Eli Lilly & Co.*, 193 F.3d 496, 501 (7th Cir. 1999); *Alonzi v. Budget Constr. Co.*, 55 F.3d 331, 334 (7th Cir. 1995); *Brazinski v. Amoco Petroleum Additivies Co.*, 6 F.3d 1176, 1182 (7th Cir.

1993). Finding no justification to depart from that "usual practice" in this case,[10] the Court dismisses *without prejudice* the state law claims asserted in Counts I through V of Plaintiff's third amended complaint.



Dated: September 30, 2008

Robert M. Dow, Jr.
United States District Judge

[10] In *Wright v. Associated Ins. Cos.*, 29 F.3d 1244, 1251-53 (7th Cir. 1994), the Seventh Circuit noted that there occasionally are "unusual cases in which the balance of factors to be considered under the pendent jurisdiction doctrine – judicial economy, convenience, fairness, and comity – will point to a federal decision of the state-law claims on the merits." The first example that the Court discussed occurs "when the statute of limitations has run on the pendent claim, precluding the filing of a separate suit in state court." *Id.* at 1251. That concern is not present here, however, because Illinois law gives Plaintiff one year from the dismissal on jurisdictional grounds of state law claims in federal court in which to refile those claims in state court. See 735 ILCS 5/13-217; *Davis v. Cook County*, 534 F.3d 650, 654 (7th Cir. 2008). Dismissal without prejudice also is appropriate here because substantial judicial resources have not been committed to the state law counts of Plaintiff's third amended complaint (*Wright*, 29 F.3d at 1251) – indeed, J.K. has not been involved in the briefing on the summary judgment motion, nor have any of the counts against him been raised in that briefing. Finally, this is not a circumstance in which "it is absolutely clear how the pendent claims can be decided." *Id.*

2017 QUI TAM


DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
FIDELITY
BRAVERY
INTEGRITY

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

SUPPRESSED	)	
	)	
Plaintiff,	)	Case No. 2017 L 7932
	)	Cal. S
v.	)	Judge Jerry A. Esrig
	)	
SUPPRESSED	)	***FILED IN CAMERA AND UNDER SEAL***
Defendants.	)	***PURSUANT TO 740 ILCS 175/4***

RELATOR'S RESPONSE TO
THE STATE OF ILLINOIS'
MOTION TO DISMISS RELATOR'S COMPLAINT

Filed under seal pursuant to 740 ILCS 175/4(b)(2) and Briefing Schedule Order entered April 5, 2018, Judge Esrig.

Respectfully submitted,

Counsel for Plaintiff-Relator Brian Higgins

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

STATE OF ILLINOIS, *ex rel.* BRIAN HIGGINS, Plaintiff,	)	Case No. 2017 L 7932
	)	Cal. S
v.	)	Judge Jerry A. Esrig
ALLIED SERVICES GROUP, INC., *et al.*, Defendants.	)	***FILED IN CAMERA AND UNDER SEAL PURSUANT TO 740 ILCS 175/4***

RELATOR'S RESPONSE TO
THE STATE OF ILLINOIS'
MOTION TO DISMISS RELATOR'S COMPLAINT

I. Introduction

On August 4, 2017, Relator Brian Higgins filed this False Claims Act case under seal pursuant to the *qui tam* provisions of the Illinois False Claims Act. 740 ILCS 175/4(b)(2). This False Claims Act case involves the fraudulent submission of contract bids by Defendants Allied Services Group, Inc., ("ASG"), John Stamps, and John Klaczak, the "Allied Defendants" and the knowing acceptance of these fraudulent bids and the knowing failure of Defendants Jamie Rhee and Joel Brown, the "Employee Defendants", to provide honest services to the City of Chicago. This False Claims Act case is based upon the ASG Defendants fraudulently inducing the City of Chicago, with its co-conspirators the Employee Defendants, to accept the bid of ASG for the removal and transportation of deceased persons.

The ASG Defendants knowingly submitted false information to obtain the bid award. This false information as explained herein, fraudulently induced the Government, (the State of Illinois and the City of Chicago will be referred to herein as the "Government") with the consent and knowledge of their co-conspirators the Employee Defendants, to fraudulently award the bid

to ASG.[1] If the Government knew the truth, the Government would not have approved of, or awarded the bid to ASG. "'Under a fraudulent inducement theory, although the [ASG] Defendants' 'subsequent claims for payment made under the contract were not literally false, {because} they derived from the original fraudulent misrepresentation, they, too, became actionable false claims.'" *United States ex rel. Laird v. Lockheed Martin Eng'g & Science Servs. Co.*, 491 F.3d 254, 259 (5th Cir.2007) (citing *United States ex rel. Marcus v. Hess*, 317 U.S. 537, 543–44, 63 S.Ct. 379, 87 L.Ed. 443 (1943))." *U.S. ex rel. Longhi v. United States*, 575 F.3d 458, 468 (5th Cir. 2009)

The Attorney General has now based on faulty logic, reasoning, and bad faith moved to dismiss Higgins' Complaint, without providing Higgins the benefit or opportunity to amend subsequent to Defendants' responsive pleadings or the opportunity to address Defendants' alleged errors. The Attorney General has simply "determined that success on the merits is unlikely." (Mtn. to Dismiss, ¶ 6.) Higgins opposes the Attorney General's Motion to Dismiss and as stated herein the Court should deny the Attorney General's motion.

II. The Illinois False Claims Act

The Illinois False Claims Act permits a person to bring a lawsuit on behalf of the State. The issue of whether a person has standing to bring a lawsuit on behalf of the State under the *qui tam* provisions of the False Claims Act was addressed by our Supreme Court in *Scachitti v. UBS Fin. Services*, 215 Ill. 2d 484, 488 (2005). The Court held that private persons do have standing. *Id.* at 488. The *Scachitti* Court addressed only in dicta, however, the authority of the Attorney General to dismiss or settle a case to demonstrate that the Attorney General retains control over

[1] The knowledge of the Employee Defendants is not a defense as the government knowledge bar was repealed in 1986. *U.S. ex rel. Dekort v. Integrated Coast Guard Sys.*, 705 F. Supp. 2d 519, 543 (N.D. Tex. 2010)

the litigation and thus *qui tam* plaintiffs have standing to bring these actions. *Scachitti v. UBS Fin. Services*, 215 Ill. 2d 484, 512 (2005)

The Attorney General cites in support of her Motion to Dismiss two *qui tam* cases filed that alleged internet retailers failed to collect and remit taxes to the State. These sales tax cases are easily distinguished from Higgins' *qui tam*. In *People ex rel. Schad, Diamond & Shedden, P.C. v. QVC, Inc.*, 2015 IL App (1st) 132999, Schad filed a False Claims Act case in 2011 alleging that QVC failed to collect and remit taxes to the State. (*Schad*, at ¶ 1.) The Attorney General moved for dismissal because the State, the victim of the alleged fraud, had conducted an audit in 2006 and approved of QVC's practices. (*Schad*, at ¶ 25.).

While in the other tax case cited by the Attorney General, the Attorney General moved to non-suit and dismiss the case because there was insufficient "nexus with Illinois under the commerce clause for Burlington Direct, an out-of-state company, to collect use tax on sales to customers in Illinois." *State ex rel., Beeler, Schad & Diamond, P.C., v. Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d 507, 510 (2006), *cert. denied*, 223 Ill.2d 686 (2007). Here in the case at bar, the Attorney General alleges no legally or factually sound reasons for the request for dismissal. Instead, the Attorney General simply asserts that the Higgins is unlikely to succeed. (Mtn. to Dismiss, ¶ 6.)

Illinois Courts have held in interpreting section 740 ILCS 175/4(c)(2)(A) that it is the state's prerogative to decide which cases to pursue and which cases to dismiss and that the presumption is that the state is acting in good faith barring evidence of bad faith. *State ex rel. Beeler, Schad & Diamond, P.C. v. Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d 507, 517 (1st Dist. 2006).

Although bad faith has not been addressed in the context of the issue at bar, bad faith generally means being unfaithful to one's duty or obligation. *Cernocky v. Indem. Ins. Co. of N. Am.*, 69 Ill. App. 2d 196, 203 (2d Dist. 1966). Bad faith does not mean criminal or fraudulent conduct. In the cases cited by the Attorney General in support of the motion to dismiss, the Attorney General stated a rational basis for the dismissal, demonstrating that the Attorney General was acting faithfully to her duties and obligations as the chief legal officer of the State. In *QVC* the State conducted an audit five years prior to the *qui tam* action being filed and concluded that the claims were settled under the alternative remedies provision of the False Claims Act. *People ex rel. Schad, Diamond & Shedden, P.C. v. QVC, Inc.*, 2015 IL App (1st) 132999, ¶ 4; 740 ILCS 175/4 (c)(5) ("the State may elect to pursue its claim through any alternate remedy.") In the *Burlington* case the Attorney General also presented the court with a sound legal reason in support of its motion to dismiss. In *Burlington*, the Attorney General concluded that there was insufficient nexus between Burlington and the State to collect sales tax. *State ex rel. Beeler, Schad & Diamond, P.C. v. Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d 507, 510 (1st Dist. 2006).

Here, the Attorney General's reasoning is perplexing. Litigation, the filing of motions to dismiss, the discovery process, and dispositive motions often serve to separate the wheat in a case from the chaff. A complaint maybe inartfully drafted when filed, but the litigation process forces the plaintiff to focus his position and to replead or plead viable claims. The Attorney General seeks to deprive Higgins of these opportunities to cure any defects in his Complaint and to remedy any errors.

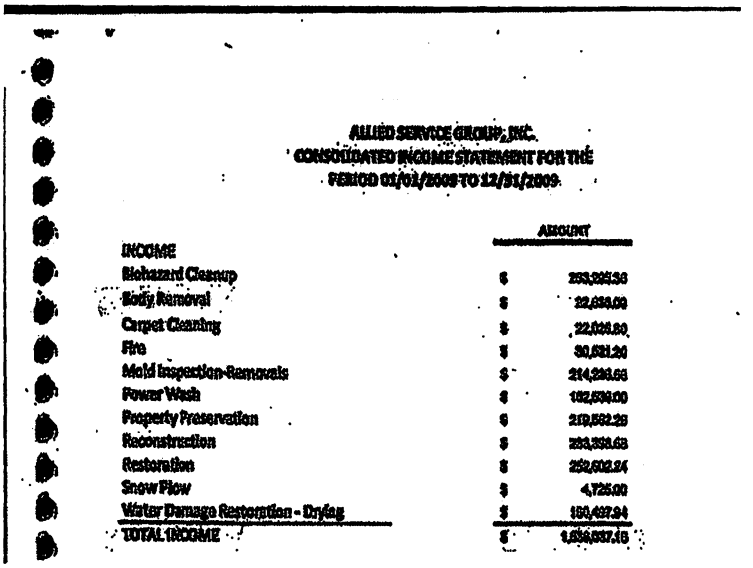
Higgins' *qui tam*, however, is also not similar to the cases cited by the Attorney General. In those cases, the Attorney General sought dismissal after it was determining that the State was

not the victim of fraud. Here the Attorney General seeks dismissal not because it was determined that there were no false or fraudulent claims, but because it determined that Higgins has an uphill battle in proving his claims and therefore Higgins is likely to lose. Therefore, the Attorney General concluded that Higgins Complaint should be dismissed.

Furthermore, in the cases cited by the Attorney General, the continuation of those cases would have contradicted a State policy and would have a wide-ranging effect on interstate commerce. If the Higgins Complaint is unsealed and allowed to proceed, and Higgins losses that should be of no concern to the Attorney General or the Government, and if Higgins is successful that success will have no impact on the State, unlike the sales tax cases, except to obtain a recovery for the Government.

III. Facts supporting the allegations of Fraud

As you will see, it is indisputable that the ASG Defendants committed fraud in their August 4, 2010 bid submission to the Government. In ASG's financial statement submitted in support of its bid, ASG claimed a total income of $1,536,037.16 for the period January 1, 2009, to December 31, 2009. (Exhibit A, BH – 0207.) This information was submitted to convince the Government that ASG had the experience to provide for the removal and transportation of deceased persons. This information was material to the Government's decision to award the contract to ASG.



ALLIED SERVICE GROUP, INC.
CONSOLIDATED INCOME STATEMENT FOR THE
PERIOD 01/01/2009 TO 12/31/2009

	AMOUNT
INCOME	
Biohazard Cleanup	$ 253,225.50
Body Removal	$ 22,650.00
Carpet Cleaning	$ 22,020.50
Fire	$ 30,581.20
Mold Inspection-Removals	$ 214,230.65
Power Wash	$ 102,534.00
Property Preservation	$ 210,582.25
Reconstruction	$ 253,330.63
Restoration	$ 252,602.24
Snow Plow	$ 4,725.00
Water Damage Restoration - Drylag	$ 150,427.94
TOTAL INCOME	$ 1,656,657.16

(Exhibit A, BH – 0207.)

However, the ASG Defendants lied. In a sworn affidavit submitted by ASG on August 29, 2012, in its "Affidavit for Minority and Women-Owned Business Enterprise (M/WBE) Certification and/or Business Enterprise Owned by People with Disabilities (BEPD) Certification" ("MBE"), ASG was required to list its gross receipts for the last five fiscal years. Here ASG did not list its gross receipts anywhere near the over $1.5 million it listed on its consolidated income statement for 2009 submitted as part of its bid, instead, ASG identified its gross receipt for 2009 as - $0. So, either ASG lied when it submitted a false statement with its bid application or it submitted a false affidavit in its application to obtain an MBE certification. Either way, both cannot be true. ASG either obtained the bid through fraud or the MBE designation through fraud and thus violated the False Claims Act.

2. Identify the gross receipts and assets of the Applicant firm and all affiliates for the last five fiscal years.

Applicant Firm

Year	Gross receipts	Assets
2011	$183,040	$183,040
2010	[illegible]	[illegible]
2009	0	[illegible]
2008	0	[illegible]
2007	Not in Business	

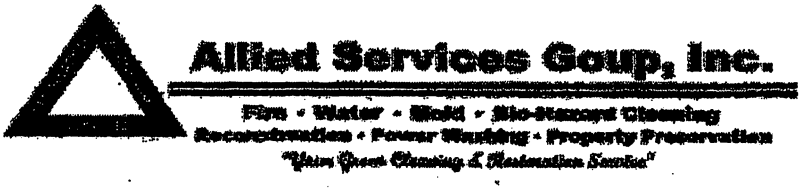
Affiliates:

Affiliate Name	Year	Gross receipts	Assets
N/A	N/A	N/A	N/A
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-

* *Attach three years of federal and state corporate tax returns for Applicant firm and all affiliates. If not a corporation, submit individual tax returns for partners/principals.*

(Exhibit B, BH – 0226.)

In a second example of fraud, ASG submitted its company background as part of its bid applications to the Government on August 4, 2010. In it, ASG claimed it acquired Allied Cleaning Services in 2009, which specialized in the removal/transport of deceased persons. ASG stated that it operates 24/7 with 40 personnel. But again, in ASG's MBE affidavit it stated that it had no receipts in 2009 or 2010 and only $183,040 in 2011 when ASG was supposedly operating 24/7 with 40 employees.



Cover Letter

Company Background:
Allied Services Group, Inc (ASG) was originally formulated as Stamps Construction in 2008. The company performed General Construction, Project Management and Consulting. In 2009, the name was changed to Allied Services Group, Inc to better serve our customers. Also in 2009, Allied Services Group, Inc acquired Allied Cleaning Services which specialized in the removal/transport of deceased persons. This acquisition was done to once again offer more services to our customers. With the combination of these companies, it has allowed ASG to become one of the largest, full-service removal/transport companies in the Chicagoland/Cook County area.

ASG currently operates 24 hours a day, seven days per week with 40 personnel. The services we provide include: Removal/Transport of Deceased Persons, Biohazard/Crime Scene Cleaning, Mold Remediation, Water/Flood/Fire Damage Cleaning, Property Preservation Services, Bed Bug Inspection/Removal as well as Full Reconstruction Services. Our client base for removal/transport of deceased persons consists of Cook County Sheriff's Department, Metra Commuter Rail, Union Pacific Railroad, Belt Railway and several local Police Departments. ASG's geographic coverage area includes the City of Chicago, the entire south suburbs and entire Cook County area.

(Exhibit C, BH – 0020.)

As a third example of fraud, in ASG's bid application for contract number 51244, with a contract term from August 15, 2017, to August 14, 2022, "Transportation of Deceased Persons, Chicago Police, Specification number 187673 Work Services Form Contract 08.23.16", ASG submitted the following:

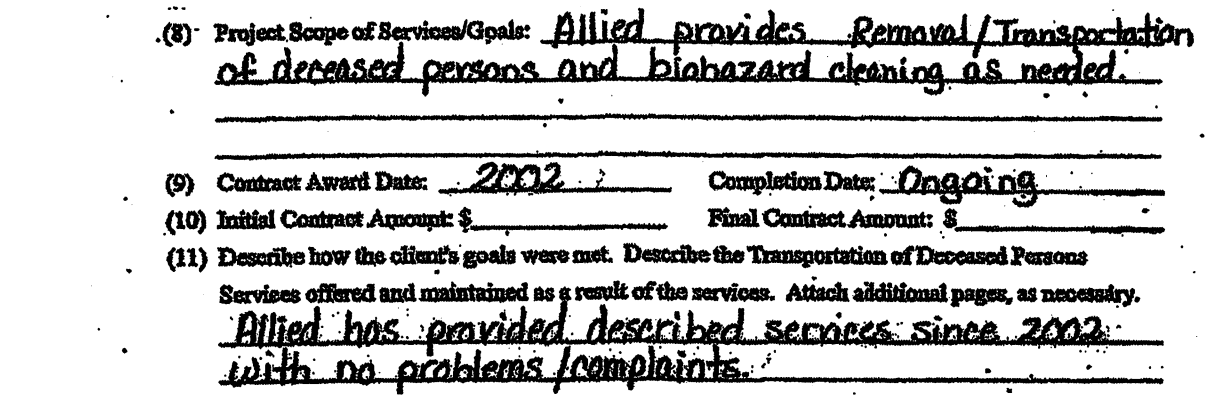
10.2. Years Of Work Experience With Transportation of Deceased persons

State the number years Contractor has provided transportation of deceased persons services: 5 Years.

(Exhibit D, p. 108.)

This was signed by Defendant John Stamps November 18, 2016. (Exhibit D. p. 112) This, of course, means that ASG's work experience in the transportation of deceased persons began in 2011.

However, in Exhibit 2 to its original bid application in 2010, ASG submitted the following:



(8) Project Scope of Services/Goals: Allied provides Removal/Transportation of deceased persons and biohazard cleaning as needed.

(9) Contract Award Date: 2002 Completion Date: Ongoing

(10) Initial Contract Amount: $ Final Contract Amount: $

(11) Describe how the client's goals were met. Describe the Transportation of Deceased Persons Services offered and maintained as a result of the services. Attach additional pages, as necessary.
Allied has provided described services since 2002 with no problems/complaints.

(Exhibit E, BH – 0205.)

In the 2010 application ASG told the Government that it had been providing the removal/transportation of deceased persons since 2002, or 8 years, 2002 to 2010, yet in 2016 ASG has been providing the removal/transportation of deceased persons for only 5 years, 2011 to 2016, showing that ASG submitted materially false information in its 2010 bid application.

Here the damages caused by Defendants are substantial. When a defendant obtains a contract through fraud, the defendant is liable for each claim submitted to the government. *U.S. ex rel. Thomas v. Siemens AG*, 991 F. Supp. 2d 540, 571 (E.D. Pa. 2014), *aff'd*, 593 Fed. Appx. 139 (3d Cir. 2014), citing *Bettis*, 393 F.3d at 1326. *See also* S.Rep. No. 99–345, at 9, reprinted in 1986 U.S.C.C.A.N. at 5274 ("each and every claim submitted under a *contract ... which was originally obtained by means of false statements* ... constitutes a false claim") (emphasis added in original). Thus, every dollar Defendants received since fraudulently inducing the Government to award the bid was obtained in violation of the False Claims Act and subject to treble damages plus a penalty of between $5,000 and $11,000 for each false claim. It is believed that Defendants are submitting over 3000 false claims per year since fraudulently inducing the Government to

award ASG the contract.

IV. A rarely used provision.

The False Claims Act states, that "The State may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the State of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion." 740 ILCS 175/4(c)(2)(A). In interpreting this provision, the presumption is that the State is acting in good faith and barring evidence of bad faith the Attorney General can decide which False Claims Act cases a *qui tam* plaintiff can pursue. *People ex rel. Schad, Diamond and Shedden, P.C. v. QVC, Inc.*, 31 N.E.3d 363, 369–70 (Ill. App. 1st Dist. 2015)

The Federal False Claims and the Illinois False Claims Act have similar provisions. *Scachitti v. UBS Fin. Services*, 831 N.E.2d 544, 557 (Ill. 2005)(Illinois False Claims Act closely mirrors the Federal False Claims Act and courts have found federal analysis to be instructive.) The Department of Justice uses its dismissal section sparingly because the Federal statute, like the Illinois statute, makes it clear that a person can pursue an action even if the government declines to do so.

Although rarely used the United States Attorney General has moved to dismiss *qui tam* cases under Section § 3730(c)(2)(A)("The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion."). For example, in *Ridenour v. Kaiser-Hill Co.*, 397 F.3d 925, 928 (10th Cir. 2005), the United States moved to dismiss because the *qui tam* lawsuit would have delayed the clean-up and closure of a radiologically-contaminated facility. While in *U.S. ex rel. Fay v. Northrop Grumman Corp.*, No. CIVA06CV00581EWN-MJW, 2008 WL 877180, at *6

(D. Colo. Mar. 27, 2008)(Exhibit F) the court found that the Government's motion to dismiss was rationally related to its interest in safeguarding classified information. Finally, in *Swift v. U.S.*, 318 F.3d 250, 251 (D.C. Cir. 2003), the district court dismissed the complaint after the government "demonstrated that dismissal was rationally related to a valid government purpose." (The D.C. Cir. addressed whether government intervention was required prior to dismissal.)

V. Conclusion

In the cases cited herein and in the Attorney General's Motion the reasons presented for dismissal were sound and thus implicitly demonstrated good faith. Here Higgins has met his burden and has shown that the Attorney General is acting in "bad faith" by not being faithful to her duties and obligations by seeking dismissal of this *qui tam* based on her determination "that success on the merits is unlikely." (Mtn. to Dismiss, ¶ 6.) The Defendants, this Court, and the Attorney General have sufficient safeguards and opportunities to address Higgins Complaint if as the Attorney General suggests it is unlikely to be successful.

WHEREFORE, for the foregoing reasons, Relator Brian Higgins respectfully requests that the Motion to Dismiss be denied.

Respectfully submitted,

Counsel for Plaintiff-Relator Brian Higgins

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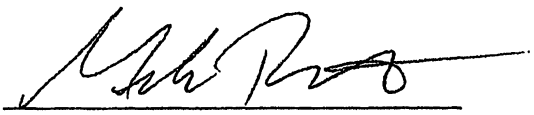
mike@malatestalaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Relator's Response to the State of Illinois' Motion to Dismiss Relator's Complaint has been served on the Illinois Attorney General, 100 W. Randolph St, Chicago, IL 60601 on this 2 day of May 2018, via email to:

Matthew Chimienti, MChimienti@atg.state.il.us

Elizabeth Morris, EMorris@atg.state.il.us



Michael C. Rosenblat

ESRATI VS DEPARTMENT OF JUSTICE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
Western **DIVISION**

David Esrati
(Enter Above the Name of the Plaintiff in this Action)

3:21-cv-218

vs.

U.S. DEPARTMENT OF JUSTICE
Southern District of Ohio
(Enter above the name of the Defendant in this Action)

MICHAEL J. NEWMAN
Peter Silvain, Jr.

If there are additional Defendants, please list them:

Federal Bureau of Investigations

COMPLAINT

I. Parties to the action:

Plaintiff: Place your name and address on the lines below. The address you give must be the address where the court may contact you and mail documents to you. A telephone number is required.

David Esrati
Name - Full Name Please - PRINT

113 Bonner St.
Street Address

Dayton OH 45410
City, State and Zip Code

937-228-4433,2
Telephone Number

If there are additional Plaintiffs in this suit, a separate piece of paper should be attached immediately behind this page with their full names, addresses and telephone numbers. If there are no other Plaintiffs, continue with this form.

Defendant(s):

Place the name and address of each Defendant you listed in the caption on the first page of this Complaint. This form is invalid unless each Defendant appears with full address for proper service.

1. U.S. DEPARTMENT OF JUSTICE Southern District of Ohio
Name - Full Name Please

200 W. Second Street, Suite 600 Dayton OH 45402
Address: Street, City, State and Zip Code

2. Federal Bureau of Investigations

200 W 2nd St # 411 Dayton, OH 45402

3. _____

4. _____

5. _____

6. _____

If there are additional Defendants, please list their names and addresses on a separate sheet of paper.

II. Subject Matter Jurisdiction

Check the box or boxes that describes your lawsuit:

☐ Title 28 U.S.C. § 1343(3)
[A civil rights lawsuit alleging that Defendant(s) acting under color of State law, deprived you of a right secured by federal law or the Constitution.]

☐ Title 28 U.S.C. § 1331
[A lawsuit "arising under the Constitution, laws, or treaties of the United States."]

☐ Title 28 U.S.C. § 1332(a)(1)
[A lawsuit between citizens of different states where the matter in controversy exceeds $75.000.]

☒ Title 5 United States Code, Section 552
[Other federal status giving the court subject matter jurisdiction.]

III. Statement of Claim

Please write as briefly as possible the facts of your case. Describe how each Defendant is involved. Include the name of all persons involved, give dates and places.

Number each claim separately. Use as much space as you need. You are not limited to the papers we give you. Attach extra sheets that deal with your statement claim immediately behind this piece of paper.

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant Department of Justice ("DOJ") and its components Federal Bureau of Investigation ("FBI"), concerning evidence (namely recordings) that was presented to the grand jury that Dayton Mayor, Nan Whaley, was under investigation and then may have become a confidential informant for the FBI as part of a plea deal. The precedent of Dayton City Commissioner Joey Williams, being allowed to run for office, after negotiating a plea deal, falls under the doctrine of "Capable of repetition, yet avoiding review" and should be considered as state supported fraud debasing the election process.

IV. Previous lawsuits:

If you have been a Plaintiff in a lawsuit, for each lawsuit state the case number and caption. (Example, Case Number: 2:08-cv-728 and Caption: John Smith vs. Jane Doe).

Case Number	Caption	
CASE NO. 3:19-cv-251	Esrati	vs. Dayton Metro Library Et al
		vs.
		vs.

V. Relief

In this section please state (write) briefly exactly what you want the court to do for you. Make no legal argument, cite no case or statutes.

WHEREFORE, plaintiff prays that this Court:

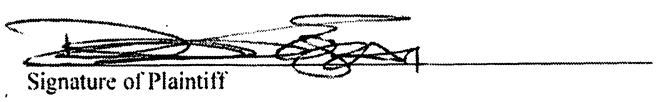
A. order defendants to disclose the requested records in their entireties and make copies available to plaintiff;

B. provide for expeditious proceedings in this action;

C. award plaintiff its costs and reasonable fees incurred in this action; and

D. grant such other relief as the Court may deem just and proper.

I state under penalty of perjury that the foregoing is true and correct. Executed on this 10 day of August, 2021.



Signature of Plaintiff

Freedom of Information Act Complaint

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT
OF OHIO
WESTERN DIVISON

David Esrati *pro se*	)
100 Bonner St..	)
Dayton OH 45410	)
	)
Plaintiff,	)
	)
v.)	
	)
U.S. DEPARTMENT OF JUSTICE	)
Southern District of Ohio	)
200 W. Second Street, Suite 600	)
Dayton, OH 45402	)
	)
and	)
	)
Federal Bureau of Investigations	)
200 W 2nd St # 411	)
Dayton, OH 45402	)
	)
Defendants.	)

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant Department of Justice ("DOJ") and its components Federal Bureau of Investigation ("FBI"), concerning evidence (namely recordings) that was presented to the grand jury that Dayton Mayor, Nan Whaley, was under investigation and then may have become a confidential informant for the FBI as part of a plea deal. The precedent of Dayton City Commissioner Joey Williams, being allowed to run for office, after negotiating a plea deal, falls under the doctrine of "Capable of repetition, yet avoiding review" and should be considered as state supported fraud debasing the election process.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff David Esrati is a citizen journalist and voter in Dayton Ohio. He has been publishing his blog, Esrati.com since 2005, to focus public attention on emerging civil liberties issues esp. free and protected speech, sunshine laws, public

meetings laws, and public corruption. He is intimately familiar with Ohio's Sunshine laws, open meetings laws, and requirements for public business to only be conducted in public unless falling under very narrow arguments defined by Ohio law.

4 Defendant DOJ is a Department of the Executive Branch of the United States Government, and includes component entities FBI, The DOJ and the FBI are agencies within the meaningof 5 U.S.C. § 552(f).

Government Agencies' Collected Criminal Evidence Of Public Officials Violating the Ohio Open Meetings Laws

5. On April 30, 2019, the FBI, the DOJ and the State Attorney General had a press conference announcing the indictments of 4 Black men, 3 of which were at one time either elected officials or government employees and one who was a private citizen in what they called a prosecution of a "Culture of Corruption" investigation. https://esrati.com/a-culture-of-corruption-but-only-if-youre-black/17147

6. On May 6, 2019, Esrati revealed the common thread to the four indicted- an FBI "Confidential informant" Mike Marshall, owner of "United Demolition." Marshall was a former foreman for Steve Rauch, who would later be indicted (the only non-Black person to be indicted). United Demolition had been granted a $248K contract with the city to demolish homes in the summer of 2016. Note, it takes 3 commissioners to approve a contract, recommended to them by the City Manager. I suggested that City Commissioner Joey Williams had "flipped" and had become a C.I. in exchange for leniency. https://esrati.com/the-wire-dayton-edition/17167

7. On May 13, 2019, I clearly stated that Williams had resigned his newly re-elected seat not because of his new job as a Bank President, but because the Feds had ordered him to. In that article, I cite a high placed former city employee about how Mayor Nan Whaley had been steering contracts. At some point, another informant had told me Whaley had retained private counsel, although I didn't post this confidential tip. https://esrati.com/a-real-mayor-for-dayton/17225

8. On March 1, 2020 the Dayton Daily News "broke the story" that "United Demolition" was the company involved and Marshall was the "Confidential Informant." This is almost a year after I published the May 6, 2019 story exposing Marshall. At this point, still not having seen any other indictments of people in Dayton Government, I published 3 pages of the Brian Higgins Discovery documents that had been given to me, that clearly identified that Joey Williams had become a confidential informant for the FBI on or around Oct 2, 2015, four years before his public indictment. This means he was allowed to run for public office, already having admitted to the Feds that he had accepted bribes and had engaged in corrupt activity. Much of the interview seemed more concerned with Marlon Shackleford (another Black man in the community) and Willis Blackshear Sr. (another Black politician). They asked Williams about Whaley and CityWide Development. They also asked about County Commissioner Debby Lieberman, Whaley, former Mayor Rhine McLin and Former Director of Planning Aaron Sorrel- and their connections to Rauch and the demolition contracts. https://esrati.com/and-the-rest-of-the-williams-corruption-story/17659

9. The implications of corrupt politicians being allowed to run for office, solicit donations, while already being indicted and agreeing to resign if they get elected (or in William's case- re-elected) must be examined under the established doctrine of the Supreme Court of "Capable of repetition, yet evading review." In cases like the Williams matter, the FBI and the DOJ committed fraud upon the taxpayers by allowing Williams to run, while some sort of plea deal had already been established. Esrati posits that Williams had asked for the Feds not to indict him or the others until his youngest son Max, had completed High School. The taxpayers had to foot the bill for the special election to fill his seat.

10. Sometime around August of 2020, Esrati was sent a "Court Protective Order" from the Feds to dispose of the Higgins Discovery Documents, which they claim, "Defendant and his counsel may use the Discovery Materials solely in the defense of this case and for no other purpose." Ostensibly, this was not due to my publication, but because Higgins had used part of his own discovery in the filing of a pro se civil case against FBI CI, "United Demolition" aka Mike Marshall for failing to perform the work Higgins had contracted him to do on his home after a fish tank had leaked. ***Brian Higgins V Michael Marshall, et al, Montgomery County Common Pleas Court Case No 2020CV01219***

11. Just before the primary filing deadline for Whaley to run for her third term as Mayor in 2021, she announces that she will not be running for Mayor. Jeff Mims, who had to have voted to award the contract to United Demolition, pulls his petitions for Commission and switches to the Mayoral race. He has yet to be implicated in any criminal misdoing in the Culuture of Corruption investigation, but has been knowingly

willing to stand by and protect himself from Sunshine Law violations. These violations were well documented by Esrati.com in his conduct leading the "School closing task force" where he allowed the law to be broken, but stood outside and did nothing while a crime was committed. https://esrati.com/dps-special-meetings-are-to-avoid-scrutiny/16236

12. Whaley, proceeds to run for Governor, collecting hundreds of thousands of dollars from donors, while possibly facing future indictment as Williams was allowed to do.

13. A reliable confidential informant informs Esrati that a friend was serving on the original grand jury that indicted Williams, Luckie, Winburn and Higgins, and had been presented with multiple recordings of Nan Whaley engaged in criminal behavior- with the prosecution presenting her as part of this criminal proceedings. However, "all of a sudden, they stopped pursuing Whaley." Esrati files a FOIA request for those recordings, contending that if Whaley is engaged in discussions of city business, outside of public meetings, she's already committing a criminal act punishable by the nearly toothless Ohio Sunshine laws- which count on private citizens enforcing them. Submission ID: 221821 May 28, 2021.

> "In the grand jury where the Dayton Ohio "Culture of Corruption" facts were being presented against Joey Williams, Roshawn Winburn, Clayton Luckie- et al- "Culture of corruption" the jury heard tapes of Dayton Mayor Nan Whaley recorded by a CI or the FBI or the DOJ. It seems clear that there is no longer an ongoing investigation of Ms. Whaley since she's being allowed to run for Governor. If there are recordings, the public has a right to hear them. They were

collected with our tax dollars and she is an elected official- involved in doing the public's business."

14 Esrati received a response from the US DOJ denying the request on June 24, 2021 tracking number EOUSA-2021-002369 claiming the following reasons:

"this Office has determined that any records responsive to your request for grand jury records are exempt pursuant to: 5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute (in this instance, Rule 6(e) of the Federal Rules of Criminal Procedure, which pertains to the secrecy of grand jury proceedings). There is absolutely no discretion for us or for the United States Attorney's Office to release a grand jury exhibit or evidence obtained as part of a grand jury investigation to you or other members of the public, and a violation of Rule 6(e) would be punishable as a contempt of court."

I was instructed of my rights to appeal and did on June 10, 2021

15. Esrati received a response from the US DOJ denying my appeal on June 16, 2021 appeal number A-2021-01970 claiming the following reasons:

"I note that your appeal concerns the FBI's refusal to confirm or deny the existence of records.

After carefully considering your appeal, I am affirming the FBI's action on your request. The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. The FBI properly refused to confirm or deny the existence of records responsive to your request. Confirming or denying the

existence of such records, including law enforcement records, concerning a third-party individual would constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(6), (7)(C). Additionally, it is reasonably foreseeable that confirming or denying the existence of such records would harm the interests protected by these exemptions. See, e.g .. People for the Ethical Treatment of Animals v. NIH, 745 F.3d 535, 544 (D.C. Cir. 2014) (upholding agency's refusal to confirm or deny existence of records that would confirm whether investigation of third party had occurred); see also Antonelli v. FBI, 721 F.2d 615,618 (7th Cir. 1983) (finding that confirming whether third party has been the subject of investigation would likely "constitute an invasion of that person's privacy that implicates the protections of Exemptions 6 and 7")."

16. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request to defendant DOJ and FBI and has asked for mediation. However, plaintiff has been advised that this should not preclude him from filing in Federal Court to gain access to these records.

On August 10, 2021, the OGIS- the Office of Government Information Services, the agency responsible for mediating appeals of FOIA denials, writes Esrati that:

"your case is in our complex queue pending assignment. Currently we are assigning complex cases received in February 2021;"

17. In plaintiff's appeal it was clearly stated that there are records, and that Mayor Whaley is not entitled to protection of privacy when discussing public business by

the Ohio Sunshine laws- which she is violating.

Plaintiff also said that confidential informants can easily be redacted, although it's likely we already know who they are. As to revelations of procedure or process the FBI used in this investigation, all we know is that it apparently only works on Black people in public office. I have cited numerous examples of larger corruption cases in the Dayton area- particularly at Wright State University, where $130M ostensibly disappeared, and no one was indicted- including a former congressman (Steve Austria) who was paid handsomely with no evidence of any tangible work product.

18. There is precedent for the production of grand jury evidence against public officials to support this filing:

***Senate of Puerto Rico v. Department of Justice*, 823 F.2d 574 (D.C. Cir. 1987).**

In a decision seeming to narrow the scope of grand jury secrecy under Federal Rule of Criminal Procedure 6(e), as incorporated by Exemption 3, the D.C. Circuit Court of Appeals ruled that the mere fact that records compiled during a criminal civil rights investigation into the murder of two political activists had been presented to a grand jury did not necessarily require their withholding. Rejecting a test based on the literal language of the rule -- "matters occurring before [a] grand jury" -- the D.C. Circuit stated that the grand jury secrecy rule protects only information which would "tend to reveal some aspect of the grand jury's investigation," such as "the identities of witnesses or jurors, the substance of testimony, the strategy or direction of the investigation, the deliberations or questions of jurors, and the like." Although purporting to acknowledge the "necessarily broad" scope of Rule 6(e), it held that an agency must provide an "affirmative demonstration of a nexus between disclosure and

revelation of a protected aspect of the grand jury's investigation" in order to bring information within the rule's protective ambit.

Senate of P.R., 82 F.*2d* is commonly summarized as:

> noting that the D.C. Circuit has "never embraced a reading of Rule 6(e) so literal as to draw 'a veil of secrecy ... over all matters occurring in the world that happen to be investigated by a grand jury."

In Shapiro v. Dep't of Justice, the court ordered the Dept. of Justice to further justify their reason for not providing the requested information:

> The government's explanation contains insufficient information for the Court to determine whether disclosure of these database search results would "increase the risks that a law will be violated ***or that past violators will escape legal consequences***." (emphasis added) Id . at 1193. See also Defenders of Wildlife v. U.S. Border Patrol , 623 F.Supp.2d at 89–90.

And

> "holding that, where the government's declaration "says little more than that the material has been presented to the grand jury; unless this fact alone automatically exempts the material, a position we reject, it is incumbent upon [the Court] to require some affirmative demonstration of a nexus between disclosure and revelation of a protected aspect of the grand jury's investigation"

In reviewing Boehm v. Fed. Bureau of Investigation that cites Senate of P.R., 82 F.2d:

He argues that "there is no blanket exception to all information that was before a grand jury" and that "[d]efendants have not shown that the substantive information they describe cannot be segregated from the identifying information." Id. at 5, citing Senate of P.R., 82 F.2d at 582; see also id. at 2.

The key in this request follows Boehm, in that we are not trying to decipher the workings of the Grand Jury, but trying to preclude an elected official from committing fraud while under investigation- an investigation that seemed to be centered around her commission of criminal acts while in office- to wit: discussing public business in a private forum.

In Boehm, the plaintiff lost:

> Based on the same reasoning provided by this Court in its June 10, 2013 Memorandum Opinion, the Court concludes that plaintiff failed to identify a public interest that would overcome the privacy interests of government sources in this case. See Boehm,2013 WL 2477091, at * 18–19.

In this filing, we clearly identify a legitimate public interest: the integrity of candidates running for public office. If Whaley did in fact become a Confidential Informant, her right to privacy is nullified by her violations of the public trust in violating the Ohio Sunshine Laws. The voters bore the costs of the Williams deal by paying for a special election.

> The reality of democracy is that "the rule of law is central to the governing system. As part of the system, the fair and impartial investigation into wrongdoing of those with whom the public has entrusted public monies and authority is essential for a

democracy to work well. If public officials are not held accountable to the law, the basic tenets of democracy are eroded."

~ Investigative decision-making in public corruption cases: Factors influencing case outcomes. Kristine Artello & J.S. Albanese, Christopher Crowther-Dowey (Reviewing editor)
https://www.tandfonline.com/doi/full/10.1080/23311886.2019.1670510

If bad actors are allowed to trade insider government information in exchange for their personal freedom, our very confidence in the government becomes so deteriorated as to cause civil unrest and disobedience. Stated differently, when the government protects governmental bad actors, government loses the fundamental foundation of trust from which our democracy depends on.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

A. order defendants to disclose the requested records in their entireties and make copiesavailable to plaintiff;

B provide for expeditious proceedings in this action;

C. award plaintiff its costs and reasonable fees incurred in this action; and

D. grant such other relief as the Court may deem just and proper.

Respectfully Submitted

/s/ David Esrati
113 Bonner St
Dayton OH 45410
937-228-4433,2
Pro Se

JURY DEMAND

I make the humble request of a trial by jury as to all issues raised herein.

/s/ David Esrati

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2021, this document was served by hand to the following:

U.S. DEPARTMENT OF JUSTICE
Southern District of Ohio
200 W. Second Street, Suite 600
Dayton, OH 45402

and

Federal Bureau of Investigations
200 W 2nd St # 411
Dayton, OH 45402

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

David Esrati

(b) County of Residence of First Listed Plaintiff MONTGOMERY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

PRO SE
100 Bonner St.
Dayton OH 45410
937.228.4433,2

DEFENDANTS

USDOJ & FBI

County of Residence of First Listed Defendant MONTGOMERY
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☒ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☒ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
USC 5 sec 552

Brief description of cause:
FOIA REQUEST APPEAL INVOLVING PUBLIC OFFICIALS IN GRAND JURY

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

HIGGINS APPEAL

FEDERAL APPELLATE LITIGATION CLINIC
UNIVERSITY OF MICHIGAN

Melissa M. Salinas, Esq. · Director, Adjunct Assistant Clinical Professor

July 18, 2022

LEGAL MAIL TO BE OPENED ONLY
IN THE PRESENCE OF THE ADDRESSEE
Brian Higgins #22060-167
Butler County Sheriff's Office
705 Hanover Street
Hamilton, OH 45011

Re: *United States v Brian Higgins*
Sixth Circuit Court of Appeals Case No. 22-3538

Dear Mr. Higgins:

The Sixth Circuit Clerk's Office has requested that the University of Michigan Law School Federal Appellate Litigation Clinic be appointed to represent you in your appeal to the United States Court of Appeals for the Sixth Circuit. I teach and direct the clinic, and write to introduce myself and provide you with pertinent information concerning the appellate process.

Your appeal has been docketed in the Sixth Circuit. It will be decided by a panel of three judges who are selected randomly from the Sixth Circuit Court of Appeals. We will not know the identity of the judges on your panel until shortly after the case is scheduled for oral argument. With rare exceptions, the decision of the panel of judges is final, and requires a vote of at least two of the judges on the panel. The Court of Appeals, which sits in Cincinnati, Ohio, is the last step before the Supreme Court of the United States. As you may know, the Supreme Court accepts only a small number of cases for review (often less than 100 per year from the across the country), and has very strict requirements for cases to be considered for further review.

An appeal is not like a trial because it concerns only questions of law and not questions of fact. Therefore, an appeal must be based upon matters which are in the record of the district court proceedings. If we wish to raise a question outside the district court's record, we must get permission by way of a motion to expand the record to include the new evidence. Otherwise, the appellate court will refuse to consider the question.

The procedure on appeal can be described as follows. First, we, on your behalf as the appellant in the case, request all necessary transcripts for your appeal. After the transcripts are filed with the Court and sent to our office, the Clerk's Office notifies us of the briefing schedule. This schedule sets the due dates for your brief and the government's brief as appellee. After we file our opening brief and the government files its response brief, we have a specified time (usually 17 days) by which we may file an optional reply brief on your behalf. After all the briefs are submitted, the Court of Appeals may or may not schedule an oral argument.

After submission of all the briefs and/or argument, the Court of Appeals decides the case. We have no control over the time consumed after we file our briefs. Our experience has been that the Court generally takes several months from the filing of our brief to hold the oral argument. If your appeal is complicated, the Court may take another four months or more from the argument to issue its decision. If the case is relatively uncomplicated, the

2058 Jeffries Hall, 701 S. State Street Ann Arbor, Michigan 48109 USA
T: 734 764-2724 F: 734 764-8242
law.falclinic@umich.edu

decision will normally be made sooner. There is no guarantee on any of these dates, as the timing is entirely within the Court's control. As you can see, in a complicated appeal, it can take more than a year to get a decision from the Court of Appeals.

I teach a clinical program at the University of Michigan Law School called the Federal Appellate Litigation Clinic. In this clinic, second and third-year law students work on appeals under my close supervision. I have selected your appeal as one of the cases our students are working on this term. The reason I selected your appeal is that it is a case with substantial issues, and the timing of the case is appropriate for the course. The student(s) working on your case will work with me on the legal research and the writing of the brief. Please understand that I retain complete control over the case, and will be working closely with all the students who undertake work on behalf of our clients, including you. Once the student is done with the work for the course and hands in the final version of the brief, I make any and all changes to that brief that we feel are necessary before the brief is filed in the Court of Appeals. At that point the case will remain with me, on my personal docket.

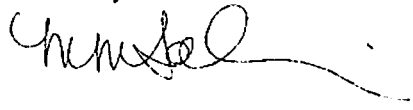
When scheduling permits, the student will also argue the case before the Court of Appeals, but only after significant additional work and practice with me and, when possible, with outside attorneys. We call these practice sessions moots. Typically, a student will go through a half-dozen moots with me before they are ready to argue in front of the Court of Appeals.

What you gain from this is the ability to have an attorney and one or more law students work on your case. This creates expanded discussion of your case, and provides additional research resources. Involvement with the clinic also allows for additional perspectives on your case, which as a rule is a benefit for cases on appeal. Simply put, the clinic allows us to have additional hands on deck on your behalf. With experience as our guide, I am pleased to report that some of these additional hands have proven to be quite creative and resourceful.

If you consent to participate in the clinic, the Court of Appeals requires us to obtain your written approval. I therefore enclose a consent form which I will need to have on file. Please sign and return the consent form to me at the address listed above, or feel free to call my office at (734) 764-2724 if you would like to discuss this matter further. Once I have received the signed consent form from you, I will tell the Court of Appeals the I accept the appointment, and order the transcripts. Once the transcripts begin to arrive, I will schedule a legal call to introduce myself and the assigned law students, and to further discuss your case.

I hope this overview helps you understand the process ahead in your appeal. It is my privilege to represent you, and I look forward to working with you.

Sincerely,



Melissa M. Salinas, Esq.
Director and Adjunct Clinical Assistant Professor of Law
University of Michigan Law School
Federal Appellate Litigation Clinic

Enclosure