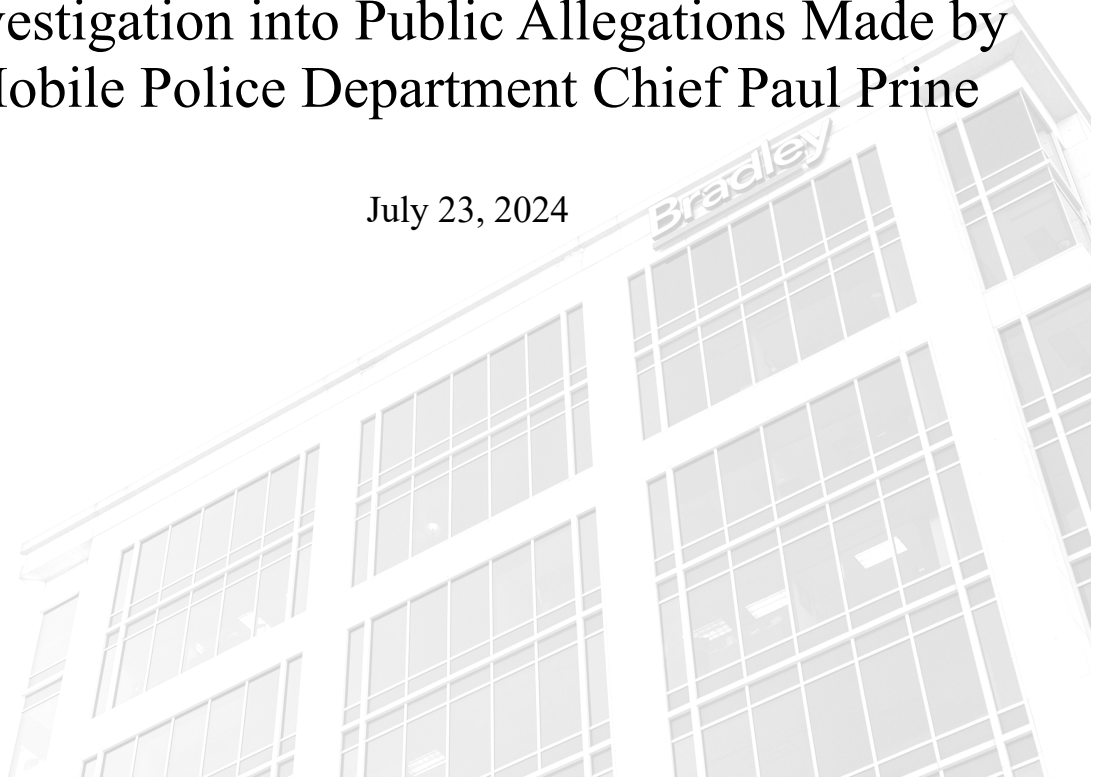


Report of the Special Counsel Regarding Investigation into Public Allegations Made by Mobile Police Department Chief Paul Prine

July 23, 2024



William C. Athanas
Daniel J. Fortune
Brenton L. Thompson
Bradley Arant Boult Cummings LLP
One Federal Place, 1819 Fifth Avenue North
Birmingham, AL 35203

Table of Contents

	<u>Page</u>
I. Introduction.....	4
II. Executive Summary	6
A. Allegation 1 – The 321z Contract and the Peer Review	6
B. Allegation 2 – The Chain of Command at the Gulf Coast Technology Center and the Use of its Resources.....	19
C. Allegation 3 – The Breakdown in Relations Between the City Administration and Chief Prine and Discussions about his Proposed Retirement or Resignation.....	20
D. Allegation 4 – Whether Written Grievances Filed by Chief Prine were Properly Addressed and Investigated	21
E. Additional Comments	22
III. Approach to the Investigation.....	23
A. The Mayor’s Letter	30
B. Efforts to Collect Emails.....	32
IV. Fact Finding	38
A. “The circumstances regarding the engagement of 321z Insights by the City of Mobile, the City of Mobile Police Department, and/or the Gulf Coast Technology Center (‘GCTC’) to conduct a review of the ‘EchoStop’ program, including how and why the contract for same was solicited and presented to the Council and any internal or “peer” review as to same done by or at the request of GCTC”	38
1. Introduction	38
a. Background on OES	39
2. Creation of the 321z Contract	41
a. Approval of the 321z Contract	45
3. The First Version of the 321z Contract.....	46
4. The Second Version of the 321z Contract	60
a. Investigative Measures taken Regarding the Second Version.....	67
i. Questioning Jonni Baker about whether she ever saw the Second Version.....	68
ii. Questioning Mark Baker about whether he ever saw the Second Version	69
iii. Reviewing the documents produced by the Bakers and 321z in response to subpoenas issued to them.....	69
iv. Making a request for Supplemental Testimony from Commander Levy.....	70
v. Requesting that the City produce all emails to or from Commander Levy for the time period October 18, 2023 to October 31, 2023	71
vi. Engaging Michael Kunkel, a digital forensic examiner holding numerous professional certifications, to conduct an additional review.....	72

b.	Findings With Respect to the Second Version Signature Page.....	75
5.	The Third Version of the 321z Contract	80
a.	The “Retainer” Agreement	90
b.	Negotiation of the Contract Amount	95
c.	Additional Relevant Contract Language	98
d.	Performance Under the 321z Contract	100
6.	Findings with Respect to the Creation of the 321z Contract.....	101
7.	The Creation and Use of the Peer Review	103
a.	The Meeting with Director Lasky	103
b.	The Creation of the Peer Review	108
c.	The Content of the Peer Review.....	110
d.	The Author of the Peer Review	114
e.	The Significance of the Identify of the Peer Review’s Author.....	116
f.	321z Involvement in the Peer Review.....	119
i.	Commander Levy’s Request to 321z Regarding the Peer Review	119
ii.	The Nature of the Review 321z Performed on the Peer Review	121
iii.	The Information Commander Levy Provided to 321z Regarding the Peer Review	124
g.	Why Commander Levy Wrote the Peer Review When He Did	129
h.	Whether 321z’s involvement in the Peer Review Cost the City Additional Amounts	133
i.	The Prine Rebuttal.....	134
j.	Whether the Peer Review Contained Criticisms	137
k.	Evidence Regarding Commander Levy’s Disclosure, Before the Prine Rebuttal, that He Authored the Peer Review.....	145
i.	Commander Levy.....	145
ii.	Chief Prine	150
iii.	Director Lasky	153
iv.	Chief Barber.....	158
v.	Director Battiste	161
vi.	Deputy Director Graves	163
vii.	Mayor Stimpson.....	164
viii.	The OPR Report.....	167
ix.	The Burr Forman Report.....	169
x.	The Peer Review	170

xi.	Findings on the Prior Disclosure Issue	173
xii.	Findings on Policy Violations Regarding the Prior Disclosure Issue	175
1.	Remaining Findings on the Peer Review	178
B.	“Issues related to the “chain of command” at GCTC (also often referred to as MPD Cyber) and allegations that the Chief of Police was improperly cut out of or else unable to use GCTC resources”	186
1.	Chief Prine.....	187
2.	Commander Levy	191
3.	Chief Barber	192
4.	Director Lasky	193
5.	Efforts to Repair the MPD-GCTC Relationship	194
6.	Conclusion.....	195
C.	The circumstances surrounding the alleged breakdown of relations between the City Administration and Chief Prine on or about November 2023 and leading up to and including discussions between the City Administration and Chief Prine on or about April 2024 regarding his proposed retirement or resignation”	196
1.	Chief Prine’s Grievance Against Director Lasky	196
2.	321z Report and Chief Prine’s Rebuttal	202
D.	“Any allegations made by Chief Prine that written grievances filed or submitted by him were not properly addressed or investigated”	211
1.	Chief Prine’s Grievance Against Director Lasky	211
2.	Chief Prine’s Grievance Against Chief Barber.....	217
V.	Conclusion	218

Appendices

1. Table of Witnesses Questioned
2. Declaration of Michael Kunkel

I. Introduction

The citizens of the city of Mobile, Alabama (“the City”) are served by employees who staff a vast array of functions, from economic development to urban forestry, from efforts to improve supplier diversity to accounting functions, and from architectural engineering to animal shelter operations. The various departments in which those employees work exist in an organizational structure which ultimately reports to the City’s Mayor, William “Sandy” Stimpson (“Mayor Stimpson”). Under a literal reading of the City’s organizational chart, only Mayor Stimpson and the Mobile City Council (“the Council”) report directly to the citizens of Mobile. That architecture is simply a necessity of the demonstrative’s creation, however: when drawing such a chart, somebody must be listed at the top. In reality, every one of the hundreds of City employees working across the City’s broad range of functions serve – and effectively report to – the citizens of Mobile.

In Resolution 60-372, issued April 30, 2024, the Council noted its authority and obligations under the Zoghby Act (Ala. Code. §§11-44C-1, *et seq.*) and ordered that an Investigative Committee, composed of the Council Committee of the Whole, directed an investigation into certain public allegations made by one city employee, former Mobile Police Department (“MPD”) Chief Paul Prine (“Chief Prine”), who had that day been terminated from his position, that potentially implicated numerous others in wrongdoing. The Investigative Committee resolved to appoint an independent third-party attorney to serve as Special Counsel to investigate these allegations.

On May 28, 2024, through the entry of Resolution 60-473, the Council hired Bradley Arant Boulton Cummings LLP to fill the role of Special Counsel. The Council tasked the Special Counsel with investigating four categories of allegations:

- (a) the circumstances regarding the engagement of 321z Insights by the City of Mobile, the City of Mobile Police Department, and/or the Gulf Coast Technology Center (“GCTC”) to conduct a review of the “EchoStop”

program, including how and why the contract for same was solicited and presented to the Council and any internal or “peer” review as to same done by or at the request of GCTC;

- (b) issues related to the “chain of command” at GCTC (also often referred to as MPD Cyber) and allegations that the Chief of Police was improperly cut out of or else unable to use GCTC resources;
- (c) the circumstances surrounding the alleged breakdown of relations between the City Administration and Chief Prine on or about November 2023 and leading up to and including discussions between the City Administration and Chief Prine on or about April 2024 regarding his proposed retirement or resignation; and
- (d) any allegations made by Chief Prine that written grievances filed or submitted by him were not properly addressed or investigated.

Mobile City Council Resolution 60-473 at 1–2, ¶1.

By their terms and effect, Resolutions 60-372 and 60-473 mandated that the Special Counsel investigate only these four categories of allegations (“the Allegations”). The Special Counsel was “not to pursue or report to the Council” any “additional allegations or issues that [did] not fit within the scope of the investigation” Mobile City Council Resolution 60-473 at 2, ¶3. The Council further refined the framework of the Special Counsel’s investigation:

In investigating any and all of these factual areas, the Special Counsel shall only investigate those matters which, if true, would constitute illegal, unethical, or out-of-policy behavior. In doing so, the Special Counsel should in every instance, in accord with best investigatory practices, identify anyone who: (a) committed an alleged violation; (b) precisely what the violation allegedly was; (c) precisely what law, regulation, procedure, standard or practice, or City policy was allegedly violated; and (d) precisely when and where any such alleged violation occurred.

Id., ¶2.

With this clear mandate in place, the Special Counsel conducted an investigation over the course of an eight-week period. The particulars of that investigation’s scope and approach are detailed below, along with the evidence gathered and the findings reached. While the Special Counsel’s investigation spanned a variety of topics, it was at all times rooted in one purpose:

determining whether the City employees involved in or otherwise connected to the Allegations had engaged in conduct that was “illegal, unethical¹, or out-of-policy.”

II. Executive Summary

As referenced above, our investigation at all times adhered to a clear mandate: investigate the Allegations, determine whether the conduct of any individual involved in such matters was “illegal, unethical , or out-of-policy” and, if so, identify the particulars of any such violation of law or policy. One category of the Allegations – involving the creation, negotiation and subsequent performance under a contract between the City and 321z Insights, LLC (“321z”) – required the largest dedication of investigative resources in light of the time period and complexity of the relevant issues, as well as the numerous individuals who had knowledge pertinent to the matter. While this Allegation consumed a disproportionate amount of time and effort, we were able to scrutinize the other Allegations to the degree necessary to make informed assessments of their merit.

We provide the results of investigation in detail in §IV, *infra*. We set forth immediately below an executive summary of those efforts and our findings.

A. Allegation 1 – The 321z Contract and the Peer Review

Investigation of this Allegation centered on the creation and use of a document entitled “Final Report and Analysis of Operation Echo Stop Peer Review” (the “Peer Review”). Operation Echo Stop (“OES”) was a law enforcement initiative created in 2022 to reduce gunfire in one of the City’s most kinetic crime areas. The Peer Review was submitted to the City under a cover letter dated March 11, 2024 and authored by Jonni Baker, the President of 321z. The letter bore 321z’s letterhead even though Commander Kevin Levy (“Commander Levy”), the head of the GCTC,

¹ We understood that the use of this term was not intended to suggest that we should engraft some sort of subjective view of “ethical” v. “unethical” conduct in making our determinations. Rather, the reference is to the Alabama Ethics Act, Ala. Code §§ 36-25-1, *et seq*, which sets forth the relevant statutory framework.

actually wrote the document. While the period of confusion regarding the Peer Review’s true author was relatively short-lived (less than two weeks), that uncertainty resulted in inaccurate information being transmitted through the City’s communication channels, disrupted City operations, and triggered multiple investigations (including this one). Our investigation of this Allegation ultimately turned on the definition of a “peer review” and assessed whether Commander Levy was entitled to have the words mean what he chose them to mean and whether, in doing so, he engaged in any conduct that was illegal, unethical, or a violation of City policy. Before reaching that question, however, additional background is necessary.

Our investigation of this Allegation began by understanding the circumstances surrounding the creation of the 321z Contract. Commander Levy was responsible for negotiating and executing the contract that 321z and the City ultimately executed.² Over the course of approximately six weeks in October and November 2023, Commander Levy created three different versions of the 321z Contract. The process was atypical at best and involved Commander Levy requesting that Ms. Baker sign the first version (“the First Version”) of the 321z Contract even though it provided for payment under a rate schedule that was not only undefined but in fact nonexistent. While that request was unusual, Ms. Baker’s response was even more so: she signed the agreement and emailed it to Commander Levy on October 18, 2023, committing 321z to a range of obligations without any clear indication of how – or even whether – the Company would be paid, and without any understanding of how much work would actually be required.

The irregularities continued when Commander Levy scrapped the First Version just five days after Ms. Baker signed it, opting instead to create a new version (“the Second Version”), which he submitted to the City’s approval process on October 23, 2023. The Second Version

² As detailed below, three different versions of this agreement existed. We refer to them individually by version number, and to the general topic at “the 321z Contract.”

maintained the same term (two years) and defined scope of work, but dramatically reduced the amount 321z was to be paid (from \$180,000 to \$92,000). When Commander Levy submitted the Second Version for approval, it contained a signature page which bore Ms. Baker's signature and appeared identical to the version she had emailed to Commander Levy on October 18 indicating her assent to the First Version. But no evidence demonstrated that Commander Levy had ever emailed the Second Version to Ms. Baker, nor that she had emailed back the executed signature page, nor that she had authorized him to simply append to the Second Version the signature page intended to reflect agreement to the First Version. Ms. Baker specifically denied granting him such authority and testified that she did not recall ever even seeing the Second Version. When asked whether he had emailed the Second Version to Ms. Baker, or whether he had obtained her authorization to simply append the signature page she signed for the First Version to the Second Version, Commander Levy testified: "I do not recall."

Commander Levy continued his response with a somewhat existential caveat: "the absence of a[n] unrecovered email does not indicate it never existed." He also provided a dense and convoluted "Cautionary Investigative Notice" ("the CIN") in which he questioned the competence of the City employees who conducted a search for emails in connection with our investigation and then impugned their integrity by noting, ominously, that their administrative rights to the City's email system allowed them to "delete, alter, and manipulate emails transmitted by city email users." Commander Levy theorized that the inability to locate an email could result from a range of causes, including "false indexing, hash file mismatch, slack space error, storage capacity or server voltage flashing and fluctuation, and a multitude of other causations" and concluded that an email's absence from the City's email system "scientifically, does not properly infer it never existed; nor should such legally, administratively, investigatively, or otherwise be used as the basis for any evidentiary findings or conclusion(s)."

Despite the CIN's questionable logic and curious use of terminology, we took Commander Levy's objections and warnings at face value. At considerable expense and effort, following receipt of his supplemental testimony and the CIN, we engaged a Certified Information Security Systems Professional and former Special Agent in the United States Air Force Office of Special Investigations to attempt to locate evidence that Commander Levy had, in fact, emailed the Second Version to Ms. Baker, or received back from her a signature page indicating her assent to that document. In addition to that expert's review of the concerns raised in the CIN, and information he gathered from the City's email system itself as a result of the credentials he was granted to search that system, we sought and received from the City every email Commander Levy sent or received during the relevant time period. The City produced hundreds of emails, distributed in a consistent pattern over the relevant time period – there were no days missing or unexplained gaps of activity. Except as specifically detailed herein regarding emails containing particularly sensitive information (*see* §IV(A)(4)(a)(vi), *infra*), we reviewed them all.

Despite expending considerable additional time, money, and effort to find proof which, if it existed, would have exonerated Commander Levy – even though he himself testified he could not recall if it even existed – we found no such evidence. We were left with the firm conclusion that the absence of an email demonstrating the Commander Levy had sent the Second Version to Ms. Baker, or that she had emailed back the signed signature page which was ultimately appended to the document resulted not from the incompetence or malfeasance of any City IT Department employee nor from “false indexing, hash file mismatch, slack space error, storage capacity or server voltage flashing and fluctuation[.]” The evidence could not be found because it never existed. Commander Levy never sent the Second Version to Mr. Baker, nor did she send him back a second executed signature page. Commander Levy simply appended Ms. Baker's signature page from the First Version to the Second Version, without her authorization.

That conduct constitutes a clear violation of Ala Code. § 13A-10-12, which makes it a Class A misdemeanor to tamper with governmental records, including by falsely altering them. We also find that Commander Levy violated City Policy #: COM-22-001, the City's Code of Conduct ("Code of Conduct"). Under section 2.0(B)(1), "altering, forging or tampering with any report, record, or city document for an improper or unlawful reason" constitutes gross misconduct. We find beyond a reasonable doubt as to Ala Code. § 13A-10-12 and by clear and convincing evidence as to section 2.0(B)(1), that Commander Levy engaged in such conduct, and that he did so for the purpose of falsely representing that 321z had seen and approved of the Second Version. We further find that Commander Levy did so purposely, rather than by mistake, accident, or good faith belief that he was entitled to take such action.

Other issues existed with respect to the Second Version. The language in the document left entirely unclear how 321z was to be paid, providing only that "City hereby agrees to pay the Contractor at the rate billed for the work to be performed under this contract." After Chris Kern, an attorney in the City's Legal Department, expressed concern that such language "kinda reads 'bill whatever you want and we will pay it,'" he and Commander Levy engaged in an email exchange on the issue. During that exchange, Commander Levy sought to allay Attorney Kern's concerns by telling him that "[321z] will only get paid when I approve what they do."

Commander Levy eventually created a third version of the 321z Contract ("the Third Version"). The Third Version maintained the same scope of work as the First Version and Second Version, as well as the same total compensation as the Second Version (\$92,000, reduced from \$180,000 in the First Version). But the Third Version not only cut the term in half (from two years

in the First Version and Second Version to one year), it also included a “Schedule A” which called for 321z to be paid \$92,000 via the submission of five invoices over a six-month period. Half of that money (\$46,000) was to be paid in the first month, and the invoice for that amount was immediately approved the day the 321z Contract was approved by the Council and signed by Mayor Stimpson, and payment was sent roughly a week later.

321z did not perform any meaningful volume of services under the 321z Contract in the first two months of the contract term. In fact, since the 3231z Contract was executed, as discussed immediately below, it appears that the company’s only activity has been to act as a glorified proofreader of the Peer Review. The language of the agreement appeared to suggest that services were supposed to be provided before payment was made, but Attorney Kern testified that he did not read any such obligation into the agreement. He also testified that prepayment of City contracts was not unusual. We accepted his testimony, and other than the violation of Ala Code. § 13A-10-12, Tampering with governmental records, and Code of Conduct section 2.0(B)(1) noted above, our investigation made no findings regarding the negotiation and execution of the 321z Contract.³

By necessity, the Peer Review was the main focus of our investigation into the performance under the 321z Contract. To understand fully that issue, we needed to learn about the circumstances which gave rise to the creation of the Peer Review. Our investigation found that Commander Levy created the Peer Review after a meeting called by Public Safety Executive Director Robert Lasky (“Director Lasky”) in January 2024, relatively soon into Director Lasky’s tenure. Director Lasky called the meeting to better understand the reasons for the apparent tension between the GCTC

³ As explained below, we also drew no negative inference from the fact that the City has already paid the full \$92,000 to 321z under the 321z Contract. After the Allegations were raised, the City ceased seeking services under the 321z Contract pending investigation. We did not premise an adverse finding on the disparity between amounts paid and volume of services provided (or lack thereof) under the 321z Contract in light of that “stop work” order.

and the MPD, hoping to address and ideally resolve those issues. To do so, however, Director Lasky needed to first identify root cause of that conflict.

In furtherance of that goal, Director Lasky asked Commander Levy and Curtis Graves (who was then the Commander of the MPD's Office of Strategic Initiatives and currently holds the title of Deputy Director of Public Safety) to identify for him instances where Chief Prine had failed to provide adequate support for their respective programs (the GCTC for Levy; the Office of Strategic Initiatives for Graves). Deputy Director Graves obeyed Director Lasky's directive. Commander Levy did not.

Commander Levy testified that he had personal and professional objections to providing the information Director Lasky requested. He advised that doing so contravened his personal convictions, and that he also believed his professional standing would be negatively affected because he thought the information he provided would be relayed to Mayor Stimpson as a basis to terminate Chief Prine. Commander Levy believed that complying with Director Lasky's request would make him complicit in an effort to oust Chief Prine, and Commander Levy indicated he wanted no part in such a plan. Director Lasky responded to Commander Levy then and testified during our investigation that there was no such effort: Director Lasky was simply trying to fulfill the order that he had been given by Chief of Staff James Barber ("Chief Barber"), who asked Director Lasky to resolve the conflict between the MPD and the GCTC.

Over the next several weeks, Director Lasky made repeated requests of Commander Levy for examples of Chief Prine's lack of support for the GCTC, including by creating and then sending to Commander Levy the shell of a PowerPoint ("the PowerPoint") which was to contain such information. Director Lasky testified that he did not intend to use the PowerPoint to gather information about OES, but Commander Levy nevertheless interpreted the request as such at the

time. Commander Levy refused each request. Commander Levy also sought to nullify Director Lasky's request by initiating a back-channel communication to Chief Prine, effectively alerting him to Director Lasky's request and fostering the belief that he was engaged in an effort to oust Chief Prine from his position. Commander Levy undertook this action in the apparent belief that revealing what he perceived to be Director Lasky's efforts to remove Chief Prine might bring them to an end.

Less than two weeks after the meeting between Director Lasky, Commander Levy and Deputy Director Graves, Commander Levy began efforts to create the Peer Review. Commander Levy did so in the hope that the information relayed in the Peer Review would be used by Director Lasky, acknowledging in testimony that he wanted the document effectively to serve as a substitute for Commander Levy providing such information directly in the PowerPoint. Commander Levy continued to believe Director Lasky's purpose at that point was to initiate a process which would have resulted in Chief Prine's termination.

Despite his previous refusal to provide Director Lasky instances where Chief Prine failed to support the GCTC, Commander Levy included in the Peer Review allegations that OES was not adequately supported by the MPD. When questioned about the apparent inconsistency between this conduct and his previously expressed personal and professional protests, Commander Levy reconciled his actions and words on the grounds the Peer Review was not a "hit piece" but rather simply the recitation of "pure science." He portrayed the Peer Review as an unemotional cataloging of OES's performance while repeatedly claiming that the document lacked any criticism of Chief Prine.

The Peer Review was not "pure science." To be sure, some of the conclusions it contained rested on information received from ShotSpotter, the company whose product detected gunshots

and served as the cornerstone of OES. But the Peer Review was more than a mere presentation of percentages. It included qualitative assessments of OES's performance, including a positive evaluation of the program's financial return on investment. Despite the absence of any formal accounting of how funds were utilized, or even an indication that a review of any kind occurred on that topic, the Peer Review pronounced that the citizens of Mobile were "well served under the stewardship and implementation of [OES] and its related expenditures."

The Peer Review criticized the performance of the MPD with respect to OES. Some witnesses disputed to varying degrees the notion that the Peer Review was critical of Chief Prine because it did not mention him by name. But the Peer Review did contain criticisms, including in the following passages:

The synopsis of this study is that Operation Echo Stop, when implemented and utilized to its full potential works, however, currently this program is yielding less than its full potential, as it requires more consistent participation from all aspects of the operational plan, making it LESS EFFECTIVE today, than it has been in the in the past. Department leadership should continue to endorse this program, not only in direct format, but in driving participation.

...

Reduced officer participation and current, poor communication and the current, poor community perception, pose significant risks to the effective sustainability of this program.

...

Operation Echo Stop requires all corners of the four-corner approach, Prevention, Deterrence, Compliance, and Detection, to be working in concert and together, not separated across different approaches. Any successful entity, battling violence issues, must treat more than the symptoms of gun violence, and consistently attack the root illness, at its core. This truly requires all assets of Public Safety, The Mobile Police Department, and The Greater Community to work together, rather than as separate components attempting to solve different aspects of the same problem, even from within the same agency or organization.

...

It is the recommendation of this author and peer review firm, that the original tenets of the Operation Echo Stop Operational Plan be fully implemented continuously. Entities within the agency responsible for providing the required personnel assets should do so, as soon as practically possible.

Our investigation determined that Commander Levy did not have 321z analyze all of the relevant policies, procedures, or data, including the OES Operational Plan. The Peer Review was dated March 11, 2024, and contained a cover letter (“the Cover Letter”) signed by Ms. Baker on 321z letterhead which read: “our analysis is based upon the data and operational plans we reviewed[.]” In fact, Commander Levy had not provided, and 321z had not reviewed, the OES Operational Plan. While Commander Levy promised in an email dated February 5, 2024 to Ms. Baker to “begin sending you some rough numbers and data,” he never did so. The only “data” provided was attached to that email – the two pages of information Commander Levy received from ShotSpotter and had previously emailed to Chief Prine as the two men communicated about ways to improve OES.

So how did 321z conduct an “analysis” to assess the performance of OES? The simple answer is that 321z did not independently assess the performance of OES, at least not in any meaningful way. Ms. Baker testified that her involvement was “not necessarily a full peer review” – a fact which she testified should have been apparent from the fact that Commander Levy put those words in quotes when he initially sought her involvement. Ms. Baker further testified that she simply checked a draft of the Peer Review Commander Levy provided for “grammatical” issues. Ms. Baker acknowledged, “I don't think it's a real peer review in my opinion, but that's what it was called, and -- and so that's what I went with.”

Commander Levy also admitted in his testimony that Ms. Baker’s review was not a substantive analysis of his methodology and conclusions. In his view, 321z was simply engaged to assess the Peer Review’s “tone and tenor.” With respect to Ms. Baker’s reference to “our

analysis” on the cover letter which transmitted the Peer Review, Commander Levy testified that those words meant: “[t]heir analysis of my document.”

That was not the way Director Lasky understood the situation. He believed, understandably, that 321z had written the Peer Review, and he viewed it as evidencing a lack of support for OES. On March 13, the day after Commander Levy emailed Director Lasky the Peer Review, Director Lasky prepared and sent a memo to Mayor Stimpson in which he noted, “[t]he program was highly effective while being fully supported,” but that “[a]s of now, I do not have the full story on why it was not fully supported through the entire test period.”

Director Lasky also provided a copy of the Peer Review to Chief Prine. In doing so, he told Chief Prine that he wanted to receive Chief Prine’s “thoughts regarding the program, the report, and recommendations.” Commander Levy did not contemplate the possibility that Director Lasky would forward the Peer Review to others (particularly Chief Prine), and Commander Levy referred in his testimony to the fact that “they changed the rules on what they were going to do with” the Peer Review. But there were no “rules” – previously stated or otherwise – regarding what Director Lasky, as both Commander Levy’s and Chief Prine’s supervisor, was entitled to do with the Peer Review. Director Lasky’s actions were entirely consistent with his previously stated intentions: to get to the bottom of the disagreement between the GCTC and the MPD. Nor did Commander Levy ever convey to Director Lasky that distribution of the Peer Review should be limited in some form or fashion. Commander Levy simply assumed that Director Lasky would use the Peer Review for the limited purpose of furthering Chief Prine’s removal.

While Commander Levy wished for the Peer Review to serve as the vehicle to convey the information he thought Director Lasky wanted for the PowerPoint, he did not wish to be seen as having provided that information – even to Director Lasky. And so when Commander Levy

provided the Peer Review to Director Lasky, he intentionally failed to advise that he had written the document, relying instead that the circumstances he created would cause Director Lasky to conclude that the Peer Review represented an independent assessment. It worked: Director Lasky inferred from the circumstances – reasonably, we believe – that 321z had authored the document, as did Chief Barber and others.

While Commander Levy cultivated an environment where his superiors would conclude that 321z wrote the Peer Review, our investigation did not identify any evidence that he ever made a clear and affirmative statement to that effect. Instead, he consistently referred to the document as a “peer review,” recognizing that the circumstances – including the fact that it was accompanied by a cover letter from 321z referencing “our analysis” – would most likely cause others to conclude that 321z wrote it. But Commander Levy’s plan worked too well: Chief Prine was so convinced that 321z wrote the Peer Review that he wrote a rebuttal (“the Prine Rebuttal”) in which he questioned 321z’s identity and qualifications as part of his attack on the Peer Review’s findings.

The skepticism Chief Prine expressed about 321z in the Prine Rebuttal came without his knowing that Commander Levy had actually written the Peer Review. Even though Chief Prine was still in the dark on that issue, his actions created a quandary for Commander Levy: 1) he could remain silent about authoring the Peer Review and risk either being revealed as such while 321z’s qualifications were assailed and the true nature of their contributions eventually uncovered; or 2) he could loudly and repeatedly embrace his role in creating the document, feigning disbelief that anyone could have thought otherwise.

Commander Levy chose the latter option. When he did so, Director Lasky, Chief Barber and others voiced surprise about the fact that Commander Levy had authored the Peer Review. Commander Levy responded by expressing disbelief that those individuals were previously

unaware of that fact given his use of the words “peer review.” Director Lasky’s testimony recalled his conversation with Commander Levy on the topic: “I think he said it was a peer review, and he expected me to know what that meant.”

Commander Levy went one step further in his testimony during this investigation. Twice during his in-person testimony and once in his supplemental written testimony, Commander Levy made statements which were false. In doing so, he violated Code of Conduct section 6.0(C), which orders that, in the course of “all internal investigations, OPR investigations, disciplinary hearings, or any other city proceedings,” City employees must not “[k]nowingly make any false statements, oral, written, implied, or otherwise during any investigation.” *Id.*

Commander Levy’s statements all related to the same issue: his claim that Director Lasky and Chief Barber were aware, prior to the issuance of the Prine Rebuttal, that Commander Levy was actually the author of the Peer Review. Both Director Lasky and Chief Barber testified that they were not aware of that fact, and we found their testimony credible. We did not rest our finding on their testimony alone, however. We considered all the evidence, including the testimony of other witnesses and the related documents. This included extensive evidence which demonstrated the lengths Commander Levy went to in an effort to conceal the fact that he authored the Peer Review – actions which would have been wholly unnecessary if in fact Director Lasky or Chief Barber knew he actually authored the document. The totality of the circumstances and evidence weighed against Commander Levy’s claims on the topic.

Commander Levy’s use of the term “peer review” – and the transmission of the Peer Review via a cover letter on 321z letterhead signed by Ms. Baker which referenced “our analysis” – understandably caused numerous City employees to interpret those words literally as “a review done by a peer.” In Commander Levy’s view, however, the document was simply a report he

authored which had been “peer reviewed.” During this confusion, Commander Levy effectively claimed entitlement to choose what the words meant. He did so in a manner designed to not only conceal his authorship of the Peer Review, but also to shield himself from responsibility when it became necessary for him to reveal that fact.

But no law or City policy prohibited the actions Commander Levy took to create an environment of uncertainty regarding the Peer Review’s author, or even to suggest that 321z had written it (provided he did not make an affirmative statement to that effect). Despite the questionable nature of that conduct, other than as specifically set forth above, we made no adverse finding against Commander Levy regarding violation of law or City policy.

B. Allegation 2 – The Chain of Command at the Gulf Coast Technology Center and the Use of its Resources

This Allegation breaks down into three components: 1) Commander Levy figuratively “walled off” Chief Prine from access to GCTC; 2) Commander Levy, whom Chief Prine considered to be under his supervision, was insubordinate towards Chief Prine; and 3) Chief Barber effectively encouraged Commander Levy’s insubordination. Our investigation determined that none of these allegations supported any finding of conduct that constituted illegal or unethical behavior or was otherwise a violation of City policy.

Our investigation determined that Chief Prine was never truly walled out from access to the GCTC, whether literally or figuratively. There were clear communication issues with the chain of command, causing Commander Levy and Chief Prine to disagree about the person to whom Commander Levy directly reported or was supervised by: Commander Levy thought it was Chief Barber; Chief Prine thought it was him. The misunderstanding regarding the chain of command is understandable due to the evolving nature of the GCTC and the various organizational charts created for MPD between 2018 and 2024.

Ultimately, there was insufficient evidence to conclude that Chief Prine was ever excluded from the GCTC, but that was never the main issue. Instead, Chief Prine's primary complaint was that MPD cases were not being given priority over other agencies at the GCTC. According to Commander Levy, when Chief Barber became the Public Safety Director and then the Chief of Staff for the Mayor, the Intelligence Unit of the MPD, and the GCTC remained under the supervision of Chief Barber. Chief Prine specifically testified about being wary of exercising authority over Commander Levy or asking any questions about the GCTC, despite the fact that Chief Prine considered Commander Levy to be a subordinate.

The involved parties had fundamental differences which were exacerbated by weak communication and strong personalities. Ultimately, that combination of factors created an "all or nothing" power struggle over the GCTC. A meeting designed to extinguish tensions inflamed them and drove the parties well past the point of no return.

No matter the root cause of the dispute between the departments and the men who led them, one fact is clear: for all of the disruption and dysfunction caused, none of the actions of any of the involved parties amounts to a violation of law or City policy.

C. Allegation 3 – The Breakdown in Relations Between the City Administration and Chief Prine and Discussions about his Proposed Retirement or Resignation

Between November 2023 and April 2024, multiple issues drove a breakdown of relations between the City Administration and Chief Prine, eventually leading to discussions regarding the proposed retirement or resignation of Chief Prine. At various points during testimony, each of Chief Prine, Chief Barber, and Deputy Lasky described central conflicts as involving struggles for "control" – control over the Gulf Coast Technology Center, control over the Mobile Police Department, and control over access to the resources available to both. A convergence of events created the appearance of a concerted plan to remove Chief Prine from his position, and

misunderstandings aggravated by poor – and too often nonexistent – communication made Chief Prine’s departure inevitable.

Perhaps the most striking element of this maelstrom is that none of it appears to have been fueled by malevolence or incompetence: the participants genuinely, but often fiercely, disagreed about how problems should be resolved, or if they even existed. The participants in these disputes were too often too quick to think the worst of each other, and too slow to recognize that they were operating at cross purposes in pursuit of the same goals. Our efforts to fully understand these matters revealed nesting dolls of issues – both personal and professional – between the men involved. We muddled through the morass as best we were able, and ultimately concluded that none of these allegations supported a finding that the conduct of anyone involved was illegal, unethical, or a policy violation.

D. Allegation 4 – Whether Written Grievances Filed by Chief Prine were Properly Addressed and Investigated

We were tasked with evaluating the adequacy of City’s investigation of and response to two grievances Chief Prine submitted separately against Director Lasky and Chief Barber. In conducting our investigation, we were mindful of its limited scope: whether the City failed to properly address and investigate any “written” grievances submitted by Chief Prine. That qualifier immediately took Chief Prine’s grievance against Chief Barber, which was submitted orally by Chief Prine, outside the scope of the investigation. Consistent with our mandate, we made no finding on that issue.

Chief Prine’s grievance against Director Lasky was submitted in writing, bringing it within the scope of our investigation. Our determination that the City did not improperly investigate Chief Prine’s grievance against Director Lasky rests primarily on both men’s status as appointed City officials.

We found universal consensus that the City’s grievance procedures make a crucial distinction between appointed officials (a category to which Chief Prine and Director Lasky undisputedly belong) and employees who are part of the “merit system.” Appointed officials enjoy only one statutory protection in the grievance context: they are insulated from removal except by a recommendation of the Mayor that is approved by a super majority of the City Council. There are no procedural protections that attach to the resolution of a grievance by one appointed official against another – in fact, there is no written City policy or procedure to address that kind of grievance. Instead, as a matter of informal historical practice, grievances involving only appointed officials are referred to and resolved by the Mayor’s office.

Chief Barber investigated Chief Prine’s grievance despite the lack of formal procedures, confirmed that Director Lasky made disparaging statements about Chief Prine to a subordinate, and verbally admonished Director Lasky’s behavior. Chief Barber did not impose Chief Prine’s requested remedy – to require not only an apology but also an exemption from having to communicate with Director Lasky, his superior. Chief Barber was not obligated to order Director Lasky to apologize and fairly deemed such an order to do nothing more than compel an insincere gesture. The suggestion that Director Lasky be prohibited from interacting with the MPD, a department he supervised directly, was untethered to precedent and unworkable in practice. Chief Barber’s decision to reject such a proposal was logically sound and well within the boundaries of the law and City policy.

E. Additional Comments

In reaching our findings, we believe it important to make an additional note: we found no evidence that any City employee, current or former, acted out of a desire for personal financial gain or with the intent to undermine the City’s ability to keep its citizens safe. While our findings

reflect considerable disagreement among key participants, we recognized that those individuals shared a common purpose of ensuring that criminal activity was minimized and, when it occurred, was investigated thoroughly. They simply disagreed, often in fundamental ways, about how best to achieve that shared goal. The significant divergence of opinion which arose as these individuals attempted to reconcile their genuinely held but nevertheless competing views was exacerbated by substantial personality conflicts.

It is not uncommon, in our experience, for law enforcement administrative efforts in particular and municipal operations in general to be plagued by some level of palace intrigue. Despite this understanding, we found the extent of dysfunction here – and the frequency with which the participants in these matters operated at cross purposes – unusual. We were also struck by the degree to which such circumstances created an unproductive environment which often unnecessarily hindered efforts to achieve what otherwise appeared to be a mutual objective.

III. Approach to the Investigation

We focused our investigation on the Allegations, and considered additional evidence not directly tied to them only as necessary to conduct a fully informed assessment. The nature and scope of the Allegations meant we centered our review on the time period from approximately mid-summer 2023 to April 30, 2024 (the date of Chief Prine’s termination). We considered events outside that time period only when necessary to better evaluate the Allegations.

To better understand fully what we sought to achieve, it is important to understand what we did not. Our investigation made no effort to assess the viability of civil claims which might be brought by or against any of the individuals or entities named in this report or otherwise associated with the events in question. Our investigation does not consider or attempt to formulate recommendations for modifications to existing City policies or suggestions for additional rules or

procedures which might be beneficial. We avoided gratuitous assessments of individuals' qualifications, performance, or credibility, limiting such determinations to those situations where necessary to fulfill our directive. Finally, our investigation does not attempt to advise on or otherwise address personnel issues, including those relating to the process of determining whether disciplinary actions may be appropriate in light of our findings.

We were at all times independent. The scope of our investigation was defined by Resolution 60-473, and the Council directed that we secure statements from witnesses via transcribed testimony given under oath. Outside of those requests, no one made any effort to mandate the range or substance of our investigation, or the methods used to conduct it. Outside of the Special Counsel team, no one directed or even had input on the findings reached. No one was provided the opportunity to make any substantive changes to our report, and no member of the Council requested to do so.⁴

We questioned 17 witnesses during our investigation, and their sworn testimony spanned 2,033 pages.⁵ All testimony was received under oath and transcribed. When we cite that testimony herein, we refer to the witness's last name and transcript page. Additionally, we sought additional testimony from one witness – Commander Levy – by sending to his counsel specific questions and

⁴ On July 21, 2024, we provided Fred Helmsing, Esq., who represented the City in this matter, certain portions of our report which contained potentially privileged or law enforcement sensitive information. We did so for the purpose of allowing the City to make any redaction requests it believed were necessary before our report was released publicly. The Council has been provided a full and unredacted version of our report.

⁵ Two witnesses provided in-person testimony on two separate occasions: Chief Paul Prine's initial testimony on June 5, 2024 was cut short due to a scheduling conflict his counsel faced, and he continued his testimony on July 12, 2024. Director Robert Lasky testified initially on June 20 and then returned for a brief in-person session at our request. He responded to a small number of follow up questions on July 12, 2024. Additionally, on July 2, 2024, we sent Commander Levy's counsel a three-page letter listing additional questions we desired to ask his client. We gave him the option of testifying in person or providing written responses under oath. After initially declining to provide additional testimony, Commander Levy was ordered to do so by the City by letter signed by Mayor Stimpson and dated July 9, 2024. He provided written responses to our questions under oath on July 12, 2024.

related documents, and he was given the option of testifying or providing responses under oath. Commander Levy chose to provide written responses under oath.

We neither sought nor received unsworn statements from witnesses. Witnesses who chose to engage counsel were permitted to have their counsel present during testimony, and we dealt directly with those counsel (rather than contacting those witnesses directly) in accordance with existing ethical obligations.

Each witness was questioned regarding their knowledge of the Allegations and was shown and questioned about documents relevant to their testimony. In addition, each witness was provided the opportunity to make a statement at the close of our questions. Some chose to do so; others did not. We made no attempt to limit the witnesses' ability to make such statements or provide any other information they deemed potentially relevant.

In evaluating witness testimony, we were mindful that individual recollections of events can differ, and inferences drawn from certain facts can vary based on perspective and experience. We also recognized that memory capacities can vary, and that most naturally fade over time. Witnesses can misperceive, misremember or otherwise make good faith errors in recalling events without intending to provide false testimony.

With these principles in mind, we did not automatically deem any conflict between witness accounts to necessarily mean that one witness was purposely providing untruthful testimony. Nor did we immediately assume that any witness's account which deviated from a document's content on the issue in question signaled an intent to deceive or was even incorrect. Instead, we considered the degree to which witness testimony aligned with documents or other available corroborating information, including the testimony other witnesses, and well as logic, allowing for reasonable interpretations and understandings. We also factored in individual witness's motivations, conscious

or otherwise, to present their testimony in a certain light. We used this framework to make the credibility assessments necessary to reach factual determinations.

We gathered documents three ways. First, we reviewed publicly available information, including previously prepared investigative reports and media articles. With respect to the former, we noted that previous investigations were conducted by City's Office of Professional Responsibility, the Burr Forman law firm, and former U.S. Attorney Kenyen Brown. Each investigation generated a report, which we reference herein as "the OPR Report," "the Burr Forman Report," and "the Brown Report," respectively, and collectively as "the Reports."

There was some degree of overlap between the OPR Report, the Burr Forman Report, and ours. All three included issues relating to the 321z contract (the Brown Report did not), although ours included other topics as well. We also relied on some of the same witnesses in gathering information. The OPR Report followed the questioning of ten listed individuals, all of whom we also took testimony from. The Burr Forman report appeared to rely on information provided by only two individuals – Kevin Levy and Mark Baker – each of whom we also questioned. Notably, Jonni Baker, the President and sole member of 321z, and also the individual who was primarily involved in the Peer Review, was not questioned as part of either the OPR Report or the Burr Forman Report.

The documents underlying our investigation and the Reports also differed. The Burr Forman Report indicated that its authors reviewed the following:

Exhibit 1	321z cover letter and report dated March 11, 2024
Exhibit 2	Paul Prine's rebuttal dated March 14, 2024
Exhibit 3	Capital Contract Summary Sheet signed by Kevin Levy and dated October 30, 2023
Exhibit 4	November 14, 2023 City Council Agenda, including Agenda Item Summary Sheet
Exhibit 5	November 21, 2023 City Council Agenda
Exhibit 6	Resolution adopting 321z contract
Exhibit 7	321z Contract dated November 21, 2023, including Schedule A, Payment Schedule and P. Prine's handwritten notes
Exhibit 8	Emails between Kevin Levy and Paul Prine dated January 25, 2024
Exhibit 9	Invoices submitted by 321z and approved for payment by Kevin Levy

It appears that all of those documents were obtained from the City. The OPR Report indicated that it reviewed the following documents:

1. Articles of Organization for Florida Limited Liability Company for 321z
2. Professional Services Contract between COM and 321z
3. OES Report and Peer Review Cover Letter dated March 11, 2024
4. MPD Command Staff Response dated March 13, 2024
5. Finance Department invoice payments to 321z
6. Novus System Agenda Summary Sheet
7. Select COM emails sent and received by Chief Prine and Levy between January 1, 2023, April 15, 2024
8. Emails between J Baker, M Baker, and Levy requested by the media under the Freedom of Information Act

Those documents were attached to the report. Again, it appears that all of these documents were obtained from the City.

Our investigation sought and received a far broader scope of documents, including from sources other than the City. We issued a subpoena to Chief Prine and received approximately 600 pages of documents from him, including a large number of pages comprising MPD policies. We also subpoenaed 321z, Mark Baker and Jonni Baker. We received 32 pages of documents in response to those subpoenas.⁶

Third, we requested that the City provide certain documents relevant to the Allegations. We made roughly 20 requests for documents to the City and received approximately 8,100 pages in response.

While we considered the information gathered in connection with the Reports, and we read various media accounts, we afforded no deference to the factual findings contained in either category of materials. This approach was simply motivated by our obligation to conduct an independent investigation reflected our view that both the scope of their inquiries and the evidence available to them differed from our investigation. As a result, some of our conclusions align with the Reports and media reports; some do not.⁷

⁶ With respect to this issue, it should be noted that the Bakers advised initially by email and subsequently by testimony that they did not have possession of any emails or texts. They indicated that they routinely deleted such items upon completion of the particular jobs they performed. As discussed more fully herein, this approach is inconsistent with 321z's contractual obligations to the City and could be interpreted to suggest nefarious intent. Nevertheless, we are not aware of evidence to suggest that the Bakers took this action with the purpose of obstructing our investigation, or that it in fact represented a deviation from their typical approach.

⁷ On April 29, 2024, Mayor Stimpson announced that he intended to forward the Reports to Alabama Attorney General Steve Marshall, and those materials were sent on April 30. By letter dated July 10, Attorney General Marshall advised Mobile City Attorney Ricardo Woods that his office conducted a "cursory review" of materials received from the City regarding the 321z Contract and then forwarded that information "to the Alabama Department of Examiners, the state's independent auditing agency, for closer examination." Attorney General Marshall advised that "[b]ased on the information provided, the Department of Examiners has now informed [him] that the city appears to have complied with all relevant state laws in executing this contract." The Attorney General relayed his conclusion that no further investigation by his office was necessary "[b]arring any new information being presented[.]" We were not privy to the nature or scope of the Department of Examiners' investigation and are unaware which documents that agency reviewed outside of the materials generated by the Burr Forman, OPR and Brown reports, or which witnesses it questioned, if any. The Attorney General's letter provides no detail regarding the methodology the Department of Examiners employed, nor the framework it used to reach its conclusions. Regardless, as with all the Reports, our assessments and conclusions were not impacted by the finding that agency reached and conveyed through Attorney General Marshall.

We believe it important to note that in evaluating the information we gathered in order to determine whether any individual engaged in “illegal, unethical, or out-of-policy behavior,” we followed the mandate of Ala.Code 1975, § 13A–1–3, which defines the general purpose of the Alabama criminal code to include:

- (1) To proscribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual and/or public interests;
- (2) To give fair warning of the nature of the conduct proscribed and of the punishment authorized upon conviction[.]

Id. We also applied the “the rule of lenity,” a long-recognized principle of statutory construction which “requires that ‘ambiguous criminal statute[s] ... be construed in favor of the accused.’” *Ex parte Pate*, 145 So.2d 733, 737 (Ala. 2013) (quoting *Castillo v. United States*, 530 U.S. 120, 131 (2000)).

In evaluating potential violations of criminal law, we utilized a “beyond a reasonable doubt” standard. We believe applying such a standard was not only consistent with how such statutes are interpreted, but also appropriate under the circumstances.

In evaluating potential violations of the Code of Conduct, we applied a “clear and convincing evidence” standard. While the Code of Conduct contains no specific standard for its application, and while its terms are civil, rather than criminal, in nature, we nevertheless recognized the weighty impact of an adverse finding. While we believe we would have been justified in applying a “preponderance of evidence” standard, we sought to ensure that, before making such a finding, we had a level of confidence commensurate with its potential consequences.

In undertaking this approach, we nevertheless applied a commonsense approach to analyzing the information we gathered, drawing inferences and making credibility determinations

where necessary and appropriate. We did not assume that the absence of evidence necessarily meant that no such evidence existed, but we also declined to adopt an approach which prohibited us from making findings unless we could state with absolute certainty that all information which might possibly exist had been obtained and evaluated.⁸

A. The Mayor's Letter

We initially intended to issue subpoenas to all witnesses, including those associated with the City, and communicated that intention on multiple occasions with counsel for the City. On June 7, 2024, without prior notice to the Special Counsel, Mayor William Stimpson issued a letter to the Council ("the Mayor's Letter") expressing concern about our approach. The Mayor's Letter was critical of the Special Counsel's decision to issue subpoenas, and that criticism was premised upon the following passage:

Issuing a subpoena, which usually follows some legal proceeding like a grand jury investigation, implies that someone has done something illegal, and they are unwilling to cooperate.

Mayor's Letter at 1.

While the source of Mayor Stimpson's understanding on this topic is unclear, its inaccuracy is not: he is simply wrong. A subpoena is a common procedure for investigators to document and obtain information as part of an investigation, and subpoenas are customarily issued to witnesses and victims without any implication that they have done anything illegal or that they are unwilling to cooperate. Virtually every lawyer with any measure of litigation experience - as well as many in law enforcement - understands that subpoena usage is not limited to the complicit or truculent.

⁸ We discuss this issue further below, in the context of efforts to identify potentially relevant emails. See §IV(A)(4)(a), *infra*.

The Mayor's Letter represented the first expression of the City's pledge of cooperation without the need for subpoenas. During the multiple prior communications, the City's counsel neither objected to the subpoenas nor expressed a willingness to cooperate without their issuance. To the contrary, the City's counsel had previously simply agreed to accept service of the subpoenas.

Contrary to the implication in the Mayor's Letter, the Special Counsel had no desire to use the delegated subpoena power to send a message, whether that a particular witness was credible, complicit, or otherwise. Consistent with the Council's mandate, and the desire to conduct this investigation as efficiently and effectively as possible, the Special Counsel immediately agreed to receive documents from the City and allow witnesses to testify without the need for subpoenas.

Unfortunately, the Mayor's Letter created two byproducts. First, by incorrectly asserting that Chief Prine was permitted to give testimony without being subpoenaed, the Mayor's Letter implied that Chief Prine either sought or received preferential treatment, in a manner which reflected that Special Counsel had prejudged his claims – prior to receiving any testimony – and deemed them accurate. Neither implication was true: Chief Prine never sought nor received special treatment, and Special Counsel evaluated his allegations, testimony and documents with the same level of scrutiny applied to all other information gathered.

Second, the Mayor's Letter triggered a whipsaw reaction following the Special Counsel's agreement to proceed without subpoenas as to City documents and witnesses. Because, contrary to the assertion in Mayor's Letter, Chief Prine had in fact testified under subpoena, the Mayor's Letter created the appearance that the issuance of that subpoena to Chief Prine was premised on the Special Counsel's view that he "ha[d] done something illegal" or was "unwilling to cooperate." Neither was true, but Chief Prine understandably expressed concern that the sequence of events suggested the Special Counsel's investigation might be less than fully independent.

The Special Counsel is not aware of evidence that the Mayor's Letter was sent with the intent to undermine the integrity of this investigation. But the decision to send that correspondence had that effect to some degree – at least in terms of public perception - and needlessly complicated the process. The Mayor's Letter was an unnecessary and unfortunate choice, but it had no impact on our findings, nor did it impede our efforts in any meaningful way.

B. Efforts to Collect Emails

We endeavored to collect all relevant documents, particularly emails. We recognized that those efforts necessarily created a burden on the parties from whom we sought information but sought to strike the appropriate balance between that weight and the desire to gather evidence necessary to allow for an informed assessment of the Allegations. Because the absence of one particular email was critically important to our findings below, we believe it necessary to provide further detail about the steps we took to collect documents.

We requested documents and emails from the City. Emails were initially gathered using search terms following the City's expressed concern that a broader request would be overwhelming to City personnel designated to locate and produce the emails. We sought a range of documents, including emails between Commander Levy and the individuals associated with 321z (Mark Baker and Jonni Baker). As detailed below, our initial search for emails between those parties did not identify the transmittal of the second version of the draft contract between 312z and the City. Because that version had been submitted by Commander Levy through the City's approval process with a signature page appended, we posed written questions to him about whether he had, in fact, ever sent the document to the Bakers.

He responded, in Supplemental Testimony provided July 12, 2024 (“Levy Supp. Test.”): “I do not recall. However, the absence of a [sic] unrecovered email does not indicate it never existed.”

Answering further, he provided a “Cautionary Investigative Notice” which read:

From a court certified digital media forensics perspective, based on the stated facts that one or more email correspondences could not be or have not been provided resultant of the fact that they are now or were no longer resident on The City of Mobile Information Technology Exchange or Microsoft Outlook server hardware, cloud space, or software application, should in no way infer, cause one to opine, or otherwise deduce that it never existed, was never transmitted, or otherwise transacted through same. Attempting to create a timeline or sequence based solely on what has or has not been provided in production by or from The City is wholly flawed and wreaks of the potential for false presumptions, not based on factual possibilities that occur in the regular course of email exchange business. There are an abundant number of reasons ranging from false indexing, hash file mismatch, slack space error, storage capacity or server voltage flashing and fluctuation, and a multitude of other causations which could lead to the email or emails no longer residing within the components searched upon request or for production. It is my understanding that not only is the system utilized by The City of Mobile not accredited and/or certified for investigative forensic use, there are also no court certified digital media forensic experts working within such department, who were tasked with providing the requested emails. Additionally, personnel with access to the retrieval system also have administrative rights, amongst other things, which could and in the past, has allowed them to delete, alter, and manipulate emails transmitted by city email users; such as the email which was removed after being transmitted to “All Police” by an employed Police Major of the City of Mobile Police Department, commenting on the Kenyan [sic] Brown DOJ report that was previously released. Therefore, on a sound forensic foundation, it can be concluded, beyond a reasonable degree of scientific certainty, that an email created and transmitted through The City of Mobile email exchange system can in fact have been created, and subsequently transmitted, but no longer exist in a retrievable format or simply at all. Its absence, scientifically, does not properly infer it never existed; nor should such legally, administratively, investigatively, or otherwise be used as the basis for any evidentiary findings or conclusion(s).

Levy. Supp. Test. at 2.

While the purpose of this statement was unclear, we took note of Commander Levy’s challenge to the qualifications of the individuals the City designated to locate and produce emails (“there are also no court certified digital media forensic experts working within such department, who were tasked with providing the requested emails”). Additionally, we noted his suggestion –

offered without further explanation – that it was possible the City employees who conducted the search might have deleted the email in question (“personnel with access to the retrieval system also have administrative rights, amongst other things, which could and in the past, has allowed them to delete, alter, and manipulate emails transmitted by city email users’). We also considered his statement that:

on a sound forensic foundation, it can be concluded, beyond a reasonable degree of scientific certainty, that an email created and transmitted through The City of Mobile email exchange system can in fact have been created, and subsequently transmitted, but no longer exist in a retrievable format or simply at all.

We noted the context of Commander Levy’s statement: he was unable testify that in fact he had sent the email but felt comfortable speculating that its absence might be due to the malfeasance of others, or perhaps simply resulted from their incompetence. On this foundation we took note of Commander Levy’s confidence in concluding that there existed “a sound forensic foundation” to conclude “beyond a reasonable degree of scientific certainty” that “an email created and transmitted through The City of Mobile email exchange system can in fact have been created, and subsequently transmitted, but no longer exist in a retrievable format or simply at all.” In other words, it was Commander Levy’s position – which he attested to under oath – that an email which once existed in the City’s email exchange system could have simply vanished.⁹

Before we received the Supplemental Testimony, in an effort to ensure that we captured all communications between Commander Levy and the Bakers, we had also issued subpoenas to 321z, Mark Baker, and Jonni Baker. Each subpoena sought the same categories of documents, including

⁹ We are mindful of that fact that at least one other investigation in this matter, conducted by the City’s Office of Professional Responsibility, also utilized City employees to collect potentially relevant emails. That investigation ultimately “found no evidence of conflict of interest, fraud, or misconduct related to the [City’s] contract with 321z.” We are unaware that Commander Levy ever suggested that finding be disregarded because the investigative steps were undertaken by potentially incompetent or deceitful actors, or rested on emails gathered from an email system he now deems unreliable.

“documents received from the City of Mobile or any identified agent thereof.” “Documents” was defined in those subpoenas to include both emails and texts, among other categories of items.

The documents the Bakers and 321z produced in response to the subpoenas (uploaded to a file transfer protocol site known as “Sharefile”) did not include any emails or texts. Upon reviewing these items, we emailed the Bakers on June 27, 2024:

Thank you for uploading documents to the Sharefile site. The documents produced do not appear to include emails or text messages. If such documents exist and are within your possession, custody or control, we ask that you upload them at your earliest convenience, and in any event before noon ET on June 30.

Jonni Baker responded three days later:

Good morning. Neither Mark nor myself have any emails or text messages in our possession.

We questioned both of the Bakers under oath on July 1, 2024. During those sessions, each was questioned about the absence of emails and text messages from their production. Mark Baker testified as follows:

Q. You indicated that you didn't find anything in the e-mails because you -- I guess -- I think you were referring to -- Well, why do you feel like -- I guess, did you delete a lot of e-mails? Do you have a standard deletion process for e-mails?

A. Yes, sir. I normally purge things that aren't needed for further reviewing as -- as we go.

Q. And you said there wasn't anything locate in the e-mail account? You weren't able to locate any relevant information out of any e-mails?

A. Correct.

M. Baker Tr. 13–14.

Q. And that is your standard practice that when you finish a project, you delete everything?

A. Normally, yep. Because we work in a lot of areas where you can't keep that information.

Q. And so we're clear, the deletion is complete; right? You are double deleting or the equivalent? You're not just putting it into a deleted items folder. You're totally wiping it from your system?

A. Normally, yes.

Q. Well, normally. Are there exceptions to that rule?

A. If it's not something that we don't perceive or if it's something we need for another task, we might hold onto it for a little bit, but we don't hold onto a lot of stuff; right? And, again, we're -- we're -- It -- it depends on -- So means and methods and other things, you know, we -- we handle carefully.

Id. at 94–95.

Jonni Baker testified:

And I did not have any, as I had messaged you, I think it was yesterday or the day before, I did not have any further e-mails or text messages as I purge as I go. Once a -- once a job is done, they're gone for security reasons.

J. Baker Tr. at 11–12.

Q. Okay. Any other e-mails that you recall sending to Commander Levy that you did not delete?

A. No.

Q. When did you delete the e-mails?

A. I purge as I go.

...

Q. So if you send an e-mail on March 11, 2024, do you delete it on March 12?

A. Sometimes and sometimes not.

Q. Okay. What determines whether or not you delete it the next day?

A. Whether it's going to be needed at a later date, and if the job is complete or not.

Q. All right. And when you refer to the job, what job are you referring to?

A. The task at hand regarding the e-mail.

Q. Okay. So not this particular 321z contract with the City of Mobile, but rather the task of doing a peer review on Operation Echo Stop?

A. Yes.

Q. And you viewed that task as completed when you sent this report to Commander Levy?

A. Yes.

Id. at 17–18.

Q. And when you delete the documents, you delete them twice? That is to say that they're not in a trash folder or deleted items folder, they're gone forever?

A. They're gone.

Q. And how about text messages, any text messages that you sent to or received from Commander Levy?

A. No.

Q. So it's not that those were deleted, they never existed?

A. No. It means that they were deleted.

Q. Oh, they were also deleted. Okay.

A. Yes.

Q. And it is your practice to delete text messages as well?

A. Correct.

Q. Okay. And I asked whether there were texts to or from Commander Levy. Let me broaden that. Any text messages to or from anyone else concerning what I'll call the 321z contract, which is the one we've just looked at, that still exists?

A. No, sir.

Q. And you said that you delete those for security reasons?

A. Of course, yes.

Q. Can you explain to me what that means?

A. There's no need for them, and so they are wiped out. What I -- With my business in the medical field, because of HIPAA, I destroy things on a regular basis that can be destroyed because of HIPAA. So it's my common practice to delete things, whether they're text messages from doctors, text messages from clients, text messages between myself and my husband, they get deleted.

Id. at 19–21.

Our discussion below regarding efforts to locate an email with the relevant signature page (*see* §IV(A)(4)(a), *infra.*) builds on this foundation.

IV. Fact Finding

We chose to structure this section by subject matter rather than simply providing a chronological review. Because the sequence of certain events matters greatly, we have on occasion referenced and then repeated certain evidence in order to give readers the necessary context. To the extent the discussions below contain overlap, we have done so for the purpose of facilitating a full understanding of the relevant circumstances.

A. “The circumstances regarding the engagement of 321z Insights by the City of Mobile, the City of Mobile Police Department, and/or the Gulf Coast Technology Center (‘GCTC’) to conduct a review of the ‘EchoStop’ program, including how and why the contract for same was solicited and presented to the Council and any internal or “peer” review as to same done by or at the request of GCTC”

1. Introduction

This issue breaks down into two primary categories: 1) the preparation and execution of a contract between the City of Mobile and 321z Insights, LLC (“321z”); and 2) the creation and dissemination of document entitled “Final Report and Analysis of Operation Echo Stop Peer Review” (the “Peer Review”). Consistent with our mandate to determine “the circumstances” regarding this issue, we collected and analyzed a wide range of information. We took testimony from seventeen witnesses with knowledge on the topic, including two separate sessions with Chief Prine and Director Lasky. We also received supplemental written testimony from Commander

Levy. In addition, we obtained and reviewed various documents, including emails, draft agreements, memoranda, documents relating to the 321z Contract's submission to and approval by the City Council, public records regarding 321z's formation, invoices, checks and other correspondence. We also reviewed the Burr Forman Report and OPR Report and considered the witness statements provided in connection with each.

a. Background on OES

Operation Echo Stop ("OES") represented an effort undertaken by the City beginning in 2022 to curb "a significant increase in violent shootings and crime incidents, many of which involve juveniles, gang affiliated activities, and illicit drug and weapons trafficking." Operation Order, Mobile Police Department, Gulf Coast Technology Center, June 1, 2022 ("OES Operational Plan"). The OES Operational Plan set forth details about how the effort would be carried out, and who would be responsible for various tasks. According to the OES Operational Plan, Commander Levy served as Operational Commander for the effort.

V. Operational Command

<u>Name</u>	<u>Unit</u>	<u>Cell #</u>	<u>Command Role</u>
Cmdr. Kevin Levy	2A11	251-422-4275	Operational Commander
Intelligence & Operations			
Cmdr. Daryl Huff	2A10		Asst. Operational Commander
Lt. Michael Cook	Cyber-01		Strategic & GCTC Operations
Lt. William Hudson	603		Tactical Operations
Mr. Michael Jay			Program Lead – Operation Echo Stop
Mr. Sixto Boyer			Operation Echo Stop - Strike Force Lead
Sgt. John Forward	630		Tactical Intelligence Detail
Lt. Scott Hanks	TAC-01		SWAT Team
Sgt. Jeff Corley	SET-01		Street Enforcement Team (S.E.T.)
Prevention Operations			
Cmdr. Curtis Graves			Asst. Operational Commander
Mr. Joshua Jones			Youth Violence Prevention Coordinator

Multiple witnesses testified about OES and offered information about its structure and operation. Director Lasky testified as follows:

A. Echo Stop a combination of police activity surrounded by a ShotSpotter system. ShotSpotter system detects gunshots within a -- a vicinity. I understand it's about three square miles.

The cost is about -- The cost for implementation is about one million dollars per -- per mile. . . . And maintaining it is about anywhere from 500 to \$750,000 per -- per mile.

Q. Okay.

A. And it's basically gunshots fired and there's different activities that go on in that area.

Lasky Tr. at 91. Chief Barber testified that he was not in favor of the use of ShotSpotter. *See* Barber Tr. at 129 (“And I’ll go back, Bill, just to remind you that I was never a big fan of ShotSpotter”).

2. Creation of the 321z Contract

Commander Levy and Mark Baker each testified that they began discussing the possibility of Mr. Baker providing services to the City, and more specifically, the Gulf Coast Technology Center (“GCTC”) in the summer of 2023. Commander Levy testified that in “June or July 2023” he reached out to Mark Baker because he was “well aware of his expertise in multiple areas of disciplines” and believed that those qualifications rendered him “very unique in that regard.” Levy Tr. at 69,70.

Commander Levy testified that he was “looking for somebody to solve two problems or two issues that we had at the” GCTC. *Id.* at 70. The first issue was that the GCTC had in the past been accredited under Commander Levy’s name, and he had “been trying for a couple of years to have the lab itself self-accredited.” *Id.* The second issue involved Commander Levy’s efforts to “expand” to create a new area for “an internal training program offered to law enforcement essentially free of charge.” *Id.* at 71. The program involved the use of unmanned aviation drones and is referenced herein as “the Program.”

Commander Levy believed that Mark Baker “possessed the credentialing authority to help walk us through the self-accreditation process” because of his prior experience. *Id.* at 72.

Commander Levy also believed that Mark Baker was “a perfect fit” to help the GCTC with its expansion efforts in the Program. *Id.* at 72–73.

While the men discussed the issue over the summer, Commander Levy testified that “because October 1 is the new budget year, we could not come to terms on an agreement or a contract until October, and we discussed that.” *Id.* at 73. According to Commander Levy’s testimony, in the period between original discussions and October, Mark Baker had “apparently done some of his own research in other markets and found that there was a business market for this type of service.” *Id.* at 74. According to Commander Levy, Mark Baker

made the decision on his --with his wife to create a company that could not only do this for us, but could go other places and do it. And they wanted to have that company separate so that it didn't comingle with any other business venture they were in.

Id. at 74.

321z filed to become a Florida corporation on October 19, 2023. The filing listed the Bakers address as the 321z’s principal and mailing address. Jonni Baker was the sole Authorized Member of 321:

[Previous On List](#) [Next On List](#) [Return to List](#)

No Events **No Name History**

Detail by Entity Name
Florida Limited Liability Company
321Z INSIGHTS LLC

Filing Information

Document Number	L23000480032
FEI/EIN Number	93-4041949
Date Filed	10/19/2023
State	FL
Status	ACTIVE

Authorized Person(s) Detail

Name & Address

Title AMBR

Baker, Jonni M
1870 Kara Place
Palm Bay, FL 32908

When questioned about the issue, Jonni Baker expressed some hesitancy about explaining this arrangement:

Q. When I look at the corporate filings for 321z, you are listed as the authorized member; correct?

A. That is correct.

Q. Are there any other authorized members?

A. No.

Q. Was there a desire to keep your husband's name off of this entity?

A. That's really not relevant.

Q. Well --

A. I don't see the relevancy of that.

Q. Sure. I appreciate that. I need you to answer the question, though. Did you have a desire to keep your husband's name off?

A. Yeah. It was mine, my business.

J. Baker Tr. at 27–28. Regarding Mark Baker's relationship with 321z, Jonni Baker testified:

A. He's a consultant.

Q. Okay. Is he paid?

A. No.

Q. Is there any sort of written consulting agreement that he has with [the] business?

A. No.

Id. at 28–29. Mark Baker's testimony on the point was similar:

Q. Who are members of 321z?

A. My wife is the only member of 321z.

Q. What is your relationship with that entity?

A. I consult with 321z on the technical aspects.

Q. Are you compensated for your services?

A. No, sir.

Q. Do you have any contracts with 321z?

A. No, sir.

M. Baker Tr. at 39-40.

Jonni Baker testified as follows regarding her expectation of how services would be provided to the City by 321z:

Q. Were you going to do some of that work?

A. Yes, sir.

Q. Was your husband going to do some of that work?

A. Yes, sir.

Q. Was anybody else going to do some of that work?

A. No.

J Baker Tr. at 44. Mark Baker's testimony was similar:

Q. Who was going to do the work under this contract?

A. My wife mainly would be doing the work for this contract.

Q. You said your wife mainly. Who else?

A. I would be supporting in the technical aspects of it.

Q. Anyone else?

A. No, sir.

M Baker Tr. at 48.¹⁰

a. Approval of the 321z Contract

The approval of the 321z Contract, as opposed to its creation and negotiation, occurred through the City's standard process. Numerous witnesses testified concerning that procedure, both generally and with respect to the 321z Contract, including:

- [REDACTED] Grants Developer

¹⁰ We credited Mark Baker's testimony that even though he was not a member of 321z and had no contract with the entity, he nevertheless planned to perform work under the 321z Contract. We note, however, that the evidence did not support a finding that Mark Baker formed 321z "with his wife," as the Burr Forman Report found.

- Chris Kern, Chief of the Civil Division in the City’s Legal Department
- [REDACTED], Capital Projects Administrator
- [REDACTED], Special Assistant to Chief of Staff James Barber
- [REDACTED] Director of Finance
- [REDACTED], Fiscal officer, Finance Department

We have identified and quoted herein portions of that testimony where relevant to our findings. We believe it important to note that we did not find any evidence that any of these City employees involved in the approval process engaged in any questionable conduct or were even any way deficient in the performance of their responsibilities. We found their conduct to be at all times consistent with their obligations and at or above the level of performance the City should expect from its employees.

3. The First Version of the 321z Contract

Our investigation identified three different versions of the 321z Contract. The first version (the “First Version”) was unsigned when attached to an email sent by Commander Levy to Jonni Baker dated October 18, 2023. The email read:

From: Levy, Kevin
Sent: Wed, 18 Oct 2023 20:44:34 +0000
To: jonnibaker@icloud.com
Cc: Levy, Kevin
Subject: Professional Services Contract
Attachments: 321z Insights Professional Services Contract_C0499.pdf

Good afternoon,

If you could please review and sign the last signature page. You will only need to scan the last page and send it back. I will create three copies and submit them for City Council Approval. This process can take 2-3 weeks. Once it's approved the Mayor will sign and we will be good to go.

Let me know if you have any questions. We appreciate your help.

KL

The First Version defined the scope of services to be performed as follows:

I. PROFESSIONAL SERVICES TO BE PERFORMED

Contractor agrees to provide services in support of the City of Mobile, Gulf Coast Technology Center mission, to include: Technology-Based Consulting Services, Peer Review Evaluations and Accreditation, Training Mission Support for GCTC Programs to include provision of the necessary tools to meet or exceed industry standards in multi-discipline training programs and the initiatives of Intelligent-U.

Compensation arrangements under the First Version were as follows:

II. COMPENSATION

City hereby agrees to pay the Contractor at the rate schedule in Exhibit A for the work to be performed under this contract. Contractor shall submit monthly invoices that document the work completed during the billing period. No other tasks may be subject to invoice absent advance written proposal and price quotation by Contractor of additional work to be performed and written approval by City. The total amount to be paid by City under this Contract shall not exceed **\$180,000.00** per the identified period of performance. However, only authorized material and services will be paid, to whatever capacity, budget, or limit set by The City of Mobile, Gulf coast Technology Center Commander.

The First Version contained a two-year term, set to run upon the City's execution through October 31, 2025.

The language of the First Version mirrored that executed by Commander Levy with Protecvideo, a separate entity which provided video surveillance to the City. The Protecvideo Contract was executed May 25, 2021. The Protecvideo Contract covered five different types of professional services: Remote Operations Analysis, Field Service, Wireless Antennas & Fiber / Field Service, Research & Development and Consultation and Training. These services were each listed on an attached schedule which set forth the hourly rates associated with each. Other than the description of professional services to be provided and the rate schedule, the First Version contained all the same terms as the Protecvideo Contract. The overlap between the documents is even more clearly shown by the fact that the First Contract included a capitalization error contained in the Protecvideo Contract "COMPENSATION" paragraph: "Gulf coast Technology Center." Despite the many similarities between the Protecvideo Contract and the First Version, one key distinction existed: the Protecvideo Contract contained page numbering listing "Page 1 of 5, Page 2 of 5, etc."

Project: Specialized Network Setup and Management

AGREEMENT

This Professional Services Contract (sometimes hereinafter "Agreement") made and entered into this 25th day of MAY, 2021, by and between THE CITY OF MOBILE, a Municipal Corporation of the State of Alabama (sometimes hereinafter "City") and Protecvideo, LLC, (sometimes hereinafter "Contractor") an Alabama Limited Liability Company, as follows:

WHEREAS, the City of Mobile desires to establish new and continue deployment and management of technical services, personnel, technology services, and consulting services as well as for existing integrated network and telemetry services program(s) throughout the City for public safety and security; and,

WHEREAS, the City of Mobile requires the services of a professional contractor with expertise in camera capabilities, technology deployment, field operations, networking, and software; and,

WHEREAS, the Contractor has extensive and relevant proficiency and experience in these areas, as well as operates proprietary systems paramount in existing system(s); and,

WHEREAS, City desires to engage this Contractor to provide said services upon the following terms and conditions;

NOW, THEREFORE, WITNESSETH:

City and Contractor, for and in consideration of the mutual covenants and agreements hereinafter set forth to be kept and performed by the other, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, do hereby covenant and agree as follows:

By contrast, the First Version contained no page numbers of any kind.

Project: Specialized Network Setup and Management

AGREEMENT

This Professional Services Contract (sometimes hereinafter "Agreement") made and entered into this _____ day of _____, by and between THE CITY OF MOBILE, a Municipal Corporation of the State of Alabama (sometimes hereinafter "City") and 321z Insights, LLC, (sometimes hereinafter "Contractor") an Alabama Limited Liability Company, as follows:

WHEREAS, the City of Mobile desires to establish new and continued deployment and management of technical training, peer review, and accreditation services, and consulting services; as well as for existing integrated network and telemetry services program(s) throughout the City for public safety and security; and,

WHEREAS, the City of Mobile requires the services of a professional contractor with expertise in camera capabilities, technology deployment, field operations, networking, training, contracting, and software; and,

WHEREAS, the Contractor has extensive and relevant proficiency and experience in these areas, as well as operates proprietary systems paramount in existing system(s); and,

WHEREAS, City desires to engage this Contractor to provide said services upon the following terms and conditions;

NOW, THEREFORE, WITNESSETH:

City and Contractor, for and in consideration of the mutual covenants and agreements hereinafter set forth to be kept and performed by the other, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, do hereby covenant and agree as follows:

I. PROFESSIONAL SERVICES TO BE PERFORMED

Contractor agrees to provide services in support of the City of Mobile, Gulf Coast Technology Center mission, to include: Technology-Based Consulting Services, Peer Review Evaluations and Accreditation, Training Mission Support for GCTC Programs to include provision of the necessary tools to meet or exceed industry standards in multi-discipline training programs and the initiatives of Intelligent-U.

City of Mobile

Another even more significant difference existed between the First Version and the Protecvideo Contract. Despite the representation in the First Version that 321z would be paid "at

the rate schedule in Exhibit A,” the document contained no Exhibit A, or other reference to how 321z was to be paid. Jonni Baker confirmed that no such schedule was ever created:

Q. . . . you never recall seeing an actual rate schedule that set an hourly rate for you; is that right?

A. No, I never -- That's correct.

J. Baker Tr. at 49. Commander Levy was also unable to shed light on the matter:

Q. So on Exhibit 53, there was never a rate schedule that was agreed to?

A. I -- I couldn't answer that. I don't -- I don't even recall. I have -- I have no idea.

Q. Okay. Was this contract signed, the version in October?

A. This is not the contract that we submitted to City Council, so there was no signatures.

Q. Okay. But you asked Johnnie Baker to sign this contract?

A. I sent the e-mail to Johnnie Baker asking her to approve this contract when I was under the impression that we could have a multiyear contract. When I learned we could not have a multiyear contract, we had to go back and create the contract that was actually signed.

Q. Right. But you asked her to sign a contract that said the City would pay them at a rate schedule in Exhibit A, and there is no Exhibit A.

A. I mean, I'm not -- I don't understand the line of questioning.

Q. How could she sign a contract agreeing to a rate schedule that doesn't exist?

A. I -- I don't know how she could do -- I -- I don't understand the line of questioning. And it's almost as if there's an insinuation there's something that was not correct. I -- I --

Q. No. I'm confused by it. It's not an insinuation of anything.

A. Okay.

Q. There's a contract here that says we're going to pay you at a certain rate schedule. The rate schedule is not attached. You nevertheless asked her to sign it, and she does. Does that strike you as strange?

A. Did she sign it? I don't recall.

Q. She did.

A. Okay. I -- I don't -- I don't recall.

Q. You don't recall any of that?

A. I'm not saying it didn't happen. You've shown me the documents, but you're asking me did I find it strange that there was or was not an attachment. I -- I -- I -- I used a template contract. If we changed a word here or there between it was submitted and not -- I -- I -- I don't follow up with them and ask them why it was. I don't do a document comparison to see one word document to the other in this. I -- I create what they tell me to create and I submit to the -- to the chain for approval. That's my role in this.

Levy Tr. at 82–85. He later testified:

Q. Okay. And so when she signed this contract that did not have a rate schedule, she agreed to a contract that did not have a provision for payment. Did that surprise you?

A. I -- I can't answer that question. I mean, we're -- we're going down a -- a rabbit hole of what I thought about something that is germane everyday business transactions with -- with -- with what we do. I'm not a contracting specialist or -- I mean, did it surprise me? No. I sent her the contract and said, sign it. She signed. And I -- I was going to begin the next step when I was told we can't do a multiyear contract. I mean, that literally is all that -- that I did. I -- I -- I can't comment any further on it.

Id. at 92–93.

Commander Levy characterized the rate schedule, the article setting forth an essential element of the agreement – how much the City would pay 321z for services provided – as mere “supporting documentation” to the First Version. Tr. at 89. He also testified that he was “not aware” of another instance where he asked a contractor to sign a contract with a rate schedule that was not attached, but he believed the questioning “ignores the reality of the process that the City of Mobile goes through.” *Id.* at 85, 86. He explained:

They always require the vendor to sign the contract before that package is -- is ever submitted; meaning, ***that contract has to have the vendor's signature on it before it ever gets submitted.***

So, no, it's not unusual to me that I would have a contract with a vendor's signature on it and -- and supporting documentation is not there, because that's the process that I have to go through before I can even submit it.

Id. at 86 (emphasis added); *see id.* at 89 (“The fact that somebody would have been asked to sign a document is not unusual. Matter of fact, it happens probably every day while we're sitting here with people who agree because ***the City's policy is that the vendor sign the contract before we ever submit it for processing***”) (emphasis added).

Both Bakers bridled at being questioned about the First Version. Mark Baker responded to initial questions by testifying that “that document was never executed as far as we know.” M. Baker Tr. at 55. When shown an exhibit which indicated that his wife had in fact signed the First Version, Mark Baker testified:

A. But did the City sign it? Because that's means it's not a full contract if only one person signed it.

Q. Understood, sir. We're asking you about your wife's signature on the document and whether you understood that she was signing that.

A. Again, there is no relevancy to a non-executed contract.

Id. at 56. Upon further questioning, Mark Baker testified:

A. We have a -- we have a contract -- we have contract and -- and a Schedule A that was sent that we understand was what we were supposed to execute to do.

Q. Understood.

A. That's my understanding.

Q. Yes. And I appreciate you making that clear. Our questions involve this first contract, the version of it which is different which was signed by your wife. We are trying to --

A. I have no further answers.

Q. Let me finish my question, sir.

A. I have no further answers --

Q. Let me finish my --

A. -- for the --

Q. -- question, please.

A. -- first one, period. I'm done with it. I have no further answers for something that doesn't, in my mind, exist. So, you know, whether you want to get nasty or not, my point is I don't know if I was aware of it or not. I'm aware of it from -- from this stuff, but it has nothing to do if it's not executable. We executed a different contract with a different -- with this schedule. That's it.

Mark Baker Tr. at 57–58.

Mark Baker's approach continued with further questioning about the First Contract:

Q. What does that language [regarding compensation] mean to you?

A. Nothing, because it's not the right document.

Q. I understand that it's not the contract that was ultimately -- that there was a subsequent contract, but what I'd like to know, though, is in regards to this contract here where it states, however only authorized material and services will be paid to whatever capacity, budget, or limit set by the City of Mobile, Gulf Coast Technology Center Commander, what does that language mean to you?

A. It -- it means nothing.

Id. at 59–60; *see id.* at 53 (“Again, this contract's not signed, and this is not the \$92,000. So I'm not sure what you're showing me is even a valid document.”). Jonni Baker echoed those objections when questioned about the First Version. *See J. Baker Tr.* at 50 (“as we’ve stated, this contract never happened . . .”); 50–51 (“I don't see why this is even relevant right now, because this isn't an existing contract . . .”).

Commander Levy initially challenged questions based on the fact that the First Version was not ultimately signed by the City. *See Levy Tr.* at 88 (“Again, when this contract -- We're -- we're

talking about a contract that never made it to the approval process”). He later responded to the question about whether the rate schedule ever existed:

Whether or not there was a -- a -- a rate schedule or not prepared at that point, I don't recall. I don't think there was anything at that point. I -- We never made it that far in the process.

Id. at 104–05.

Despite never receiving the rate schedule, Jonni Baker signed the First Version. She testified that she did not have “specific memory” of reviewing the First Version, but acknowledged that she would have done so consistent with her standard practice:

Q. . . . In running your business, do you sign contracts?

A. I have signed contracts.

Q. Okay. And when you sign them, do you read them first?

A. Of course.

Q. Okay. And so is it fair to assume that, consistent with that practice, you would have read this one?

A. Yes.

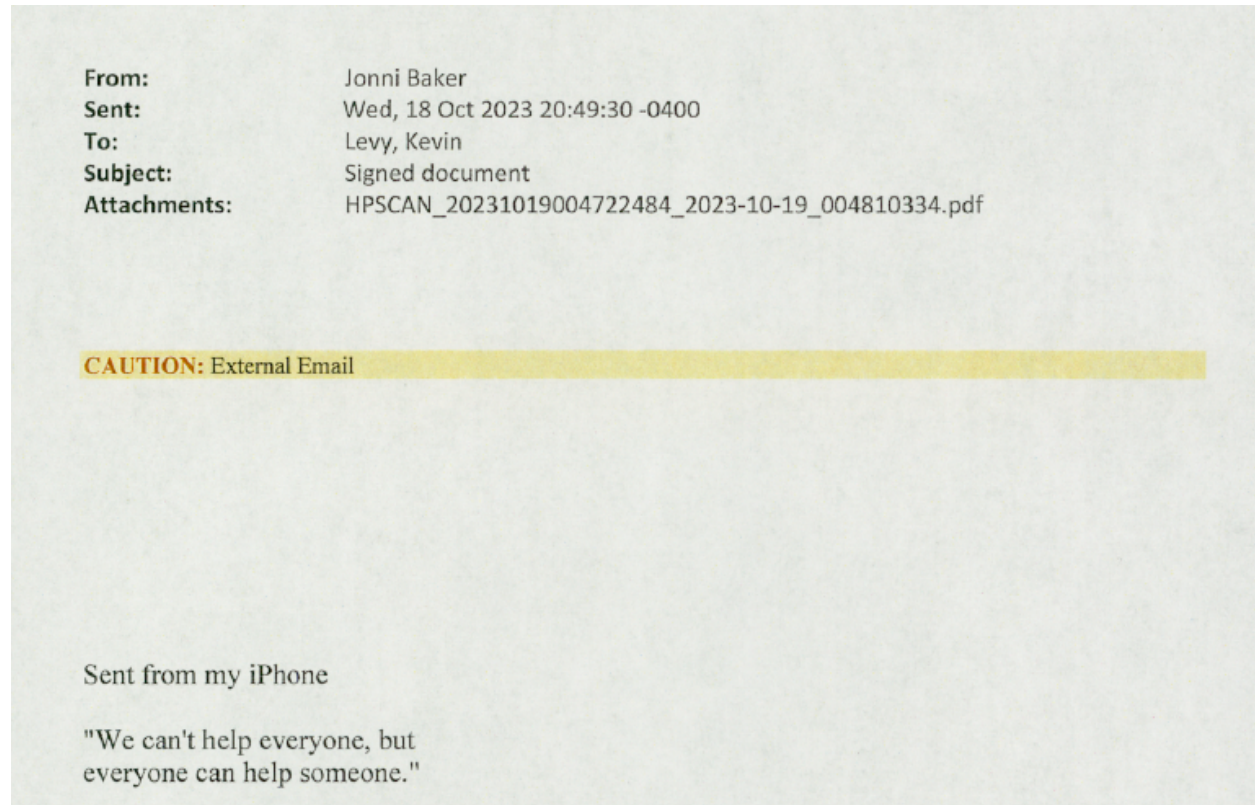
J. Baker Tr. at 40–41. She followed that testimony up by stating “But I don't recall reading it, because there were so many contracts.” *Id.* at 41.

Commander Levy’s testimony made clear the reason behind his effort to obtain Jonni Baker’s signature on the 321z Contract Versions he sent:

They [the City employees involved in the contract approval process] ***always require the vendor to sign the contract before that package is -- is ever submitted; meaning, that contract has to have the vendor's signature on it before it ever gets submitted.***

Levy Tr. at 86 (emphasis added).

Jonni Baker's email returning the executed signature page for the First Version bore the time stamp of 20:49:30 on October 18, 2023, which would have been roughly four hours after Commander Levy first sent her the agreement.¹¹



The signature page Jonni Baker emailed back contained no page number.

¹¹ We identified what appeared to be a discrepancy with time stamp on the email Commander Levy sent to Jonni Baker containing the First Contract. While that email reflected the time sent as “Wed, 18 Oct 2023 20:44:34”, a separate email chain containing that communication indicated that the time sent was actually “4:44 PM” (or “16:44”). Jonni Baker’s response to that email “I will take care of it tonight” has a time indication of 4:37 on that chain. Her later email containing the signature page, captured above, aligns with that timing.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this day and year first written.

CITY OF MOBILE, A Municipal Corporation

BY _____
Mayor

ATTEST:

City Clerk

321z Insights, LLC. (C0499)

BY: *Grini M. Baker*

Its: _____

Approximately 10 minutes after sending back the signature page from the First Contract,

Jonni Baker sent Commander Levy an email:

From: Jonni Baker
Sent: Wed, 18 Oct 2023 20:59:52 -0400
To: Levy, Kevin
Subject: File attached

CAUTION: External Email

I have a few questions and when I talk to Mark about it his face tells me he half listened to you.

Our business name hasn't been approved yet with State of Florida we are assuming it's safe but we won't know until Wednesday at latest.

Business insurance in the agreement is this something I will be searching for or do you have one in mind?

He has explained what it is the business will be doing and that you will be providing any necessary info and explained the credit/bank card linked to the bank etc.... Just wondering if we will be putting any money out and also if we will be making any money. Please forgive my direct and to the point-just the way I am.

BTW Mark is aware I said all this and am sending these questions. He's just using me to cover up his lack of attention to detail.

Thank you,
Jonni

Sent from my iPhone

"We can't help everyone, but everyone can help someone."

Jonni Baker was questioned about the email, including her use of the phrase "just wondering if we will be putting any money out and also if we will be making any money":

Q. What do you mean when you say you're wondering also if we will be making any money?

A. Well, who would take a contract if they're not going to be making any money?

Q. Well, I don't --

A. If --

Q. -- think anybody would. But did --

A. So --

Q. -- you not -- Were you unclear about whether or not you would make money?

A. I was unclear if it was going to be worth my time --

Q. Okay. And what are the factors you --

A. -- and how to get paid, which is why the retainer was set up.

J Baker Tr. at 60-61.

Commander Levy testified as follows about the email:

But you -- you had asked me about this, why she was worried about making money. She and he had had some conversation about them having to travel out to do the assessment on the lab, to do all these things, and if they were going to have to put that money out upfront.

Part of the reason, when you look at the actual contract, why they required prepayment was they were starting a business from scratch. They wanted to have money that they could spend. They didn't want to have to go into their own personal account to -- to spend money.

She didn't know then how many trips, how many visits. These were things that he and I were going to discuss, and she was worried. Well, if we travel out there 100 times, we're not going to make any money on the contract.

That's the context of this to which we're only pulling one paragraph sort of out of this letter, but that's the context of the conversations that we had had.

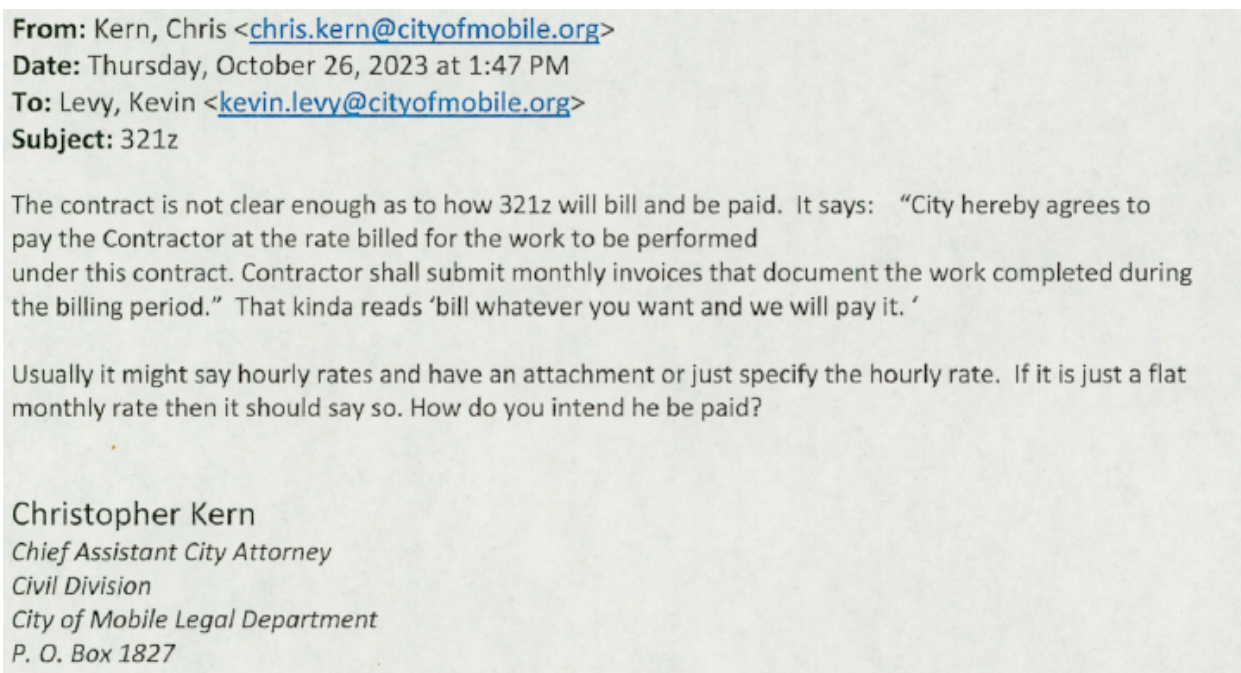
Levy Tr. at 96-97. Commander Levy also testified that the Bakers

wanted a retainer style contract where they paid monthly, regardless, so that they would get most, if not all, the money at the beginning of the contract, the first few months, six months, so that as they expended money, they would have capital to work off of.

Id. at 97.¹²

4. The Second Version of the 321z Contract

Commander Levy subsequently revised the First Version. The revised version (“the Second Version”) had not yet been produced by the City at the time Commander Levy testified, but its existence was suggested by an email exchange between Commander Levy and Chris Kern, an Assistant City Attorney who managed the Civil Division of the City’s Legal Department. The two men had an email exchange on October 26, 2023, eight days after Jonni Baker signed the First Contract. Attorney Kern emailed Commander Levy initially:



We noted that the language Attorney Kern quoted in his email to Commander Levy differed from that contained in the First Contract (differences in italics):

Language in First Version	Language Referenced in Kern Email
---------------------------	-----------------------------------

¹² The “retainer” issue is discussed in detail below, in §IV(A)(5)(a).

“City hereby agrees to pay the Contractor at the rate <i>schedule in Exhibit A</i> for the work to be performed under this contract.”	“City hereby agrees to pay the Contractor at the rate <i>billed</i> for the work to be performed under this contract.”
---	--

The nature of Attorney Kern’s questions in his email to Commander Levy suggested that the contract he was reviewing was also different from the contract which was ultimately executed and dated November 21, 2023 (“the Third Version”). The Third Version contains a “Schedule A” which sets forth the schedule of payments 321z was to receive.¹³ We discuss the Third Version in greater detail below. *See* §IV(A)(5), *infra*.

We questioned both Commander Levy and Attorney Kern about the existence of a version of the agreement which was different from the First Version and the Third Version. Commander Levy initially testified that he was unsure about whether the version that Attorney Kern commented about was different from the First Version. *See* Levy Tr. at 110 (“I mean, you'd have to ask Chris that question”). The following exchange then occurred:

Q. No, we wouldn't, because we can look at Chris' e-mail and we --

A. Right.

Q -- can see the version of this document. And the clause that he is expressing concern about is not in this document, is it?

A. Right.

Q. Right?

A. Are -- You're ask me?

Q. I am asking you.

A. Yeah, I don't see it in that – in that version. Correct.

¹³ It is important to note that a “rate schedule” – which was referenced in the First Version but which both Jonni Baker and Commander Levy conceded was never created – differs from the “Schedule A” contained in the Third Version.

Id. Attorney Kern’s testimony was far more direct. *See* Kern Tr. at 26 (“Yes, it does appear that [Exhibit] 53 [the First Version] is not the original version I looked at”).

Following the testimony of Commander Levy and Attorney Kern, we received a production from the City which included an email that Commander Levy sent to [REDACTED] on October 23, 2023 which contained attachments. That email attached the Second Version.¹⁴ The email read:

From: Levy, Kevin
Sent: Mon, 23 Oct 2023 21:40:01 +0000
To: [REDACTED] Levy, Kevin
Subject: New Contract for Novus
Attachments: 321z_FY23_Resolution - City Council_ProtecVideo LLC.pdf, 321z Insights Vendor Signed Contract.pdf, Novus Cover Sheet.pdf

Good late afternoon,

I just wanted to give you a heads up that I was going to drop off another contract for Novus. Attached are the electronic copies of what you will need, and I will bring the hard copies with me.

Have a great afternoon,

KL

The Second Version defined the scope of services in the same manner as the First Version
First Version

¹⁴ We also received that document separately as part of a different production from the City.

I. PROFESSIONAL SERVICES TO BE PERFORMED

Contractor agrees to provide services in support of the City of Mobile, Gulf Coast Technology Center mission, to include: Technology-Based Consulting Services, Peer Review Evaluations and Accreditation, Training Mission Support for GCTC Programs to include provision of the necessary tools to meet or exceed industry standards in multi-discipline training programs and the initiatives of Intelligent-U.

Second Version:

I. PROFESSIONAL SERVICES TO BE PERFORMED

Contractor agrees to provide services in support of the City of Mobile, Gulf Coast Technology Center mission, to include: Technology-Based Consulting Services, Peer Review Evaluations and Accreditation, Training Mission Support for GCTC Programs to include provision of the necessary tools to meet or exceed industry standards in multi-discipline training programs and the initiatives of Intelligent-U.

The Second Version also maintained the same term:

III. TERM OF AGREEMENT

The term of this Agreement shall commence upon its execution by the City of Mobile and shall continue **through October 31, 2025**, renewable or extended, upon submission of a new and/or addendum contract with the consent of the City and the Contractor.

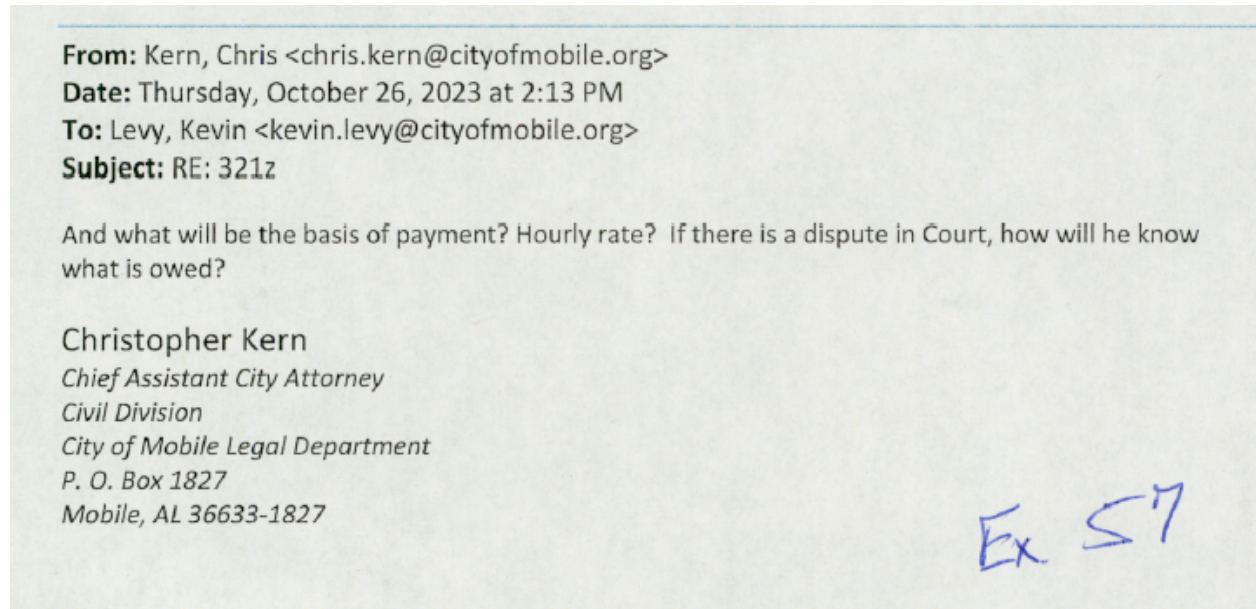
Just like the First Version, the Second Version also lacked page numbers.

Notably, even though the Second Version obligated 321z to provide the same scope of work for the same term as the First Version, the Second version reduced the maximum amount payable from \$180,000 to \$92,000:

II. COMPENSATION

City hereby agrees to pay the Contractor at the rate billed for the work to be performed under this contract. Contractor shall submit monthly invoices that document the work completed during the billing period. No other tasks may be subject to invoice absent advance written proposal and price quotation by Contractor of additional work to be performed and written approval by City. The total amount to be paid by City under this Contract shall not exceed **\$92,000.00** per the identified period of performance. However, only authorized material and services will be paid, to whatever capacity, budget, or limit set by The City of Mobile, Gulf coast Technology Center Commander.

During his exchange with Commander Levy, Attorney Kern expressed concern about the compensation language in the Second Version:



Commander Levy responded:

From: Levy, Kevin
Sent: Thu, 26 Oct 2023 19:40:16 +0000
To: Kern, Chris
Subject: Re: 321z

I had them pull the contract to allow for the vendor provide the insurance cert which is apparently missing.

Let me use this opportunity to satisfy these questions.

Can you shoot me some "preferred" verbiage?

It will be a combination of hourly consulting work and a flat rate for some tasks.

Best advice?

I can keep it vague but still add the language you want.

Thanks in advance,

KL

Both men were questioned about whether Attorney Kern in fact, sent "'preferred' verbiage." Commander Levy testified as follows:

Q. . . . Did he send you any language?

A. I -- I -- I don't recall. You've got the e-mail, and we'll look at it. I -- I don't recall.

Q. Well, as you sit here today, do you have a memory of that at all?

A. No. I have numerous conversations with him back and forth, so it's hard to say.

Levy Tr. at 114. Attorney Kern's testimony was more definitive:

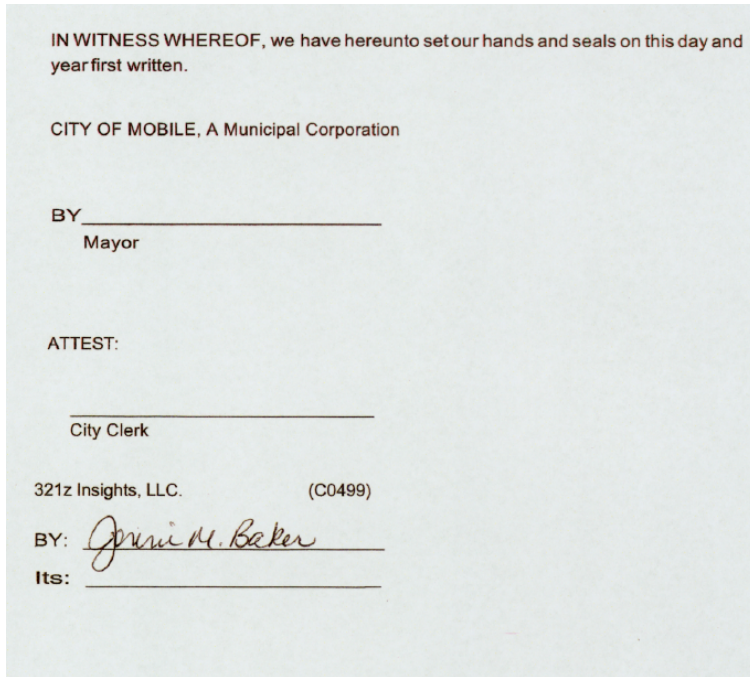
Q. . . . And he asked you to send him some, quote, preferred verbiage. He told you it would be a combination of hourly consulting work and a flat rate for some tasks and then asked you for best advice. Do you recall sending Mr. Levy any preferred verbiage, either in the body of an e-mail or sending him exemplar contract for him to work from?

A. I do not.

Kern Tr. at 30-31.

Notably, the Second Version contained an executed signature page bearing Jonni Baker's signature. The signature page Jonni Baker emailed back to Commander Levy on October 18, 2023 after he sent her the First Version appeared identical to the signature page on the Second Version.

Both are reproduced below:



IN WITNESS WHEREOF, we have hereunto set our hands and seals on this day and year first written.

CITY OF MOBILE, A Municipal Corporation

BY _____
Mayor

ATTEST:

City Clerk

321z Insights, LLC. (C0499)

BY: Jonni M. Baker

Its: _____

We attempted to determine whether Commander Levy had ever sent the Second Version to the Bakers, or whether he had simply appended the signature page Jonni Baker signed for the First Version to the Second Version when he submitted it to the City for review and approval. Initially, we relied on our earlier efforts to locate evidence that Commander Levy sent the Second Version to 321z, or that Jonni Baker sent another signature page back to him. In conducting this review, we were aware of the following facts:

- Commander Levy emailed the First Version to Jonni Baker on October 18, 2023, and asked her to “review and sign the last signature page.”
- Jonni Baker did so, emailing back the signed signature page on October 18, 2023.
- On October 23, 2023, Commander Levy emailed the Second Version to [REDACTED].
- On October 26, 2023, Commander Levy and Attorney Kern emailed back and forth about the language in the Second Version.
- On October 30, Commander Levy emailed the Third Version to [REDACTED].

a. Investigative Measures taken Regarding the Second Version

From these facts, we knew that if Commander Levy had in fact emailed the Second Version to Jonni Baker he would have had to do so between October 18 and October 23. The same date range applies to determining if Jonni Baker had in fact emailed the signature page to the Second Version back to Commander Levy. We took the following steps to determine whether evidence existed to establish that Commander Levy ever sent the signature page to the Second Version, or whether Jonni Baker ever emailed it back.

It should be noted that these measures were undertaken to exonerate Commander Levy – to find evidence that he had, in fact, sought and obtained Jonni Baker’s signature on the document

he submitted to the City for approval on October 23, 2023 and represented to be authentic. In addition to our previous review of the documents provided by the City on June 18, 2024 (which were produced in response to our request that that City use search terms), we took the following steps to determine whether Commander Levy ever emailed the Second Version to Jonni Baker:

i. Questioning Jonni Baker about whether she ever saw the Second Version

Q. Do you remember ever seeing it, this version?

A. No, I don't remember.

J. Baker testimony at 64.

Q. Okay. And so you don't think you ever saw this version of the contract?

A. Yes, I don't recall. Yeah. No, I don't recall seeing this.

Id. at 65. The questioning continued:

Q. This version, Ms. Baker, I'm scrolling through, these are the Bates stamp numbers that the City produced to us. You'll see 05151, 05152. And at the end, there's a signature page with your signature on it, 05153. Do you remember ever signing this version of the document?

A. No. I remember signing a signature page.

Q. Did you tell Commander Levy he could use that signature page independent to other versions of the contract?

A. I don't recall saying that.

Q. You think that's something you --

A. You're correct, though.

Q. -- would remember if you did it?

A. I believe so, but this contract's not official either, so --

Q. It's not, but it's got your signature on it, and so I want to make sure if it has your signature on it, that you have a memory of signing it, or you don't. And either one is fine. But I don't want to say Jonni Baker signed this contract if you didn't, so --

A. I signed a signature page is all I can tell you.

Id. at 65-66.¹⁵

- ii. Questioning Mark Baker about whether he ever saw the Second Version

Mark Baker testified as follows:

Q. And the question is whether you remember ever seeing this version before with the total amount of \$92,000, but no reference to Schedule A?

A. No, sir.

M. Baker Tr. at 63.

- iii. Reviewing the documents produced by the Bakers and 321z in response to subpoenas issued to them

As referenced above, we had subpoenas served on Mark Baker, Jonni Baker and the 321z.

Each of those subpoenas sought the same documents (although recipients were advised that the same documents need not be produced more than once):

All and all documents relating to an agreement executed between the City of Mobile, AL and 321z Insights LLC, including but not limited to:

- a. documents submitted to the City of Mobile or any representative regarding the qualifications, experience or capabilities of 321z Insights LLC;
- b. documents received from the City of Mobile or any identified agent thereof;
- c. draft and modified versions of a letter from Jonni Baker to City of Mobile Police Department, Gulf Coast Technology Center, Attention: Cmdr. Kevin R. Levy dated March 11, 2024; and
- d. draft or modified versions of a document entitled “Final Report and Analysis of Operation Echo Stop Peer Review” dated March 11, 2024.

¹⁵ The original version of Jonni Baker’s transcript indicated that the last line of this quoted passage was “I signed **the** signature page is all I can tell you.” (emphasis added). Because the use of the word “the” was inconsistent with her testimony several lines above and our memory of the testimony, we asked the court reporter to check the audio recording. She did so and confirmed that Jonni Baker in fact testified as quoted herein. The court reporter supplied a corrected transcript. We have maintained both versions in our case file.

As noted above, the Bakers and 321z produced 32 pages of documents. The Second Version was not contained in those documents. It should be noted, however, as referenced above, that the Bakers testified that they deleted all emails relating to this matter, in accordance with their standard practice.

iv. Making a request for Supplemental Testimony from Commander Levy

We advised Commander Levy, through his counsel, of the following:

At the time of Commander Levy's testimony, we had not yet received from the City a copy of Exhibit 109 [the Second Version], which is a version of the agreement between the City and 321z Insights, LLC. Exhibit 109 differs from the original version (Exhibit 53) [the First Version], and also from the final, executed version (Exhibit 15) [the Third Version]. I have attached copies of all three documents. As addressed in Commander Levy's testimony, he requested on October 18, 2023 that Jonni Baker "review and sign the last signature page" on the original version of the agreement. See Exhibit 53. She did so that same day, sending him an email with the same date and attaching the executed signature page. See Exhibit 55.

Because it appeared to us, based on available documents (including Commander Levy's email exchange with Chris Kern on October 26, 2023, which is Exhibit 57), that an additional version of the contract might exist, we asked the City to search for and produce what appeared to be the second version of the agreement. While the City produced what appears to be the second version (now labeled Exhibit 109), we do not see any emails which reflect that document was emailed to Ms. Baker for her signature (in contrast to the request made in the email contained at Exhibit 53).

We supplied Commander Levy with copies of all the exhibits referenced in our review above, and then posed the following questions:

Did Commander Levy ever email the version of the contract contained at Exhibit 109 [the Second Version] to Ms. Baker, or anyone else affiliated with 321z? If so, when did he send that email? If not, where did the signature contained on the contract (at bates no. 5153 of Exhibit 109) come from? Did Commander Levy append to the version of the contract contained at Exhibit 109 to the signature page Ms. Baker provided via the email at Exhibit 53 to signify her agreement to the contract that was attached to Exhibit 53? If so, did he have her authorization to do so? If such authorization existed, in what form was it conveyed?

Commander Levy responded: “I do not recall. However, the absence of an unrecovered email does not indicate it never existed.” Levy. Supp. Test. at 2.

As noted above (*see* § III(B), *supra*), Commander Levy included with his Supplemental Testimony a “Cautionary Investigative Notice.” Mindful of the fact that Commander Levy was unable to state definitively that he did not act in a manner – appending the signature page of one contract to another, without notice or authorization – which would have been a clear violation of City policy, we sought to determine whether the CIN represented an assertion of genuinely held concerns or whether Commander Levy offered the statement in an effort to evade detection. Ultimately, we decided the best course was to take the concerns contained in the CIN at face value. That resulted in our taking the following measures:

- v. Requesting that the City produce all emails to or from Commander Levy for the time period October 18, 2023 to October 31, 2023

Recognizing the possibility that Commander Levy had emailed the Second Version to Jonni Baker, that she had emailed back the executed signature page, and that both had simply forgotten about it, we took steps to review Commander Levy’s email traffic without the use of search terms. On July 15, 2023, we initially requested that the City produce “all of [Commander] Levy’s emails from 10/18/23 to 10/26/23.” Later that day, we followed up with another request: “Let’s expand the request for all Levy emails from 10/18/23 to 10/31/23.”

The City produced approximately 2,900 pages of documents in response to this request. Except as explained in footnote 18, *infra*, we reviewed all of the emails and attachments in that production. This meant reading all of the emails produced from Commander Levy’s account, not simply those to or from the Bakers. Those efforts failed to identify any evidence that Commander

Levy had emailed the Second Version to Jonni Baker or that she had emailed back the signature page.

- vi. Engaging Michael Kunkel, a digital forensic examiner holding numerous professional certifications, to conduct an additional review

We had no reason to believe that the City employees who conducted the email searches we requested were lacking in either competence or integrity. Nevertheless, in an effort to address Commander Levy's expressed concerns, we took an additional step to determine whether he ever sent the Second Version to the Bakers or whether he simply appended Jonni Baker's signature page from the First Version to the Second Version. This step required the expenditure of additional time, effort and money, but we felt it important to carry out. Again, we did so in an effort to exonerate Commander Levy – identifying an email during the relevant time period (October 18, 2023 to October 31, 2023) where he sent the Second Version to the Bakers or received what became its signature page back would have ended our investigation of this issue without an adverse finding.

On July 17, we engaged Michael Kunkel, a Certified Information Security Systems Professional and former Special Agent in the United States Air Force Office of Special Investigations. During his years of service as federal agent, Mr. Kunkel investigated computer related crime and cyber counterintelligence for the Department of Defense. Following his government service, he has worked as a digital forensic examiner for two separate entities (Stroz Friedberg L.L.C. and Setec Security Technologies, Inc.) for the last 15 years, and has testified in over 100 trials, hearings and court martial proceedings during his career.

The efforts Mr. Kunkel undertook are detailed in his Declaration (“the Kunkel Declaration”), attached to this Report as Appendix 4.¹⁶ In substance, those efforts involved the following:

- An initial videoconference with the Special Counsel, counsel for the City and members of the City’s IT department so that Mr. Kunkel could receive certain background information;
- A follow up virtual meeting with the members of the City’s IT department to gather information about the City’s email system infrastructure and the process necessary to search for relevant emails;
- Review of the City’s email retention policy;
- Conducting a search in Commander Levy’s inbox for any email containing one of five keywords: the email addressed associated with 321z, Jonni Baker and Mark Baker;
- Conducting a separate search for any email – whether or not it was sent to or received from one of those five email addresses – referencing the term “321z”;¹⁷

¹⁶ Mr. Kunkel’s curriculum vitae is attached to the Kunkel Declaration.

¹⁷ The Kunkel Declaration specifically lays out that process:

I conducted the searches in O365 by taking the following steps:

- a. Using the eDiscovery search functionally in O365, I selected the location of the search to be Commander Levy’s mailbox.
- b. Next, I set a date limitation larger than the October 18-30 time window of interest in order to account for emails sent at or near the 18th or 30th.
- c. Then, I used the keywords of email address listed above for the first search, and the term “321z” alone for the second search.
- d. After each search I directed O365 to export the results to PST email files for viewing using Microsoft Outlook.
- e. I manually reviewed the resulting PST files to identify emails that would provide facts to answer my questions in paragraph 6 above.

- Exporting “the entirety of Commander Levy’s unsearchable and encrypted emails in order for those to be reviewed internally;”¹⁸
- Identifying four key emails during the relevant time period:

First, Commander Levy sent an email to Jonni Baker on October 18, 2023 containing an unsigned professional services contract titled “321z Insights Professional Services Contract_C0499” with instructions to return only a signed signature page. This is the email represented in City of Mobile_02956-02956.5.

Then, Jonnie Baker sent an email back containing an attachment titled “HPSCAN_20231019004722484_2023-10-19_004810334” containing only the signed signature page. This is the email represented in City of Mobile_02410-02410.1.

The next email I identified with an attachment was sent from Commander Levy to [REDACTED] on October 23, 2023, containing an attachment titled “321z Insights Vendor Signed Contract” with a signed signature page. This is the email represented in City of Mobile_06951-06958.

Lastly, I identified an email sent on October 30, 2023, from Commander Levy to [REDACTED] with an attachment titled “321z Insights_Updated & Signed Contract” with a signed signature page. This is the email represented in City of Mobile_02649-02649.7.

Kunkel Dec. at 4, ¶12.

- Ultimately concluding that:

During my searches I did not identify any emails between Commander Levy and Jonni Baker to transfer copies of the Professional Services Contract after October 18, 2023.

Id. at 4, ¶13.

¹⁸ The nature of Commander Levy’s role meant that he regularly received encrypted emails containing particularly sensitive information. We sought to strike a balance between our desire to review relevant emails and the concerns the City legitimately raised about the release of such sensitive information. Working with the City’s counsel, Fred Helmsing, we devised a plan to allow Mr. Helmsing to review these emails and then provide to us any that were in any way related to 321z. The search initially identified approximately 1130 encrypted emails, but that was for a much larger time period than was relevant to our inquiry. The actual number of emails within the relevant time period was far smaller. We are confident that we were able to review any and all potentially relevant emails, whether or not they were at some point encrypted.

As part of Mr. Kunkel's review, we also attempted to determine whether it was possible to electronically compare the signature page Jonni Baker emailed to Commander Levy on October 18, 2023 to the signature page that was appended to the Second Version. Mr. Kunkel's finding on that issue were as follows:

The signature pages in the full Professional Services Contracts sent from Commander Levy to Ms. [REDACTED] were part of more complex PDF files with multiple pages and metadata. Due to the nature of PDF files and their layers of metadata and encoding, I was unable to separate the signature pages alone for hash value comparison. Any attempt inherently carried metadata and encoding within the data that would result in differing hash values even if the pages were identical. As such, I cannot conclude using hash value analysis one way or the other whether the signature pages on the October 23rd and October 30th Professional Services Contracts are identical to each other or to the October 18th signature page Jonni Baker provided. If Commander Levy had taken the signature page Jonni Baker emailed him on October 18, 2023, and inserted that into the two Professional Services Contracts he later emailed to Ms. [REDACTED], then I would expect to see a visually identical signature page in the contracts, but I cannot conclusively prove whether or not the pages are technically identical.

Id. at 5, ¶15.

b. Findings With Respect to the Second Version Signature Page

In considering Commander Levy's actions with respect to his creation and submission of the Second Version, we focus on two Alabama criminal statutes and one section of the Code of Conduct. First, the statutes:

§ 13A-9-3. Forgery in the second degree.

(a) A person commits the crime of forgery in the second degree if, with intent to defraud, he or she falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

...

(2) A public record, or an instrument filed or required or authorized by law to be filed in a public office or with a public employee; or

(3) A written instrument officially issued or created by a public office, public employees or government agency.

(b) Forgery in the second degree is a Class C felony.

Under this statute, the following definitions apply:

§ 13A-9-1. Definitions.

(1) WRITTEN INSTRUMENT. Such term means:

a. Any paper, document or other instrument containing written or printed matter or its equivalent; and b. Any token, stamp, seal, badge, trademark or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

...

(5) FALSELY COMPLETE. To “falsely complete” a written instrument means to transform, by adding, inserting or changing matter, an incomplete written instrument into a complete one, without lawful authority, so that the completed written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him. Ala. Code 1975 § 13A-9-3.1

(6) FALSELY ALTER. To “falsely alter” a written instrument means to change, without lawful authority, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, addition or transportation of matter, or in any other manner, so that the instrument so changed falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.

...

(8) INTENT TO DEFRAUD. A purpose to use deception, as defined in Section 13A-8-1(1), or to injure another person's interest which has value, as defined in Section 13A-8-1(14).

“Deception” as used in Ala. Code § 13A-9-1 is defined as follows:

(1) DECEPTION occurs when a person knowingly:

a. Creates or confirms another's impression which is false and which the defendant does not believe to be true; or

...

The term “deception” does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons. “Puffing” means an exaggerated commendation of wares or services.

Ala. Code § 13A-8-1.

We find that Commander Levy’s conduct in appending the signature page to the Second Version constitutes conduct which “falsely makes, completes or alters a written instrument which

is or purports to be, or which is calculated to become or to represent if completed . . . (2) A public record, or an instrument filed or required or authorized by law to be filed in a public office or with a public employee; or (3) A written instrument officially issued or created by a public office, public employees or government agency.” We further find that Commander Levy did not act with intent to defraud in doing so, however. On this issue, we note the absence of a clear indication that the statute would apply under these circumstances because we are not convinced, beyond a reasonable doubt, that the Second Version is a document which indicates falsity as to matters having pecuniary significance. In making this finding, we note the absence of clear precedent on the question, and take recognize the holding of *Evans v. State*, 794 So.2d 415 (Ala. Ct. Crim. App. 2000), and the cases cited therein.

The second statute is:

§ 13A-10-12. Tampering with governmental records.

(a) A person commits the crime of tampering with governmental records if:

(1) He knowingly makes a false entry in or falsely alters any governmental record;
...

(b) Tampering with governmental records is a Class A misdemeanor.

Ala.Code § 13A-10-12. Under this statute, the following definitions apply:

The following definitions apply in this article only unless the context otherwise requires:
...

(4) GOVERNMENTAL RECORD. Any record, paper, document, or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government. Any educational attendance, membership, or financial report, or a student's school transcript.

Ala.Code § 13A-10-1.

We find that Commander Levy’s conduct in appending the signature page to the Second Version constitutes a violation of this statute because it involved his falsely altering a governmental record, as defined in the statute. We make that finding after applying a “beyond a reasonable doubt” standard.

Next, the Code of Conduct:

2.0 CITY OF MOBILE RECORDS

City of Mobile employees may have access to information and records that are confidential or proprietary in nature.

Failure to properly handle or safeguard information and/or records that are confidential will be classified as:

...

B. Gross:

1. Altering, forging or tampering with any report, record, or city document for any improper or unlawful reason. (Level 4-5)

We find that the Second Version qualifies as a “record or city document” under Section 2.0(B)(1). We also find that Commander Levy did not email the Second Version to the Bakers, nor did he obtain authorization to utilize the signature page that Jonni Baker signed to indicate her agreement to the First Version. We found that by simply appending that signature page to the Second Version, and then presenting that document as authentic, Commander Levy’s actions amount to a violation of the City’s prohibition on “altering, forging or tampering with any report, record, or City document for any improper or unlawful reason.” We find that he did so purposely, and not be reason of mistake, accident, or good faith belief that he was authorized or entitled to take such action. We find that Commander Levy violated this policy by creating the Second Version and submitting it to the City on or about October 23, 2023.

In making these findings, we note the lengths we went to in an effort to identify evidence that Commander Levy had, in fact, provided the Second Version to Jonni Baker. As detailed above (*see* §IV(A)(4)(a), *supra*), we took no fewer than six different steps to try to find evidence which might have exonerated Commander Levy on this issue. This included having to engage an expert at significant cost in order to address the allegations that Commander Levy belatedly (and, we believe, baselessly) lodged regarding the City's email system and the individual employees directed to assist in gathering emails from it. None of those efforts uncovered evidence favorable to Commander Levy. After undertaking them, we are left firmly convinced that Commander Levy never sent the Second Version to Jonni Baker, nor did he receive her authorization to utilize her signature on the First Version in order to submit the Second Version. He simply appended the signature page meant for the First Version to the Second Version and represented the document to be authentic.

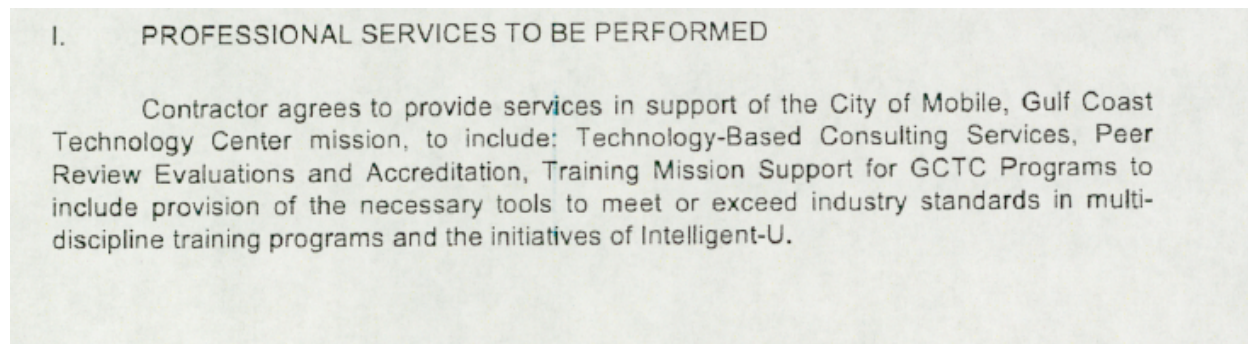
The fact that the Second Version was not ultimately executed by the City does not alter our analysis that Commander Levy violated either Ala.Code § 13A-10-12 or Section 2.0(B)(1). Nothing in either provision limits its reach to executed contracts (or contracts at all) and indeed it would be counterproductive to do so.

With respect to our findings that Commander Levy violated Ala.Code § 13A-10-12 and Section 2.0(B)(1) of the Code of Conduct, we note that had Mr. Kunkel been able to review files containing all metadata, and had he been able to determine with a sufficient degree of certainty that the two signature pages were in fact different documents, rather than simply different versions of the same document, our conclusions would be different. Consistent with our effort to find evidence which might exonerate Commander Levy on this issue, we tasked Mr. Kunkel with attempting to conduct such a review. But the evidence did not allow for such a determination. We

did not premise any adverse finding on the inability to make the determination, nor did we deem that fact evidence favorable to Commander Levy.

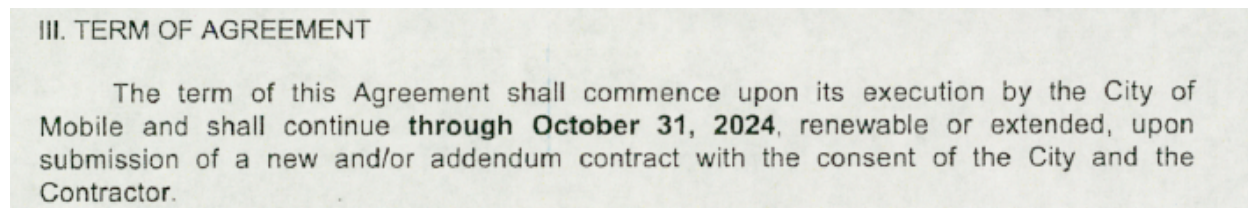
5. The Third Version of the 321z Contract

The Third Version defined the scope of services exactly as the First Version and Second Version:



Just like the First Version and the Second Version, the Third Version also lacked page numbers.

The Third Version shortened the term of the agreement. While the First Version and Second Version set the term “through October 31, 2025,” the Third Version’s term was:



The most significant change in the Third Version was a change in the compensation structure.

II. COMPENSATION

City hereby agrees to pay the Contractor at the rate billed for the work to be performed under this contract. Contractor shall submit monthly invoices that document the work completed during the billing period. No other tasks may be subject to invoice absent advance written proposal and price quotation by Contractor of additional work to be performed and written approval by City. The total amount to be paid by City under this Contract shall not exceed **\$92,000.00** per the identified period of performance. However, only authorized material and services will be paid, to whatever capacity, budget, or limit set by The City of Mobile, Gulf coast Technology Center Commander. Payments will be made as outlined in Schedule A.

The modification directed that “Payments will be made as outlined in Schedule A,” and that document provided as follows:

Schedule – A

321z Insights, LLC.

Payment Schedule (6-Month):

Month 1 / Invoice #1	-	\$46,000.00 (50%)
Month 2 / No Invoice	-	\$0
Month 3 / Invoice #2	-	\$13,800.00 (15%)
Month 4 / Invoice #3	-	\$ 9,200.00 (10%)
Month 5 / Invoice #4	-	\$13,800.00 (15%)
Month 6 / Invoice #4	-	\$ 9,200.00 (10%)

*Any travel, incidentals, or other direct and indirect expenses are the responsibility of the contractor and will not be billed outside of the monthly rates listed above; unless otherwise amended.

Services and materials will be reviewed and accepted by The Cmdr. Of The Gulf Coast Technology Center, prior to the authorization of invoice submission.

We sought to determine how Schedule A was created. Jonni Baker testified as follows:

Q. . . . So on this version, as we talked about, it contains a Schedule A. Let me take you to it. Did you draft that Schedule A?

A. No.

Q. Do you know who did?

A. No. I know that neither myself nor Mark did.

Q. Whether or not you're the one who actually typed it up, did you have any involvement in its content? That is to say, did you say, look, we need 46,000 the first month, and then no payment the second month, the 13,8 third month? Did you have any sort of discussion like that with Commander Levy?

A. I did not.

Q. Do you know if anyone did?

A. No, I don't.

Q. Okay. And as you sit here today, do you have any idea how those numbers were arrived at?

A. I don't know. No, I don't.

J. Baker Tr. at 68-69. Mark Baker referred to Schedule A as something "we were sent[.]" M. Baker Tr. at 57. Later, he testified:

Q. I'm going to scroll down to where it says Schedule A. Do you see that?

A. Correct.

Q. And so do you know who prepared Schedule A?

A. I assume the Commander as that's what it states in there, the Commander. That's who we're supposed to listen to. That's all we know.

Q. So you didn't type up this Schedule A?

A. No, sir.

Q. Did you negotiate these amounts?

A. We talked about we needed, you know, some kind of schedule. I'm not sure if there was any discussion over it. I don't recall, but the -- I know I didn't type it.

Id. at 68-69. Commander Levy testified that the Bakers “outlined what the prepayment schedule was going to be. I didn’t have a problem with it.” Levy Tr. at 98. He added later: “I didn't have a problem with it, but I'm also not the person that makes the decision; right.” *Id.* at 100.

The language of Schedule A included a requirement that:

Services and materials will be reviewed and accepted by The Cmdr. Of The Gulf Coast Technology Center, prior to the authorization of invoice submission.

We initially read this language as an attempt to address the concerns that Attorney Kern raised with respect to the Second Version, and to ensure that payments made to 321z were proper. Specifically, this language appeared to create a prerequisite for payment under the payment schedule: 321z had to provide “services and materials” which would then need to be “reviewed and accepted” by Commander Levy “prior to the authorization of invoice submission.” In other words, the language suggested that 321z had to provide services or materials *before* Commander Levy would permit them to submit an invoice. Under this reading, the City would only pay when services or materials were provided and where Commander Levy deemed the volume and quality of those services just the submission of an invoice in an amount commensurate with their value.

Commander Levy disagreed with this interpretation. He testified as follows regarding this language:

Q. Okay. And so that language means, and specifically what's attached to Schedule A, that you are the one who will authorize them to submit invoices; right?

A. I'm the one that authorizes the submitted invoices for payment.

Q. No. (Reading.)

Services and materials will be reviewed and accepted by the Commander of the Gulf Coast Technology Center prior to the authorization of invoice submission.

A. Oh, oh, no, sir. Invoice submission, that's us submitting it through the payment system in Munis.

Levy Tr. at 119. Commander Levy's reading appeared illogical to us, as it effectively converted the "authorization" requirement to one which simply asked him to confirm that 321z submitted the invoice according to the payment schedule (that is, the proper amount for the proper month), but without regard as to whether services had been provided in a volume and quality commensurate with the amount invoiced, or even provided at all. In essence, Commander Levy's reading rendered him a mere conduit who simply passed the invoices on in the City's payment system after receiving them from 321z, provided the amounts matched the payments for the scheduled month.

Struck by Commander Levy's interpretation, we followed up:

Q. Okay. So they could submit invoices to you –

A. 100 percent.

Q. -- whenever they want?

A. Correct, yes, sir.

Q. And that's not dependent on them having done work at all?

A. No. They submit invoices according to this payment schedule, and then I authorize them and submit it for a payment, which is the invoice submission that's being referred to here.

Q. And so when you submit an invoice under this payment schedule, are you reviewing the services and materials that they've provided and you accepted?

A. I have accepted that they are invoicing according to the schedule, which is why I approve the invoices when they are sent.

Q. That says services and materials.

A. Correct.

Q. Are they providing any services or materials before you authorize the payment of these invoices?

A. Based on my understanding that this was a prepayment flat, I -- I don't -- I don't know that they had to. I mean, I get what you're saying, and I see what it says there, but, again, I'm not a contracting specialist.

So my understanding is that if there's a payment schedule that says Invoice Number 1, Invoice Number 2, Invoice Number 3, and so on and so forth, as long as they submit that in accordance with what was paid in their payment schedule as a prepayment contract, that they would, in theory, get money even before they provided some services. Hence the whole idea that this was a retainer style or flat rate contract.

Id. at 119-21. In order to ensure that we understood fully Commander Levy's position on this issue, we referred back to his email exchange with Attorney Kern, wherein he stated:

So there will be certain things that they do throughout the year and we pay when they are billed. I am listed as the approver so they will only get paid when I approve what they do. Could be monthly, or could be all in the first three months. Depends on how long it takes. That was why we left it vague.

The questioning proceeded:

Q. What did they do?

A. We actually had a lot of conversations until they were forced to stop working. So we -- we -- we did a lot of things on the phone and discussed ideas and shared information. He gathered information on counter detection systems.

So -- so there's -- there's not a lot of stuff they didn't do, but they're also being paid -- paid for this. And there's also a circular argument that exists right now about a company that was hired, paid money, and then supposedly don't do anything when, in fact, the false allegations that have led us here today are the sole reason that I was directed to stop them to do any work.

Levy Tr. 122-23.

The notion that the City would agree to pay 321z for services which had not yet been provided seemed unusual. Those concerns were compounded by the fact all three versions of the 321z contract contained exactly the same vague description of services¹⁹ to be provided:

¹⁹ On this point, we note that Attorney Kern testified that he deemed that he was "more or less satisfied" that the scope of work in the 321z Contract was sufficient. Kern Tr. at 45.

I. PROFESSIONAL SERVICES TO BE PERFORMED

Contractor agrees to provide services in support of the City of Mobile, Gulf Coast Technology Center mission, to include: Technology-Based Consulting Services, Peer Review Evaluations and Accreditation, Training Mission Support for GCTC Programs to include provision of the necessary tools to meet or exceed industry standards in multi-discipline training programs and the initiatives of Intelligent-U.

In light of Attorney Kern's previously expressed concern that the language in the Second Version amounted to "bill whatever you want and we will pay it," we questioned him about his reading of the language. He testified that he read Commander Levy's email "they will only get paid when I approve what they do" as an attempt "satisfy me that there would be work performed before approval of invoices." Kern Tr. at 41. Attorney Kern later testified that it was his "understanding would be services would be provided before you get your final -- before the contract is over." *Id.* at 62. Attorney Kern testified that he interpreted the language to mean that "it was his way of saying he was going to look at invoices before they were submitted to Accounting." His testimony followed:

Q. Okay. What is the authorization of invoice submission?

A. I think he means him [Commander Levy] authorizing it.

Q. Authorizing the City to pay it?

A. Yeah, or authorizing it to go to account to the City.

Id. at 55; *see id.* at 58 ("This was broken down into six payment[s]. That satisfied me"). Again, in Attorney Kern's view,

Q. . . . But all we're doing is checking and making sure the amount of the invoice is the same as the amount in the schedule?

A. That's correct.

Id. at 63. The upshot of Attorney Kern’s testimony was that his interpretation of the “authorization” language aligned with Commander Levy’s.

All three versions contained the same language in the “General Provisions” section:

IV. GENERAL PROVISIONS

A. City shall provide written task orders to Contractor. Contractor shall submit invoices to the City of Mobile, Gulf Coast Technology Center Commander, or his/her designated representative., with reports of its activities and work product documents.

Commander Levy was questioned regarding the task order requirement:

Q. And the template, which you've made clear this is a template, provided for that through the issuance of task orders?

A. That's what the contract says. If your --

Q. That's all I ask.

A. If your question --

Q. That's all I ask.

A. But if your question is have I ever issued a task order, I don't recall ever issuing a task order.

Levy Tr. at 138-39. He provided further testimony on the issue:

Q. And to do that, you did not use the task order process, because that's not a process that you use. Is that your testimony?

A. Correct.

Q. Yeah. You said you've never issued a task order before in another --

A. Yes, sir.

Q. -- professional services contract?

A. That I recall, correct.

Q. Right.

A. Right.

Q. And you didn't issue one here?

A. Correct.

Id. at 140-41. Attorney Kern was also questioned about this language:

Q. So that [the task order requirement] is a process to make sure that the City requests what it wants done under the contract. And the contractor, it is clearly defined what contractor is supposed to do; right? That's the purpose of a task order?

A. That would be the general purpose of a task order in a contract, yes.

Q. Right. And that would be customary that a contract would either have a scope of work specifically defined or a task order process by which services are specifically requested. Is that fair?

A. Yeah, I think that's fair.

Kern Tr. at 42-43. Attorney Kern testified that he deemed the contract to contain a sufficient scope of work. *Id.* at 44. He was later asked if he would be surprised that Commander Levy never issued a task order despite the agreement's mandatory language and responded: "Not at all." *Id.* at 52. He later explained: "Task orders are generally used only in the construction -- our construction contracts for the most part." *Id.* at 53.

The signature page appended to the Third Version appears identical to that appended to the First Version and Second Version. As noted above, there was no evidence that Commander Levy ever emailed the Second Version to Jonni Baker, or ever received from her the executed signature page for that version. Our investigation also found no evidence that Commander Levy ever emailed the Third Version to Jonni Baker, or ever received from her the executed signature page for that version.

Despite the absence of such evidence, however, we noted that the Bakers both testified regarding their awareness of the Third Version's existence and terms, particularly as to Schedule A's compensation terms.

Moreover, 321z regularly submitted invoices consistent with that schedule. Whether or not Jonni Baker actually signed the signature page which was appended to the Third Version, the evidence show that she was aware of and agreed to the document's terms, and at a minimum ratified the contract's existence. We therefore make no adverse finding regarding the execution of the Third Version.

We also note that none of the three versions of the 321z Contract contained page numbers. We noted that previous contracts executed by Commander Levy using the same format contained page numbers and we investigated whether evidence existed to show that Commander Levy purposely removed those page numbers in order to be able to more freely append an original signature page. We questioned Commander Levy regarding this issue in his Supplemental Testimony:

Written Supplemental Question #5 by William C. Athanas:

With respect to the creation of the 321z contract, Commander Levy testified "I'm not a contract person. I used the template I was given." Tr. at 344. Commander Levy was involved in the execution of the City's contract with a separate entity, Protecvideo, LLC, which is attached as Exhibit 40. That contract appears to use a template that is similar to the versions of the City's contract with 321z (Exhibits 15, 53, and 109). Exhibit 40 has page numbers at the bottom of each page ("Page 1 of 5," "Page 2 of 5," etc). None of the versions of the 321z contracts contain that numbering system (or any other page numbers).

When Commander Levy began preparing the 321z contract, did the version of the template he used contain page numbers at the bottom? If so, did Commander Levy remove those page numbers? If so, why? If Commander Levy did not remove the page numbers, does he know why none are contained on versions of the 321z contracts (Exhibits 15, 53, and 109)?

Answer to Supplemental Question #5 by Kevin Levy:

I did not remove page numbers. I do not know why there are or are not page numbers on other documents.

Our investigation ultimately produced insufficient evidence to make a finding that Commander Levy purposely removed the page numbers from any of the three versions of the 321z Contract.

a. The "Retainer" Agreement

In their respective testimony, Mark Baker, Jonni Baker and Commander Levy testified that the Third Version was intended to serve as a "retainer" contract for 321z. Their testimony shed further light on that term.

Mark Baker testified:

Q. And the \$92,000 put 321z Insights, LLC, on retainer for that year?

A. Correct.

Q. If the City gave you work -- I guess, if Commander Levy utilized you and said, hey, I need you to work, you know, 50 hours a week or 40 hours a week for the whole year, the City still would have only paid 92,000?

A. Correct.

Q. But if the City -- if Commander Levy didn't task you to do anything, the City would still have to pay 92,000?

A. Correct.

Mark Baker Tr. at 79-80. He later added:

Q. And so your understanding was it didn't matter how much you worked as long as you got the job done; is that fair?

A. Correct.

Id. at 83.

When Jonni Baker was questioned on the topic, she testified as follows:

Q. Okay. In light of that, Ms. Baker, 6 where the payment is going to be according to a rate schedule, and there isn't a rate schedule, do you remember why you signed the document?

A. Based on way that was explained to me for being paid, that's why I would have signed it.

Q. What was that explanation?

A. A retainer.

Q. Okay. And give me your understanding of what a retainer is.

A. A retainer is money paid ahead of time for services that are going to be rendered under the contract.

Q. All right. And under that definition, the volume of services don't matter; is that correct?

A. Yes, that would be correct.

Q. And so if this were a retainer, you'd be due to be paid \$180,000, whether you did 1,000 hours' worth of work or ten minutes. Is that your understanding?

A. Well, that would be my understanding, but as we've stated, this contract never happened, but, yeah.

J. Baker Tr. at 49-50.²⁰ She later testified:

Q. And you mentioned that this was a retainer agreement. And so was it your understanding that through the period of the contract, upon the payment of the \$92,000, the City of Mobile can contact you at anytime and say this is what we want you to do under this contract?

A. That is correct.

Id. at 75. Jonni Baker also testified:

Q. . . . I'm asking you whether you had an understanding of how much work you were supposed to perform under this contract description.

A. No, I didn't have a full understanding, but it sounded like it was going to be quite a bit.

Q. Okay. Does that mean 100 hours or 1,000 hours or more or less?

A. I can't answer that --

Q. Okay.

A. -- because I wouldn't know.

Id. at 46. She followed up:

Q. Would it matter in determining how much you thought you were due to be paid?

A. Not necessarily, no.

Q. Okay. So the volume of work would not impact the amount of money you thought you were due?

A. No.

Id. at 46-47.

Commander Levy's testimony on the issue was as follows:

Q. And is that why Mark Baker insisted on either prepayment or a greater level of payment early in the contract?

²⁰ This testimony took place in the context of a discussion about the First Version, but Ms. Baker's testimony made clear that the "retainer" concept remained the same. *See id.* at 75 (discussing concept in the context of the Third Version).

A. Correct. They wanted a retainer style contract where they paid monthly, regardless, so that they would get most, if not all, the money at the beginning of the contract, the first few months, six months, so that as they expended money, they would have capital to work off of.

Levy Tr. at 97-98. He followed up:

Q. Are they providing any services or materials before you authorize the payment of these invoices?

A. Based on my understanding that this was a prepayment flat, I -- I don't -- I don't know that they had to. I mean, I get what you're saying, and I see what it says there, but, again, I'm not a contracting specialist.

So my understanding is that if there's a payment schedule that says Invoice Number 1, Invoice Number 2, Invoice Number 3, and so on and so forth, as long as they submit that in accordance with what was paid in their payment schedule as a prepayment contract, that they would, in theory, get money even before they provided some services. Hence the whole idea that this was a retainer style or flat rate contract.

Id. at 120-21.

As part of evaluating this issue, we sought to better understand why 321z would desire to set up a retainer agreement, particularly with half of the entire contract amount payable in the first month. During his testimony, Commander Levy noted his memory that the Baker had a concern about upfront costs they might incur:

She and he had had some conversation about them having to travel out to do the assessment on the lab, to do all these things, and if they were going to have to put that money out upfront.

Levy Tr. at 96. When we questioned Jonni Baker about this issue, she testified:

Q. . . . Did you have a concern when the contract was executed that it would be necessary for you-all to have some money for upfront costs?

A. Yes.

Q. Okay. And you see 50 percent of the contract -- That is \$46,000 -- is paid in the first month. Is it your --

A. Yes.

Q. -- understanding that it was arranged that way to address the concerns that you-all had?

A. It would make sense, yes.

Q. Do you remember, Ms. Baker, as you sit here today, what you anticipated those costs to be, whether or not they were incurred, what did you think you were going to have to pay early on the contract?

A. That we would be traveling, either myself or Mark or perhaps both of us, the expense of staying out there, you know, everything that goes with traveling. And then that's pretty much what I had thought of at first.

Q. Did you expect to have to purchase any materials upfront?

A. I don't recall. If -- if -- if I did, it wouldn't have been much, I don't think.

Q. Okay. How about software or database access?

A. I would assume so, yes.

Q. Okay. But as you sit here, do you have a memory that, in fact, that was part of what you deemed necessary for an upfront payment?

A. Mark and I had talked about it, so I would say yes.

Q. Did you price what those -- Was it software or database access or both?

A. It's unclear. I don't remember. I'm sorry.

Q. Okay. It's okay. Do you remember about what you thought that would cost?

A. That would be a question for Mark.

Q. Sure. And the reason I'm asking you, Ms. Baker, is I'm trying to figure out if the 46,000 is tied to anything, or if you-all just said, you know what, let's get half of it upfront just to cover whatever costs we incur.

A. I couldn't tell you.

J. Baker Tr. at 69-71.

We had previously questioned Mark Baker on that issue:

Q. . . . And just so I understand, were you also expecting to have to purchase materials upfront?

A. Not -- not right away. I mean, I -- I don't know. There was -- It was -- not sure what materials we would have to purchase, but there was no discussion of purchasing, as far as I remember, you know, materials right away to --

Q. Well, how about software licenses or database access, were you expecting to have to outlay money for things like that?

A. Yeah, we were, not those specific, but there was some outlay of some money upfront from our perspective that we were willing to pay for part of that. And then -- But as a normal company, we'd like to get compensated as soon as we could, so --

Q. Right. And I'm trying to understand the outlay. You've talked about the travel. So there was an additional outlay beyond the expected travel?

A. There would have been or there was. In some cases, you know, there's typical outlay of when we start gathering this material. You know, I don't know if we'd need a database, if you will. But if -- I would have to go back and look at, you know, what -- what we looked at. But off the top of my head, there's normally something that -- that'll cost money, so --

Q. Right. And I think your testimony has been clear that you were concerned about the possibility that you might have to come out of pocket, and you wanted money upfront to offset that if it happened. My question is whether that actually occurred. Once the contract was signed, did you, in fact, come out of pocket or pay money as part of performing under the contract?

A. Did we spend money, ourselves, to get -- to do things? So --

Q. Yes, sir.

A. -- the -- We spent time on the Echo Stop [the Peer Review]. We spent time on some discussions about the lab and accreditation SOP, if that's what you're asking.

Q. Well, my question was a little more specific, which was: Did you actually come out of pocket to pay for things? We know you didn't have to travel. Did you pay for materials? Did you pay for software? Did you pay for database access?

A. We -- we didn't really get a chance to.

M. Baker Tr. at 72-74.

b. Negotiation of the Contract Amount

We also sought to determine how the parties to the 321z Contract arrived at the amount. In light of the Bakers' testimony about a desired "retainer" agreement, we questioned Commander Levy about the volume of work he expected would be performed. In doing so, we did not consider the absence of work performed *after* the City Attorney directed Commander Levy to cease work under the 321z Contract as evidence of a violation of law or City policy. More specifically, we did not factor the question of whether the City has yet received \$92,000 worth of services into our assessment of the agreement's legitimacy. We did consider the amounts paid and the volume of work performed *before* the stop order was issued but did not premise any adverse finding on a determination that insufficient services were provided over the life of the agreement. To do so would have unfairly penalized Commander Levy or perhaps others for decisions which were outside their control.

We questioned Commander Levy on this issue:

Q. . . . It's not my intention to flyspeck the contract, but we can agree on a couple of things, right, that with the contract, there are a couple of things that are particularly important, right, one would be the term.

A. Sure.

Q. Do you agree with that?

A. Right.

Q. The other would be the amount to be paid --

A. Correct.

Q. -- right?

A. Yes.

Q. And the other would be the volume of work to be done.

A. I'm going to not agree with that portion.

Q. You don't think it matters in determining whether a contract is reasonable and enforceable whether or not the parties have decided the volume of work to be done?

A. Well, the volume of work, to me, illustrates output. And in Intelligence, we deal in outcome. So the -- the satisfaction of this contract for me wasn't in how much work or how often they worked, but was I driving or working towards the end result. And that answer is yes.

Levy Tr. at 133-34. Commander Levy testified further on the issue:

A. So I don't know specifically what they intended to spend all of the money on. Again, I'm not a contract negotiator. I don't negotiate contracts. When this conversation was happening, and we came to the one-year contract, they told me what the terms were going to be. The terms were going to be that they wanted to be prepaid. They outlined what the prepayment schedule was going to be. I didn't have a problem that it.

There's something that we haven't discussed, which I think is relevant in here. I was super excited about this contract. And the reason I was super excited about it was to get somebody to come in and peer review a lab, peer review our documents, and help us assess that, and also work on a drone program, that is something that if you shop around and do your own homework, to find the expertise, you're looking at \$300,000. I was getting this for \$92,000.

The reason they were excited about it was he had done his research and found there was a business market. The one thing he didn't have for his new business was a customer. And so this was a mutually beneficial agreement for the City and for them.

They were going to say, hey, the City of Mobile is a great reference. They came and did work. And also I didn't have to spend \$300,000 to get a lab accredited. We -- The City saved money.

Like the whole -- All -- At the end of the day, spending money, they City spends a lot more money on a lot of other things, and we're sitting here as part of that. This was a cost savings measure to the City. I found the guy that had the expertise, and I was excited.

Did they have new business jitters in terms of are we going to have to lay out oney, are we going to have to pay for gas, that kind of thing? I'm sure, as any new businessowner would. And those were issues that were worked out.

And that was ultimately why the prepayment schedule was -- as submitted with this. I didn't have a problem with it, but I'm also not the person that makes the decision; right.

I submitted it to legal. It went through procurement. And ultimately the City Council, the same City Council that's having this investigation, signed this, approved this contract in City Council.

Id. at 98-100. We followed up to better understand how Commander Levy had determined that amount of the 321z Contract was appropriate:

Q. Did you get bids from other potential contractors on this work?

A. No. That's not required under these types of contracts.

Q. You said that the other cost would be \$300,000. Where does that number come from?

A. I've been in this industry for -- for a couple of decades. To get a lab accredited and to have somebody come through -- And -- and not even accredited, because he's not going to be the accrediting body. But to have somebody walk you through the accreditation process, that could cost you 200,000, 250, \$300,000. And to also have somebody come in work with you under FAA compliance on an unmanned aviation program, that's impressive, too; right?

And so those two things combined, I felt like the price was a great price. They were going to use us as a reference, I'm guessing. That's -- That was his -- his excitement.

And so we were trying to get the process going. And he -- His un-comfort level was how much money was he going to have to put up upfront. And that -- that's ultimately what led to the prepayment.

Id. at 100-01.

Mark Baker testified as follows:

Q. Mr. Baker, do you know how the \$92,000 figure was arrived at?

A. To a certain extent. I don't know the breakdown completely, but, you know, it was agreed upon that, you know, it -- it was -- it was -- it would be a salary for -- basically for paying for my wife's time, not my time.

M. Baker Tr. at 81.

c. Additional Relevant Contract Language

The 321z Contract contained certain contractual provisions contained in professional services contracts executed by the City. As noted above, the “Compensation” section provided as follows:

II. COMPENSATION

City hereby agrees to pay the Contractor at the rate billed for the work to be performed under this contract. Contractor shall submit monthly invoices that document the work completed during the billing period. No other tasks may be subject to invoice absent advance written proposal and price quotation by Contractor of additional work to be performed and written approval by City. The total amount to be paid by City under this Contract shall not exceed **\$92,000.00** per the identified period of performance. However, only authorized material and services will be paid, to whatever capacity, budget, or limit set by The City of Mobile, Gulf coast Technology Center Commander. Payments will be made as outlined in Schedule A.

This language required that:

- The contractor “submit monthly invoices that document the work completed”
- “No other tasks” would be “subject to invoice absent advance written” proposal and approval
- “Only authorized material and services will be paid”

In addition, the 321z Contract contained certain requirements within the “General Provisions” section

IV. GENERAL PROVISIONS

- A. City shall provide written task orders to Contractor. Contractor shall submit invoices to the City of Mobile, Gulf Coast Technology Center Commander, or his/her designated representative, with reports of its activities and work product documents.
- B. Contractor agrees to permit the City access to, and as requested copies of, all books and records received and developed in connection with the contract work.

These included:

- The requirement that the City provide written task orders to the contractor
- The contractor provide “reports of its activities and work product documents”

- The contractor permit the City “access to and as requested copies of all book and records received and developed in connection with this contract work”

d. Performance Under the 321z Contract

As part our investigation, we sought to determine the volume of services provided under the 321z Contract. Other than a copy of the Peer Review, none of the documents turned over in response to subpoenas issued to Mark Baker, Jonni Baker and 321z establish that work was performed. Mark Baker testified as follows on the question of the volume of work 321z performed:

Q. And you indicated, I think, that you actually did do some work on this project at the early stages. Did I understand that correctly?

A. On the Echo Stop [the Peer Review]?

Q. No. Under this contract, sir. So the contract is executed in late November 2023. And I think you've indicated that at some point, the City told you to stop work on it as these issues were worked out. I'm trying to determine what, if anything, you did between the period after the contract was signed and before you were told to stop work.

A. Again, only the time for Echo Stop.

Q. Okay. I appreciate you clarifying that. Thank you.

Mark Baker Tr. 81-82.

Commander Levy's testimony was as follows:

Q. What have they done?

A. They have provided -- Nothing that they've actually turned over. This has all been discussion based; right? But they've done the research on certain aspects, specifically with the drone program, looking into cataloging the things that we would have to do in terms of the lab accreditation, and -- and so forth.

Q. Okay. And you said nothing that they've turned over. So they haven't supplied you any work product?

A. Correct.

Q. But you've had discussions about it?

A. Yes, sir.

Q. Have you memorialized those conversations?

A. No.

Q. All right. Do you know when they occurred?

A. I mean, sometime between when the contract was signed and when essentially we were told to -- to stop working while we flushed through this investigations, series of investigations.

Q. Do you have any idea of the volume of work that they've done?

A. No.

Q. I mean, is it an hour, 10 hours, 100 hours?

A. Couldn't tell you.

Q. No idea?

A. I mean, I know they've done sufficient work that allowed me to draw conclusions that they were working as I expected them to, but how many hours that was and -- and -- and that sort of thing, no, I can't -- I can't give you an answer.

Q. Okay. How do you know that they've done sufficient work, just based on your conversations?

A. I had the expectation of what we'd be working towards and -- and what -- what the end goals were. I -- I think something that's important to -- to remember is the time lapse that occurred here. There is not a great deal of time that lapsed between when they began really having the discussions in January and when we wound up in the situation we're in. So it's only been a few months; right? So it -- While, yes, we're in June now, this -- the contract wasn't signed until -- and approved until mid-November, Thanksgiving, and December. So we really didn't start discussions probably until early January. And then it was just a month to two before all of this developed, so --

Levy Tr. at 124-26.

6. Findings with Respect to the Creation of the 321z Contract

The process undertaken to create and execute the 321z Contract was anomalous. Commander Levy initially prepared a contract which called for the 321z to be paid \$180,000 over

a period of two years under a rate schedule which was never identified or even created. Despite the absence of such a critical term, Commander Levy sent the agreement to Jonni Baker and asked her to sign it, and she did so. Even if we assume that Jonni Baker was focused on the total amount she was going to receive under the agreement as opposed to some hourly rate at which it might be paid, the First Version did not guarantee her the full amount – it instead provided that she would be paid according to some nonexistent rate schedule. Her email to Commander Levy, sent a mere ten minutes after she signed the contract, asking “if we will be making any money” reflects a negotiation process well outside of customary and expected practice.

The abnormal nature of the contracting process continued when Commander Levy revised the agreement, creating a Second Version which required the same amount of work, but cut the total value of the contract from \$180,000 to \$92,000. The Second Version also deleted the reference to a rate schedule, but offered nothing in its place to determine how 321z was to be paid: it simply provided that the City “agrees to pay [321z] at the rate billed for the work to be performed under this contract.”

Commander Levy submitted the Second Version through the approval process, during which it was reviewed by Attorney Kern. His expressed worry that such language amounted to an arrangement where 321z could “bill whatever you want and we will pay it” which triggered Commander Levy to revise the agreement once again. The Third Version retained that language, but at least seemingly conditioned it by adding a schedule of the amounts 321z would receive each month and including ostensibly protective language to make sure the City only paid when services were provided in an amount commensurate with the scheduled invoice payment.

Commander Levy rejected that interpretation, insisting instead that the schedule was exactly and only that: a timetable on which 321z would be paid, regardless of whether it performed

any services at all. While we questioned this interpretation, we are mindful of the fact that Attorney Kern agreed with Commander Levy, and we believe it would be fundamentally unfair, or at least ill-advised, to make an adverse finding which disregards the legal advice Commander Levy sought and the interpretation Attorney Kern offered. We also accepted Attorney Kern's testimony that the City has previously prepaid contracts without requiring a specific scope of work, and that the absence of task orders by Commander Levy – even though the agreement specifically required them – was not unusual in contracts other than those involving construction services.

Ultimately, Commander Levy and the Bakers both voiced the view that the Third Version was a “retainer” agreement. The Bakers deemed that arrangement to entitle them to full payment regardless of the volume of work they were required to perform: if the City asked them to provide 1,000 hours of work, they were required to do so. If the City only asked for 10 hours, or perhaps even none, they were also deserving of the full \$92,000.

We credited the notion that Department heads must have discretion to execute contracts with vendors, and we are not aware of any law or City policy which was contravened by Commander Levy's decision to include and agree to the terms contained in the 321z Contract. As noted above, we have found that Commander Levy violated Section 2.0(B)(1) and of the City's Code of Conduct and Ala. Code § 13A-10-12(a) by appending the signature page from the First Version to the Second Version. Beyond those determinations, however, we do not find that any violations of law or City policy occurred in connection with the creation of the 321z Contract.

7. The Creation and Use of the Peer Review

a. The Meeting with Director Lasky

At some point following Director Lasky's assuming the title as Public Safety Director, Deputy Director Graves (then serving as Commander of the MPD's Office of Strategic Initiatives)

made a statement to the effect of his program did not “get much support from the” MPD. Lasky Tr. at 48. Director Lasky recalled that Deputy Director Graves “made a comment that the GCTC doesn't get as much support as they need from the [M]PD.” *Id.*

Director Lasky testified that he subsequently had a meeting with Deputy Director Graves and Commander Levy, who stated “that over the last two years, there's been the -- Chief Prine has been eroding their support and budget of the GCTC.” *Id.* at 48-49. Director Lasky testified that “I asked for particulars at that time like how. . . . Tell me how. And I really didn't get an answer[.]” *Id.* at 49. Director Lasky testified further:

Q. . . . You didn't get an answer at the meeting or ever?

A. I didn't get -- Both. I didn't get an answer at the meeting, and Kevin was very -- You know, I don't know. He just -- was -- was telling me that they, you know, wanted to say that there were problems but would not articulate in a fashion that I could investigate and determine if those problems or true to not true to a sufficient fact sufficient for my -- You know, it's like saying -- I use the analogy, you know, it's like your -- your child coming home and saying my car is not working right. Okay. Well, what's not working right? Well, it's just not working right. I'm like, you've got to tell me what's not working right. And I just never got, you know, to my frustration, because it's very hard for me to fix something or to which I don't know what the exact problem is.

Id. at 49-50.

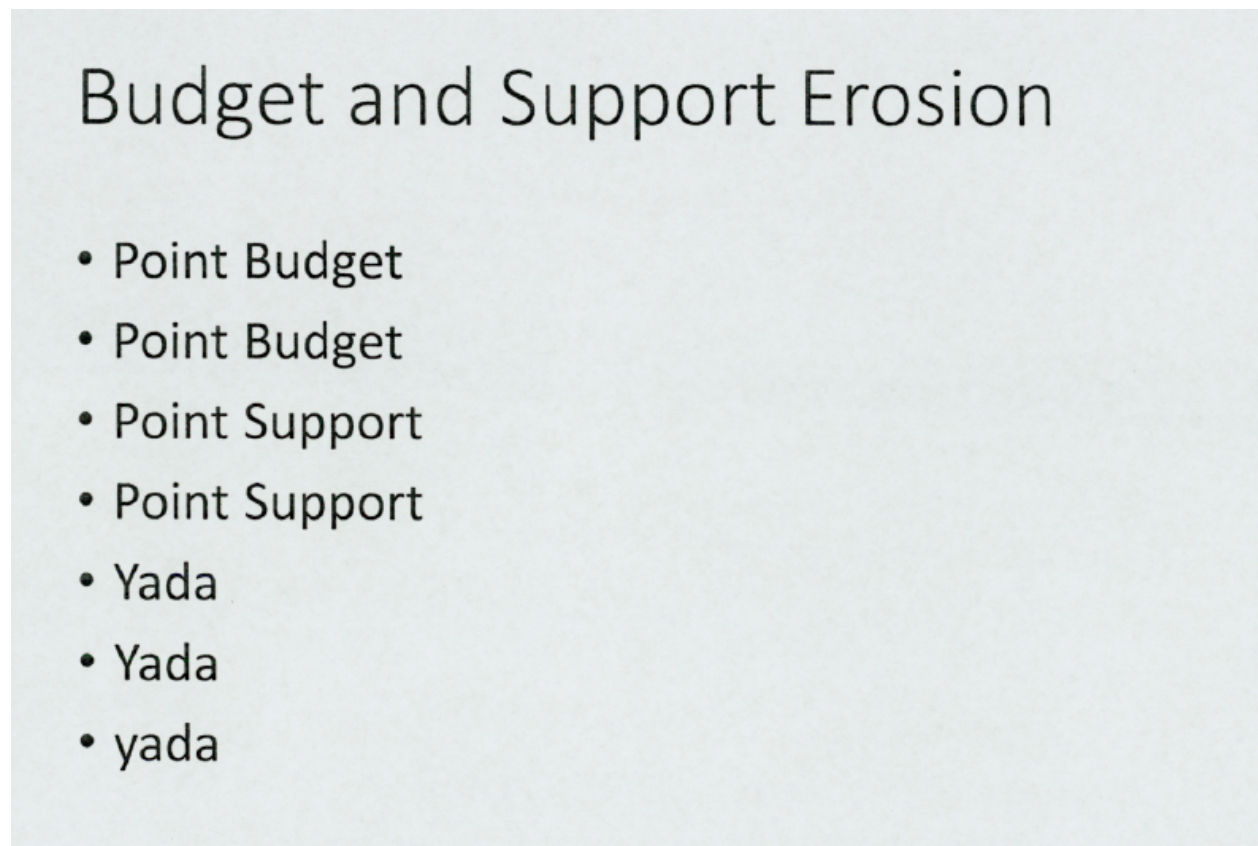
Director Lasky testified that after his initial meeting with Commander Levy and Deputy Director Graves, he convened another meeting with both men and Chief Barber. *Id.* at 50. During that meeting,

Both Curtis and Kevin did articulate to -- in front of Chief Barber that there were problems with the -- the GCTC and the -- the Police Department. I don't think -- And they -- they said it was about budget and, you know, personnel issues or personnel, but never articulated it.

Id. at 51. Director Lasky testified that because he could not get specifics, he could not be sure “if there [was] a legitimate problem because nobody's telling me on this date, this happened or this.”

Id. at 51-52. Commander Levy had previously advised Director Lasky “that if it keeps going the way it is, [Commander Levy] said that he was going to eventually quit and that other people will quit.” *Id.* at 52.

Director Lasky testified that as part of his effort to identify Commander Levy’s concerns, he created a PowerPoint and told Commander Levy he needed him to fill in a particular page. *Id.* at 60-61. The page reads:



Commander Levy never provided the information Director Lasky requested. *Id.* at 62. He testified further:

I heard what -- what Paul or Chief Prine wants. I heard what Kevin -- Kevin wants complete independence. Paul wants complete control; okay?

Id. at 64.

In response to further questioning about Commander Levy's later expressed concerns (in the OPR investigation) that he perceived that Director Lasky was trying to "build a case" against Chief Prine, Director Lasky testified as follows:

Q. Did you ever ask Mr. Levy to help build a case against Prine?

A. No.

Q. Do you know that anyone else did?

A. No.

Id. at 67; *see id.* at 64 (Q. Do you ever recall at this point or any other telling Mr. Levy that you wanted Chief Prine to be terminated? A. No”).

Commander Levy was also questioned about the issue. He testified:

A. . . . There were multiple requests, that meeting and others, where I was asked to put together a list, a PowerPoint at one point, to demonstrate all the things the Chief of Police was not doing right to support us.

And I refused, because I felt like that [wasn't my] place, and that if the Public Safety Director, who the Chief's supervisor, had an issue between the two of them, they should work that out.

They should not be asking me to create a document that's going to be presented, as I understood it, to the Mayor outside of the presence of the Chief, sort of backdooring this iteration of -- of knowledge about what somebody may or may not be going.

Like that's a conversation, if you want to have somebody, you bring everybody into the room, and you have that conversation.

Q. Did you tell Mr. Lasky that?

A. Yes, 100 percent.

Levy Tr. at 167-68. Commander Levy continued:

He [Director Lasky] then called me back the next morning and said, I've sent you a PowerPoint. And he sent me this PowerPoint, and he said, I've done the PowerPoint, just fill in the blanks. I refused once again.

In that phone call, he told me, I'm telling you to. I'm not asking you to, I'm ordering you to. That was on a Friday. I'm ordering you to do the PowerPoint. And my response was no, sir.

Id. at 170-71. Commander Levy testified that he was both “unwilling and unable” to provide the information Director Lasky requested due to his personal beliefs. *Id.* at 172.

Commander Levy testified that he did not believe Director Lasky’s request was “illegal, immoral, or unethical, or anything of the sort.” *Id.* at 173. Nevertheless, he felt the need to “[take] matters into [his] own hands” and contacted Joe Kennedy, an MPD assistant chief (“Assistant Chief Kennedy”) with whom Commander Lasky had worked previously, to set a lunch to discuss the matter. *Id.* Commander Levy testified that he did so in order to alert Assistant Chief Kennedy of Director Lasky’s request, knowing it would trigger Assistant Chief Kennedy to advise Chief Barber (with whom Assistant Chief Kennedy was close friends) and Chief Prine (for whom Assistant Chief Kennedy worked) of the issue, allowing Commander Levy to “get out of the middle.” *Id.* at 174-75.

The plan worked as Commander Levy designed it, and Chief Prine later learned of Director Lasky’s request. Director Lasky explained further:

Q. Did you understand at this point in time that Chief Prine believed you were looking to oust him from his position as police chief?

A. This is the document I believe that started that thought.

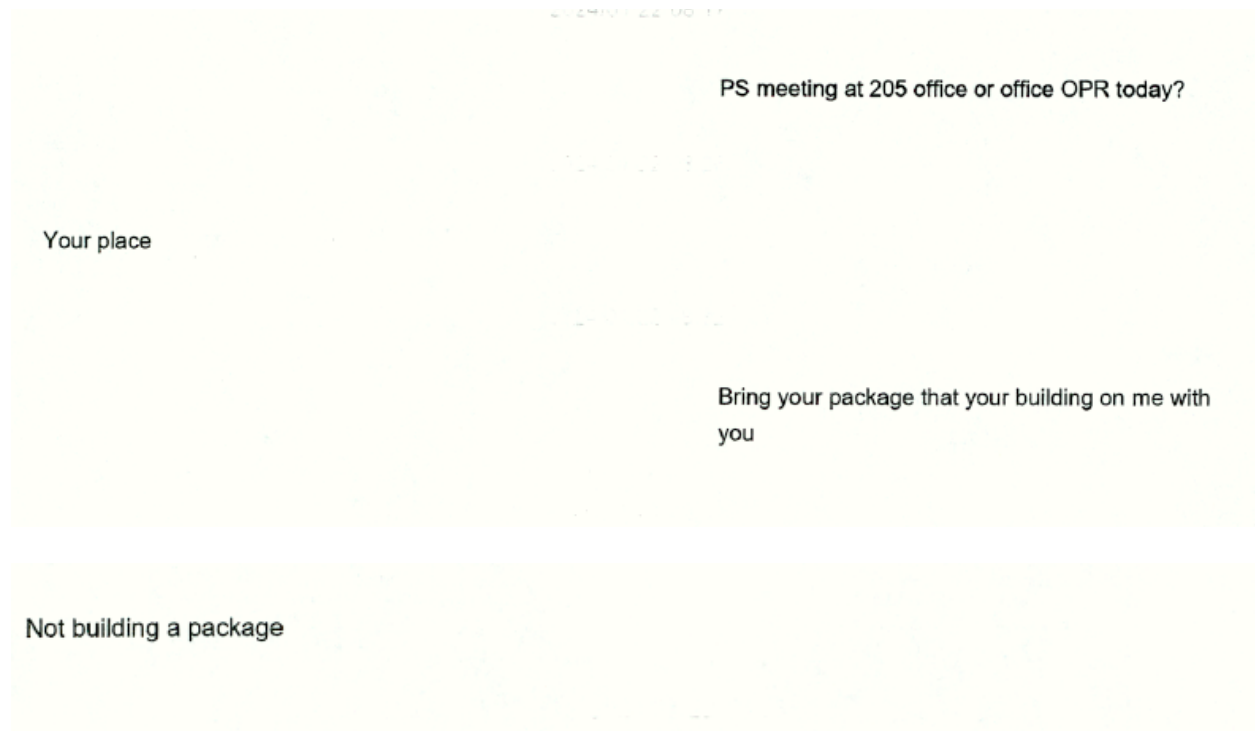
Q. Okay. So let's take one step back. You do believe that Chief Prine believed that, that you were involved in an effort to oust him?

A. He said -- Yes. He said as much.

Q. Okay.

A. He said it was as a result of this document.

Lasky Tr. at 68-69. On January 22, 2024, Chief Prine texted Director Lasky about the issue, and their exchange was as follows:



Director Lasky testified that he was not “building a package on [C]hief Prine” and that Chief Barber never asked him to do so. *Id.* at 81.

b. The Creation of the Peer Review

Shortly after Commander Levy refused Director Lasky’s order to provide specific instances of Chief Prine’s lack of support for the GCTC, Commander Levy began working on the Peer Review. An email he sent to Jonni Baker on February 5, 2024 read as follows:

From: Levy, Kevin
Sent: Mon, 5 Feb 2024 16:21:26 +0000
To: jonnibaker@icloud.com
Cc: Levy, Kevin
Subject: Peer Review: Operation Echo Stop - Gun Shot Detection Tools
Attachments: A few reasons.pdf

Great Morning,

As we discussed recently, we are seeking a 3 or 4 page "Peer Review" document, specifically concerning The Gun Shot Detection Tools utilized during the first two years of Operation Echo Stop.

I will begin sending you some rough numbers and data. When you get time, we can get on a call and discuss the numbers and what they mean and what they relate to, etc.

Here, attached, for example, is a summary email I recently sent to the Chief at his request.

KL

Commander Levy testified as follows on the issue:

So I was under the belief, based on directions I was given and statements that I was told by Director Lasky, that my perception was he was looking for something to go back to the Chief and -- and -- and -- or to someone and say, hey, the Chief's not supporting the GCTC. The Chief is not doing his job. I knew that.

Coming up in the -- the year -- the third year was evaluate. I was going to be preparing this Echo Stop peer review, which is the subject of the whole thing that we're sitting here, the report that I wrote.

And I knew that that report potentially was going to be used in lieu of my PowerPoint. And the I reason I knew that is because I was going to have to mention in there, which I did, that the community perception index was lower than we wanted, and somebody might take offense to that. I knew that going into it, but it's the reality. It's the truth.

I didn't create those statistics. We paid for software. 911 gave us the numbers, and ShotSpotter delivered the number of calls. There -- there -- there was no -- I'm not a scientist in that regard; right? I took the data and put it together.

I knew, I knew, I knew, that when I wrote that report, it was going to be used somehow, somehow to say, hey, look at what we did. We could have been done better. I didn't know exactly how, I do now, but I knew that.

And so I said, well, here's another opportunity to get out in front of all of this. Guess what? These are the – because by then we're in 2024. So none of the numbers for 2023 were going to change. So I had all the data that I needed. And I sent that data to -- to the Chief, to the Assistant Chief.

Yes. After I knew Lasky had asked me for the PowerPoint, I sent that data, because I, in my mind, felt like this white paper that I was going to write was somehow going to be the new PowerPoint. And guess what? That's exactly how it was used.

Levy Tr. at 205-07 (emphasis added).

c. The Content of the Peer Review

When transmitted, the Peer Review included a cover letter (“the Cover Letter”) on 321z letterhead and bearing Jonni Baker’s signature. The Cover Letter read:

City of Mobile Police Department
Gulf Coast Technology Center
PO Box 1827
Mobile, AL 36663

March 11, 2024

Attention: Cmdr. Kevin R. Levy

It is our pleasure to enclose the peer review of Operation Echo Stop, to date; including analysis of the effectiveness and strategic outcomes. Our analysis is based upon the data and operational plans we reviewed, as well as conversations concerning efforts designed to effectively deploy all four corners of the OES methodology to Impede Violence and Improve Perception.

Respectfully,

Jonni Baker, President

A handwritten signature in blue ink that reads "Jonni Baker". The signature is written in a cursive style with a large, looped initial "J".

The Peer Review ultimately supplied to the City was a five-page single spaced document. In addition to the introductory paragraphs, the Peer Review contained the following sections:

- “SUMMARY OF METRICS”
- “SUMMARY OF VIOLENCE REDUCTION”
- “SUMMARY OF COMMUNITY PERCEPTION INDEX”
- “SUMMARY OF FINANCIAL RETURN ON INVESTMENT”
- “FINDINGS & RECOMMENDATIONS”

The final two sections were of greatest significance for our purposes.

The SUMMARY OF FINANCIAL RETURN ON INVESTMENT section read as follows:

SUMMARY OF FINANCIAL RETURN ON INVESTMENT:

Several incidents were discussed with the respective parties, and it was learned that on several occasions, the early alerting of probable gunfire, resulted in rapid response time from patrolling officers, whereby one or more citizens' lives were saved. This alone, in and of itself, justifies the expense of the program.

That said, however, the investment of ARP funds has demonstrated the areas of concentration where desired outcomes can be obtained. In terms of effective expenditure, the funds were used as designed, and the results have been reviewed as designed, through this three-phase program. Therefore, the reviewer of this program and author of this document believes the citizens of Mobile have been well served under the stewardship and implementation of Operation Echo Stop and its related expenditures.

Future investments will only yield a positive ROI if the recommendations listed here, or a comparable subset, are effectively employed to deliver the desired outcome.

Our investigation did not identify any evidence that any sort of financial analysis occurred. Instead, Commander Levy testified that the statements in the first paragraph of this section – referencing that “on several occasions, the early alerting of gunfire, resulted in rapid response time from patrolling officers, whereby one or more citizens lives were saved” – justified the conclusion.

See Levy Tr. at 274-80. Commander Levy confirmed that 321z would have had no ability to verify these conclusions. See *id.* at 280 (“Q. Okay. And Jonnie Baker would know that or not know it?

A. Not at all”). Jonni Baker confirmed a total lack of knowledge on this issue:

Q. . . . When that references discussion with the respective parties, who are the respective 20 parties?

A. I don't know. I can't answer that. I don't know.

Q. And if we go further down, it says in the next paragraph -- Well, let me finish off that first paragraph. (Reading.)

This alone in and of itself justifies the expense of the program.

Do you know whether, in fact, one or more citizen's lives were saved, or are you relying on Commander Levy who told you that?

A. I don't know personally. I didn't write this peer review.

Q. Okay.

A. So I have to rely on information given to me.

J. Baker Tr. at 98-99.

The Peer Review also contained the following language in the “FINDINGS & RECOMMENDATIONS” section:

The synopsis of this study is that Operation Echo Stop, when implemented and utilized to its full potential works, however, currently this program is yielding less than its full potential, as it requires more consistent participation from all aspects of the operational plan, making it LESS EFFECTIVE today, than it has been in the in the past. Department leadership should continue to endorse this program, not only in direct format, but in driving participation.

...

Reduced officer participation and current, poor communication and the current, poor community perception, pose significant risks to the effective sustainability of this program.

...

Operation Echo Stop requires all corners of the four-corner approach, Prevention, Deterrence, Compliance, and Detection, to be working in concert and together, not separated across different approaches. Any successful entity, battling violence issues, must treat more than the symptoms of gun violence, and consistently attack the root illness, at its core. This truly requires all assets of Public Safety, The Mobile Police Department, and The Greater Community to work together, rather than as separate components attempting to solve different aspects of the same problem, even from within the same agency or organization.

...

It is the recommendation of this author and peer review firm, that the original tenets of the Operation Echo Stop Operational Plan be fully implemented continuously. Entities within the agency responsible for providing the required personnel assets should do so, as soon as practically possible.

d. The Author of the Peer Review

Commander Levy testified unequivocally that he wrote the Peer Review:

Q. The five-page report, you were the principal author of this?

A. I was the sole author of it.

Levy Tr. at 221. He testified that 321z had “edited” the document, but “they’re not the author of the document.” *Id.*

Our investigation identified two versions of the Peer Review: one dated April 1, 2024 and a second dated March 11, 2024.

FINAL REPORT AND ANALYSIS OF OPERATION ECHO STOP
PEER REVIEW

March 11, 2024

Mobile, AL - In March of 2022, The City of Mobile, Mobile Police Department (MPD) and various agency partners within The Gulf Coast Technology Center (GCTC), began a multi-year study designed primarily to “Impede Violence” and “Improve Perception.” While the source of funding for this operation originated through the federal government’s American Rescue Plan, the intent was to reduce violence; specifically, violence resulting from gunfire. Funding was allocated across several facets of community and technology implementation, spanning one or more large areas across The City and within MPD’s police jurisdiction. While the specific perimeter of implementation for some efforts and components cannot be disclosed due to safety and law enforcement sensitivity concerns, the areas outside of Operation Echo Stop (OES) component coverage were noted and utilized as a comparison for this evaluation model. In all cases, the operational mission of Impeding Violence and Improving Perception was designed to achieve the reduction and elimination of incidents making the overall gunfire ECHO STOP; resulting in the overarching operational name.

FINAL REPORT AND ANALYSIS OF OPERATION ECHO STOP
PEER REVIEW

April 1, 2024

Mobile, AL - In March of 2022, The City of Mobile, Mobile Police Department (MPD) and various agency partners within The Gulf Coast Technology Center (GCTC), began a multi-year study designed primarily to “Impede Violence” and “Improve Perception.” While the source of funding for this operation originated through the federal government’s American Rescue Plan, the intent was to reduce violence; specifically, violence resulting from gunfire. Funding was allocated across several facets of community and technology implementation, spanning one or more large areas across The City and within MPD’s police jurisdiction. While the specific perimeter of implementation for some efforts and components cannot be disclosed due to safety and law enforcement sensitivity concerns, the areas outside of Operation Echo Stop (OES) component coverage were noted and utilized as a comparison for this evaluation model. In all cases, the operational mission of Impeding Violence and Improving Perception was designed to achieve the reduction and elimination of incidents making the overall gunfire ECHO STOP; resulting in the overarching operational name.

There were minor differences between the two versions, and we sought to determine whether the differences between the two documents might have resulted from 321z's edits. We questioned Commander Levy about this issue:

Q. . . . Are you aware, sir, that there are multiple versions of that document [the Peer Review]?

A. I am not.

Q. Are you aware that there's one version of that document?

A. Correct. To my knowledge, the document that was submitted is the only document I -- I prepared.

Q. Okay. Did someone else prepare a different version?

A. No. I created a document. I had it peer reviewed or edited and then incorporated those changes into the final document. It's all one living document. I didn't create multiple versions of it.

Id. at 18. Commander Levy later testified that he originally drafted the document with the expectation it would be delivered on April 1, but was "getting pressured to do it earlier." *Id.* at 250. During Commander Levy's testimony, he was questioned about the differences between the two documents, and Commander Levy testified that he made all of the edits. *Id.* at 255-60.

e. The Significance of the Identify of the Peer Review's Author

The fact that Commander Levy authored the Peer Review without disclosing the fact that he done so mattered. The Peer Review purported to offer an assessment of OES's effectiveness and included sections entitled "SUMMARY OF FINANCIAL RETURN ON INVESTMENT" as well as "FINDINGS AND RECOMMENDATIONS." As noted above, Commander Levy was at all times the Operational Commander of OES. His authoring the report amounted to Commander Levy "evaluating himself," an approach about which numerous witnesses expressed concern:

Q. Would you have thought that if he wrote it, he would tell you he wrote it?

A. I would hope that if he had said that to me, I would have actually scratched my head and said, *dude, what are you doing* with --

Q. Why?

A. Only because, I mean, you're asking for an -- He -- It was my understanding that they were asking or someone was asking for an evaluation of the Echo Stop program. He being someone who is part of the Echo Stop program should not be evaluating himself on the program.

Graves Tr. at 33 (emphasis added).²¹ Director Lasky had similar reservations:

Q. Okay. The second, the 321z report, do you have an opinion on the fact that that was not an independent report? Does it impact the value in your mind?

A. Yes, it does.

Q. In a negative way?

A. I -- Yeah.

Q. The report is less valuable because --

A. As a -- as -- as a -- as a -- as a tool for my judging, it's less valuable, because it was not written by an independent third party.

Lasky Tr. at 196. Mayor Stimpson affirmed this view:

Q. Is that an independent review if the guy who's overseeing it writes his evaluation?

A. It would not be.

Stimpson Tr. at 84.

Commander Levy's testimony regarding his willingness to prepare the Peer Review but not provide information for the PowerPoint²² reflects his disagreement with this view:

²¹ We recognize that Director Lasky is currently Deputy Director Graves's supervisor. We considered this fact in assessing his credibility, particularly as to issues which might impact Director Lasky. We found no basis to conclude that Deputy Director Graves was anything other than forthright and honest in his testimony. We credited his testimony as a result, regardless of his current position.

²² We discuss this issue above. See §IV(A)(7)(b), *supra*.

Q. Why, if you were unwilling to prepare the PowerPoint, were you willing to write the white paper?

A. Because the white paper is not an attack on any one person. It's an evaluation of a system some of which or most of which was my responsibility.

The white paper, to me, is pure science. I evaluated a system. It's not directed at anybody. It doesn't mention anybody by name. It doesn't mention anybody singularly not cooperating or participating.

All it does is it says, hey, there's some resources that are not being fully provided. If we provide these resources under recommendations, we can achieve the number that we want.

The white paper is a purist document. It doesn't attack anybody. That's different than somebody asking you to create a PowerPoint singularly directed at pointing out one person who's not doing their job, totally different.

Levy Tr. at 207-08.

Commander Levy's testimony on this point highlights at least three points which must be addressed. We focus our discussion here on the second: that the Peer Review was "pure science."²³ To perform that task we look at three related questions: a) the content of the Peer Review; b) the nature of the request Commander Levy made of 321z to assess his purportedly "scien[tific]" conclusions; and c) the information Commander Levy provided to 321z to make those determinations.

Contrary to Commander Levy's claim that the Peer Review was a "purist document," (Levy Tr. at 208), it contained numerous qualitative assessments and opinions. To be sure, the document referenced some statistical data, noting a "32.79% decrease in gunfire" and tracking the community perception index fluctuations. But the core of the Peer Review was contained in its

²³ We address the other issues separately. *See* §IV(A)(7)(j), *infra* (discussing the question of whether the Peer Review contained criticism); §IV(A)(7)(i), *infra* (examining whether the absence of any specific reference to Chief Prine nullified whatever criticism the Peer Review contained).

“FINDINGS & RECOMMENDATIONS” section, and that discussion was largely a subjective assessment of what was wrong with OES and how to fix it.

As noted above, the blame for much of what was deemed deficient about OES’s performance was laid at the feet of the MPD, albeit in a discrete and often passive-aggressive manner. But the import was clear, and Director Lasky picked up on it immediately. He wrote a memo to Mayor Stimpson expressing concern why OES was “not fully supported” – less than six weeks after Commander Levy had repeatedly refused Director Lasky’s order to provide instances where the MPD failed to support the GCTC. It was no coincidence, and Commander Levy’s failure to claim authorship of the Peer Review no accident.

f. 321z Involvement in the Peer Review

Assessing 321z’s involvement in the Peer Review required us to evaluate three issues. Each is addressed below.

i. Commander Levy’s Request to 321z Regarding the Peer Review

We questioned both Commander Levy and the Bakers about what he requested 321z to do with the Peer Review. Commander Levy testified:

I get stuff peer reviewed all the time. In my mind, I'm thinking if I get this report peer reviewed, one, it'll add some credibility that, hey, I -- I -- these supporting documents match what's in here, but the other issue I was afraid of -- and -- and not really -- Afraid is not good word. I was -- I was very cautious on is I wanted the tone of my report and the editing of my report to be correct. I didn't want it to come out hostile. I didn't want it come out too -- too not to the point.

Id. at 214-15. He followed up:

And I actually and originally called Mark. Can I send this report to you? Will you edit it? I just need some *tone and tenor*. I'm going to send you the OPS plan. I'm going to send you the stats. I'm going to send you like three or four documents. Look at it. I'm not asking you to do any kind of deep dive into, you know, the causation of society and 911 calls. Just look at what I wrote. Does it match the supporting documentation?

Id. at 216 (emphasis added). He later testified:

A. . . . In this case, there's no other Operation Echo Stop Commander, so I turned it to somebody -- because my point was to get somebody to edit it for ***tone and grammatical mistakes***, to somebody who had some credentials to do that.

Q. Okay. Does Jonnie Baker have credentials in Operation Echo Stop or ShotSpotter or those sorts of things?

A. I can't speak to her credentials. That wasn't the credentials I was seeking. She does have credentials, from my understanding, in ***the ability to edit these types of documents for tone any tenor and grammatical mistakes***.

Id. at 272 (emphasis added).

Q. Did Jonnie Baker have any information about how funds for this program were used?

A. No. She didn't write that. I wrote that.

Q. But she reviewed it?

A. And if there was any grammatical mistakes, or if the tone was wrong, she would have told me, which is all I asked her to do.

Id. at 275.

We also questioned Commander Levy about the portion of the Peer Review which stated that “the early alerting of probable gunfire resulted in rapid response time from patrolling officers whereby one or more citizens' lives were saved.” He understandably expressed some hesitation about testifying regarding law enforcement sensitive information, and so we focused our questioning on Jonni Baker’s knowledge of this information – and thus her ability to confirm it as part of her review – as opposed to the information’s substance and source:

Q. Okay. And Jonnie Baker would know that or not know it?

A. Not at all.

Q. Because she's just looking for tone?

A. Editing, grammar, and so forth, yes, sir.

Id. at 280.

ii. The Nature of the Review 321z Performed on the Peer Review

Mark Baker was also questioned about the nature of the review 321z conducted:

Q. What information, I guess, did Kevin Levy provide you in regards to conducting a peer review of the Echo Stop program?

A. He basically explained what the Echo Stop program was and asked, you know - - He said he was looking for a peer review just to look over the data. And, again, we -- we did mainly editing of his report and the data to make sure it all looked correct or sounded correct to us as peer reviews and from what we could read in the report that he sent us. And then we just edited to grammar and some of the suggestions we gave, you know, for a smoother read, maybe. But it all seemed to be pretty straightforward.

Q. Did you do any independent verification of any of the data --

A. No.

Q. -- that was provided by Kevin Levy?

A. No.

Q. Did you conduct any independent investigation as to the voracity of any of the information provided to you by Kevin Levy?

A. No.

M. Baker Tr. at 34-35. He further testified as follows:

Q. Okay. So you would have gotten a version from Mr. Levy, made changes to it, and sent it back to him?

A. Correct. And, again, just no -- no real data, it's -- You know, we didn't have that data to change data on it, but just grammatically smoothing sentences and grammar.

Q. And is that consistent with your understanding of a peer review?

A. That was consistent with what we were understanding the peer review was for this peer review.

Id. at 97; *id.* at 108 (“He just needed it for peer review, meaning somebody read over it. Somebody looked at it and thought it was reasonably put together”).

When questioned about this issue, Jonni Baker testified that Commander Levy’s usage of quotes around the term peer review had significance regarding the nature of what 321z was being asked to do:

Q. Did he [Commander Levy] tell you why he wanted it peer reviewed?

A. I don't know that it was necessarily why, but I knew that we just discussed doing a peer review, looking at the -- making sure everything made sense so that a layman could read it and making sure the -- you know, it was grammatically correct, easily understood, stuff like that.

Q. Is that consistent with your understanding of what a peer review is?

A. Not necessarily, no, but I do notice that -- Nobody seems to bring this up -- that, you know, when he writes the word peer review in the e-mail, it's in quotes. So I'm not so sure that he even looked at my part of the deal as being the peer review.

J. Baker Tr. at 85-86. When we advised Jonni Baker that she was welcome to provide whatever testimony she desired on the issue, she continued:

A. I take it as it's not necessarily a full peer review. Where I see --

Q. Okay.

A. -- the quotes like that, that means it's something -- You know, it can fall in -- under the scope of peer review, but not necessarily, for lack of better terminology. Those are the words he picked.

Id. at 86-87.

Jonni Baker later testified about the nature of her involvement:

Q. And if we go further down, it says in the next paragraph -- Well, let me finish off that first paragraph. (Reading.)

This alone in and of itself justifies the expense of the program.

Do you know whether, in fact, one or more citizen's lives were saved, or are you relying on Commander Levy who told you that?

A. I don't know personally. I didn't write this peer review.

Q. Okay.

A. So I have to rely on information given to me.

Q. Okay.

A. So I have to rely on information given to me.

Q. Okay. And I guess that's my question, is whether you independently tried to verify any of the findings or representations --

A. No.

Q. -- made in the peer review?

A. No.

Q. Okay.

A. Like I told you, I didn't feel like this was a true 110 percent peer review done on my end.

Q. Right. And so a peer review done on your end would have involved some level of trying to verify the findings made?

A. If I wrote -- if I wrote this, I would have verified it, yes.

Id. at 98-100. Further testimony followed on the point:

Q. Okay. And so in this matter, if someone were to suggest that all Mr. Levy did was give you his report and ask you to put your name on it, how would you respond to that?

A. Well, that's not an accurate statement.

Q. Okay. Tell me why. What's inaccurate about it?

A. Well, you're just telling me he gives me this report and tells me to put my name on it. That's not the case. I edited -- I'm sorry. I edited it -- It's hard to say --and checked it.

Q. Well, I think we talked about what you did to check it. You --

A. Right.

Q. -- didn't check it.

A. I grammatically checked it. No, I grammatically checked it to make sure --

Q. Do you --

A. -- that it made sense to a layman. I could not verify any of data. Like I told you, I don't think it's a real peer review in my opinion, but that's what it was called, and -- and so that's what I went with.

Id. at 100-01.

Jonni Baker testified as follows regarding the extent of her effort on the Peer Review:

Q. Are you able to estimate the amount of time you spent looking things over?

A. No, I can't.

Q. Do you think it's more or less than ten hours?

A. I think it's -- That's probably a good summation.

Q. I'm sorry. I said more or less, so I didn't really give you a time. Do you think it was ten hours?

A. Yeah, that sounds good.

Id. at 103. She later estimated she spent “between 10 and 12” hours on the project. *Id.*

iii. The Information Commander Levy Provided to 321z
Regarding the Peer Review

The third aspect of evaluating the nature and scope of 321z involvement in the Peer Review involves the material Commander Levy provided to them. We began by reviewing an email:

From: Levy, Kevin
Sent: Mon, 5 Feb 2024 16:21:26 +0000
To: jonnibaker@icloud.com
Cc: Levy, Kevin
Subject: Peer Review: Operation Echo Stop - Gun Shot Detection Tools
Attachments: A few reasons.pdf

Great Morning,

As we discussed recently, we are seeking a 3 or 4 page "Peer Review" document, specifically concerning The Gun Shot Detection Tools utilized during the first two years of Operation Echo Stop.

I will begin sending you some rough numbers and data. When you get time, we can get on a call and discuss the numbers and what they mean and what they relate to, etc.

Here, attached, for example, is a summary email I recently sent to the Chief at his request.

KL

Attached to that email was a portion of Commander Levy's January 25, 2024 email exchange with Chief Prine regarding OES.²⁴ Our review of 321z's document production did not include any such materials. Recognizing, of course, that Mark Baker and Jonni Baker both testified that they deleted all emails and texts relating to the matter, we also reviewed all emails from Commander Levy to

²⁴ The January 25, 2024 email exchange between Commander Levy and Chief Prine regarding these issues is noteworthy in two respects. First, Chief Prine clearly and understandably recognized that the information Commander Levy relayed suggested that the Police Department was not doing enough to support OES. His response makes that point clear:

On Jan 25, 2024, at 2:47 PM, Prine, Paul <paul.prine@cityofmobile.org> wrote:

Ok, I wasnt aware of this, I will have Chief Jackson push this out. In the future if you see the decline please pass it up so we can ensure everyone is on the same page. Thanks.

Second, in providing information to 321z for the purpose of utilizing the Peer Review as cover for Commander Levy to prepare a report criticizing Chief Prine, Commander Levy used the exact information that caused Chief Prine, upon his receipt, to pledge to have his Assistant Chief "push . . . out" in order to effectuate Commander Levy's proposed solutions. Moreover, Chief Prine encouraged Commander Levy to relay information about future deterioration of the effort "so we can ensure everyone is on the same page." *Id.* By cutting and pasting the portions of the email exchange he provided to 321z, Commander Levy omitted, intentionally or otherwise, Chief Prine's pledge of support to OES. One cannot help but note the irony.

321z. We were unable to identify any other information, whether “rough numbers and data or otherwise,” sent by Commander Levy.

Commander Levy was asked about the issue during his testimony. He reaffirmed the importance of providing the Operations Plan. Levy Tr. at 216 (“And the big part of that was the OPS plan, which called for these resources that we never got, which is why the OPS plan is important”). He provided additional testimony:

Q. What did you provide them?

A. The operations plan that we already looked at and the statistical data.

Q. Is that the same statistical data that you gave to Chief Prine in that January 25, 2024, e-mail?

A. 100 percent.

Q. Okay. Anything else?

A. No.

Id. at 243. Levy also testified that he spoke with the Bakers about the “holistic approach” underlying OES and “just gave them a background to understand . . . why the document was written.” *Id.* at 244. He estimated that they spent “a couple of weeks” reviewing the Peer Review he drafted. *Id.* at 245.

Questioned later about what he actually provided to 321z, Levy testified:

Q. . . . Do you remember separately sending the operations plan?

A. I know I sent it, I just can't tell you when.

Q. Okay.

A. And maybe I didn't. I mean, I'm pretty sure I did. No, I'm 100 percent I sent them the operations plan. Where in the series of this that, I can't tell you.

Id. at 249.

We questioned Mark Baker about the issue as well:

Q. Mr. Baker, the documents you've produced do not include any data or operational plans, the documents you've produced in response to the subpoena. Did you, in fact, receive data and operational plans from Mr. Levy?

A. I think we had some information that -- that -- that was -- When you say no data, data meaning they had stats that said it was better before than after?

Q. (BY MR. ATHANAS) Well, the letter references an operational plan that you reviewed. Did you received and review an operational plan[?]

A. I don't recall a -- something that spelled out an operational plan, but we reviewed his document.

Q. (BY MR. ATHANAS) Where Mr. Levy says in that second full paragraph: (Reading.)

I will begin sending you some rough numbers and data.

Do you remember him sending anything else?

A. No. I remember having discussions on the phone. And when I say data, I looked down at the shots fired or something there in that document you just scrolled up to. There's actually some numbers in there that -- that --

Q. No. There definitely is. And we'll --

A. All right.

Q. -- take you back to the document. The document absolutely references shots fired.

M. Baker Tr. at 91. He further testified:

Q. Okay. And did he provide you additional data information during that discussion?

A. He provided maybe slightly some, but I think we understood the gist of what they were trying to accomplish and what they accomplished, meaning looking at the data, shots fired and, you know, people calling in, whatever. And so it -- it -- it came together. And I couldn't tell you exactly what data on that call that he shared that wasn't in the document, but it -- it -- it all flowed and made sense to what we understood Echo Stop or whatever it's called was supposed to be.

Q. Okay. And if he had sent you additional documents, not a phone call, but if he had e-mailed you rough numbers and data, is it safe to assume you would have kept that?

A. No, because we finished the project. It wouldn't necessarily have been kept.

Id. at 93-94.

Because we were unable to identify any evidence that Commander Levy in fact sent 321z any other than a portion of the materials he provided to Chief Prine via their January 25, 2024 email exchange, we followed up by seeking supplemental testimony on the issue.

Written Supplemental Question #7 by William C. Athanas:

In the email marked as Exhibit 71, Commander Levy advises Jonni Baker that “I will begin sending you some rough numbers and data.” He attaches to that email a two-page document, which he characterizes as “a summary email I recently sent to the Chief at his request.”

Did Commander Levy ever send Jonni Baker, or anyone associated with 321z, any additional “rough numbers and data” other than what was attached to the email marked as Exhibit 71? If so, what did he send? When did he send those items? How did he send those items – by email or by regular mail? If he did not send any additional “rough numbers and data” beyond those attached to the email, why not?

Answer to Supplemental Question #7 by Kevin Levy:

I do not recall.

On this issue, we found that contrary to the testimony Commander Levy provided, he in fact never sent 321z the Operations Plan. Commander Levy was wrong when he made those statements. Being wrong is different from providing false testimony, however.

We do not find that Commander Levy provided false testimony on this issue. We believe that his equivocation on the question about whether he provided the document - “maybe I didn't” – precludes such a determination. Our assessment of the relevant evidence, including documents and the testimony of others, and our assessment of Commander Levy’s testimony, causes us to conclude that he was simply but genuinely mistaken in his repeated and often unequivocal

statements that he had provided the Operations Plan to OES, and that such testimony resulted from faulty memory on the point rather than an intent to deceive.

Commander Levy's failure to provide the Operations Plan, or any other OES-related documents to the Bakers, is nevertheless an important fact. Our review determined that Commander Levy was typically detail oriented, and his failure to provide the Operations Plan or any other documents evidenced his lack of concern about 321z conducting any sort of substantive assessment. If, as Commander Levy acknowledged, he simply wanted "somebody to edit it for tone and grammatical mistakes," neither the Operations Plan nor any other OES-related documents were necessary.

We are also mindful of the fact that despite Commander Levy's promise to send 321z "some rough numbers and data," the Bakers never followed up when Commander Levy failed to do so. Had they in fact been conducting any meaningful level of evaluation on the Peer Review, we would have expected them to reach out Commander Levy to inquire about why they had not received the information they were promised. The fact that neither Commander Levy nor the Bakers ever revisited this issue despite Commander Levy's promise on February 5, 2024 signals that both sides understood exactly what type of "peer review" 321z was doing.

g. Why Commander Levy Wrote the Peer Review When He Did

As part of our review, we evaluated the reasons why Commander Levy wrote the Peer Review when he did. In doing so, we noted that that his efforts began shortly after Director Lasky had asked Commander Levy to identify instances where Chief Prine failed to support the GCTC. As discussed above (*see* §IV(A)(7)(a) *supra*), Commander Levy repeatedly refused to provide such information and testified that he had a personal and professional objection to doing so.

In light of that explanation, we evaluated the reason that Commander Levy provided for preparing the Peer Review so soon thereafter. Commander Levy's testimony on this issue was not consistent. He testified that he wrote the Peer Review consistent with a longstanding plan to prepare such a document:

And so when we launched our approach, we measured two things. And in Year 1, we designed actually what this was. This is -- I don't know if this has ever been brought out, but it needs to be.

Year 1 was implement. Year 2 was operate. Year 3 is evaluate. That was the experience. Year 1, buy all the stuff and -- and implement it. Year 2, let's operate it. And in Year 3, let's do a white paper, the white paper that I wrote, and let's review what happened with the stats that was being provided to us.

Levy Tr. 196-97. The Operational Plan does not contain the schedule Commander Levy referenced.

To clarify the source of his statements on the issue, we followed up with a supplemental request:

Written Supplemental Question #6 by William C. Athanas:

During his testimony, Commander Levy referenced the plan that Operation Echo Stop would be evaluated in year three of its existence. *See* Tr. at 197, 205.

Is there some other document that mandates or suggests that Operation Echo Stop should be analyzed in its third year? If not, what is the basis for Commander Levy's statement?

Answer to Supplemental Question #6 by Kevin Levy:

This was the plan verbally discussed with Public Safety Director Lawrence Battiste when he was in office: Year 1, Implement; Year 2, Operate; and Year 3, Evaluate. This was the

plan we designed. Chief of Staff Barber also knew of the three-year plan because we discussed the budgeting, rollout, and timeline of the plan. My discussions with then Public Safety Director Battiste were operational in nature, and my discussions with Chief of Staff Barber were projection-based depending on the outcome of Operation Echo Stop. At the time, I had weekly meetings with Chief of Staff Barber, where we discussed Operation Echo Stop. Both Public Safety Director Battiste and Chief of Staff Barber were aware of the three-year plan.

Director Battiste testified as follows regarding that "internal assessment":

Q. Okay. And that would have been the same time that you had an expectation there would be an internal review in Year 3?

A. Yes, sir.

Q. Who did you expect would conduct that internal review?

A. Commander Levy.

Battiste Tr. at 26. In response to follow up questioning focusing on the precise timing of that internal review, Director Battiste testified:

Q. And did you expect that evaluation would be done in Year 3 or at the end of Year 3?

A. **At the conclusion of Year 3.**

Q. Did you ever change that expectation?

A. No, sir.

Q. Are you aware that anybody later told Commander Levy that the evaluation should be done in Year 3 as opposed to at the end of Year 3?

A. I'm -- I'm not aware, no, sir.

Id. at 27-28 (emphasis added).

Commander Levy also testified that he wrote the Peer Review because Chief Barber was pressing him to do so. But as detailed below, Chief Barber's request for information was distinct from the Peer Review, and Commander Levy prepared and submitted it separately.

There -- there was a followup memo. I know, talking to the Police Chief, he didn't want to continue the program. The -- There was a followup memo from Kevin Levy -- I don't know if you have that -- which basically said that there are certain components we ought to keep that, you know, the -- mainly the response to gunfire, but basically it -- The cost/benefit didn't make sense, I believe, is the way it was said.

Levy Tr. at 111. Chief Barber's testimony on this point aligned with available documents.

Commander Levy did in fact prepare a "followup memo" dated March 28, 2024:

OFFICE OF PUBLIC SAFETY
Gulf Coast Technology Center

MOBILE
ALABAMA



TO: Robert Lasky
Executive Director of Public Safety

FROM: Kevin R. Levy, Commander
Director of Intelligence
Gulf Coast Technology Center

DATE: March 28, 2024

SUBJ: Operation Echo Stop – Forward Recommendations

The deployment of Gun Shot Detection and telemetry technology deployed within the City of Mobile has yielded direct benefits to the Community's overall safety. However, the key indicators suggest that a practical strategy forward involves the deployment of several best practices absent the actual GSD software and apparatus. All of these proven effective through the initial Operation Echo Stop evaluation period. As a reminder, Operation Echo Stop is not "Shotspotter" and is not Gun Shot Detection. To the contrary, Gun Shot Detection and "Shotspotter" are/were only components of the overarching operation. During the evaluation period they verified community interaction and the actual occurrence of gunfire incidents. Points learned and strategies moving forward include but should not be limited to the following:

1. Training / Re-Training of field officers regarding OES and OES Mission
2. Continue Door Knocker Distribution Policy / Efforts
3. Continue 80-Foot Circle Roll-Call Training and Procedures
4. Continue Follow-Up Casing Collection, Post Incident
5. Review and Adjust to 911 Community Involvement in Known Gunfire Incidents
6. Deploy Gun-Shot Detection Teams
7. Deploy Unmanned Aviation Response Teams as Needed
8. Continue Four Corner Approach to Impeding Violence and Improving Perception
9. Identify and Deploy Specialized Intelligence Response Teams with Specific Information

The relatively low cost for these services and functions can be encumbered out of regular overtime funding, when efforts extend beyond the regular shift work of participating officers. The cost-savings by not renewing GSD technology is well warranted and future sustainability cannot be justified, City-Wide in context to the derived result, which primarily emanates from what is listed here, not the GSD technology which is merely a marker.

Respectfully,



Kevin R. Levy

Mobile Police Department - Intelligence Division - P.O. Box 1827 - Mobile, AL 36622 - City of Mobile_05117

- h. Whether 321z's involvement in the Peer Review Cost the City Additional Amounts

As part of fulfilling our mandate to determine the "circumstances" of the Peer Review, we evaluated the question of whether 321z involvement came at a cost to the City. Commander Levy testified as follows on that issue:

I never paid them for it. We never negotiated a price for it. I just asked him, would you be willing to do this? And they agreed to do that. Right, wrong, or indifferent, that's the truth. That's what we did.

Levy Tr. at 217. Both the Burr Forman Report and the OPR Report expressed the view that the City incurred no additional cost as a result of 321z's involvement:

Levy states that 321z's peer review of his OES report was not originally contemplated by the contract and that the work contracted for remains to be performed. Not only did the City not pay anything in addition to the \$92,000 for 321z's review of Levy's OES report, but it would appear that 321z conducted the peer review (which is listed in the overall scope), in addition to the other services it was originally contracted to provide to the City. Because compensation under the contract is capped at \$92,000, there can be no more remuneration than was already agreed upon. Thus 321z's review provided an additional service not originally contemplated by the contract at no additional cost to the City.

On January 25, 2024, Levy emailed Chief Prine that GCTC intended to use a third party (unidentified), at no extra cost to COM, to peer review of his assessment of OES. Included in Levy's emails was a discussion of the data collected related to OES. All well in advance of Chief Prine's allegations related to the 321z contract to the Mayor and City Attorney on March 27, 2024.

Jonni Baker testified as follows on this topic:

Q. Was it your understanding that you were doing this as part of the contract that 321z had signed, or separate from it?

A. I'm took it as part of.

Q. Okay. And so did that mean that 321z was going to do less work on the other issues, or was this simply just additional work that it was being asked to do?

A. Additional work.

Q. Okay. And was there going to be any additional compensation for this additional work?

A. No.

J Baker Tr. at 84.

Our investigation found that while 321z's involvement in the Peer Review did not cost the City additional money, over and above the \$92,000 called for and paid under the 321z Contract, their efforts were not gratis. Commander Levy's testimony that "I never paid them for it" does not square exactly with Jonni Baker's, which makes clear that 321z's efforts on the Peer Review was "part of" the 321z Contract. As a practical matter, this may well be a distinction without a difference: 321z is not demanding additional payment for its work on the Peer Review, and the City has not had to pay funds in addition to the \$92,000 already paid.

i. The Prine Rebuttal

Chief Prine prepared and disseminated and distributed a memo dated March 14, 2024 entitled "Response to Peer Review Report of Operation Echo Stop Dated March 11, 2024." This

document, referred to herein as the “Prine Rebuttal,” was provided to Mayor Stimpson on March 18, 2024. The Prine Rebuttal states that the Peer Review “was apparently submitted by Jonni Baker, President of 321z Insights.” Exhibit 18 at 1. It further states:

Given this company gave a third-party review of Operation Echo Stop’s effectiveness for 2022 and 2023 it was important to know who the company is and what services they were contracted to provide to the city.

Id. He noted that 321z contracted with the City for consulting services in November 2023, and stated that he “was not apprised of that fact, nor did approve any such contract for services.” *Id.*

Before reviewing the substance of the Prine Rebuttal, it is important to address the issue of Chief Prine’s knowledge of the existence of the 321z Contract as opposed to the question of whether he understood that 321z had been hired to conduct the Peer Review.

The Burr Forman Report stated that Chief Prine “complained” that he “was not apprised of, nor did he approve the 321z contract.” Burr Forman Report at 2. The OPR Report similarly raised and refuted this claim, as its executive summary stated that “OPR confirmed Chief Prine received email notifications of the proposed 321z professional services contract prior to its approval by [the City] Council on November 21, 2023.” OPR Report at 1; *see also id.* at 4 (“Chief Prine had been notified of this contract on November 13, 2023 and November 20, 2023”). The OPR Report’s chronology contained the following reference:

November 20, 2023

Chief Prine was notified by Baxter by email of the motion to approve the 321z contract by Council.

In its Conclusion, the OPR report stated:

OPR confirmed two COM employees notified Chief Prine of the upcoming Council Agenda Items related to 321z. Email communication on November 13, 2023, and November 20, 2023, refuted Chief Prine's allegation he was unaware of the 321z contract. Chief Prine had more than a week to contact Levy to express any concerns prior to Council approval of the 321z contract on November 21, 2023. Chief Prine had a duty to review the notifications and agenda items sent to him. Links were available in the notification emails which would have easily provided additional information.

Our initial review of this matter did not reveal that Chief Prine had at any point alleged that he was unaware of the existence of the 321z Contract. His contention, as we initially understood it, was that while he was aware that the 321z Contract had been submitted to the City Council for approval, he was not aware that 321z would be tasked with preparing the Peer Review. He confirmed that understanding in his testimony:

Q. From these [documents relating to the City Council's approval of the 321z Contract], sir, would you agree that you were given notice of the execution of the 321z contract before it was approved by the City Council on November 21 of 2023?

A. I -- I would agree that I received notice.

Q. Okay. And, again, we talked about that distinction between the notice of the existence of the contract and its substance versus the manner in which it was applied?

A. Yes.

Q. Did you know about the manner it would be applied as of November 21, 2023?

A. No, I did not.

Prine Tr. at 72. We therefore focused our efforts on the issue on determining whether Chief Prine was aware that Commander Levy had authored the Peer Review before the drafting of the Prine Rebuttal, rather than evaluating the question of whether he was aware that the 321z Contract was submitted to and approved by the City Council.²⁵

²⁵ We address that issue below, among our review of others' knowledge on that topic. See §IV(A)(7)(k), *infra*.

The Prine Rebuttal expressed concern that

this report was an abstract assessment of OES while making allegations that the Mobile Police Department leadership is to blame for the complete failure of OES without any consideration of other variables stated in the report.

Exhibit 18 at 1. The Prine Rebuttal proceeded to offer a point-by-point response to the Peer Review, and culminated in a summary of Chief Prine's disagreement with the Peer Review. Both its content and Chief Prine's testimony make clear that he viewed the Peer Review to contain criticism of him.

Q. Okay. Let's go through the report here. And I want to maybe start with a broader question and then we can narrow it down.

A. Okay.

Q. I understand that you interpret this report as being critical of your performance.

A. I do.

Prine Tr. at 135.

j. Whether the Peer Review Contained Criticisms

Commander Levy testified that that Peer Review contained no criticism:

Q. Okay. Do you read this report as being critical of Chief Prine or the leadership of the Police Department?

A. No. This was a collective evaluation. And some of the recommendations in here applied directly to me and my command.

Q. No. It's --

A. Yeah.

Q. -- possible it could be critical of Police Department leadership and others; right?

A. I don't see it being critical of anything. I think it's recommendations, is what a peer review is. This isn't a -- This wasn't a critical piece. Now, people may disagree with statements in here, which clearly they do, but this document is -- is not a -- a criticism. This document is a -- a fair evaluation of the data that we had

and the recommendations of how to either use it or to scrap it moving forward based on -- on the -- the -- the desires of the agency.

Levy Tr. at 267-68. When asked whether a simple “evaluation of the data” required a peer review, Commander Levy objected to the question as “misleading,” and stated:

A. -- the whole purpose behind the peer review is what I stated earlier. I wanted a second set of eyes to looking at a document because of what was happening politically behind the scenes, not because I had any question of my data.

My data -- my data -- This report originally was going to be my report, then I decided maybe I would get a peer review company. Fast forward to when all the pressure started coming with the PowerPoints and everything else.

This -- this peer review was for somebody to look to make sure that I wasn't sending anything to anybody that was going to be misconstrued as a hit piece or an edit job. It was looking at the tone. And so -- so to ask me now did I have it peer reviewed because I needed somebody to look at the data is unfair, because I've already told you that the whole purpose behind me having the peer review was solely based on the fact that I was being pressured to turn a report in early right after that hit piece request was made with the PowerPoint.

And so my purpose on asking for the peer review hasn't changed; and it was, I feel like I'm getting caught in the middle of this. I just want a second set of eyes to look at it.

And I stand by that decision to do it. Whether or not it was the best decision or the worst, I don't know, but I'm standing by that same decision, because I still feel like I'm the ant caught between the elephants.

Id. at 269-70.

To some extent, the testimony of other witnesses aligned with Commander Levy's characterization. For example, Chief Barber testified as follows on the issue:

Q. Okay. And did you take the report as being critical in any regard?

A. No, sir. The -- You know, it never named Prine. It -- it never says that ShotSpotter was a failure. It just says if you look at it wholistically, the way I took that report was that the more attention the police gave to gunshot fire -- gunfire, that citizens would participate in notifying the police. And so when we looked at the cost/benefit analysis -- And I think it's a half a million dollars per square mile, I mean, it was just way too -- It was very costly. The money could be spent better somewhere else.

And so you've got, I don't know, 180 square miles of city, and only three square miles, but 1.5 million being spent to try to detect gunshots.

Barber Tr. at 108-09. His subsequent testimony was similar:

Q. Okay. Do you perceive it to have any criticisms of the program of OES?

A. No, sir. I didn't see it as critical of, and I didn't see it as a failure. I don't think it -- And I think Prine -- The memo I just looked at called it -- that it was designed to -- to blame him for the failure of Echo Stop.

I didn't really see that. I actually just saw what I kind of testified to earlier. When I read the report, it's just the attention of the police was enough to get the citizens interested in reporting, but when the attention -- And the way I understood it was that Chief Battiste, as I mentioned earlier, when he was Public Safety Director, was very interested in Echo Stop. And they were having weekly meetings with Paul Prine and everything else.

And I think it's in some of the documentation that when Battiste left and went to the Strickland Youth Center, the meetings stopped. And the -- the way I read that report was back when there was a lot of attention at the highest levels of leadership placed on it, that it was fully supported, it was more effective than it was -- And by effective, I mean citizen participation -- than it was when it was less supported by leadership. I -- That's the way I read the report.

Id. at 127-28.

When we questioned Director Lasky, he also initially indicated that he did not read the Peer

Review as criticizing Chief Prine:

A. Whether it dropped off or not, I think -- I think may be it -- it -- it dropped off at -- at some point, but, you know, to -- but, again, I -- I will tell you this. I look at this report, and it says Echo Stop was -- was successful in reducing gunfire. It probably could have been more successful if it received, you know, additional support. I never got to the point why it didn't get additional -- what happened and anything of that nature.

Q. Additional support from whom?

A. From the Police Department.

Q. Was it your understanding that they were not supporting Operation Echo Stop?

A. No, not supporting -- not supporting it to the level of whatever this report was.

Id. at 101-02.

Follow up testimony made clear that Director Lasky's memo to Mayor Stimpson, wherein he expressed concern that OES was "not fully supported through the entire test period" was premised on his determination that the Peer Review indicated that OES required "more consistent participation from all aspects of the operational plan therefore making it less effective today than it has been in the past":

Q. Okay. Let me direct you to that page, 210, with the findings where it says:

(Reading.)

Based upon the analysis of Operation Echo Stop, both what has been written here and what

has been obtained from external studies --

Do you know what studies we're talking about here?

A. No.

Q. (Reading.)

This program on its merits is considered highly effective. The synopsis of this study is that Operation Echo Stop, when implemented and utilized to its full potential, works. However, currently this program is yielding less than its full potential as it requires more consistent participation from all aspects of the operational plan therefore making it less effective today than it has been in the past.

Is that what you're referring to in your memo to Mayor Stimpson where you say:

(Reading.)

The program was highly effective while being fully supported. As of now, I do not have the full story of why it was not --

A. Uh-huh.

Q. (Reading.)

-- fully supported through the --

A. Yes.

Q. (Reading.)

-- *entire test period.*

A. Uh-huh.

Lasky Tr. 103-05. Lasky's follow up testimony was as follows:

Q. You understood this to be a criticism of the Police Department's level of support; is that correct?

A. Yes.

Q. Okay. And who ultimately would that criticism be focused on?

A. I have no idea. I mean, as -- as a leader, I would tell you it -- it would be the Chief of Police, you know, as, you know, I would want to get what exactly happened and why.

Id. at 105. Lasky's later testimony initially challenged the notion that the Peer Review criticized Chief Prine, but then made clear that he was focused on whether those criticisms were in fact accurate:

Q. Well, the next sentence says:

(Reading.)

Department leadership should continue to endorse this program not only in direct format but in driving participation.

Do you --

A. Uh-huh.

Q. -- understand that to mean they were not doing that or not doing it effectively enough?

A. I mean, I -- I -- I took it for what it's worth. It -- It's -- I don't know where the breakdown occurred.

Q. You understood that Chief Prine perceived this as a criticism of him?

A. Yes, I did.

Q. Do you agree that it's a criticism of him, or would you disagree with that?

A. I would disagree with that.

Q. Okay. You don't think this report criticizes Chief Prine?

A. Correct.

Q. Do you think it criticizes the Police Department's leadership?

A. No, I mean, no, because I don't know what and why the lack of participation happened.

Q. Well, there are references in the report that part of the reason why the lack of participation happened, the suggestion is that the leadership didn't support it enough.

A. I -- I get that, but --

Q. Okay.

A. -- I don't know that to be true.

Id. at 105-07. Ultimately, Director Lasky acknowledged that the Peer Review was in fact critical of MPD leadership:

Q. Understood. At some point relatively soon after, Mr. Levy contacts Ms. Baker about drafting a report, which is the report we've talked about, which I think you've acknowledged is critical of Mobile Police Department's leadership for, among other things, a lack of support. Is that a fair characterization?

A. Yes.

Id. at 111-12.

Director Battiste had a similar interpretation. He was shown Director Lasky's memo to Mayor Stimpson and asked whether his assessment of the Peer Review aligned with Director Lasky's, specifically with regard to the statement OES was "highly effective while being fully

supported” but that it was unclear why that support did not continue “through the entire test period.” Battiste Tr. at 33. His response: “Yes, sir.” *Id.*

During Mayor Stimpson’s testimony on this issue, he initially attempted to draw a distinction between a “criticism” and a “fact.” Utilizing this approach, Mayor Stimpson resisted characterizing portions of the Peer Review which reflected negative assessment as “criticisms”:

Q. It can be a fact and a criticism at the same time, can't it?

A. Yes, it certainly can.

Q. Okay. And is this a fact and a criticism?

A. I made the comment --

MR. HELMSING: I think he's already answered.

A. I -- I've -- I've -- I've -- I've made the --

MR. ATHANAS: He hasn't answered that question.

A. Ask it again.

Q. (BY MR. ATHANAS) Is this a fact and a criticism?

MR. HELMSING: And I think he's --

A. I think I'm saying --

MR. HELMSING: -- already answered that question.

A. I'm saying it -- I'm -- I'm saying it as a fact; okay? I did not read it as a -- as a criticism because of leadership. I read it as a -- a fact, because they didn't have the manpower to do it. And, thus, I don't think they were being critical of -- Let me read the last paragraph. Hold on. Let me read the last sentence again. Yeah. I -- I did not read it as a criticism. I read it as fact. And you're saying it can be both, but I did not see it as a criticism.

Stimpson Tr. at 96-97. The questioning continued:

Q. I appreciate that. It also says that:
(Reading.)

The program is less effective today than it has been in the past.

Do you perceive this as a criticism?

A. Again, I see it as a fact. And the reason, again, has to do with, you know, where were they deploying the manpower?

Q. Well, the author of this report also says:
(Reading.)

Department leadership should continue to endorse this program.

The implication being they're not endorsing the program?

A. So when I read that report, I was not looking at it through a prosecutor's eyes. I was reading this as a report trying to explain what had happened to a program that was under review; okay? So if you're looking at it through a prosecutor's eyes, I think you see it one way. If you look at it through a mayor's eyes, I'm looking at it as a different way.

Id. at 97-98. We understood Mayor Stimpson's reference to "looking at it through a prosecutor's eyes" to suggest that we were perhaps overly cynical of our reading of the Peer Review because of our past service as Assistant U.S. Attorneys. We took no offense to this suggestion but felt it important to point out to Mayor Stimpson that we were not the only ones who had read the Peer Review to contain criticisms: Director Lasky had reached the same conclusion when he prepared the memo he sent. The following testimony then occurred:

Q. How about a Public Safety Executive Director's eyes?

A. I don't know how -- I don't know how he's looking at it; okay?

Q. Well, we know how he looked at it, because he sent you a memo that said --

A. Okay.

Q. -- he doesn't know why the program is not being fully supported.

A. Yes, he did.

Id. at 98-99.

k. Evidence Regarding Commander Levy's Disclosure, Before the Prine Rebuttal, that He Authored the Peer Review

To make the determination of whether Commander Lasky disclosed that he was author of the Peer Review prior to the issuance of the Prine Rebuttal, we considered testimony from multiple witnesses and other sources. Each is reviewed below.

i. Commander Levy

Commander Levy testified that both Director Lasky and Chief Barber were aware that he was the author of the Peer Review.

Q. Did you tell Director Lasky that you were going to write the report?

A. 100, and I told Chief Barber that, too.

Levy Tr. at 218. With respect to Chief Barber's knowledge, Levy further testified:

When it got closer for the report, Chief Barber actually had talked to me on the phone, and he said, when are you going to have this report ready? I said, I'm writing it now, but I'm thinking I'm going to get it peer reviewed. And that was probably some time February, going into March, right before I produced the report.

Id. at 219.

Testifying further regarding the Chief Barber and Director Lasky's knowledge, Levy stated:

I can just say that the Director of Public Safety knew exactly what this document [the Peer Review] was and who wrote it. Chief Barber knew exactly -- knew what this document was and who wrote it.

Id. at 227. In supplemental testimony provided in writing under oath, Commander Levy stated:

The intended audience for the report was the requestor, Public Safety Director Robert Lasky, who held that position at the time of the report's completion. Director Lasky was aware that I drafted the report and even commented that he understood it to be "similar to a white paper." In subsequent conversations, after questions about authorship arose, Director Lasky mentioned that he had previously submitted white papers without his name, as he understood that to be the format for white papers. While Director Lasky may have been confused about the definition of a "peer review," he was fully aware that I authored the report.

Chief of Staff James Barber also knew I authored the report, as we discussed it multiple times over the phone, as mentioned in my previous response.

Levy. Supp. Test. at 3.

Levy also testified:

The very first person I told [about authoring the Peer Review] was Lawrence Battiste when he gave me the assignment, and we outlined operate, implement, evaluate, that I was going to create a white paper. So three years ago, it was known that I would create a white paper.

Levy Tr. at 218-19.²⁶ Levy acknowledged that he did not tell Chief Prine he had written the Peer Review because:

I didn't even give the report to Chief Prine, because it wasn't supposed to go to Chief Prine per my instructions; right?

Id. at 219. In Levy's view,

the big lie is somewhere somebody told someone that someone other than me wrote the peer review. And that's factually and fundamentally false. I wrote the document, never said otherwise. I was never asked, was never given the opportunity. Nobody ever asked me.

Id. at 220.

Commander Levy testified that he "didn't know that this document was going to be given to anyone other than the person who had requested it" and premised that belief on "the conversation I had had with the current Public Safety Director and the previous Public Safety Director three years ago." *Id.* at 229; *see id.* at 230 ("I just want you to know from where I sit, I turned in the report I was asked to turn in. I turned it into the person that asked me for it, and all of this nonsense

²⁶ We understood from the context of Commander Levy's testimony on this point that he was not suggesting that Director Battiste had prior knowledge that he had written the Peer Review. Instead, as Commander Levy's testimony made clear, he was stating that Director Battiste was aware that Commander Levy was going to write "a white paper," that is, a report of some kind, even though he did not know that Commander Levy was the author of the Peer Review before the Prine Rebuttal.

happened. And never was I given an opportunity to clarify”).²⁷ Levy testified that “they changed the rules on what they were going to do with this document” and that doing so “hurt me at work and personally[.]” *Id.* at 230. Levy further testified that

nobody stopped to ask a sensible question of the person who authored document. Where did you get the document from? They just went off. And whatever was convenient for their particular attack one way or the other, they used it and never went to the source of the information.

Id. at 231.

Commander Levy also testified regarding his decision to write the Peer Review and enlist 321z to be involved in the document:

So I was under the belief, based on directions I was given and statements that I was told by Director Lasky, that my perception was he was looking for something to go back to the Chief and -- and -- and -- or to someone and say, hey, the Chief's not supporting the GCTC. The Chief is not doing his job. I knew that.

Coming up in the -- the year -- the third year was evaluate. I was going to be preparing this Echo Stop peer review, which is the subject of the whole thing that we're sitting here, the report that I wrote.

And I knew that that report potentially was going to be used in lieu of my PowerPoint. And the I reason I knew that is because I was going to have to mention in there, which I did, that the community perception index was lower than we wanted, and somebody might take offense to that. I knew that going into it, but it's the reality. It's the truth.

I didn't create those statistics. We paid for software. 911 gave us the numbers, and ShotSpotter delivered the number of calls. There -- there -- there was no -- I'm not a scientist in that regard; right? I took the data and put it together.

I knew, I knew, I knew, that when I wrote that report, it was going to be used somehow, somehow to say, hey, look at what we did. We could have been done better. I didn't know exactly how, I do now, but I knew that.

And so I said, well, here's another opportunity to get out in front of all of this. Guess what? These are the -- because by then we're in 2024. So none of the numbers for

²⁷ The “current Public Safety Director” was Robert Lasky, and the “previous Public Safety Director” was Lawrence Battiste. Their respective understandings on the issue are set forth below.

2023 were going to change. So I had all the data that I needed. And I sent that data to -- to the Chief, to the Assistant Chief.

Yes. After I knew Lasky had asked me for the PowerPoint, I sent that data, because I, in my mind, felt like this white paper that I was going to write was somehow going to be the new PowerPoint. And guess what? That's exactly how it was used.

Id. at 205-07 (emphasis added).²⁸

Commander Levy testified that he did not recall whether he asked 321z to provide a cover letter with the Peer Review. *Id.* at 238. He testified that he provided the cover when he passed the report on to Director Lasky because he “didn't see any reason not to” and, because the cover letter was provided to him, “I certainly didn't want to start taking pages or – or parts of the document out.” *Id.* at 238. Commander Levy had no concern that “Director Lasky might think that the cover letter suggested that 321z had written the report” because the two men had “multiple conversations, along with Chief Barber, about the fact that [he] wrote the report[.]” *Id.* at 239.

Commander Levy sent the Peer Review to Director Lasky as an attachment to an email sent March 12, 2024 at 5:15 pm with a subject line “Hard Copy”:

²⁸ When Commander Levy was asked why, knowing that the Peer Review would be used as “the new PowerPoint,” he was willing to provide the former but not the latter, he stated:

The white paper, to me, is **pure science**. I evaluated a system. It's not directed at anybody. It doesn't mention anybody by name. It doesn't mention anybody singularly not cooperating or participating.

Levy Tr. at 207 (emphasis added). We did not find this explanation to be grounded in evidence or logic. We discuss the reasons underlying that conclusion in §IV(A)(7)(c).

From: Levy, Kevin <kevin.levy@cityofmobile.org>
Sent: Tuesday, March 12, 2024 5:16 PM
To: Lasky, Robert <lasky@cityofmobile.org>
Subject: Hard Copy

KEVIN R. LEVY, COMMANDER
Director of Intelligence
City of Mobile Police Department
& Gulf Coast Technology Center
PO Box 1827, Mobile, AL 36633
Main: (251) 301-0150
After Hours: (251) 208-7211
kevin.levy@cityofmobile.org

He sent a follow-up email on March 12, 2014 at 5:41 pm (29 minutes after the first email) with a subject line OES Peer Review with Cover Sheet:

From: Levy, Kevin <kevin.levy@cityofmobile.org>
Sent: Tuesday, March 12, 2024 5:41 PM
To: Lasky, Robert <lasky@cityofmobile.org>
Subject: OES Peer Review with Cover Sheet

This version has the cover letter attached.

Thank you kindly,

KL

KEVIN R. LEVY, COMMANDER
Director of Intelligence
City of Mobile Police Department
& Gulf Coast Technology Center
PO Box 1827, Mobile, AL 36633
Main: (251) 301-0150
After Hours: (251) 208-7211
kevin.levy@cityofmobile.org

Neither email indicates that Commander Levy had any role drafting the Peer Review, nor does either attempt to limit or condition Director Lasky's use of the Peer Review in any way.²⁹

ii. Chief Prine

An email exchange between Chief Prine and Commander Levy dated January 25, 2024, prior to the Peer Review's drafting, reflects information relevant to Chief Prine's knowledge of whether Commander Levy intended to author the document. In that exchange, Commander Levy wrote:

Please note, effective February 1, 2024, we will be engaging in a 90-day review (Feb/Mar/Apr) of the overall effectiveness for Operation Echo Stop and more specifically, Gun Shot Detection efforts within the GSD covered areas. We have a third-party "peer review" company, already funded and contracted to perform this analysis. The final product will be a short, 3-4 page summary of the overall system and pointers on areas that are highly effective as well as some areas where we might have lessons learned. This evaluation was part of this 3-year journey from the very beginning, and documentd as such. The finished product will be a law enforcement sensitive internal document, from which we will be able to assess the best path forward and what type of investment, we may want to consider to either continue, expand, or delete this system.

(emphasis added). In the context of follow up question from Chief Prine, Commander Levy wrote:

By the way, I am guessing our third party peer review report will probably show the same when they review the ops plan. Just some thoughts. Appreciate your help.

When questioned about his knowledge regarding the possibility that a review of OES might be prepared, Chief Prine testified:

In the very beginning of Operation Echo Stop, I did have an understanding there would be a review of Operation Echo Stop latter -- the latter part of the second year or the third year that would review its success. So I guess '24 would technically be maybe the second year, but my understanding is, is the review would show how well we are reducing crime or preventing crime in a -- a given area.

²⁹ We received these emails on July 15, 2024. Commander Levy was questioned under oath on June 21, 2024. He provided Supplemental Testimony on July 12, 2024. We sent these emails to Commander Levy's counsel on July 15, 2024 (the day we received them from the City) and offered him the opportunity to provide any response he wished. We received no response.

Prine Tr. at 120. When asked what he understood by Commander Levy’s reference to the availability of a “third party ‘peer review’ company” regarding who would author what became the Peer Review, Chief Prine testified that he did not recall “seeing the particular email” but noted that it did not mention 321z. *Id.* at 121, 122. Chief Prine testified as follows regarding his knowledge of who would write the report:

Q. At the time of this e-mail chain, did you know that Mr. Levy was going to write the report?

A. No, sir, I did not.

Id. at 125.

As noted above, Director Lasky forwarded both emails to Chief Prine the next morning (apparently after reviewing them when he began work for the day). He sent the emails to Chief Prine in the order he received them from Commander Lasky:

From: Lasky, Robert
Sent: Wednesday, March 13, 2024 9:11 AM
To: Prine, Paul <paull.prine@cityofmobile.org>
Cc: Barber, James <jbarberj@cityofmobile.org>
Subject: Third-party Review of Echostop

Paul,

Attached please find the third-party review of Echostop. On Monday, I would like to hear your thoughts regarding the program, the report, and recommendations. Manpower aside, the economic costs of continuing the program is estimated at 50k-60k per square mile. Start up cost for new areas are approximately 1 mil. Per square mile.

Rob

Robert (Rob) F. Lasky
Executive Director
Public Safety
200 Government Street
Post Office Box 1827
Mobile, Alabama 36633-1827
Cell (305) 401-0459
Desk (251) 208-7975

One minute later, Director Lasky forwarded to Chief Prine the second email sent by Commander Levy, this one containing the Cover Letter:

From: Lasky, Robert
Sent: Wednesday, March 13, 2024 9:12 AM
To: Prine, Paul <paul.prine@cityofmobile.org>
Subject: Third-party review with cover letter.

Robert (Rob) F. Lasky
Executive Director
Public Safety
200 Government Street
Post Office Box 1827
Mobile, Alabama 36633-1827
Cell (305) 401-0459
Desk (251) 208-7975



“Creating One Mobile: A Unified City That is Safer, More Business and Family Friendly”

Chief Prine drafted a six-page document (“the Prine Rebuttal”) dated March 14, 2024 containing a subject line “Response to Peer Review Report of Operation Echo Stop Dated March 11, 2024.”

Chief Prine sent the Prine Rebuttal to City Attorney Ricardo Woods via email dated March 18, 2024,³⁰ which stated:

This review also validates my grievance against Rob Lasky in January 2024 when he and Kevin Levy conspired to write up a presentation for the Mayor that would suggest that I was the reason for the failure of OES. When that plot failed after I found out, apparently this was an attempt to suggest that a third-party objective company would make the argument for them.

Chief Prine was questioned regarding his knowledge at the time of this email:

Q. . . . At the time you wrote this, did you know Levy had written at least the initial version of the report?

³⁰ Chief Prine testified that he sent the Prine Rebuttal to Mayor Stimpson on the same day. Prine Tr. at 216.

A. No, sir.

Prine Tr. at 175. Chief Prine testified that while he did not know that Commander Levy had written the Peer Review at the time he wrote the Prine Rebuttal, members of his staff suspected that Commander Levy had written the document. *Id.* at 217 (“Some of the staff members suggested, well, that sounds like Kevin Levy. You know, he's the master of acronyms”). Chief Prine made clear, however, that

I had no proof, and I don't think I made any allegation that -- that Kevin wrote the report, because I didn't know.

Id. at 217.

iii. Director Lasky

Director Lasky testified regarding his knowledge that Commander Levy authored the Peer Review. He noted that at some point Chief Barber told him “there's supposed to be a -- a -- a third-party evaluation of Echo Stop, make sure [Commander Levy] gets it done, and -- and let's look at it.” Lasky Tr. at 95. He testified further:

Q. Okay. And you got this [Exhibit 15, the Peer Review and cover letter] from Mr. Levy --

A. Correct.

Q. -- and you reviewed it?

A. Correct.

Q. Who did you understand wrote it?

A. Some other company, whoever signed it.

Q. 321z?

A. Correct.

Q. Did you understand that Mr. Levy had any involvement in drafting the report?

A. I would assume that -- I think I -- I think I had -- I'm -- I'm -- Yes, I would assume that he probably had some, because he had all the data, and I -- I assume that he was probably involved in it.

Q. Okay. Would you understand him to be the principal drafter of the report?

A. I did not.

Q. Okay. You'd have thought that the third party would be the principal drafter --

A. Correct.

Q. -- of the report?

A. I -- I guess I've come to realize that a peer review is a term of art within the scientific data community which I had no understanding of.

Id. at 95-97.

Director Lasky returned for a second round of testimony on this issue, and testified as follows:

Q. We talked about this the last time you testified. I want to understand where you received the document [the Peer Review] from before creating that memo and sending it to Mayor Stimpson.

A. I believe I was handed one and then . . . The first time I got it, I received it with -- I think without the cover letter. I was handed it, handed to. And then -- then I -- I think eventually I got it e-mailed to me, but -- but I'm not 100 percent.

Q. Who handed it to you?

A. Kevin Levy.

Q. What did he say when he handed it to you?

A. Here's the -- here's the Echo Stop report, something like -- something that -- I don't recall the exact words to tell you the truth.

Q. You indicated -- Do you recall him saying that he wrote it?

A. Not, that's not what I said.

Q. I know you didn't. I'm just clarifying --

A. He -- he -- he basically said like here's the -- here is the report, here is the evaluation, and here is something. I knew what it was when he handed it to me.

Q. So there was nothing in what he said to suggest to you that he was, in fact, the author?

A. Correct.

Lasky Tr. Vol 2 at 5-6.

Documents we collected corroborated Director Lasky's testimony that Peer Review was "eventually emailed" to him. As noted above in the discussion of Commander Levy's statements to others regarding his involvement in authoring the Peer Review, Commander Levy emailed the Peer Review to Director Lasky without any indication that he had involvement in the drafting of the document. Commander Levy sent the Peer Review originally without the cover page attached, and then followed up 29 minutes later by sending the Peer Review with the Cover Letter.

As noted above, Director Lasky forwarded both emails to Chief Prine the next morning. On March 13, 2024, Director Lasky sent a memo to Mayor Stimpson with a subject line "Third Party Review of ECHOSTOP" with the following comments:

Office of Public Safety

To: Mayor
From: Robert (Rob) F. Lasky
CC:
Date: 03/13/2024
Re: Third Party Review of EHOSTOP

COMMENTS: Attached is the third part review of EHOSTOP. I have highlighted the most pertinent passages. The program was highly effective while being fully supported. As of now, I do not have the full story on why it was not fully supported through the entire test period.

COS Barber, Ricardo, and Candance all have received copies.

rfl

Director Lasky testified as follows about his understanding of the Peer Review's author at the time he sent this memo to Mayor Stimpson:

Q. When you said to the Mayor, attached is a third-party review of Echo Stop, you believed a third party had prepared this?

A. Absolutely.

Q. Okay.

A. 100 percent. I would have not wrote that if I did not, in my heart of heart, believe that.

Lasky Tr. at 99. Testifying further, he stated:

A. . . . And, once again, I was unaware that Levy wrote that report.

Q. Okay.

A. I said that. I think I said that before.

Q. All right. You were unaware at the time that you wrote the memo to Mayor Stimpson?

A. Correct.

Id. at 118; *see id.* at 119 (“He wrote the report. I guess he wrote the report, but I -- I didn't know at the time. I thought it was a third-party review of the program”).

Director Lasky was questioned about his knowledge of the purpose of the Peer Review:

Q. Okay. What did you understand was the purpose of this report?

A. The purpose of the -- Okay. So the purpose of the report -- Again, so when I took over -- And I want to say this after the initial buzz; okay? Chief of Staff Barber gave me two instructions; okay? Number 1, find what's the problems with -- between GCTC and the -- the Police Department and see if you can fix them or fix them. And, 2, have -- Basically evaluate Echo Stop to see, you know, if it's -- if it's a program worth going forward with.

Q. Okay. And which of these did you think --

A. This was -- Okay. And -- and he -- Okay. When he said evaluate, he also said -- he said -- he said -- My understanding was -- or that -- that's what he told me. Not looking at the -- the -- Not knowing what the original SOP was for Echo Stop is in the third year, it was going to be evaluated; okay. And he told me that there's supposed to be a -- a -- a third-party evaluation of Echo Stop, make sure Kevin gets it done, and -- and let's look at it.

Id. at 94-96.

He further testified regarding when he learned that Commander Levy had, in fact, authored the document:

A. I thought it -- I -- I -- It was explained to me that they were going to be -- that there was going to be an evaluation of the program by a third party; okay? That's -- that's kind of what that Chief Barber told me; okay? That's kind of what I thought this was.

Q. And did you at some point come to learn that that's not what this was?

A. Yeah, after all this blew up.

Id. at 97. When Director Lasky learned that Commander Levy had written the Peer Review, he questioned him about the matter. Commander Levy “said it was a [peer] party review, and he expected me to know what that meant.” *Id.* at 98.³¹

iv. Chief Barber

Chief Barber testified that he asked Commander Levy to prepare “an evaluation” of OES. Barber Tr. at 105. He explained: “[o]ur budgeting process starts in May. And so I needed to know some information on whether we were going to continue that” since the federal funding previously available was set to expire. *Id.* at 105-06. Chief Barber sought “to make a determination, is this an effective enough program that the City should spend its own money going forward.” *Id.* at 106. When asked what information he needed, Chief Barber testified:

On how effective ShotSpotter was, what the cost of the program was, what the cost of manpower was. And it just -- I don't know that it's in the record, but it's unilaterally from the Police Chief to Kevin Levy, the ShotSpotter component of Echo Stop was -- they had all agreed was way too costly for what we were getting out of it.

Id. at 106-07.

Chief Barber was asked whether he asked Commander Levy to “complete the analysis earlier than planned,” he testified:

I don't know that there was a planned date, like a target date for the analysis.

I think -- I don't know what Kevin Levy was thinking. And -- and I don't remember the -- the date of the report or the evaluation.

The -- My purpose was to get into the spring cycle of budgeting. I needed to know whether we were going to fund this program, is it effective or not effective.

³¹ During his second round of testimony, Director Lasky asked to clarify two points from his previous testimony. This was one of the changes. The original transcript read “third-party review,” but Director Lasky clarified that he meant to say “peer review.”

And it was effective in the sense that it did draw in more citizen participation. It was the cost/benefit just didn't make sense to continue the program.

So the decision was basically made to focus more on our response to gunfire than it was to use ShotSpotter.

Id. at 110-11.

Chief Barber testified that the Peer Review was not the “evaluation” he was seeking:

There -- there was a followup memo. I know, talking to the Police Chief, he didn't want to continue the program. The -- There was a followup memo from Kevin Levy -- I don't know if you have that -- which basically said that there are certain components we ought to keep that, you know, the -- mainly the response to gunfire, but basically it -- The cost/benefit didn't make sense, I believe, is the way it was said.

Id. at 111. Chief Barber’s testimony on this point aligned with available documents. As noted above, Commander Levy did in fact prepare a “followup memo” dated March 28, 2024:

As noted above, on March 13, 2024, Director Lasky forwarded to Chief Prine the initial email he received from Commander Levy on March 12, 2024 containing just the Peer Review (but not the Cover Letter). The first email copied Chief Barber, but the second did not.

Chief Barber testified repeatedly and unequivocally that he believed 321z - not Commander Levy - had written the Peer Review. *See* Barber Tr. at 115 (“I thought that 321z had written the report”); 118 (“I was always under the assumption that 321z was a third-party review of the Echo Stop program”); 113 (“Q. The reference to our analysis, whose analysis did you understand that to be? A. 321z's”); 115 (“I thought that 321z had written the report”). He also testified that “when I found out it was Kevin, it was to the surprise of everybody in the Mayor's office.” *Id.* at 120.

Chief Barber was questioned regarding when he learned that Commander Levy had written the Peer Review:

Q. I think Kevin Levy was out of town at the time. But when he got back and I asked him about it is when he told me he wrote the report. 321z just conducted a third-party peer review of the report.

Id. at 104. When questioned about the timing of Commander Levy's disclosure, Chief Barber testified as follows:

Q. Do you know if Mr. Levy had told you before the rebuttal was received that, in fact, he wrote the report, or after?

A. No, it would have been after.

Id. at 117. Chief Barber reiterated that Commander Levy's disclosure to him that he was the author of the Peer Review was the first he learned of that fact:

Q. But before Kevin telling you that, had anyone told you that or suggested that to you?

A. No, sir. That was the first time I realized he wrote it.

Id. at 120.

Chief Barber provided additional specific details about that disclosure.

So I remember it was a conversation by phone while he was out of -- He may have been out of town or just getting back -- to where he said that he wrote the report. And I told him that was not my impression of it and -- But he confirmed that.

Id. at 119. Further questioning revealed Commander Levy's explanation to Chief Barber for acting as he did:

Q. . . . You had told us about the call that you had with Commander Levy, either when he was out the city or after he had come back, where he discussed the fact that he wrote the report. Do you recall anything else about that conversation in terms of your following up and expressing surprise or concern or asking why that had not been clear sooner, anything along those lines?

A. Yes. My question was: Why did we do it this way; okay? And so why was it done this way? In other words, why did you author it and then we did a peer review with this third party? The -- It went back **to he did not want to be in the middle of any kind of problems with the Police Chief, and so he wanted a new set of eyes on it, confirm the data.** And I think -- I think he purposely -- Well, I'm saying

-- Now I'm guessing at stuff. But -- but **that was the reason he said he wanted a third-party peer review.**

Id. at 137 (emphasis added).

v. Director Battiste

As noted above, Director Battiste served as Public Safety Director at the time OES was formulated and implemented. He departed that role in June 2023, and therefore was not involved in requesting the Peer Review. Because Commander Levy indicated that Director Battiste was aware of the plan for him to write a report on OES, we questioned him regarding that knowledge.

We questioned Director Battiste regarding Commander Levy's statement to the OPR investigators that his preparation of the Peer Review was done in accordance with a preexisting plan to evaluate OES in its third year of operation. Commander Levy's statement, as memorialized by those investigators, was as follows:

OES was a three-year program to determine if Shot Spotter technology could be deployed to reduce gun violence. The first year was focused on setting up technology. Year two was comprised of program implementation and gathering data. Year three was to analyze the accumulated data and determine if the program was effective. Year three would evaluate whether OES should be discontinued and or expanded. Levy was asked to complete the analysis earlier than planned. Levy determined the data was compiled and remain unchanged so conducting the analysis earlier in 2024 did not impact the results and recommendations. Levy completed the OES analysis and wrote his report.

Director Battiste testified that did not "necessarily remember seeing [the evaluation requirement] in a document." Battiste Tr. at 24. He had a memory of that topic being raised in a meeting with ShotSpotter representatives "before we deployed . . . the system" and discussing with them:

an evaluation process so that we could speak to the fidelity of the program and whether or not we had any real successes or did we gain any successes with reducing violent crime as a result of deployment.

Id. at 24-25. Based on that discussion, it was Director Battiste's understanding

that ShotSpotter would do an evaluation of the program, but we would also do our own internal assessment as to whether or not -- as to whether or not we saw successes, not -- not using necessarily ShotSpotter's measures, but using our own measures to -- to make a determination whether we had had a reduction in -- in violent crime and improved community relations as a result of it.

Id. at 25. Director Battiste testified as follows regarding that “internal assessment”:

Q. Okay. And that would have been the same time that you had an expectation there would be an internal review in Year 3?

A. Yes, sir.

Q. Who did you expect would conduct that internal review?

A. Commander Levy.

Id. at 26. In response to follow up questioning focusing on the precise timing of that internal review, Director Battiste testified:

Q. And did you expect that evaluation would be done in Year 3 or at the end of Year 3?

A. **At the conclusion of Year 3.**

Q. Did you ever change that expectation?

A. No, sir.

Q. Are you aware that anybody later told Commander Levy that the evaluation should be done in Year 3 as opposed to at the end of Year 3?

A. I'm -- I'm not aware, no, sir.

Id. at 27-28 (emphasis added).³²

³² Chief Prine testified:

In the very beginning of Operation Echo Stop, I did have an understanding there would be a review of Operation Echo Stop later -- the latter part of the second year or the third year that would review its success.

Prine Tr. at 120.

Director Battiste testified that he could not remember “the exact date” he saw the Peer Review but did recall discussing the document with Commander Levy. Tr. at 29. Director Battiste clarified the timing: “It wasn't until Chief Prine left the Department and engaged the City Council into the evaluation. And shortly thereafter, I was allowed to read a copy of the -- of the review.” *Id.* at 29. Chief Prine was terminated on April 30, 2024.

vi. Deputy Director Graves

Deputy Director Graves was also questioned regarding his knowledge of the Peer Review’s author. When shown an exhibit containing the Cover Letter and the Peer Review, Deputy Director Graves testified:

Q. Have you ever seen that [Exhibit 15, the Cover Letter and the Peer Review] before?

A. I have.

Q. When did you see it first?

A. Well, absent of the cover letter, I saw something else. I saw just this document. This document was shown to me by Commander Levy in his office. He told me that he had an evaluation done or a peer review done -- I can't remember the exact terminology -- of the Echo Stop program. He said he had been asked to -- to -- to have someone actually evaluate the program. So he shared with me or showed me what he had sometime after he initially said that -- that an evaluation was requested.

Q. Did he tell you that someone else had evaluated the program?

A. He told me that he had an evaluation done of the program. He did not give me names or who actually did the -- who did the evaluation, nor did he tell me he did it.

Graves Tr. at 31-32. Graves further testified:

A. He showed me a document, told me that he was told to have an evaluation done. This was -- That was -- This was the followup to the initial conversation. Told me that it was done, that it had been done, but did not express to me that he had done an evaluation of the program, I was led to believe, based off of us not communicating any further, other than the fact that he had an evaluation done by another party and not him.

Id. at 32-33.

With respect to Director Lasky's knowledge of the Peer Review's author, Deputy Director testified as follows:

Q. . . . Did you have conversations with Executive Director Lasky either before or after the date of this memo [to Mayor Stimpson on March 14, 2024] regarding his understanding of who wrote the report?

A. I don't know about the date. I know that I've had a conversation with Director Lasky with him telling me that he understood that -- that the report was done by another party and not by Commander Levy. I don't remember what date it was. That's why I don't want to get boxed into a date because I don't recall.

. . .

Q. Do you ever have a memory of Director Lasky saying, yeah, I knew Kevin wrote the report, he told me?

A. Negative. I've -- I -- He never told me that.

Id. at 35-36.

vii. Mayor Stimpson

When questioned regarding his knowledge of identity of the Peer Review's author, Mayor Stimpson testified:

Q. In regards to Exhibit 15, the actual report, as you sit here today, what is your understanding as to who wrote that report?

A. So I actually -- When Kevin Levy got back off of -- off of a trip, wherever he was, I called Kevin, because I wanted to know who'd wrote it. And he said, look, I wrote it. But that didn't -- that didn't send a red flag up to me, you know, that that -- that was a problem. Because I knew that he had been involved, because from the briefing, telling me about how he had -- you know, how the police were doing their search for the shell casings and all. So it didn't bother me, and I didn't see it as a problem that he had written it at that time.

Stimpson Tr. at 64-65.

When asked for further detail regarding his memory of the conversation with Commander Levy, Mayor Stimpson testified:

Q. So you spoke directly with Mr. Kevin Levy?

A. So, yes, I did. Let me -- let me say this. I don't recall the whole conversation, but yesterday in a conversation with **Candace Cooksey, she reminded me of the phone call that we had with him**; okay? Had she not reminded me, I'm not sure that I would have told you that Kevin -- I couldn't have told you if she had not reminded me of having the conversation.

Id. at 65 (emphasis added). Mayor Stimpson testified that he did not recall when the conversation with Commander Levy occurred. *See id.* at 67 (“Q. Do you know when you had this phone conversation [with Commander Levy?] A. I really don't.”).

From that testimony, it initially appeared that Mayor Stimpson’s memory of the conversation with Commander Levy had been refreshed by his conversation with Ms. Cooksey. That fact, in and of itself, was not noteworthy to us. Witnesses’ recollections are often refreshed before or even during testimony, and the practice is expressly authorized by the rules of evidence. *See Fed. R. Evid.* 612. The fact that a witness’s recollection has been refreshed does not necessarily call into question his credibility.

In follow up questioning, however, it became Mayor Stimpson’s memory of his conversation with Commander Levy had been *supplied* - not simply *refreshed* - by Ms. Cooksey:

Q. Okay. How did the meeting with Candace Cooksey occur –

A. I just --

Q. -- yesterday?

A. Yesterday --

Q. Did you just --

A. -- we was having a meeting about this, about coming here. **And then she just**

mentioned to me, you know, we had this conversation. I did not recall the conversation. I do not recall Kevin Levy telling me that; okay? But she said that he did. And so being -- swearing under oath, I felt like that I had to say that.

Id. at 85 (emphasis added).

In noting this testimony, we do not intend to cast aspersions on Mayor Stimpson or Ms. Cooksey. We do not suggest, and did not find, that Mayor Stimpson was untruthful in his testimony on the point. To the contrary, we found that he was candid and forthcoming about the limits of his memory and the fact that he did not recall when he spoke with Commander Levy, what was discussed, or even that the conversation occurred. We interpreted Mayor Stimpson's testimony as a reflection of his desire to testify truthfully about the topics of any conversations he had with Commander Levy regarding the Peer Review and understand that he sought to do so to the best of his ability. We recognize that he apparently felt it would be dishonest to fail to note the conversation, even if he had no independent memory of it, and so he testified based on what he had been told by Ms. Cooksey.

We also do not intend to suggest that Ms. Cooksey intended to encourage Mayor Stimpson to provide erroneous testimony. It is entirely possible that a conversation between Commander Levy, Mayor Stimpson and Ms. Cooksey occurred. We further recognize that Ms. Cooksey likely sought to assist Mayor Stimpson in providing his full recollection of events under oath by reminding him of the discussion, intending to *refresh*, rather than *supply*, his memory on the point.

Regardless of the substance of any such conversation, we are confident that it occurred after the Prine Rebuttal was issued. There would have been no need for Commander Levy, Mayor Stimpson or Ms. Cooksey to engage in such a discussion before the Prine Rebuttal, and no one – including Commander Levy – has suggested that was the case.

Commander Levy's supplemental testimony supports this finding. Among the questions we posed to Commander Levy via letter dated July 2, 2024, was the following:

"Does Commander Levy believe that Mayor Stimpson knew, prior to March 27, 2024, that he wrote the report?"

He responded by letter signed under oath and dated July 12, 2024, stating:

I have no knowledge of whether the Mayor or Chief Prine knew who wrote the report, as they were not the intended recipients. The report was given to Director Lasky at his request, and I was not informed that he would add his own cover email and send it to the Mayor or Chief Prine.

viii. The OPR Report

The OPR Report states:

[O]n January 25, 2024, Kevin Levy (Levy), Commander, Gulf Coast Technology Center (GCTC), notified Chief Prine of his plan to assess the effectiveness of Operation Echo Stop (OES) and have his assessment peer reviewed.

On January 25, 2024, Levy, Commander of GCTC, and Chief Prine exchanged emails about the effectiveness of OES. In these exchanges, Levy notified Chief Prine that he intended to [to] conduct a 90-day review to evaluate the effectiveness of OES. Levy also notified Chief Prine that he intended to use a third party, at no additional cost to [the City], to peer review his findings.

Levy documented his findings regarding the effectiveness of OES and provided his report to 321z for peer review. 321 completed their review on March 11, 2024.

OPR Report at 2. The OPR Report later recycles this conclusion in its chronology, stating:

Levy notified Chief Prine that he intended to conduct a 90-day review to evaluate the effectiveness of OES. Levy also notified Chief Prine that he intended to [use] a third party (unidentified), at no additional cost to [the City], to peer review his findings.

Id. at 3. The OPR Report's conclusion read as follows:

On January 25, 2024, Levy emailed Chief Prine that GCTC intended to use a third party (unidentified), at no extra cost to COM, to peer review of his assessment of OES. Included in Levy's emails was a discussion of the data collected related to OES. All well in advance of Chief Prine's allegations related to the 321z contract to the Mayor and City Attorney on March 27, 2024.

The evidence does not support the OPR Report's finding that Commander Levy notified Chief Prine before the Peer Review's drafting that he intended to author the document. The OPR Report premises that finding on emails exchanged between Commander Levy and Chief Prine on January 25, 2024. As noted above, in those exchanges, Commander Levy writes:

Please note, effective February 1, 2024, we will be engaging in a 90-day review (Feb/Mar/Apr) of the overall effectiveness of Operation Echo Stop and more specifically, Gun Shot Detection efforts with the GSD covered areas. We have a third-party "peer review" company, already funded and contracted to perform this analysis.

After Chief Prine sent an email asking about the reason for the decline in "the perception index" (one of the metrics used to measure the efficacy of ShotSpotter), Commander Levy responded by listing various reasons and suggestions. He expressed the belief that four negative publicity incidents "played a factor in the perception/police relations" and then added:

By the way, I am guessing our third party peer review report will probably show the same when they review the ops plan.

It is not clear how the OPR Report interpreted Commander Levy's statement that "we have a third-party 'peer review' company, already funded and contracted to perform this analysis" to establish that Commander Levy notified Chief Prine that he would be the one conducting that review. If anything, the email says the opposite: that the "third party" would be the one to "perform this analysis." Commander Levy's follow up email, where he expresses uncertainty about what that analysis will show, further undercuts the idea that he indicated before the Peer Review was prepared that he intended to author the document.

Commander Levy's supplemental testimony also undercuts the OPR Report's conclusion.

We posed the following question to him via letter dated July 2, 2024, asking:

Does Commander Levy believe that Chief Prine knew, prior to March 27, 2024, that he wrote the report?

He responded by letter signed under oath and dated July 12, 2024, stating:

I have no knowledge of whether the Mayor or Chief Prine knew who wrote the report, as they were not the intended recipients. The report was given to Director Lasky at his request, and I was not informed that he would add his own cover email and send it to the Mayor or Chief Prine.

When asked about Chief Prine's knowledge that Commander Levy intended to prepare the Peer Review before the Prine Rebuttal, Commander Levy did not reference the January 25, 2024 email chain on which the OPR Report relied, nor did he offer any other evidence to supporting such a finding. Instead, he simply said he did not know whether Chief Prine knew.

Chief Prine testified that based on his email exchange with Levy (the only communication the men had on the issue), he was unaware that Commander Levy planned to write the report. Prine Tr. at 125. Chief Prine's testimony on this point aligns with the evidence, and the OPR Report does not. For those reasons, we respectfully disagree with the OPR Report's conclusion on this point and find it to be not only be lacking in support, but in fact contrary to all available evidence.

ix. The Burr Forman Report

The Burr Forman Report also quoted the email exchange between Commander Levy and Chief Prine on January 25, 2024. In addition, the Burr Forman Report referenced Commander Levy as the author of the Peer Review. *See id.* at 5 ("Levy subsequently authored the report regarding the effectiveness of OES"). While the Burr Forman Report did not extensively detail its evaluative process on this issue, it did contain a conclusion which suggests as much. In its

“Findings” section apparently intended to evaluate whether “fraud” occurred, the Burr Forman Report states:

Actions in the nature of fraud require, at a minimum, a misrepresentation of fact, to someone who relied on it, acting to his detriment. To the extent there is an unsubstantiated claim that Levy misrepresented to Prine that the OES review was conducted by an independent third party, those alleged misrepresentations would not give rise to criminal—or civil—liability. Even if Levy led Prine to believe that 321z conducted an independent review and drafted the March 11, 2024 report itself (which he did not); Prine did not act to his detriment based on that information. The course of events was not affected. Prine apparently suspected that Levy misstated 321z’s role in order to cover up some kind of wrong doing, but that is not the case. The statements regarding the peer review contained in Levy’s January 25, 2024 email do not constitute wrongdoing.

To the extent this finding can be interpreted to mean that the Burr Forman Report found Commander Levy advised Chief Prine via the January 25, 2024 email exchange that he, as opposed to some “third-party ‘peer review’ company,” was going to author the Peer Review, we respectfully disagree for the reasons set forth above.

x. The Peer Review

We also reviewed the content of the Peer Review itself to determine whether it made clear Commander Levy had authored the document. Of course, the most obvious evidence in that regard would have been Commander Levy’s name or signature on the document. He testified as follows on that issue:

Q. . . . Well, first of all, the report doesn't have your name on it?

A. Correct.

Q. Why not?

A. It's a white paper.

Q. I know, but is it not your practice to put your name on the things that you prepare?

A. No, sir. I mean, I -- I've done numerous white papers where I handed it -- Again, the assignment that I was given is develop this evaluation and hand it to the person

that gave me the assignment. So when I gave this to Director Lasky, he knew who -- who it was being given to him by.

Levy Tr. as 222.

Beyond the question of whether Commander Levy signed or otherwise included his name on the Peer Review, we reviewed the body of the document to determine whether it was clear that he wrote it. On this issue, we noted two sentences in particular:

Therefore, *the reviewer of this program and author of this document* believes the citizens of Mobile have been well served under the stewardship and implementation of Operation Echo Stop and its related expenditures.

Peer Review at 4. Commander Levy was asked about this language:

Q. (Reading.)

Therefore, the reviewer of this program and the author of this document --

Again, those are one person --

A. Correct.

Q. -- or two people?

A. The reviewer of this program --

Q. Yeah.

A. -- was me.

Q. And the author of this document?

A. Is me.

Q. Right. Why separate them out?

A. That -- that -- I mean, why -- That's not even a legitimate question. Why separate -- I mean, are we going -- are we going now word by word through the sentence trying to figure out why I put every word on this page?

Q. No. I'm asking you about this particular portion where you refer to the reviewer of this program and --

A. Right.

Q. -- the author of this document.

A. Correct. It's both me.

Q. All right. And I asked why you separated them?

A. It's the way I wrote it.

Levy Tr. at 276-77.

We noted another similar reference in the Peer Review:

It is the recommendation of *this author and peer review firm*, that the original tenets of Operation Echo Stop Operational Plan be fully implemented continuously.

Exhibit 15 at 5. Again, we questioned Commander Levy about this language:

Q. Right up there: (Reading.)

It is the recommendation of this author and the peer review firm --

A. Okay.

Q. All right. Are those intended to indicate there are two different entities involved in the drafting of this document?

A. No.

Q. The author and the peer review firm are the same?

A. I'm the author. The peer review is noted on the cover sheet. Again --

Q. No. But it says:

A. It is the --

Q. It is the recommendation --

A. -- of author --

Q. -- of this author --

A. -- and this peer review firm --

Q. And I said, are those intended to indicate there are two different people? And you said no.

A. Oh, no, no. They are two different people. I thought you were trying to say it was the same thing. No, it's different. I'm the author. They're the peer review firm. Correct.

Levy Tr. at 260-62.

We note that Commander Levy changed his testimony in the midst of being questioned. We do not believe that change was occasioned by genuine confusion, but rather because he realized in the midst of answering that his original response undercut his position. Additionally, we note that the language “*the reviewer of this program and author of this document believes*” would have a subject-verb disagreement if in fact it were to read as Commander Levy suggests. One person “believes” while two people “believe.” If anything, the language of the document furthered the interpretation that one person wrote the Peer Review, not two. In this case, Commander Levy was clearly not the “peer review firm,” and therefore, if anything, the document suggested that the one author was 321z.

In considering this issue, we were also mindful of the fact that none of those individuals listed in the section (other than Commander Levy), nor any other of which we are aware, drew the conclusion from the language that two people wrote the Peer Review – they believed that one person wrote it, and that “one person” was 321z.³³

xi. Findings on the Prior Disclosure Issue

After considering the testimony of each of these individuals and the relevant documents, we return to the core question: did any of them know, prior to the issuance of Prine’s Rebuttal, that

³³ We note, as we did above, that some members of the MPD told Chief Prine, before the Prine Rebuttal was prepared, that they believed Commander Levy might have written the Peer Review. *See* Prine Tr. at 217 (“Some of the staff members suggested, well, that sounds like Kevin Levy. You know, he's the master of acronyms”). We recognize that those individuals were speculating and, even though they turned out to be correct, do not read the presence of “acronyms” as evidence sufficient to signal to readers that Commander Levy wrote the Peer Review.

Commander Levy was the true author of the Peer Review? We considered the testimony of all these individuals, focusing on Director Lasky and Chief Barber, because Commander Levy repeatedly and specifically claimed they had such knowledge. We also reviewed the Peer Review itself to determine if it signaled that Commander Levy had in fact written the document. Our investigation found that none of these individuals – including specifically Director Lasky and Chief Barber - had knowledge before the issuance of the Prine Rebuttal that Commander Levy authored the Peer Review, whether as a result of Commander Levy disclosing that fact, a review of the Peer Review itself, or otherwise.

In making this finding, we note two points. First, Director Battiste testified that he understood that Commander Levy was going to be preparing a report of some type regarding OES, but his testimony made that report was to be prepared “[a]t the conclusion of Year 3.” Whatever that report might have looked like, it was not the Peer Review, which Commander Levy authored *during* Year 3.

Second, we also recognize that Chief Barber testified regarding his knowledge that Commander Levy intended to prepare an “evaluation” of OES. But Chief Barber’s testimony was clear that such an “evaluation” was different from the Peer Review. We identified the document Chief Barber was referring to and confirmed that it was an entirely different record. Chief Barber’s knowledge of Commander Levy’s participation in the creation of that memo was a question separate and distinct from his knowledge of Commander Levy’s involvement in drafting the Peer Review.

The evidence supports a finding that Commander Levy prepared the Peer Review as a means of providing Director Lasky the information Commander Levy understood Director Lasky wanted: instances where Chief Prine failed to provide support for the GCTC. Commander Levy

did not want to be seen as providing that information to Director Lasky as he hoped to avoid getting in the middle of a dispute between the two men.

We are neither speculating nor drawing inferences on this topic: as detailed above, Commander Levy acknowledged that very point in his testimony:

After I knew Lasky had asked me for the PowerPoint, I sent that data, because I, in my mind, felt like this white paper that I was going to write was somehow going to be the new PowerPoint. And guess what? That's exactly how it was used.

Levy Tr. at 207. Commander Levy's own words indicate a belief that the information he conveyed via the Peer Review would be used in a manner he opposed and wished to avoid. It is not only logical, but also fully consistent with all credible evidence, that he would therefore endeavor to conceal his involvement in the Peer Review's drafting. His actions demonstrate his intent to do so, and his later repeated and unqualified declarations that he authored the document resulted from a recognition that the Prine Rebuttal threatened to shine a light on process by which the Peer Review was created. His suggestion that his authorship of the Peer Review should have been obvious belies the circumstances of its creation, which he purposely orchestrated and carried out.

xii. Findings on Policy Violations Regarding the Prior Disclosure Issue

The Code of Conduct provides:

6.0 COOPERATION WITH INTERNAL INVESTIGATIONS

All employees are required to cooperate with all internal investigations, OPR investigations, disciplinary hearings, or any other city proceedings. Employees must not:

...

C. Knowingly make any false statements, oral, written, implied, or otherwise during any investigation. (Level 4-5)

We find that Commander Levy's testimony given on June 21, 2024 at Mobile Bay Reporting located at 110 Dauphin Street, Mobile, Alabama (quoted below) regarding Director Lasky and Chief Barber's awareness, before the issuance of the Prine Rebuttal, that Commander Levy was the author of the Peer Review, violates Section 6.0(C) of the Code of Conduct. The specific testimony is as follows:

Q. Did you tell Director Lasky that you were going to write the report?

A. 100, and I told Chief Barber that, too.

Levy Tr. at 218.

I can just say that the Director of Public Safety knew exactly what this document [the Peer Review] was and who wrote it. Chief Barber knew exactly -- knew what this document was and who wrote it.

Id. at 227.

In supplemental testimony provided in writing under oath and dated July 12, 2024, Commander Levy stated:

The intended audience for the report was the requestor, Public Safety Director Robert Lasky, who held that position at the time of the report's completion. Director Lasky was aware that I drafted the report and even commented that he understood it to be "similar to a white paper." In subsequent conversations, after questions about authorship arose, Director Lasky mentioned that he had previously submitted white papers without his name, as he understood that to be the format for white papers. While Director Lasky may have been confused about the definition of a "peer review," he was fully aware that I authored the report.

Chief of Staff James Barber also knew I authored the report, as we discussed it multiple times over the phone, as mentioned in my previous response.

Levy Supp. Test. at 3.

In making these findings, we note five key points, similar to our findings above:

1. We found that Commander Levy made the statements quoted above knowing they were false, and not as the result of a good faith mistake, uncertainty, accident, recklessness or faulty memory.

2. We found that Commander Levy's statements as quoted above were not expressions of opinion or subjective assessment. Rather, we found that Commander Levy conveyed the statements as objective facts and did so out of desire to mislead us in conducting our investigation.

2. Code of Conduct Section 6.0 contains no express materiality element, but we interpreted the provision to contain such a requirement.³⁴

3. We found that Commander Levy's testimony as quoted above met the materiality standard, in that they were "capable of influencing" our investigation. Commander Levy sought to deceive us regarding the fact that Director Lasky and Chief Barber knew, before the issuance of the Prine Rebuttal, that Commander Levy was the author of the Peer Review. Resolution of this issue fell squarely within the scope of our mandate, which included:

the circumstances regarding the engagement of 321z Insights by the City of Mobile, the City of Mobile Police Department, and/or the Gulf Coast Technology Center ("GCTC") to conduct a review of the "EchoStop" program, including how and why the contract for same was solicited and presented to the Council and any internal or "peer" review as to same done by or at the request of GCTC

4. We did not premise our finding solely on a determination that Chief Barber and Director Lasky were more credible than Commander Levy, whether in general or on this particular issue. In addition to assessing all of the testimony all three men provided, we evaluated the testimony of other witnesses and considered documents which supported or undercut each version of events and made our finding based on our consideration of those factors.

³⁴ The federal false statement statute, contained at 18 U.S.C. §1001, contains such a requirement. *See United States v. Gaudin*, 515 U.S. 506, 509 (1995).

5. Commander Levy engaged counsel during our Investigation, but consistent with our effort to remain independent, his counsel has not been given prior notice of our findings. Nor was Commander Levy's counsel afforded the opportunity to cross examine the witnesses we questioned – a long recognized fundamental right of due process. The Council or the City may determine that before any discipline is imposed on Commander Levy, he should be entitled to submit a response to our findings, or otherwise challenge our determinations. Consistent with our effort to avoid involvement in personnel issues, we take no position on whether Commander Levy is entitled to any additional procedural protections before a final determination of whether Commander Levy violated any provision of the Code of Conduct has been violated and, if so, what form of discipline, if any, might be appropriate.

1. Remaining Findings on the Peer Review

Separate from our findings with respect to the accuracy of Commander Levy's testimony, we sought to determine whether his actions in failing to disclose his involvement in the creation of the Peer Review violated law or City policy. We are not aware of any potential applicable statute which applies to this situation.

With respect to potential violations of City policy, we examined Commander Levy's actions under the framework set forth in the City's Code of Conduct. We focused specifically on two potentially applicable sections. First, we considered the application of Section 1.11:

1.11 False Statements Regarding City Operations

An employee shall not engage in the dissemination and/or publication of any false statements regarding city operations, policies, or personnel by speech, writing, expression or in any other manner when such speech is knowingly factually inaccurate or made with reckless disregard of the truth. Repeating false statements with a reckless disregard for the truth is the same as originating the speech. (Level 4-5)

Second, we considered the application of Section 2.0:

2.0 CITY OF MOBILE RECORDS

City of Mobile employees may have access to information and records that are confidential or proprietary in nature.

Failure to properly handle or safeguard information and/or records that are confidential will be classified as:

...

B. Gross

...

3. Knowingly making any false statement or report, either oral or written. Knowingly entering or causing a report, record, or city document to be entered as inaccurate, false, or improper information. (Level 4-5)
4. Intentionally omitting any matter, item or fact from any report, record or document for the purpose of making the report, record or document inaccurate or incomplete for the purpose it is designed. (Level 4-5)

In applying these two provisions, we considered whether Commander Levy knowingly entered, or caused the entry, of a false statement or report. To make that determine, we focused on his statement, as well as others he may have caused, including specifically Director Lasky's March 13, 2024 memo to Mayor Stimpson. As noted above, the memo read as follows:

Office of Public Safety

To: Mayor
From: Robert (Rob) F. Lasky
CC:
Date: 03/13/2024
Re: Third Party Review of EHOSTOP

COMMENTS: Attached is the third part review of EHOSTOP. I have highlighted the most pertinent passages. The program was highly effective while being fully supported. As of now, I do not have the full story on why it was not fully supported through the entire test period.

COS Barber, Ricardo, and Candance all have received copies.

rfl

To make this determination, we considered the emails that Commander Levy sent to Director Lasky which attached the Peer Review as well as the statements he made to him when he hand delivered that document. Commander Levy sent two emails to Director Lasky containing the Peer Review: one with the Cover Letter and one without. The email containing the Peer Review without the Cover Letter was as follows:

From: Levy, Kevin <kevin.levy@cityofmobile.org>
Sent: Tuesday, March 12, 2024 5:16 PM
To: Lasky, Robert <lasky@cityofmobile.org>
Subject: Hard Copy

KEVIN R. LEVY, COMMANDER
Director of Intelligence
City of Mobile Police Department
& Gulf Coast Technology Center
PO Box 1827, Mobile, AL 36633
Main: (251) 301-0150
After Hours: (251) 208-7211
kevin.levy@cityofmobile.org

The subsequent email, which contained the Cover Letter, read:

From: Levy, Kevin <kevin.levy@cityofmobile.org>
Sent: Tuesday, March 12, 2024 5:41 PM
To: Lasky, Robert <lasky@cityofmobile.org>
Subject: OES Peer Review with Cover Sheet

This version has the cover letter attached.

Thank you kindly,

KL

KEVIN R. LEVY, COMMANDER
Director of Intelligence
City of Mobile Police Department
& Gulf Coast Technology Center
PO Box 1827, Mobile, AL 36633
Main: (251) 301-0150
After Hours: (251) 208-7211
kevin.levy@cityofmobile.org

Director Lasky testified that when Commander Levy handed him a hard copy of the Peer Review as well, he said and recounted:

A. Here's the -- here's the Echo Stop report, something like -- something that -- I don't recall the exact words to tell you the truth.

Q. You indicated -- Do you recall him saying that he wrote it?

A. Not, that's not what I said.

Q. I know you didn't. I'm just clarifying --

A. He -- he -- he basically said like here's the -- here is the report, here is the evaluation, and here is something. I knew what it was when he handed it to me.

Q. So there was nothing in what he said to suggest to you that he was, in fact, the author?

A. Correct.

Lasky Test. Vol. II at 5-6.

To make fully informed findings on this issue, we must view the evidence in whole, rather than in its component parts. Toward this end, we assessed the evidence as follows:

- Commander Levy believed that Chief Prine had failed to support the GCTC in certain ways and voiced those concerns over time.
- When Director Lasky was appointed to his position, he sought to understand the reasons for the friction between the MPD and the GCTC generally and Chief Prine and Commander Levy more specifically.
- As part of those efforts, he convened a meeting in January 2024 with Commander Levy and Deputy Director Graves and attempted to identify the root cause of the problem between the MPD and the GCTC, in order that he could address and resolve it.
- Commander Levy believed that any information he provided to Director Lasky would be used as a basis to terminate Chief Prine, and was unwilling and, in his view, unable (consistent with his personal convictions) to provide such information.

- Soon thereafter, however, Commander Levy determined that he could provide evidence of Chief Prine’s lack of support for the GCTC to Director Lasky without being identified as the source.
- Commander Levy did so by authoring the Peer Review, which purported to be an independent assessment of OES and which, while containing some positive characterizations of the program, also included several clear criticisms of MPD leadership for failing to support OES.
- Commander Levy then recruited 321z to be involved in the submission of the Peer Review, but in a purely non-substantive way, failing to provide 321z information sufficient to allow them to assess his methodology and conclusions, opting instead to direct that they perform some sort of “tone and tenor” review of the document – in effect, directing them to proofread the document.
- 321z did so and made no substantive changes to the Peer Review because: 1) they were entirely lacking in the information necessary to do so; and 2) they fully understood that was not what they were being asked to do.
- Commander Levy’s took these measures because he desired to have 321z submit the Peer Review so that he could pass it off in a manner which caused others to believe it was their work, not his.
- Commander Levy did so fully aware that the circumstances he created and crafted would cause Director Lasky and others to believe that 321z – rather than Commander Levy - was the source of the Peer Review’s conclusions.

- It was Commander Levy's hope and expectation that Director Lasky would reach this conclusion and simply use the Peer Review as an example of Chief Prine's lack of support for the GCTC, without anyone being able to tie Commander Levy to that evidence.
- Upon receipt of the Peer Review from Commander Levy and laboring under the manufactured belief that it was an independent assessment, however, Director Lasky provided Chief Prine a copy of the Peer Review in an effort to better understand the reasons for the determinations contained, specifically with regard to the lack of support for OES (and, by extension, the GCTC).
- Director Lasky also provided a copy of the Peer Review to Mayor Stimpson, mistakenly but understandably representing it as an independent "third party review" while also fairly noting that it reflected a lack of support for OES.
- Chief Prine's receipt of the Peer Review caused him to draft the Prine Rebuttal, which questioned 321z's identity and qualifications in addition to voicing objections to the Peer Review's findings.
- Chief Prine's actions, although undertaken without knowing the true author of the Peer Review, created a quandary for Commander Levy: 1) he could remain silent about authoring the Peer Review and risk either being revealed as such while 321z's contributions and qualifications were uncovered; or 2) he could loudly and repeatedly embrace his involvement in creating the document, all the while feigning disbelief that others were previously unaware of that fact.
- Commander Levy chose the latter option.
- When faced with questions about his actions, Commander Levy's fallback position became that he was victimized by Director Lasky's misuse of the Peer Review, which Commander

Levy contended violated some non-existent “rules” about the purpose for which the document could be used.

The question is whether these findings amount to a violation of law or City policy. The answer to the first question is clear-cut: Commander Levy’s actions, even if orchestrated to cause Director Lasky to reach a faulty conclusion, do not violate any law.

The assessment of whether City policy has been violated is more involved, but ultimately winds up in the same place: we find that Commander Levy’s actions in creating an environment where Director Lasky would believe that 321z wrote the report do not violate any City policy.

Had Commander Levy referred to the Peer Review as a “third party review” or “an independent evaluation,” our conclusion might be different. But we did not find definitive evidence that Commander Levy made such representations.³⁵

In reaching our conclusion on this question, we are mindful of the fact that Policy 2.0(B)(2) prohibits omissions as well as affirmative false statements. We recognize that some may view the absence of Commander Levy’s name on the Peer Review as an omission which could constitute a violation of this policy. While we believe Commander Levy purposely omitted his name from the Peer Review, we do not believe the evidence provides sufficient support for such a finding, and certainly not under a “clear and convincing” evidence standard.

We note, as we have before, that in reaching these findings we have afforded Commander Levy every reasonable benefit of the doubt and sought to ensure that all inferences are fairly drawn

³⁵ Two witnesses testified that Commander Levy had verbally referred to the Peer Review as something akin to a third-party evaluation. *See* Graves Tr. at 32 (“He told me that he had an evaluation done of the program. He did not give me names or who actually did the -- who did the evaluation, nor did he tell me he did it”); Lasky Vol. II Tr. at 6 (“he basically said like here's the -- here is the report, here is the evaluation, and here is something”). Both witnesses were clear that their memory of those statements was not definitive. Consistent with our mandate and previously detailed approach, we decline to premise an adverse finding on that testimony. We do so without negatively assessing the credibility of these witnesses, but rather with an understanding of the full context and import of their testimony.

and firmly supported. Ultimately, the question becomes whether an undefined and inherently ambiguous term can serve as the basis for finding that a false statement was made. Fidelity to our mandate requires that we reject that conclusion.

The process by which the Peer Review was created and disseminated can be characterized in any number of ways, and none of them cast Commander Levy in a particularly favorable light. But if we are to honor our obligation, we must conclude that nothing Commander Levy did with respect to the creation and dissemination of the Peer Review violates any existing law or City policy.

Our determination on this Allegation is likely to function as a Rorschach test: some will believe that our findings unfairly characterize Commander Levy's actions; others will be upset that we did not go far enough in condemning his undertakings. Ultimately, however, none of those anticipated reactions can impact the findings of an independent review.

Our conclusion on this issue reflects neither more nor less than the product of the mission we were entrusted to carry out eight weeks ago: find out what happened and determine whether any law or City policy was violated. We continue to adhere to that mission in finding that, except as otherwise specifically detailed in this section, Commander Levy's actions with respect to the Peer Review do not violate any law or City policy.

- B. "Issues related to the "chain of command" at GCTC (also often referred to as MPD Cyber) and allegations that the Chief of Police was improperly cut out of or else unable to use GCTC resources"

Prior to Chief Barber's service at the Mayor's Chief of Staff, he held the titles of Public Safety Executive Director, and Chief of Police. Barber Tr. at 20. While serving as Chief of Police, Chief Barber contacted Commander Levy, who had recently retired from federal law enforcement,

to head up what would become the GCTC. *Id.* at 25–26. The GCTC has since grown to be a multi-agency state and federal task force, with up to 27 agencies under one roof. Levy Tr. at 23–30, 32.

1. Chief Prine

As directed by the resolution, our investigation focused on the allegations made by Chief Prine and the time period involving Chief Prine and Commander Levy. Chief Prine was officially sworn in as the City of Mobile Chief of Police on November 12, 2021 and his administration was terminated by the Mobile City Council on April 30, 2024.

Chief Prine’s testified that the

GCTC is an unofficial task force that was developed in ’15, ’16 by Barber and Kevin Levy. And in doing so, I don’t really know what their - - the plan was, but there’s been very tight, restrictive controls over who has access to it and who does not have access to it.

Prine Tr. at 237. Chief Prine testified that issues with the GCTC “chain of command” were present during the bulk of his tenure as Police Chief. Chief Prine testified that “early in his tenure,” it became clear to him that he had “no authority or control” over most aspects of the GCTC’s functioning and that he “did not have oversight or access to anything.” *Id.* at 250–51.

In Chief Prine’s view, the primary chain-of-command issue was his and the MPD’s lack of involvement with the GCTC’s operations and lack of access to the resources of and support from the GCTC:

Early in my tenure with conversations with James Barber, the Chief of Staff, he has personally told me that contracts would be handled through Kevin Levy as he’s the resident expert, so to speak, of the technology and the contracts that needed to be submitted through Council vote.

Id. at 95. Chief Prine testified that his lack of involvement with the GCTC was not limited to contract procurement and review: “but it comes to equipment purchases, it comes to personnel that have been hired over there. I have absolutely no autonomy over there.” *Id.* at 97. Chief Prine

testified that he did not have “oversight or access to anything.” *Id.* at 250–51. Chief Prine further claimed that he did not have access to the GCTC facility and he felt, “in many regards, [he] was locked out.” *Id.* at 257.

Chief Prine testified his efforts to address to the working relationship between the MPD and the GCTC resulted in his “immediately be[ing] walled out by [Commander] Levy.” *Id.* at 254–55. We sought to clarify whether by “walled out” Chief Prine meant that he did not have access to the GCTC facilities and whether he had an access card. (Prine 268). Chief Prine responded:

Well, I got an access card, but when they first went into – I forget what they call it – the Brick building, it’s on St. Louis Street, 433 St. Louis Street. I’d asked Kevin – One day I was on the way over there, and - - and Kevin says all right, well, let me know when you get here. I said, I can’t just come in? Oh, no. We have to let everybody in for security reasons.

Id. at 269. Chief Prine later made clear that he was not literally being “walled out,” testifying that he

wasn’t trying to get into the lab, but I just took that as you couldn’t get into the - - to the Tech Center without approval or access. Now, I never went and tried, either. So in all fairness to them, I never went there and tried to get in without their permission.

Id. at 269.

Ultimately, Chief Prine did not indicate that he was ever not allowed into the GCTC but that his main issue was that MPD cases were not being given priority over other agencies at the GCTC. For example, Chief Prine testified,

They say, okay. Well, they don’t put it as priority. They put it in - - what’s call the queue. So if Elberta, Alabama has a phone dump, irrespective of the type and nature of their crime, we go in behind that. Well, I took issue with that, because that’s also the same meeting I found out my investigators were going to the Sheriff’s Department to use their technology to get the same information. It has been problematic. You asked the power struggle, it - - it started before I become the Chief, but I seen it when I become the Chief. And - - and it is embarrassing to say at our level, but the truth is if you ask questions, you were immediately walled out by him or Barber.

Id. at 254-55.

Regardless of the form it took, Chief Prine viewed being “walled out by Commander Levy” as a chain of command issue. When we asked Chief Prine if Commander Levy had ever refused or failed to follow a direct order, he responded in the affirmative. *Id.* at 269. Chief Prine testified that early in his tenure, he asked Commander Levy about the feasibility of “building out [] metrics” for a program aimed at gang violence. *Id.* at 270. According to Chief Prine, Commander Levy responded, “there’s no way it can be done.” *Id.* at 271. But Chief Prine testified that he later sought out a third party in Montgomery who was able to put together “exactly what [he] wanted” in a few days. *Id.* at 272. Chief Prine testified about his subsequent discussion with Commander Levy on the topic:

It wasn’t long after that I called Kevin up to my office and talked with him. And I said, hey, I said, you said this couldn’t be done, but here, you know look at this... Well - - But then he - - then he started - - commenced to telling me that, you know, he knew better than me of how this stuff worked and how to put it together. And I think we come up with the idea then, just out of being peaceful with him, he said, I’ll tell you what. Why don’t we hire an analyst to do nothing but gang activity? And he did, and he hired a guy named [redacted]. He’s going to be on that sheet you’ve got. And they hired a guy, And, man, they did - - they did great. We arrested a bunch of gang bangers over two years, and I - - I could not disagree.

Id. at 272–73.

Chief Prine testified about other examples of conduct by Commander Levy that he (Chief Prine) considered to be insubordination. Chief Prine testified that early in his tenure as Chief, Commander Levy would “pick and choose when he wanted to show up” to Chief Prine’s mandatory staff meetings. *Id.* at 274–75. Chief Prine acknowledged, however, that in the “last few months of 2024, [Commander Levy] actually started making a concerted effort to come to the staff meetings.” *Id.* at 275. Chief Prine also testified about instances he asked Commander Levy to “provide certain resources” only to have Commander Levy “indicate[] that he was unable to do

so,” and for Chief Prine to “subsequently learn[] that it could have been done.” *Id.* at 275–76. We sought to clarify Chief Prine’s understanding of why Commander Levy would decline to provide requested resources. Chief Prine testified that Commander Levy “only want[ed] to answer to [Chief] Barber and if Commander Levy “didn’t see the relevance of what [Chief Prine] was asking for . . . he just gave me a lot of reasons why it couldn’t be done,” *Id.* at 276-77.

Chief Prine offered his view on the practical consequences of the disconnect between the MPD and the GCTC, testifying about situations in which

in a meeting that I had in February with my entire staff, I found out that my investigators were having to go to the Sheriff’s Department to get intelligence done on major crime cases that we’re paying millions of dollars with our own Intelligence Unit that’s not doing it.

Id. at 203. Chief Prine offered as an example a homicide investigation in which MPD requested support from the GCTC to track the victim’s phone, but the GCTC advised it did not have resources to spare and told MPD they would be able to assist the following morning. *Id.* at 284. The victim’s phone died in the interim period. *Id.*

Chief Prine testified that he would often choose to avoid raising issues and concerns with Commander Levy. Chief Prine repeatedly described Commander Levy as “sensitive,” (*id.* at 232–33, 265), and testified that “every time [Levy] gets . . . a little pushback, he threatens to quit.” *Id.* at 201. Chief Prine also testified his wariness of exercising authority over Commander Levy or asking any questions about the GCTC, even though Chief Prine considered Commander Levy to be a subordinate:

I could have asked, but that comes at a proverbial cost with Jim Barber. If I start overreaching, which had been the case from the onset of - - of my tenure as the Chief of Police, anytime that I would ask questions regarding the Tech Center, the - - the Intelligence Unit contracts, it was never adversarial, but it was understood you - - you - - you just leave Kevin Levy alone.

Id. at 110-112. Chief Prine testified that he viewed raising issues about the GCTC as “pok[ing] the proverbial bear, whether it be Kevin Levy or whether it be James Barber.” *Id.* at 256. According to Chief Prine, “every time [Levy] felt like there was a hiccup, he could call Barber, and then Barber would call” Chief Prine. *Id.* at 273.

2. Commander Levy

In 2015, Commander Levy was hired by the City of Mobile Police Department to serve as the Director of the Cyber Unit or what later became the Intelligence Division. Levy Tr. at 21. Commander Levy was hired by Chief Barber and eventually becoming the head of the GCTC:

there’s multiple iterations of development from where I was first hired essentially working in a closet, which with me and then a couple of other people. And then, yes, that ultimately developed over a period of years to what later became the Intelligence Division and the Gulf Coast Technology Center.

Id. at 23-24. Commander Levy testified that he

was hired under the Office of the Chief and had regular meeting with Chief Barber when he was the Chief. And then if I had any structural or developmental, we need money to - - to buy equipment or software or - - or we wanted to transfer people that had a special skill set, or we wanted to send somebody to training, those types of things were all decisions that I would bring to Chief Barber’s attention.

Id. at 28-29. Commander Levy also testified that initially all the money that funded the Cyber Unit came from the City of Mobile, but as they progressed in development and ultimately to the GCTC, which is not located in Police Headquarters, the GCTC began “harnessing partnerships.” *Id.* at 29.

Commander Levy testified that the Intelligence Unit of the MPD and the GCTC remained under the supervision of Chief Barber when he became the Public Safety Director and then the Chief of Staff for the Mayor. *Id.* at 41. Commander Levy specifically testified that Chief Barber, as the Public Safety Director and Chief of Staff for the Mayor, was “my chain of command.” *Id.* at 42. Commander Levy rejected the notion that Chief Prine was ever his direct supervisor, testifying that in January of 2024, Director Lasky took on that role. *Id.* at 295.

Commander Kevin Levy testified that he believed “[Chief] Prine wanted his own division within the Police Department that did the same things or similar [things]” as the GCTC. *Id.* at 57. In his view, Commander Levy and Chief Prine “fundamentally differed [in their] understanding of intelligence” and its role “within a police department.” *Id.* at 57–58.

Commander Levy testified that Chief Prine wanted his own intelligence division within the Police Department that did the same things or similar to what the GCTC did. *Id.* at 58. Commander Levy further testified that, “as a purist,” he considered it impossible for Chief Prine to have the same function within the Mobile Police Department if the GCTC continued to exist. *Id.* at 57. According to Commander Levy,

And then over the last year or two, year and a half, they began dissecting that away. And so the first thing that they pulled away from us (GCTC) was the Realtime Crime Center, which also handled Project Shield and the Realtime Aleters. And they were having sort of an internal function of support for police officers. That was a pretty heavy blow, to be honest, because they dismantled a very key element of intelligence collection on two fronts.

Id. at 60-61.

3. Chief Barber

Chief Barber considered the main cause of the GCTC “chain of command” issues to be a “personality based” conflict between Chief Prine and Commander Levy. Barber Tr. at 31–32. Chief Barber testified regarding what he perceived to be “personal dislike” between Commander Levy and Chief Prine. *Id.* at 36. Chief Barber also testified that Commander Levy told him that Chief Prine once mocked Commander Levy during a command briefing, which Chief Barber believed was the “beginning of the bad relationship between the two.” *Id.* at 36.

Chief Barber also testified that Commander Levy and Chief Prine each considered the other to be “disrespectful.” *Id.* at 40. Chief Barber testified that he was aware of the tension between Chief Prine and the GCTC over the MPD’s access to digital forensics support. *Id.* at 31. But Chief

Barber saw the resource-based tension as being primarily between MPD detectives and the GCTC. *Id.* at 34. Chief Barber testified that he did not “think that Prine really understood the [GCTC], what the capabilities of the [GCTC were], or what programs, what data was actually there.” *Id.* at 31.

Chief Barber also testified that he didn’t “understand why [Chief Prine] didn’t have access to programs and data” of the GCTC, particularly since “[MPD] officers were assigned to the [GCTC].” *Id.* at 50–51. Chief Barber’s view was that Chief Prine’s complaints were rooted in his desire for “full and total control” of the GCTC. *Id.* at 49. Chief Barber dismissed that possibility as “not a workable solution.” *Id.* at 51.

4. Director Lasky

Director Lasky echoed testimony by Chief Barber regarding Chief’s Prine’s complaints about the GCTC:

“That he wasn’t getting the intel or the laboratory stuff quick enough. He didn’t have enough day-to-day control - - day-to-day control. And his - - he - - his - - his basic thing was he believed that center should serve the Mobile Police Department first and foremost, that they - - we - - that the City paid the most amount of money for it, and that they should answer to him, and Kevin should do what he wants when he wants, and (Prine) did not understand that is a regional technology center and that partners come in there. Because they - - You can prioritize and work as a group. It’s a regional center, not strictly for the Mobile - - Mobile, and that if you rant it where you did Mobile stuff all the time, first priority, the partners would eventually evaporate.

Laskey Tr. at 55-56. Director Lasky also testified that he was unaware that Chief Prine was ever improperly cut out or unable to use GCTC resources and did not believe that was ever the case. *Id.* at 169-170. Director Lasky testified,

There were policies and procedures for requesting things to the lab that he (Prine) would have to follow. It’s not - - Meaning, if you want to crack a phone, if you needed a search warrant, then you need to get a search warrant. You can’t just demand something. Now, I’m not saying that ever happened. What I’m saying is I - - I disagree with the statement that they - - he was ever cut out.

Id. at 170-171. Director Lasky reiterated that Chief Prine’s issue was with priority, not access. *See id.* at 172 (Q. . . . he thought the City of Mobile should be first in line? A. Absolutely”)

5. Efforts to Repair the MPD-GCTC Relationship

Eventually, the relationship between Commander Levy and Chief Prine deteriorated to the point that Chief Barber met with Mayor Stimpson to discuss efforts to “fix the relationship between the [GCTC] and the [MPD].” Barber Tr. at 44. Chief Barber communicated to Mayor Stimpson his belief that Commander Levy might view the relationship with Chief Prine as irreparable, and expressed concern that any attempted “fix” might cause Commander Levy to resign. *Id.* at 44–45. Chief Barber ultimately instructed Director Lasky to “fix the relationship” between Chief Prine and the MPD and Commander Levy and the GCTC and to make sure the MPD and the GCTC were getting what they needed from each other. *Id.* at 32, 45.

According to Chief Barber, Director Lasky’s efforts were largely unsuccessful and the tension between Commander Levy and Chief Prine “came to a head on March 8,” 2024. *Id.* at 53. Chief Barber testified about a March 8, 2024 meeting between Chief Prine, William Jackson, MPD Chief of Staff Joe Kennedy, and Commander Levy to discuss the GCTC chain of command issues. *Id.* at 54–55. Chief Barber’s understanding was that Chief Prine presented to Commander Levy two solutions to the chain of command issues, both of which involved “absolute control” of the GCTC reverting to Chief Prine and the MPD. *Id.* at 55. Chief Prine then demanded that Commander Levy respond. MPD Chief of Staff Joe Kennedy spoke up against what he viewed as an unproductive ultimatum (*see* EX 103), at which time things became “very contentious” between Chief of Staff Kennedy and Chief Prine. (Barber 55). Chief of Staff Kennedy resigned as Chief of Staff of the MPD that evening.

Chief Barber testified that he spoke with Chief of Staff Kennedy and Commander Levy about the March 8, 2024 meeting. Those discussions prompted Mayor Stimpson and Chief Barber to arrange for a meeting with Chief Prine, William Jackson, Director Lasky, Curtis Graves, Chief Barber, Commander Levy, and the Mayor. *Id.* at 56. Chief Barber testified that in his view, the meeting, which took place on March 15, 2024 “was a last attempt to try to resolve” things and make a final determination of how to move forward with the GCTC. *Id.* at 60. The following solution was proposed:

at the meeting was that they put a lieutenant or a captain over the Tech Center that could report directly to the Police Chief and get him whatever he needed and tak Levy and just make him kind of the facility director in that he just oversees the lab. And - - and I think that’s the way we kind of laid it out. We were going to move Tactical Intelligence, Gun Intelligence back under the Police Department, which we ended up doing that.

Id. at 61.

According to Director Lasky, Chief Prine opposed that proposal. Director Lasky testified that Chief Prine submitted the same solution he proposed at the March 8, 2024 meeting: “That everything comes underneath him, and he gets full control of everything, including Kevin answers to him and everything.” Lasky Tr. at 125.

Chief Prine testified about the proposal Director Lasky gave him on March 15, 2024, summarizing it as “essentially said we will send back all your sworn officers from the Intelligence Unit and the Gulf Coast Technology Center back to you, but we’ll – we’ll isolate [GCTC] and put them under Lasky.” Prine Tr. at 207. Chief Prine testified that he “was never opposed if they wanted to move the Tech Center” and that all he wanted was “the necessary resources for [his] people to get the job done.” *Id.* at 263-64. Chief Prine also testified that at the March 15, 2024 meeting, he “questioned whether or not the [GCTC] can operate independent from the [MPD].” *Id.* at 258.

At their core, the chain of command issues between the GCTC and the MPD during Chief Prine's tenure were representative of two issues: 1) the personal and professional issues that existed between the respective leaders of those departments; and 2) a disagreement about whether MPD, the entity under whose auspices the GCTC functioned, ought to have priority of its resources. Chief Prine, Commander Levy, Director Lasky, and Chief Barber all testified that Commander Levy and Chief Prine viewed the problems the City's law enforcement apparatus faced differently, and it is clear from our investigation that common ground was scarce between the two men. While these underlying issues - and the tangible consequences on the effective functioning of the MPD and the GCTC - were unfortunate, no aspect of those matters contravenes law or City policy.

- C. The circumstances surrounding the alleged breakdown of relations between the City Administration and Chief Prine on or about November 2023 and leading up to and including discussions between the City Administration and Chief Prine on or about April 2024 regarding his proposed retirement or resignation"

We noted above that the extent of palace intrigue which plagued the City's law enforcement efforts was unusual, even to members of the Special Counsel team who have spent decades working in and around law enforcement and government operations. We discuss below (*see* § __, *infra*) two examples of that dysfunction: complaints lodged by Chief Prine against Director Lasky and Chief Barber. While we wait to address the particulars of those allegations below, their existence serves as an example of how the relationship between the City Administration and Chief Prine broke down over the last six months of his tenure. We provide further detail below.

1. Chief Prine's Grievance Against Director Lasky

When questioned about his grievance against Director Lasky, Chief Prine described it as raising two main issues: The first related to comments that Director Lasky made about Chief Prine to Tony McCarron and Reagan Clegg. On January 19, 2024, Director Lasky called McCarron while he and Clegg were driving. Director Lasky asked McCarron about the renewal of a digital

marketing campaign to recruit officers to the MPD. Prine Tr. at 146. McCarron expressed to Director Lasky that “he couldn’t make the decision” and that Director Lasky would “need to get with Prine” to discuss. *Id.* at 146. In response, Director Lasky “said something to the effect” of: “yeah, well, I’m really getting tired of Paul Prine’s ass.” *Id.* at 147.

The second concerned Chief Prine’s understanding that Director Lasky had asked Commander Levy to prepare a report demonstrating that any failure’s of Operation Echo Stop were attributable to Chief Prine and the MPD. *Id.* at 148. Chief Prine testified that he first learned of the report during the week of January 19, 2004, through a conversation with Joe Kennedy:

Okay. So when Joe Kennedy, the Assistant Chief or Chief of Staff of the Mobile Police Department came to me on the week of January the 19th, 2004, he is the one that told me that Chief Barber alleged and told him, Kennedy, that Director Lasky reached out to Kevin and asked Kevin to falsify a report, what was described to me as a fill-in-the-blank presentation for the Mayor to show the failures of Operation Echo Stop and how the Chief, me, has not supported the program.

Id. at 150.

We asked Chief Prine to clarify his use of the term “falsify” and his use of the phrase “fill-in-the-blank.” He testified that during their conversation about the report, Kennedy never used the word “falsify” but did use the phrase “fill-in-the-blank”:

Q. When you say falsify, is that your interpretation, or is that what you were told?

A. That’s my interpretation.

Q. Because there could be -- There are two possibilities, at least two possibilities. One is he said, give me some information about where Chief Prine has failed to fulfill his obligations. And the other is, he said, make something up about Chief Prine failing to --

A. Well --

Q. -- fulfill his obligation.

A. Sure. My perception is, is that it's falsified because Kennedy described to me that it was a fill-in-the-blank presentation of how I had not supported the program. Well, if you have a fill-in-the-blank presentation, that means that the report has been built around whatever they wanted -- the administration wants it to say.

Id. at 150–51.

Chief Prine agreed that, as described by Kennedy, Director Lasky's request could be interpreted as one for truthful information about situations in which Chief Prine has failed to fulfill his operational obligations as Chief of Police, as opposed to a request that Commander Levy "make something up about Chief Prine failing to fulfill his obligations." *Id.*

In an effort to understand the specifics of Director Lasky's request and the accuracy of Chief Prine's allegations, we sought supplemental testimony from Commander Levy, and we also questioned Deputy Directors Graves, and Director Lasky.

Commander Levy confirmed, both to us and to OPR, that Director Lasky asked him for information about times in which Chief Prine failed to support the GCTC. Levy Tr. at 165–66. He testified that he had "multiple meetings" in which Director Lasky asked him and others for information about times in which "Mobile Police Chief Paul Prine was not supporting" GCTC. *Id.* Commander Levy specifically recounted the most recent of those meetings by testifying: "He asked me to put a PowerPoint together. And the PowerPoint was to consist of the things that I felt like the Chief was not going right or was not doing to support us. I refused; okay?" *Id.* at 169. When asked why he refused to do so, Commander Levy testified that "Director Lasky's request made [him] uncomfortable" and that "he didn't want to get involved." *Id.* at 165; EX 41. We asked Commander Levy to clarify what about Director Lasky's request made him uncomfortable. He responded that he felt Director Lasky's request would result in him (Levy) being pulled into the middle of what he (Levy) "perceived as a political fight between Director Lasky and MPD." Lasky Tr. at 166; EX 41. And asked about why he felt that way, Commander Levy responded:

A. There were a lot of tensions between the Public Safety Director and the Chief of Staff, the new Public Safety Director, which was Director Laskey. He had only been in his position for maybe a couple of months at that time.

And I'm not naïve to the workings of how politics work. My job is to stay out of politics. And I felt like the request -- There were multiple requests, that meeting and others, where I was asked to put together a list, a PowerPoint at one point, to demonstrate all the things the Chief of Police was not doing right to support us.

And I refused, because I felt like that wasn't my place, and that if the Public Safety Director, who the Chief's supervisor, had an issue between the two of them, they should work that out.

Levy Tr. at 167.

It was Commander Levy's belief (both at the time of the request and his testimony in this matter) that any information he provided to Director Lasky was "going to be presented . . . to the Mayor" and be used "to antagonize or suggest to someone other than [Director Lasky] that [Chief Prine] is not doing his job." *Id.* at 170. Commander Levy never expressed an unwillingness to raise complaints about Chief Prine's support for the GCTC. As Director Lasky testified, and as others have confirmed, he had been vocal about his concerns that GCTC was not getting the support it needed and about the issues between GCTC and the MPD. *Id.* at 178–79; Graves Tr. at 18–19. His reservation was providing complaints that would be presented to third parties in the resolution of a dispute between Chief Prine and Director Lasky, and potentially others. Lasky Tr. at 178.

Commander Levy gave no indication that Director Lasky was seeking fabrications about Chief Prine's and the MPD's support of GCTC, and it all but suggests the opposite was true, when Commander Levy testified: "So -- so it -- Again, I'm not faulting the Public Safety Director. I'm not saying he -- he-- he made up any of this. He went on the information that he was hearing." *Id.* at 180.

Like Commander Levy, Graves confirmed that Director Lasky requested from them information about Chief Prine's and the MPD's lack of support for them in their respective roles. Graves Tr. at 23. Deputy Director Graves offered a different explanation than did Chief Prine and Commander Levy as to Director Lasky's motives for doing so. *Id.* Deputy Director Graves recalled Director Lasky likening the issue to "getting [a] cow out of a ditch," which Deputy Director Graves understood to mean that Director Lasky was searching for solutions, not someone to blame. *Id.* at 23–24. Deputy Director Graves's testimony supports Commander Levy's suggestion that Director Lasky was not asking the men to provide false information about Chief Prine or manufacture the same. *Id.* at 23. He testified that Director Lasky asked him and Commander Levy to be "as honest as [they] could about the concerns that [they] had that [they] were not getting supported." *Id.*

Graves disputes, however, Commander Levy's assertion that Director Lasky's request for information about Chief Prine's and the MPD's lack of support made Commander Levy "uncomfortable." *Id.* Graves also disagreed with Commander Levy's perception of an ongoing fight, political or otherwise, between the MPD and Director Lasky. *Id.* at 24. Instead, Graves interpreted Director Lasky's request as "him taking on the responsibility of trying to – to correct a concern that was brought to his attention." *Id.* at 25.

We also asked Director Lasky about his January 2024 meeting with Commander Levy and Graves. He confirmed that the meeting happened, and he did not dispute that at that meeting he asked Graves and Commander Levy for information about the issues between Commander Levy and the GCTC and Chief Prine and the MPD. Lasky Tr. at 59–64. Director Lasky described his motivation for his request to Commander Levy and Graves as "a beginning step to trying to figure out what are the exact issues" between the GCTC and the MPD and "to determine the best way forward for the GCTC." *Id.* at 70–71. Director Lasky described his efforts as being part of his

“investigation” into the current state of the relationship between the GCTC and the MPD. *Id.* at 60.

Director Lasky rejected the notion that his request to Commander Levy and Graves was a request to “help build a case against Chief Prine.” *Id.* at 68. He did acknowledge that Chief Prine had interpreted his request to Commander Levy and Graves as an attempt by him (Lasky) to “oust” Chief Prine. And testified that he told Chief Prine as much after learning about Chief Prine’s belief. *Id.* at 69. Director Lasky specifically denied ever telling Mr. Commander Levy that he wanted Chief Prine to be terminated. *Id.* at 64.

We find that Director Lasky’s request to Commander Levy and Graves was not a request that they fabricate evidence against Chief Prine or provide any sort of false information.

The facts in this case demonstrate a significant breakdown in the relationship and communication between Chief Prine and the MPD, on one hand, and Commander Levy and the GCTC, on the other:

- Chief Prine and Commander Levy had no communications about OES between June 15, 2023 and January 25, 2024. Prine Tr. at 161. Chief Prine himself described this as a “communication br[ea]k down.” *Id.* at 161.
- Chief Barber testified that the relationship between Chief Prine and Commander Levy had deteriorated to the point that any attempts to fix the relationship between the MPD and the GCTC would cause Commander Levy to quit. Barber Tr. at 44, 47.

The facts demonstrate that Chief Barber tasked Director Lasky with “fix[ing] the relationship” and told Director Lasky that he (Barber) was not interested in “who was at fault,” he was only “interested in getting [the cow] out of the ditch.” *Id.* at 45–46. And they support the

finding that Director Lasky's request to Graves and Commander Levy was his (Lasky's) attempt to follow Chief Barber's directive:

- Neither Graves nor Commander Levy believed that Director Lasky was asking them to manufacture or provide false information about Chief Prine. Levy Tr. at 180; Graves Tr. at 23.
- Both Commander Levy and Graves testified that Director Lasky's request sought information about Chief Prine's and the MPD's lack of support. Levy Tr. at 165–66; Graves Tr. at 23.
- Both Director Lasky and Graves had previously brought to Chief Barber's and Director Lasky's attention their concerns that Chief Prine and the MPD were not supporting them in their respective roles.
- And Chief Barber testified that in tasking Director Lasky with fixing the relationship between the MPD and the GCTC, he told Director Lasky to "make sure the Police Department is getting what it needs from the Tech Center" and vice versa. Barber Tr. at 32. A necessary part of Director Lasky's compliance with Chief Barber's order was his understanding of the bases for Commander Levy's and Graves's prior assertions of a lack of support.

2. 321z Report and Chief Prine's Rebuttal

Chief Prine has drawn an explicit connection between his grievances against Chief Barber and Director Lasky and the 321z Report's conclusions about the failure of OES. In Chief Prine's view, Director Lasky's request to Graves and Commander Levy for information about Chief Prine's and the MPD's lack of support for them in their respective roles was retaliation for the grievance Chief Prine had filed against Chief Barber in November of 2023:

The third part [sic] review supports the grievance the Chief of Police filed against the current public safety director (January 2024), for allegedly attempting to get the intelligence Director to fabricate a report for the mayor that suggested the Chief of Police failed to support OES which resulted in its failure.

Chief Prine Rebuttal at 5.

We asked Chief Prine to explain how he came to that conclusion. He acknowledged the circumstantial nature of his conclusion that the 321z Report and its alleged criticism of him and the MPD was retaliation for his grievances against Chief Barber and Director Lasky:

Now, I can't prove it. I -- I think I do have in an e-mail that I felt like Rob doing -- or Director Lasky trying to fabricate a report was vindictive action from my grievance on James Barber November the 20th, 2023. I can't prove that.

Prine Tr. at 149.

Instead, he pointed to the timing of the 321z Report, as well as the lack of support offered for the Report's conclusions, many of which he believed were facially contradicted by the facts on the ground. Chief Prine saw an inherent illogic in the report's substantive conclusions that he and MPD were responsible for the failure of a program over which the GCTC and Commander Levy had "full operational control." Chief Prine Rebuttal at 3. Chief Prine testified that he "had no operational control [over OES]. [He] didn't develop, devise, [or] implement the plan." Prine Tr. at 56-57. He testified that Commander Levy, not Chief Prine, handled all OES press conferences and public statements. *Id.* at 59-60.

Chief Prine also testified that he was completely in the dark about OES from June 15, 2023 until January 25, 2024:

And so I didn't have no communications to my knowledge. Without having access to my e-mail, I didn't have any communication from Kevin Levy from June the 15th of 2023 until January the 25th when he starts firing out e-mails about a peer review and -- and the substandard work we were doing.

Id. at 161. He blamed Commander Levy for that radio silence, testifying that the biweekly OES meetings between MPD and GCTC personnel were cancelled at Commander Levy’s request. *Id.* at 160–61.

Given the nature of the allegations made in his grievance against Director Lasky, we asked Chief Prine if, at the time he submitted his rebuttal to the Mayor, he knew that Commander Levy had authored the 321z Report. *Id.* at 175. He responded that he did not. But he expressed the view that the knowledge that Commander Levy wrote the 321z Report did not change his belief that “it validated his grievance” against Director Lasky. *Id.* at 176.

He testified that the 321z Report was a continuation of a trend of unfairly unfavorable Reports written against him by third parties hired by the City:

He testified that “shortly after he took office,” he “requested that [the City] bring in Dan Lumpkin” to consult on how to resolve “turbulent waters” among Police Department staff that had arisen during the transition to Chief Prine taking over as Chief. *Id.* at 179–80.³⁶ Lumpkin drafted a ‘climate survey’ report. *Id.* at 181. Chief Prine testified that Lumpkin’s report was “a veiled attempt and a threat . . . to control [him].” *Id.* He did not identify any issues – substantive, methodological, or otherwise – with Lumpkin’s report, testifying only that “during a transition it’s never good to do climate surveys.” *Id.*

He testified about a review performed by the “PM Group,” a legal consulting group the City hired to, in Chief Prine’s view, “teach him how to talk with the black community” in the wake of a number of use-of-force incidents involving African American victims. *Id.* at 182–83; Barber Tr. at 185–86. Chief Prine viewed the PM Group’s hiring as unnecessary:

³⁶ Chief Barber disputes the assertion that Chief Prine requested Lumpkin’s consulting services. He testified that he and the Administration made the decision to hire Lumpkin to address “early problem[s]” between Chief Prine and his direct reports that included “demeaning, belittling, and vulgar” conversations. Barber Tr. at 41–42.

Well, it sounds a little braggadocious, but I didn't feel like I needed help communicating with the public. I think I've done very well in that regard.

Prine Tr. at 185.

Chief Barber testified about the PM Group Report and the circumstances leading up to its issuance, which he felt provided crucial context to the breakdown of the relationship between Chief Prine and the Administration. Barber Tr. at 179. In the months leading up to the City's decision to hire the PM Group, there were six officer-involved shootings. *Id.* at 186. The public's and the City Council's response to the string of shootings was overwhelming and negative.

Chief Barber recalled that around the same time, more than one City Council member expressed concern about Chief Prine's behavior as Chief, both in his dealings with the public and with other City Officials. Barber Tr. at 182–84 (testifying that a City Council member told him that Chief Prine “is a liability” and that “y'all need to do something about this”); *id.* at 189 (testifying about a conversation that Director Lasky had in which a different City Council member told Director Lasky that Chief Prine “needed to go”).

Chief Barber told Chief Prine there was an immediate need to repair the public and internal image of Chief Prine and the MPD, and that he thought the PM Group would be able to help do that. *Id.* at 189–90.

When Chief Barber raised the prospect of hiring the PM Group, Chief Prine responded by calling Chief Barber “a liar,” telling Chief Barber that the City Council was “not upset with him” (Prine), and that Chief Barber was orchestrating a conspiracy “to get rid of [him] or make [him] look bad.” *Id.* at 187. After taking a break to let things cool down, Chief Barber again approached Chief Prine to reiterate his support for him as Chief:

I waited about a week and then had Director Lasky bring him down there so that we could talk. It was about trust, you know, about trust issues, that whatever he's perceiving is going on is not happening is what I told him, that he doesn't have a

bigger advocate than Jim Barber when it comes to City Council. He didn't believe me.

Id. at 188–89.

Chief Prine concluded with testimony about a report prepared by former United States Attorney Kenyen Brown (“Brown Report”) on six use of force incidents involving MPD officers and Mobile citizens. Prine Tr. at 195–96. He felt apprehension in early March of this year, in light of the conclusions made in the Lumpkin and PM Group Reports, that the Brown Report “was going to somehow or another paint [him] and [his] leadership in a bad light.” *Id.* at 196. Chief Prine’s understanding was that Brown was “only [supposed] to come in and investigate six officer-involved incidents involving force.” *Id.* at 197. But, according to Chief Prine, Brown’s interview questions to MPD officers went outside that investigative scope:

And when Brown started his interviews that week, in brevity, I started getting complaints from some of my staff that were saying, well, he's not -- he's investigating that, but he didn't ask me nothing about policy. He's asking me about the Chief said something to the effect of "F the public" two and a half years ago early in his tenure, and the Chief -- He was asking about morale of the Police Department.

Id. That differed from the topics addressed in Chief Prine’s interview:

Well, when I interviewed with Kenyen on March the 20th, he -- he talked a lot about the policy of language and a few other little things, but he didn't specifically ask me about whether I said a thing or didn't say a thing two and a half years previous, nor did he ask me about morale of the Department.

Id. at 197–98.

The facts in this case do not support Chief Prine’s theory of retaliation or the chain of retaliatory causation he alleges between the grievances he filed against Chief Barber and Director Lasky, Director Lasky’s request to Commander Levy and Graves, and the 321z Report.

We note that in making that finding, we take no position on Chief Prine’s criticisms of the 321z Report – both as to substance and methodology.

Instead, our finding is that the facts in this case does not support the specific allegations that Chief Prine has levied: that “[Director Lasky] and Kevin Levy conspired to write up a presentation for the Mayor that would suggest that I was the reasons for the failure of OES”:

- The testimony and documents in this case support the finding, as noted above in §IV(A)(7)(k)(iii), that Director Lasky did not know before the issuance of the Chief Prine Rebuttal that Commander Levy authored the Peer Review.

On March 27, 2024, Mayor Stimpson sent a letter to Chief Prine informing him that he was being place on administrative leave and was being relieved of command pending the findings of an investigative report on the Mobile Police Department prepared by Kenyen Brown:

Dear Chief Prine,

Effective immediately, you are relieved of command as Police Chief of the Mobile Police Department. This decision is made based on the preliminary findings from the investigation into the Mobile Police Department pending final report. Considering the investigation is ongoing, you are on administrative leave until further notice.

Attached to that letter was a memorandum written by City Attorney Ricardo Woods and addressed to “City Employee.” Stimpson Tr. at 157; EX 97. According to Mayor Stimpson, “City Employee” referred to Chief Prine. Stimpson Tr. at 159. The memorandum presented two termination options. The first, titled “Separation Agreement,” provided:

- Allows him to retire with his reputation intact.
- The nondisclosure/nondisparaging allows us to mitigate the public report Kenyen is preparing.
- Negotiate payment to help with the transition as a consultant through 11/9/2025 contingent on re-election or last date of this term).
- Paid leave to begin upon this agreement.
- Insurance coverage.

Id. at 158–160; EX 97. The second, titled “Removal from office,” provided:

- Relieved of command with pay pending council action.
- Kenyen will prepare an executive summary w/o a non-disparaging agreement.
- Executive session with city council.
- Press conference to release findings.
- Public dissemination of the executive summary.
- Resolution to council to remove him from office.
- Vote of council is there.

Stimpson Tr. at 161–62; EX 97. Mayor Stimpson testified about how Chief Prine’s acceptance of Option 1 and the resulting non-disparagement agreement would impact Kenyen Brown’s report:

It says: (Reading.)

Removal from office, relieved of command with pay pending Council action.

And it says: (Reading.)

Kenyen will prepare an executive summary without a non-disparaging agreement.

A. Okay. So can I comment on the second part?

Q. Please do.

A. Okay. So on the -- on the 20th of March, which Kenyen came in -- or the 18th of March when he came in -- he interviewed me on the 19th. He had already interviewed a lot of the command staff and others at the PD. And he had picked up a lot of indicators of Paul's demeanor, his character, and things that he felt were not becoming to a -- a Chief of Police; okay? And he was getting to the root of what he felt like was the problem. Why did we have six incidents in this eight-month period? And he was coming to the conclusion it was Paul's leadership. So what we knew was that if we were going to have a non-disparaging agreement, we couldn't allow Kenyen Brown to say something disparaging about Paul Prine. So we would tell Kenyen that with this severance agreement, we have a non-disparaging agreement, and so you can't say anything negative about Paul Prine, you know, in your report.

Stimpson Tr. at 161–63.

In light of that explanation, we asked Mayor Stimpson whether he viewed Kenyen Brown’s report as being “independent.” *Id.* at 163. He responded:

A. The -- Yes, it was an independent report, but he -- We felt like he needed to know that we had signed a non-disparaging agreement. But we -- we don't think, in good faith of negotiating with Paul Prine, that -- to say that we're not going to say anything disparaging when you know that Kenyen Brown is getting ready to, and so he could put it in an executive summary, but it wouldn't be for public dissemination.

Id. We sought to clarify whether the City understood the impression that someone might take from “[t]he nondisclosure/nondisparaging allows us to mitigate the public report Kenyen is preparing” and why it might cause concerns that the City was dictating other conclusions in the Report or trying to “buy Paul Prine’s silence.” *Id.* at 164. The Mayor responded that he could “absolutely see why somebody would think that” and that it was “absolutely not the intent to do that.” *Id.*

We also asked Chief Prine about the non-disparagement provision proposed as part of the memorandum’s first option. Chief Prine testified that, before receiving the memorandum on March 27, 2024, he had had no discussions with the City about the effect his termination would have on Kenyen Brown’s report. Prine Supp. Tr. at 83–84. But the City Attorney did walk him through the memorandum in detail March 27th:

The day they gave this to me, they explained to it me in detail line by line. And then when it was done, there -- in my opinion, there was really no conversation. The only thing I asked, if I remember, was a lump sum option possible. And then we talked about 321z and a little bit about what I knew about the UAV Survey contract.

Q. And so when they explained it to you line by line, was it your understanding that the Kenyen Brown report was going to be written in a way that either referenced you negatively or didn't reference you negatively depending on which option you chose?

A. That's exactly right, yes, sir.

Id. at 85–86.

Chief Prine interpreted both options in the memorandum “as a threat” to, among other things, “defame” him. Prine Tr. at 298, 300. He told the Mayor and City Attorney that he would need some time to consider the severance options, and they agreed. *Id.* at 299–300.

In the days that followed, media reports being to circulate about Chief Prine being placed on administrative leave and his potential termination. *Id.* at 303. Chief Prine testified that the resulting media reports and attention caused the City to rescind the March 27, 2024 severance offer. *Id.* at 304–05. Mayor Stimpson, based on his anticipation of the substance of the Brown Report and his determination that there were “irreconcilable differences” between Chief Prine and Director Lasky and Chief Barber, decided to recommend that the City Council terminate Chief Prine. Stimpson Tr. at 169–173. The City Council unanimously approved Chief Prine’s termination on April 30, 2024.

After considering the testimony of each of these individuals and the relevant documents, we reiterate a point made above but that effectively summarizes the breakdown between Chief Prine and the Administration and its officials: we found the extent of dysfunction – and frequency with which the participants in these matters operated at cross purposes – unusual. We were also struck by the degree to which such circumstances created an unproductive environment which often unnecessarily hindered efforts to achieve what otherwise appeared to be a mutual objective.

The breakdown in Chief Prine’s relationship with the Administration was the natural, if unfortunate, culmination of a series of unsuccessful attempts by Chief Prine and Director Lasky and Chief Barber and the Administration more broadly to work through the dysfunction and disagreements described above.

At various points during their testimonies, each of Chief Prine, Chief Barber, and Director Lasky described central conflicts in this case as struggles for “control” – control over the Gulf

Coast Technology Center, control over the Mobile Police Department, control over access to the resources available to both. Whatever other problems those struggles might have caused, their resolution did not rise to the level of a violation of any City policy or any state or federal law.

- D. “Any allegations made by Chief Prine that written grievances filed or submitted by him were not properly addressed or investigated”

Chief Prine’s alleged that the City failed to properly investigate grievances he submitted separately against Director Lasky and Chief Barber. We address each in turn.

1. Chief Prine’s Grievance Against Director Lasky

Chief Prine’s allegations against Director Lasky were transmitted in writing to Mayor Stimpson via letter dated January 22, 2024. In that transmission, Chief Prine alleged that on January 19, 2024, Tony McCarron, a recruiter with the Public Safety Department, advised Chief Prine that Director Lasky had made a disparaging comment about Chief Prine during a discussion on speaker phone while McCarron was driving with Officer Reagan Clegg, a subordinate of Chief Prine’s. Chief Prine recounted in the statement in his letter to Mayor Stimpson: “[Director Lasky] made a statement something to the effect that he was tired of Paul Prine.” Exhibit 29a.

Chief Prine also advised Mayor Stimpson that he had been advised by MPD Chief of Staff Joseph Kennedy that Chief Barber had “advised him that he heard that Director Lasky was trying to compel Commander Levy, Intelligence Division, to document every issue he has had with the Chief of Police as he was putting together a package to present to the Mayor about the Chief.” *Id.*

Chief Prine’s suggested remedy was for Director Lasky

to apologize to Commander Levy, Officer Clegg, and Tony McCarron. I would also suggest that there be no contact between myself and the director, and that he has no dealing with members of this Department, or with the public representing the Department.

Id.

Chief Prine testified to his understanding of how initiating an investigation of those grievances was supposed to occur under City Policy:

In particular, it says that OPR -- that you can make a complaint virtually to any department head or to a supervisor, which I did to the Mayor. But there is a lot of things that OPR did not follow. If they were to do an investigation of such egregious allegations, they should have put the employee on notice, i.e., Barber or Lasky, and they were supposed to notify me in writing of whatever that outcome was.

Prine Tr. at 350. In the context of a discussion about another grievance that a task force officer filed, Chief Prine acknowledged, that the process applicable to merits system employees was not necessarily applicable to appointees like himself:

This doesn't necessarily happen with appointees, because we're appointees. But their own rules and regulations, I would argue, they didn't follow them. Not that there has to be a due process, because it's an at-will situation.

Id. at 351.

Chief Barber's testimony confirmed that the procedures for investigations of claims made by merits system employees and claims made by appointees like Prine:

A. The appointed's are -- We have two systems, right, allowed by law. One of them is the merit system, which we're required to participate in, which has certain classification like police officer, firefighter, public works.

And then we have appointments. I'm -- I'm an appointment. I'm an at-will employee. And then we have five appointments that are at-will employees with statutory protection. And so that's the Police Chief, the Fire Chief, the Finance Director, Public Works Director, and Public Safety Director.

Q. What are the statutory protections?

A. That only on the recommendation of the Mayor and with the super majority of Council can any one of those positions be removed.

Q. Do those individuals receive any sort of protection in terms of grievances?

A. No. Our at-will -- We don't even have a written policy on our appointed positions, our at-will positions.

The -- Now, there's a very well laid out policy for grievances in the civil service system. You know, it's a three-step process. And so we do have requirements to be responding in writing and everything and timelines on that one.

Barber Tr. at 191-93.

Michelle Gruz, head of OPP, confirmed Chief Barber's assessment in discussing the reason why she did not investigate the allegations Chief Prine raised against Director Lasky:

Q. Did you ever conduct an investigation into the allegations that Chief Prine raised against Director Lasky?

A. No.

Q. And why not?

A. For the simple reason as a non-merit employee, the Mayor's office, we're at-will employees, and so those are deferred over to Chief Barber and the Mayor for the protocol that they -- they use to evaluate the seriousness of the complaint.

Q. When you say the protocol, is that a written policy or just the way it works in practice?

A. I'm not aware of a -- of a written policy, but that is what I understand the practice to be.

Q. And so if we're in a scenario where a non-merit employee like Chief Prine has raised an allegation against another non-merit employee like Executive Director Lasky, your understanding is under that protocol that would go to Chief Barber?

A. Yes.

Gruz Tr. at 11.

But even assuming that OPR's Handbook applies to Prine's January 22, 2024 grievance against Lasky, the City's response was proper because, although the January 2024 grievance was in writing, it did not comply with the requirements of OPR Handbook section 2B, and it therefore did not trigger an OPR investigation. (OPR Handbook at 5 (providing that "[a]ll allegations will be filed in accordance with Chapter 2 of this handbook"))).

We also note that Chief Barber conducted an investigation into Chief Prine's January 22, 2024 grievance despite the lack of applicable formal procedures:

Q. Okay. So let's break those out as to the tired of Paul Prine discussion. So that I understand, there is not a formal policy which dictates how such a grievance is to be investigated and addressed?

A. That's correct.

Q. In this case, the process by which you investigated it was to ask Director Lasky if he made the statement. He conceded that he did. You told him you thought that was unprofessional?

A. Well, I asked him if he thought that was professional, and he said no.

Q. Okay.

A. And the -- So I -- I basically handled it like you would a civil service with the exception -- I mean, I handled it within quick time, I mean, maybe the same day, you know, certainly no longer than one day later on.

But the -- the -- the -- It's just that we're not required to report anything back to the Personnel Board on how we handled it.

Q. What do you remember Chief Prine asking for in terms of a remedy as to the tired of the Paul Prine statement by Director Lasky?

A. It's on here.

Q. Okay.

A. (Reading.)

I would also suggest that there be no -- Last sentence -- (reading.)
there be contact between myself and the Director and that he has no dealing with members of this Department or with the public representing the Department.

Q. Okay.

A. Which is a remedy that could not be granted.

Barber Tr. at 200-02. Chief Barber was asked why he had not ordered Director Lasky to apologize, as Chief Prine had requested:

A. You know, I've never directed anybody to apologize. That's kind of up to them. It's not sincere if they're being told to do something, for one thing. The other one,

if the misconduct rose to the level of disciplinary action, then that in itself -- No -- no apology can replace that disciplinary action.

Id. at 203.

When asked whether there were “other things that should have been done to investigate,” Chief Barber noted “There was no dispute of fact. There was no reason to go any further than where -- where I took it.” *Id.*

Director Lasky confirmed Chief Barber’s testimony:

A. COS Barber called me into the room. He let me read this [Prine letter to Mayor Stimpson] and he asked me did it happen.

...

Q. There's a statement attributed to you that is to the effect that he was tired of Paul Prine, the third full paragraph.

A. Yes. He asked me if that happened.

Q. Okay. What did you tell him?

A. I told him yes, but not in those words.

...

A. So here's -- So what he asked me, he asked me if it happened or something like that happened. And I looked him in the eye and I said absolutely 100 percent it happened; okay?

He then asked me why it happened, and I explained that to him. And then he told me that it was unprofessional. And I said, I agree with you. And he said, is it going to happen again? I said no.

And then we talked about some other things. And he asked then -- Basically he said, you need to work -- you need to continue to work with Paul Prine and the whole bit.

Lasky Tr. at 131-32. Director Lasky characterized his discipline as a “verbal reprimand.” *Id.* at 137. Director Lasky also expressed his view that Chief Barber, City Attorney Ricardo Woods or

Mayor Stimpson “handle situations like this . . . it was more their practice[.]”. *Id.* at 135. Director Lasky added a final thought on the subject:

And what strikes me as ironic is that when similar allegations were made against Chief Prine, and he benefited from a informal type investigation by one or more of those three people, okay, he didn't complain about it.

Id.

We also investigated the second component of Chief Prine’s grievance against Director Lasky, dealing with the allegation that Director Lasky sought to “put[] together a package” information in an effort to oust Chief Prine, and the attempt to enlist Commander Levy in that effort. When questioned about the issue, Chief Prine testified as follows:

Q. When you say a false report, help me understand what you mean by that. You referenced something in November of 2023, and then there's a reference here in January of 24.

A. Okay. So when Joe Kennedy, the Assistant Chief or Chief of Staff of the Mobile Police Department came to me on the week of January the 19th, 2024, he is the one that told me that Barber alleged and told him, Kennedy, that Lasky reached out to Kevin and asked Kevin to falsify a report, what was described to me as a fill-in-the-blank presentation for the Mayor to show the failures of Operation Echo Stop and how the Chief, me, has not supported the program.

Q. When you say falsify, is that your interpretation, or is that what you were told?

A. That's my interpretation.

Q. Because there could be -- There are two possibilities, at least two possibilities. One is he said, give me some information about where Chief Prine has failed to fulfill his obligations. And the other is, he said, make something up about Chief Prine failing to --

A. Well

Q. -- fulfill his obligation.

A. Sure. My perception is, is that it's falsified because Kennedy described to me that it was a fill-in-the-blank presentation of how I had not supported the program. Well, if you have a fill-in-the-blank presentation, that means that the report has been built around whatever they wanted -- the administration wants it to say. When I

talked with Kevin Levy on that day, that morning -- Because not only did I call Kevin, I also called Reagan Clegg, the officer that was Tony McCarron. The same morning, I validated both issues. And Kevin words to me -- He did not get into detail, he just simply said, well, it was something to that effect, but I'm just not going to get involved in that.

Prine Tr. at 149-51.

We have reviewed in detail above the allegations involving Director Lasky's efforts to heal the divide between the GCTC and the MPD. *See* §IV(B)(5), *supra*. We will not revisit that analysis here, other than to note that while we understand fully Chief Prine's concerns upon learning of Director Lasky's efforts -- filtered through Commander Levy's perceptions - we found no evidence that any such effort were actually ongoing. In the absence of an established right to a formalized process for reviewing this aspect of the grievance, and in light of our earlier discussion, we are left with an insufficient basis to determine that any violation of law or City policy occurred.

2. Chief Prine's Grievance Against Chief Barber

Chief Prine testified that he lodged a grievance against Chief Barber relating to conduct that occurred in November 2023. While Chief Prine provided documents related to this complaint, we noted a threshold issue: the grievance Chief Prine lodged was not in writing.

Q. . . . So that I understand, did you ever submit a written grievance, or just orally --

A. It was --

Q. -- sit down with Ricardo?

A. -- sit down with Ricardo and then subsequently with the Mayor independently.

Prine Tr. at 348-49. Chief Barber confirmed that fact: "He says it's a grievance. It was verbal. It -- There was no written grievance." Barber Tr. at 190.

Our mandate is clear: Resolution 60-473 directs that we are to investigate:

Any allegations made by Chief Prine that *written* grievances filed or submitted by him were not properly addressed or investigated.

Because Chief Prine's grievance against Chief Barber was made verbally, it falls outside the scope of our investigation. Consistent with our mandate, we make no finding with respect to that allegation.

V. Conclusion

Our principal task in conducting this investigation was to determine whether the City employees involved in or otherwise connected to the Allegations had engaged in conduct that was "illegal, unethical, or out-of-policy." In the process, we explored an array of the City's functions and interacted with numerous employees. While the conclusions we reached are not all positive, we leave this process encouraged by the collective commitment and competence of the many individual employees with whom we interacted. The violations we found should not overshadow the efforts or impugn the character of the countless men and women who serve the City with skill and integrity every day.

Appendices

1. Table of Witnesses Questioned
2. Declaration of Michael Kunkel

APPENDIX 1 – TABLE OF WITNESSES QUESTIONED

Witness	Title	Date	Tr. pages
Baker, Jonni	President, 321z	7/1/24	114
Baker, Mark	Consultant, 321z	7/1/24	119
Barber, James	Chief of Staff	6/25/24	243
Battiste, Lawrence	Public Safety Executive Director (former)	7/2/24	60
██████████	Grants Developer	6/20/24	13
Graves, Curtis	Public Safety Deputy Director	7/2/24	45
Gruzs, Michelle	Head of OPR	7/2/24	15
Kern, Chris	Chief of the Civil Division in the City's Legal Department	6/21/24	72
Lasky, Robert	Public Safety Executive Director	6/20/24	201
Lasky, Robert	Public Safety Executive Director	7/12/24	10
Levy, Kevin	Commander, GCTC	6/21/24	345
██████████	Capital Projects Administrator	7/2/24	14
██████████	Special Assistant to Chief of Staff James Barber	7/2/24	15
██████████	Director of Finance	6/25/24	24
Prine, Paul	Chief of Police (former)	6/5/24	385
Prine, Paul	Chief of Police (former)	7/12/24	100
██████████	Fiscal officer, Finance Department	6/20/24	31
Rose, Donald	Chief Procurement Officer	6/25/24	43
Stimpson, William	Mayor	6/26/24	184

APPENDIX 2 – KUNKEL DECLARATION

DECLARATION OF MICHAEL KUNKEL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Michael Kunkel, declare:

1. As a result of my direct involvement in the matters set forth below, I have personal and firsthand knowledge of the facts set forth in this declaration, and I could and would testify competently to such facts if called as a witness.

2. I am the Director of Investigative Services of Setec Security Technologies, Inc. My job responsibilities entail providing litigation support to attorneys and project management of Setec's computer forensic and electronic discovery specialists who work in our business unit, Setec Investigations, which specializes in the discovery, collection, investigation, and production of electronic information for investigating and handling computer-related crimes and misuse. In my role with Setec, I work with government entities, local, state, and federal law enforcement agencies, private attorneys, and corporations, and specialize specifically in managing computer forensic investigations and providing thorough litigation support solutions. I have been involved in over 1000 computer forensic investigations and electronic discovery engagements surrounding theft of intellectual property, trade secret misappropriation, financial fraud, email and Internet abuse, employee disputes, copyright infringement, industrial espionage, disputed dismissals, software code reviews, spoliation, and large data set management among other engagements.

3. I hold certifications as a Certified Information Security Systems Professional (ISC²) as well as an EnCase Certified Examiner (OpenText). Previously, I was a Special Agent in the United States Air Force Office of Special Investigations where I investigated computer related crime and cyber counterintelligence for the Department of Defense. I have excelled in over 500 hours of classroom instruction on computer crime investigative techniques and I was a DoD certified Computer Crime Investigator and Computer Forensic Examiner from the Defense Cyber Investigations Training Academy. I was responsible for computer investigations covering the Western Coast of the United States as well as the entire US Air Force interest in the Asia/Pacific region. I also utilized my computer investigative expertise during the Global War on Terror in Iraq to identify and neutralize terrorist threats to United States in a Joint Special Operations Task Force. My Curriculum Vitae is hereto attached as Exhibit A.

1 4. Setec has participated in and led countless computer forensic investigations and electronic
2 discovery efforts to facilitate the discovery of electronic evidence in support of criminal and civil
3 lawsuits. Setec is regularly designated as an expert and our team of computer forensic and electronic
4 discovery specialists frequently provides expert witness testimony.

5 5. I was contacted on July 16, 2024, to provide computer forensic support in this matter involving
6 Commander Kevin Levy. At the onset I was informed there was an investigation into the existence of
7 certain emails between Commander Levy and others involving 321z Insights, LLC, and their
8 attachments, specifically a Professional Services Contract in multiple forms. I had a teleconference
9 meeting with Attorney Bill Athanas from Bradley Arant Boult Cummings LLP, Attorney Fred
10 Helmsing from McDowell Knight Roedder & Sledge LLC, and members of the City of Mobile
11 Information Technology team. After this meeting I convened a separate meeting only with members
12 of the City of Mobile Information Technology team.

13 6. After my meeting described above, I convened a separate meeting only with members of the
14 City of Mobile Information Technology team. My goal for this meeting was to identify facts to answer
15 the following questions:

- 16 a. What was the email retention setting in the City of Mobile's Microsoft Office 365
17 (O365) infrastructure?
- 18 b. Are there any emails between Commander Levy and Jonni Baker in which they
19 exchanged a version of the Professional Services contract beginning on October 18,
20 2023, through October 30, 2023?
- 21 c. Are there any emails between Commander Levy and anyone else containing an
22 attached version of the Professional Services contract beginning on October 18, 2023,
23 through October 30, 2023?

24 During this meeting I was provided with visual access to the O365 email administrative portal for the
25 purpose of conducting the searches I determined were necessary in Commander Levy's email account,
26 and to view administrative settings.

27 7. First, I identified the email retention policy was set to retain all emails for four years. This
28 means I would expect to see all emails to or from Commander Levy's email account during the
October 2023 timeframe available for searching in O365 even if an email had been deleted by

1 Commander Levy. However, this policy itself had a last modified date of June 24, 2024. I was
2 informed by a City of Mobile Information Technology team member the policy had traditionally been
3 set to retain all emails for four years, but it periodically had to be updated.

4 8. Next, along with the City of Mobile Information Technology team members, I conducted a
5 search for any email in Commander Levy's email mailbox containing any of five keywords, which I
6 understand are email addresses used by Jonni Baker with 321z Insights, LLC:

- 7 a. jonnibaker@icloud.com
- 8 b. 321z.insights@gmail.com
- 9 c. jbaker@321z.org
- 10 d. mbake1@live.com
- 11 e. m2bkr@icloud.com

12 9. After that, I conducted a search for any email within the date range of October 18, 2023,
13 through October 30, 2023, referencing 321z. The purpose of these searches was to identify the all
14 transfers of contract or signature page attachments between Commander Levy and Jonni Baker during
15 the timeframe from October 18, 2023, until October 30, 2023, as well as to identify any emails between
16 Commander Levy and anyone mentioning 321z Insights, LLC, with contract attachments.

17 10. I conducted the searches in O365 by taking the following steps:

- 18 a. Using the eDiscovery search functionally in O365, I selected the location of the search
19 to be Commander Levy's mailbox.
- 20 b. Next, I set a date limitation larger than the October 18-30 time window of interest in
21 order to account for emails sent at or near the 18th or 30th.
- 22 c. Then, I used the keywords of email address listed above for the first search, and the
23 term "321z" alone for the second search.
- 24 d. After each search I directed O365 to export the results to PST email files for viewing
25 using Microsoft Outlook.
- 26 e. I manually reviewed the resulting PST files to identify emails that would provide facts
27 to answer my questions in paragraph 6 above.

28 11. When conducting an email search in O365, the system identifies whether there are any emails
that, while contained within the custodian's mailbox, were unsearchable either because they could not

1 be indexed for some reason, or were encrypted. O365 allows for the export of all of those emails
2 separate from the search results. In this case I worked with the City of Mobile Information Technology
3 team members to export the entirety of Commander Levy's unsearchable and encrypted emails in
4 order for those to be reviewed internally. The purpose of this was to manually search all available
5 emails to or from Commander Levy regardless of whether there was a technical reason why they could
6 not be searched by the Microsoft system or not.

7 12. My searches identified the following emails in sequence:

- 8 a. First, Commander Levy sent an email to Jonni Baker on October 18, 2023 containing
9 an unsigned professional services contract titled "321z Insights Professional Services
10 Contract_C0499" with instructions to return only a signed signature page. This is the
11 email represented in City of Mobile_02956-02956.5.
- 12 b. Then, Jonnie Baker sent an email back containing an attachment titled
13 "HPSCAN_20231019004722484_2023-10-19_004810334" containing only the
14 signed signature page. This is the email represented in City of Mobile_02410-02410.1.
- 15 c. The next email I identified with an attachment was sent from Commander Levy to
16 [REDACTED] on October 23, 2023, containing an attachment titled "321z
17 Insights Vendor Signed Contract" with a signed signature page. This is the email
18 represented in City of Mobile_06951-06958.
- 19 d. Lastly, I identified an email sent on October 30, 2023, from Commander Levy to [REDACTED]
20 [REDACTED] with an attachment titled "321z Insights_Updated & Signed Contract"
21 with a signed signature page. This is the email represented in City of Mobile_02649-
22 02649.7.

23 13. During my searches I did not identify any emails between Commander Levy and Jonni Baker
24 to transfer copies of the Professional Services Contract after October 18, 2023.

25 14. My searches were tailored to capture any email communication that would contain versions of
26 the Professional Services Contract with 321z Insights, LLC, from October 18, 2023, through October
27 30, 2023. The search results did not include more versions of the Professional Services contract than
28 those outlined above in paragraph 8. This search process included a manual review of the entirety of
Commander Levy's otherwise unsearchable emails. The City of Mobile's email system has a 4 year

1 retention policy meaning if an email sent in the October 2023 timeframe meeting the search criteria
2 had been deleted then I would expect it to still be in the search results.

3 15. In addition to searching O365, I attempted to determine whether there was technical evidence
4 in the signature pages of the Professional Services Contract sent by Jonni Baker on October 18, 2023,
5 and the signature pages of the Professional Services Contracts sent from Commander Levy to Ms.
6 [REDACTED] on October 23, 2023, and October 30, 2023. My goal was to determine whether the
7 Professional Services Contracts sent on October 23rd and 30th had the exact same signature page
8 embedded in them. In some cases it is possible to extract an embedded object, such as an embedded
9 picture file, from within a file for separate examination and comparison to include the calculation of a
10 cryptographic hash value. Hash value comparisons between two digital objects is a definitive way to
11 determine if the two objects are identical. In this case, extracting the signature pages alone for direct
12 technical comparison, such as by comparing hash values, was not possible. The signature page
13 provided by Jonni Baker was a simple PDF file with very little metadata and a file name consistent
14 with being created directly by a scanner, HPSCAN_20231019004722484_2023-10-
15 19_004810334.pdf. The signature pages in the full Professional Services Contracts sent from
16 Commander Levy to Ms. [REDACTED] were part of more complex PDF files with multiple pages and
17 metadata. Due to the nature of PDF files and their layers of metadata and encoding, I was unable to
18 separate the signature pages alone for hash value comparison. Any attempt inherently carried metadata
19 and encoding within the data that would result in differing hash values even if the pages were identical.
20 As such, I cannot conclude using hash value analysis one way or the other whether the signature pages
21 on the October 23rd and October 30th Professional Services Contracts are identical to each other or to
22 the October 18th signature page Jonni Baker provided. If Commander Levy had taken the signature
23 page Jonni Baker emailed him on October 18, 2023, and inserted that into the two Professional
24 Services Contracts he later emailed to Ms. [REDACTED], then I would expect to see a visually identical
25 signature page in the contracts, but I cannot conclusively prove whether or not the pages are technically
26 identical.

27 //

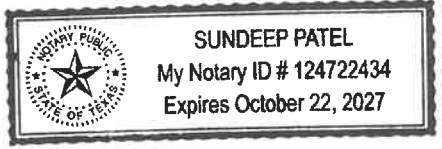
28 //

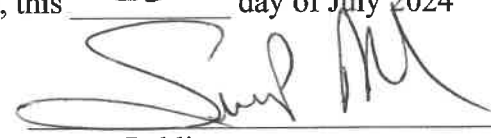
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under the penalty of perjury under the laws of the State of Texas that the foregoing is true and correct, and that this declaration was executed on July 22, 2024, at Dallas, Texas.


Michael Kunkel

Subscribed and sworn to before me, this 22nd day of July 2024




Notary Public
My Commission Expires: Oct 22, 2027