

Miami Herald

DORAL

City officials' cellphone records: complete or incomplete?

On Wednesday, attorneys representing the city of Doral turned over public records

Little came back, according to an attorney representing a billboard company suing the city

Doral city attorneys say the information is all there

BY MONIQUE O. MADAN
mmadan@miamiherald.com

Nearly two months after a judge ruled that about a dozen Doral city officials must turn over their cellphones in response to a lawsuit claiming Sunshine Law violations, the results are in, and what came back "may be incomplete."

The lawsuit stemmed from a 2014 legal dispute between the city and SDE Media, a billboard company that sued the city and the council after the council rejected a request to put a billboard on the northwest corner of the Palmetto Expressway and Northwest 26th Street, one of the Doral areas with the heaviest traffic.

SDE Media alleges that there was collusion among several council members to vote against the request. Doral officials contend the company's legal move is a tool to manipulate the city.

It took a month to collect all the phones, as some officials failed to comply immediately. Councilman Pete Cabrera said it infringed upon his civil rights; Councilwoman Christi Fraga was in labor at the time of the order.

The phones were ultimately submitted to a third-party company — Epiq Systems — assigned by the court for the copying

of texts, voicemails and emails. Doral's legal team reviewed the records to determine what content pertains to the legal dispute and on Wednesday, it turned all relevant data over to SDE Media.

But what came back "may be incomplete," said Thomas Julin, the attorney representing SDE Media.

"We're still uncertain whether they have conducted an adequate search for the records that were requested," Julin said Thursday. "There's still work to be done to determine whether the City Council members are concealing any public records."

To search the phones, SDE Media selected search terms that would relate to the dispute, such as "billboard" or "SDE Media." If someone used that particular word or phrase in an email or text, it would come back as responsive.

Julin explained that the records that came back to SDE Media were minimal and that there might have been some technical issues with the search for responsive records on the city officials' phones.

One of the attorneys representing the city, Sam Zeskind, told the Miami Herald on Friday that "this is an attempt by SDE Media to continue their fishing expedition by

claiming another conspiracy."

"This is just SDE Media trying to strong-arm the city for an illegal billboard," Zeskind said. "The city of Doral not only complied with the court order, but went beyond the scope of the order and allowed Epiq to provide every call, email and message record including recovered deletions to the plaintiffs. Nothing was found. ... Epiq had complete access."

SDE Media says the issues are:

- All five council members turned in iPhones, which encrypt outgoing emails so that only the "to" and "from" headers are searchable. This prevents outside parties from seeing the content of those conversations.

- The quantity of text messages was far lower than expected based on the frequency with which council members usually exchanged text messages with lobbyists, according to AT&T and Verizon records.

SDE Media's independent findings showed that between June 2014 and early January 2015, hundreds of text messages were exchanged between several members of the City Council, as well as with Melissa Tápanes, a lawyer for View Point of Florida, former partner of SDE Media and now one of its top competitors. Many of these exchanges took place within 48 hours of scheduled council meetings.

However, on Wednesday, Doral's legal team shared fewer than five text messages.

"In the search of the

phones, we're seeing a very small volume of these exchanges," Julin said. "It can be that these hundreds of communications are unrelated and aren't responsive, sure, or that there are encryptions preventing us from finding the relevant terms. We don't know yet. But when you are seeing that there are very little to no records at all, it's a little odd."

Zeskind: "None of the city's council members or officials are using encryption software. Any encryption on the phones is part of the phones' operating system. If SDE Media has a problem with that, they need to take that up with Apple."

- It is unclear whether the phones that were turned in were the phones that were used during the entire period in question.

"For example, Cabrera's iPhone 6 Plus. They found nothing on it that contains the search terms," Julin said. "It doesn't tell us when Pete Cabrera started using that phone and whether or not he turned in the one he was using at the time. If he purchased a new phone, it would be logical that there would be nothing on it. The city's attorneys still don't have the answer to that question."

Zeskind didn't provide a clear response to this point, but said that "despite the unreasonable and unwarranted invasion into their privacy, the city's officials complied with the order and turned over their private cellphones."

- Julin says that some messages appeared to be erased prior to being hand-

“
WE'RE STILL
UNCERTAIN
WHETHER THEY
HAVE CONDUCTED
AN ADEQUATE
SEARCH FOR THE
RECORDS THAT
WERE REQUESTED.

Thomas Julin, attorney
representing SDE Media

ed over for copying.

"The report that Epiq gave us back showed that some messages were deleted, although the court order specified that nothing should be deleted," he said. "Some deleted messages were recovered. The city attorney, Sam Zeskind, reviewed those and said the deleted messages were not responsive."

"I think there are still a lot of questions," Julin said. "We are really studying the data. It's deeply concerning that this happened in the first place. When you can't search for records because you allow City Council members to conduct city business on encrypted phones to communicate with each other, that in it and of itself is a violation of the public records law."

Zeskind: "The city's ordinance, passed more than four years prior to this case, prohibits billboards in that location. SDE Media thinks these rules do not apply to them. They are simply disgruntled because they are used to getting their way."

A hearing is scheduled for April 6 at 9:15 a.m. before Judge William Thomas. SDE Media is asking for additional phone records from AT&T and Verizon. The city is objecting and has filed a motion for a protective order.