

STATE OF INDIANA	)	ST. JOSEPH CIRCUIT COURT
	) SS:	
COUNTY OF ST. JOSEPH	)	CAUSE NO. 71C01-1908-MI-000389
JUDICIAL WATCH, INC.,	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CITY OF SOUTH BEND,	)	
Defendant.	)	

**Plaintiff Judicial Watch Inc.'s Opposition to  
Defendant City of South Bend's Motion for Protective Order**

Plaintiff Judicial Watch, Inc., by counsel and pursuant to Ind. Trial Rule 26(C), submits this opposition to Defendant City of South Bend's motion for a protective order quashing the deposition of former Mayor Pete Buttigieg. As grounds therefor, Plaintiff states as follows:

1. This case concerns the City's repeated refusal to comply with the Access to Public Records Act and to produce all non-exempt responsive records to Plaintiff's APRA requests. Mayor Buttigieg's deposition is necessary to determine what potentially responsive records exist, how they were maintained during his tenure, how the same records were preserved upon the completion of his term, and what directives about record creation and retention, if any, he provided the city as the head of the public agency.

2. On June 8, 2019, NBC News published an article about an "innovative, first-of-its-kind" program created in 2016. *See Adam Edelman, Buttigieg's big accomplishment that he never mentions on the campaign trail*, NBC News (June 8, 2019, available at <https://www.nbcnews.com/politics/2020-election/buttigieg-s-big->

accomplishment-he-never-mentions-campaign-trail-n1015251). It refers to the program as a “a novel approach” and one that other cities are looking to replicate. *Id.* In addition, the story credits the initiation of the program to Mayor Buttigieg and reported:

Working closely with La Casa de Amistad, South Bend's main Latino outreach center, Buttigieg and the nonprofit's executive director, Sam Centellas, imagined a "Community Resident Card" program in which the IDs would be paid for, created and distributed by the group — a private organization — not the city.

Buttigieg's part to make it all work was to sign an executive order requiring local services and institutions — like law enforcement, schools, the water utility and libraries — to accept the card as a valid form of identification. The city also enlisted local businesses, such as financial institutions and drugstores, so cardholders could open bank accounts and pick up prescriptions.

*Id.*

3. In light of the article, Plaintiff sent four APRA requests to the City to learn more about the creation of the program. *See* Complaint at ¶ 8. The records sought include emails between Mayor Buttigieg's Office – including the mayor himself – and other city agencies and La Casa de Amistad for the months leading up to and through the initiation of the program. *Id.* at ¶¶ 11 and 23. In sending such requests, Plaintiff believed that to create an innovative, novel program, the Mayor and his staff would have had to correspond with La Casa de Amistad prior to the issuing of the executive order. In today's world, it is not unreasonable to believe email is the primary tool of communication.

4. In response to Plaintiff's straightforward, reasonable requests, the City continuously made demands for specificity that are not mandated by APRA or related

case law. *Id.* at 9. In addition, the City has informed Plaintiff that only one email exists between Mayor Buttigieg's Office and La Casa relating to the creation of the program and that no emails exist between Mayor Buttigieg's Office and other city agencies on the same topic.

5. Plaintiff has sought discovery on three, overarching topics. First, Plaintiff seeks to discover facts about how the searches for potentially responsive records were performed. Second, Plaintiff seeks to discover the basis for which the City demanded more specificity. Third, Plaintiff seeks to discover what systems and processes were used to send, maintain, and preserve emails related to the creation of the program.

6. To discover such facts, Plaintiff sought the deposition of a city representative. The City designated Shawn Delahanty. *See* Deposition of Shawn Delahanty, attached as Exhibit A. Although Mr. Delahanty could testify about the technical side of the searches, he did not have the knowledge to testify about:

- Whether City officials or employees use personal email accounts to conduct official city business (*id.* at 19:14-17);
- The means by which Mayor Buttigieg and his staff communicated within and outside the South Bend government about the creation of the program (*id.* at 75:17-23); and
- The City's record retention policy, including how records related to the program have been retained, stored, and managed (*id.* at 76:9-13).

7. The City next designated Danielle Campbell Weiss. *See* Deposition of Danielle Campbell Weiss, attached as Exhibit B. Ms. Weiss testified about the

processes by which the City responded to Plaintiff's APRA requests. However, she did not have the knowledge to testify about:

- Whether there is a specific policy concerning the use of personal email accounts for official city business (*id.* at 15:14-16:3, 16:20-25);
- Whether city officials or employees use personal email accounts for official city business (*id.* at 23:22-24:1);
- The number of employees who would have records potentially responsive to Plaintiff's APRA requests (*id.* at 55:13-16);
- Whether Mayor Buttigieg used a personal email account to conduct official city business (*id.* at 83:15-20);
- Whether Mayor Buttigieg created, maintained, or preserved emails or any other records responsive to Plaintiff's APRA requests (*id.* at 83:21-85:6, 87:10-20); and
- Whether, at the time the APRA requests were submitted, the City had a policy concerning the use of personal email accounts to conduct official city business; and whether that policy applied to both elected officials and city employees (*id.* at 87:15-88:2).

8. Plaintiff has also served a document request on the City seeking the production of documents concerning the processing of Plaintiff's APRA requests as well as the City's general policies about APRA requests. *See* Exhibit C

9. In addition, Plaintiff has served two sets of interrogatories on the City. Of note from the first set, the City stated that it does not have a "single document identifying processes and procedures for responses to APRA requests." *See* Exhibit D. Plaintiff is waiting for the City to respond to Plaintiff's second set of interrogatories. In it, Plaintiff asked the City to identify all written policies about non-city emails as well as whether those policies apply to elected officials. *See* Exhibit E.

10. The City complains that it does not know why Plaintiff seeks the deposition of Mayor Buttigieg, that there is no need for Mayor Buttigieg's testimony, and that Plaintiff is utilizing the litigation to question Mayor Buttigieg about the program itself. Each complaint is incorrect.

11. On February 19, 2020, Plaintiff informed the City that a few of the topics it intended to seek testimony from Mayor Buttigieg included:

- Whether he created, maintained, or preserved emails or any other records responsive to Plaintiff's APRA requests;
- Whether he or any of his staff used personal email accounts to conduct official city business; and
- Whether, at the time the APRA requests were submitted, the City had a policy concerning the use of personal email accounts to conduct official city business; and whether that policy applied to both elected officials and city employees.

*See Exhibit F.*

12. Mayor Buttigieg's testimony is essential. As Plaintiff informed the City, the City's designees could not answer the questions about the topics listed in paragraph 11 above. They also could not answer the questions about the topics listed in paragraphs 6 and 7 above. Only Mayor Buttigieg has the answers to these questions. He was the Mayor when the records would have been created. He was also the Mayor when Plaintiff submitted the APRA requests. In addition, he was the Mayor when the City responded to Plaintiff's APRA requests. Plainly put, Mayor Buttigieg is an obvious fact witness.

13. Plaintiff does not intend to ask the Mayor about the program itself. As Plaintiff previously informed the City and reiterated above, Plaintiff seeks to depose

the Mayor about what potentially responsive records exist, how they were maintained during his tenure, how the same records were preserved upon the completion of his term, and what directives about record creation and retention, if any, he provided the city as the head of the public agency. Each of these topics is “relevant to the subject-matter involved in the pending action.” Ind. Trial Rule 26(B)(1). Answers to questions about each of these topics will enable the Court to determine, as a matter of law, whether the City has violated the APRA and whether the City must produce all non-exempt, responsive records to Plaintiff.

14. In short, the City has not – nor can it – demonstrate that Mayor Buttigieg’s deposition will result in “annoyance, embarrassment, oppression, or undue burden or expense.” Ind. Trial Rule 26(C).

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THEREFORE, for these reasons stated above, the Court should deny Defendant’s motion for a protective order.

Respectfully submitted,

JONES LAW OFFICE LLC

/s/ Andrew B. Jones  
Andrew B. Jones (29686-71)  
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**CERTIFICATE OF SERVICE**

I certify that on the 24<sup>th</sup> day of March, 2020, service of a true and complete copy of the foregoing document was made upon the Defendant's attorneys of record via the Courts' electronic filing system.

/s/ Andrew B. Jones

Andrew B. Jones

STATE OF INDIANA  
IN THE ST. JOSEPH CIRCUIT/SUPERIOR COURT

JUDICIAL WATCH, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO.
	)	71C01-1908-MI-000389
CITY OF SOUTH BEND,	)	
	)	
Defendant.	)	
-----	)	

The Videotaped Deposition of SHAWN DELAHANTY

Date: Wednesday, October 30, 2019

Time: 1:07 P.M.

Place: City of South Bend  
227 West Jefferson Boulevard  
South Bend, Indiana 46601

Called as a witness by the Plaintiff, in  
accordance with the Indiana Rules of Civil  
Procedure pursuant to Notice.

Before Ann S. Hunsberger, AAS  
Notary Public, Elkhart County, Indiana

MIDWEST REPORTING, INC.  
1448 Lincoln Way East  
South Bend, Indiana 46613  
574-288-4242

ORIGINAL



## 1 APPEARANCES:

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8 On behalf of the Plaintiff;

9 MS. ALADEAN M. DEROSE  
10 MS. DANIELLE CAMPBELL WEISS  
11 City of South Bend  
12 227 West Jefferson Boulevard  
13 South Bend, Indiana 46601  
14 574.235.5866  
15 aderose@southbendin.gov

16 On behalf of the Defendant.

## 17 ALSO PRESENT:

18 Michael David Malesa, Videographer  
19 Anne Fuchs  
20 Michael Bekesha  
21  
22  
23  
24  
25

## I N D E X

THE VIDEOTAPED DEPOSITION OF  
SHAWN DELAHANTY

	PAGE
DIRECT EXAMINATION	
MR. JONES .....	6
CROSS-EXAMINATION	
MS. DEROSE .....	83
REDIRECT EXAMINATION	
MR. JONES .....	85

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## E X H I B I T S

PLAINTIFF'S	DESCRIPTION	PAGE
<u>1</u>	Letter .....	39
<u>2</u>	Public Records Request .....	52
<u>3</u>	E-mail .....	58
<u>4</u>	Public Records Request .....	60
<u>5</u>	Public Records Request .....	62
<u>6</u>	Public Records Request .....	63
<u>7</u>	Letter .....	65

1 VIDEOGRAPHER: We are now on  
2 the video record. The time is  
3 1:07 P.M., and today is the day of  
4 October 30, 2019.

5 We are here for the videotaped  
6 deposition of Shawn Delahanty. The  
7 deposition is being taken in the law  
8 office for the City of South Bend.  
9 The Cause No. 71C01-1908-MI-000389.  
10 The cause name is Judicial Watch,  
11 Incorporated, plaintiff, versus the  
12 City of South Bend, defendant.

13 This case is filed in the State  
14 of Indiana, Saint Joseph County  
15 Circuit/Superior Court. The court  
16 reporter is Ann Hunsberger, and I'm  
17 the videographer Mike Malesa.

18 Will counsel please introduce  
19 yourselves for the record, and court  
20 reporter swear in the witness,  
21 please.

22 MR. JONES: Andrew Jones for  
23 Judicial Watch.

24 MS. DEROSE: Aladean DeRose,  
25 City of South Bend.

1 MS. WEISS: Danielle Weiss,  
2 City of South Bend.

3 MS. DEROSE: And also present  
4 is Ann Fuchs, our office manager.

5 MR. BEKESHA: Michael Bekesha  
6 on behalf of Judicial Watch.

7 SHAWN DELAHANTY  
8 called as a witness by the Plaintiff, having been first  
9 duly sworn, was examined and testified as follows:

10 MS. DEROSE: If I could, I'd  
11 like to make a statement for the  
12 record, please. The City of South  
13 Bend has identified and produced  
14 Shawn Delahanty as a witness  
15 designated to speak on behalf of the  
16 City under Trial Rule 30(b)6  
17 pertaining to the limited topics of  
18 the internal processes for search of  
19 e-mails under the Access to Public  
20 Records Act and the manner by which  
21 any electronic or e-mail search by  
22 subject matter, date, name, or  
23 descriptive term is conducted within  
24 the city of the South Bend.

25 Mr. Delahanty also has limited

1 knowledge of public records,  
2 retention schedules as that applies  
3 to communications by e-mail. Any  
4 other topics would be outside the  
5 scope and knowledge of  
6 Mr. Delahanty.

7 MR. JONES: Ready?

8 MS. DEROSE: So with that --

9 MR. JONES: Okay. Thank you.

10 MS. DEROSE: -- we can begin.

11 DIRECT EXAMINATION

12 BY MR. JONES:

13 Q Could you state your name, please.

14 A Shawn Delahanty.

15 Q And can you spell your last name.

16 A D-e-l-a-h-a-n-t-y.

17 Q Mr. Delahanty, my name is Andrew Jones. I  
18 introduced myself to you just off the record a  
19 couple of minutes ago. I represent an organization  
20 called Judicial Watch.

21 Have you ever given a deposition?

22 A I have not.

23 Q Well, I'm going to go over a couple of preliminary  
24 matters that I'm sure your legal counsel has talked  
25 to you about; but I just want to make sure we're on

1 the same page about a couple of different things so  
2 we get a clean record today. We're able to get you  
3 in and out here as quick as possible. Okay?

4 A Okay. Thanks.

5 Q Great. Number one, it's really important, for me,  
6 to wait to answer a question until you've finished  
7 answering; and it's really important for you to  
8 wait to answer a question until I have finished  
9 asking it. Okay?

10 A Okay.

11 Q Great. If I ask you a question at any point that  
12 you find confusing, please let me know, and I will  
13 clarify it. Okay?

14 A Okay.

15 Q If I ask you a question and you answer it, can I  
16 assume that you understood it?

17 A Yes.

18 Q Great. If you need to take a break at any time,  
19 talk to legal counsel, use the restroom, get a  
20 drink of water, whatever it is, that is completely  
21 fine. All I ask is that if there is a question on  
22 the record pending you answer that before we take a  
23 break. Okay?

24 A Yes.

25 Q Great. You are doing better than 99.9 percent of

1 deponents already. You're giving verbal answers to  
2 questions. That's really, really important because  
3 we have a written record for today. No uh-huhs and  
4 uh-uhs and head nods and head shakes show up on the  
5 record. So can we agree that you'll give verbal  
6 response to the questions?

7 A Yes.

8 Q Great. And you were placed under oath a few  
9 moments ago by our court reporter. Do you  
10 understand that you're under oath?

11 A Yes, I do.

12 Q Do you understand what that means?

13 A Yes.

14 Q Great. Okay. We can go ahead and get started.  
15 I'm going to ask a couple more background  
16 questions. I ask these of every person that I take  
17 the deposition of; so I don't want you to be  
18 offended. Okay?

19 A Okay.

20 Q Are you on any medication today?

21 A I'm not.

22 Q Okay. Done any alcohol or drugs in the last 24  
23 hours?

24 A No, I have not.

25 Q Ever been convicted of a crime?

1 A No.

2 Q How long have you worked for the City of South  
3 Bend?

4 A Eighteen years and several months.

5 Q Okay. How old are you?

6 A Forty.

7 Q And what's your highest level of education?

8 A I have a bachelor's of science in computer science  
9 from Saint Joseph's College in Rensselaer.

10 Q Great. Where are you from originally?

11 A I was born in Elkhart, raised in  
12 Mishawaka/Granger/South Bend area. I've lived here  
13 all my life except when I was at college.

14 Q Where did you go to high school?

15 A Marian High School, Mishawaka.

16 Q And if you're 40, did you graduate in -- would that  
17 be '97?

18 A That's correct, yeah.

19 Q Okay. And did you go right on to college at  
20 Saint Joseph's?

21 A I did.

22 Q Did you graduate in 2001?

23 A Yep. Yes, I did.

24 Q You said that was in computer science?

25 A Yeah. Bachelor's of science in computer science.



1 Q Okay. So that's a BS in computer science?

2 A Yes.

3 Q Great. What is your current position with the City  
4 of South Bend?

5 A Director of IT services.

6 Q And have you held that position for 18 years?

7 A No. I've held it since 2015.

8 Q Okay. When you were hired by the city 18 years  
9 ago, what position were you hired in?

10 A I was hired in as a systems specialist 1 and then  
11 progressed to system specialist 2, 3, then 4; and  
12 then served as interim department director before  
13 my current position.

14 Q Okay. What do those -- you said -- what was this  
15 called again? Systems specialist?

16 A Systems specialist.

17 Q Yeah.

18 A That was the term that all IT employees had as  
19 formal titles on the books. My specific tasks that  
20 I were hired in for was help desk --

21 Q Okay.

22 A -- and user support is what I was hired in for  
23 originally.

24 Q So you were the help -- you helped staff the help  
25 desk for -- if people within the city needed help?

- 1 A Correct.
- 2 Q When I see "within the city," it would be city  
3 employees that needed help?
- 4 A Yes.
- 5 Q And that was when you were -- well, you said  
6 Classification 1?
- 7 A Yes.
- 8 Q Okay. When you were Classification 2, what did you  
9 do?
- 10 A With each classification, it added more  
11 responsibility as far as systems that I was  
12 responsible for. So, basically, I started being  
13 administrator of several systems with each step:  
14 phone systems, write systems, things like that.
- 15 Q Got you. And by the time you were at Step 4, what  
16 were you handling?
- 17 A I was responsible for most end user support and  
18 vendor management which was kind of working with  
19 vendors to work on contracts that the city would be  
20 signing.
- 21 Q Okay. For IT related --
- 22 A For technology specific -- yeah.
- 23 Q Got you. What is end user support?
- 24 A We see an end user as anybody that is a city  
25 employee using an actual physical computer. So

1 anybody that has an issue and needs assistance or  
2 has a question, that's what we consider end user  
3 support.

4 Q Okay. And then you became -- was is it interim  
5 director of IT services?

6 A Yes. Interim director of the information  
7 technologies department.

8 Q Got you. Okay. And when were you named interim  
9 director?

10 A 2014.

11 Q And in 2015, is that when you became --

12 A Director of IT services, yes.

13 Q How many subordinate employees do you have right  
14 now?

15 A Two.

16 Q And what are their titles?

17 A Systems specialist and systems manager.

18 Q Okay. Mr. Delahanty, I know city's legal counsel,  
19 Mrs. DeRose, gave us a statement at the start of  
20 this; but I want to know what topics are you  
21 prepared to testify about today?

22 A Can you be more specific?

23 MS. DEPOSE: And I'll object to  
24 the form of the question. It  
25 assumes that there was a preparation

1                   made for him; so if you --

2                   MR. JONES: Well, I sent a  
3                   notice to the city that he, I  
4                   believe, has received requesting the  
5                   ability to give a 30(b)(6)  
6                   deposition. So I want to know what  
7                   topics he is here to -- that he is  
8                   prepared to answer questions to  
9                   today.

10                  If he can't answer the  
11                  question, I don't --

12 BY MR. JONES:

13 Q   Can you answer that question?

14 A   Yes.

15 Q   Okay.

16 A   I'm prepared to talk about the legal retention  
17       policies that we have in place for e-mail as well  
18       as the search piece that IT performs for legal  
19       discovery requests.

20 Q   Okay. Are you familiar with any public records  
21       requests sent to the city by Judicial Watch?

22 A   I don't have any purview into where requests are  
23       received from.

24 Q   Okay. Are you aware of whether you performed any  
25       searches related to public records act requests

1       made by Judicial Watch?

2     A    I don't have any record of where requests are  
3       coming from.

4     Q    Okay. Do you have any idea of any of the public  
5       records requests made by Judicial Watch?

6     A    I do not have any.

7     Q    Okay. I want to talk to you about how you prepared  
8       for today's deposition. Now, I need to start by  
9       saying I don't want to know anything about any  
10      conversations that you had with Ms. -- Mrs. DeRose,  
11      Mrs. Campbell, any of the -- or Mrs. Weiss --  
12      excuse me -- any of the people involved with the  
13      city's legal department. Okay?

14    A    Okay.

15    Q    Who did you speak with in preparing for today's  
16      deposition, aside from any attorneys?

17    A    Ann Fuchs was present in the room who is present  
18      here today.

19    Q    Okay. Other than that, anybody else?

20    A    No.

21    Q    How did you prepare for today's deposition other  
22      than interacting with the city's legal team?

23    A    I did no formal preparation.

24    Q    Okay. Review any documents or documentation of any  
25      kind?

- 1 A I did not.
- 2 Q Okay. Ever talk to the mayor?
- 3 A No.
- 4 Q Who, in 2015, gave you your role or appointed you  
5 to the role as a department head?
- 6 A In 2015 when I became the interim director.
- 7 Q I'm sorry. For 2014.
- 8 A I'm sorry. 2014 was interim director.
- 9 Q Right. 2015 is when --
- 10 A 2015 is when I became director of my specific  
11 division within IT.
- 12 Q Right.
- 13 A Which are you asking about?
- 14 Q 2015. When you were given the role and you're --  
15 you're a department head; right?
- 16 A Division director within the department, yes.
- 17 Q Right. When you were given your division director  
18 position in 2015, who gave you that position?
- 19 A The chief innovation officer at the time, Santiago  
20 Garcis.
- 21 Q Got you. Do you know if the mayor had any say in  
22 that decision?
- 23 A I do not know that.
- 24 Q Okay. Do you know the mayor?
- 25 A I've met him in passing, yes.

1 Q You have no political affiliation with him?

2 A None whatsoever, no.

3 Q You ever donated to him?

4 A Personally --

5 MS. DEROSE: Objection. You  
6 may answer.

7 A Personally I have, yes.

8 Q Okay. So you've donated to him. Have you ever  
9 volunteered on one of his campaigns?

10 MS. DEROSE: Objection.  
11 Irrelevant.

12 BY MR. JONES:

13 Q You can answer the question.

14 A I have not, no.

15 Q Okay. Let's talk about your current position,  
16 Mr. Delahanty. What are your responsibilities in  
17 your current role?

18 A The current role, as director of IT services -- I'm  
19 in charge of procurement of technology both  
20 hardware and software for city departments. I  
21 continue to work in vendor management which is  
22 contract negotiations. I oversee outsourced help  
23 desk which is now outsourced, and that gets  
24 escalated to -- it as the potential to get  
25 escalated to internal services. So I still oversee

1 all end user support.

2 Q Do you have -- or do you have any oversight over  
3 the e-mail system used by city employees?

4 A I do.

5 Q And what oversight do you have?

6 A I have domain admin privileges to the Office 365  
7 system.

8 Q And does the City of South Bend have a contract  
9 with Microsoft for that system?

10 A We have an enterprised license agreement for the  
11 licensing we receive.

12 Q Okay. Could you explain that for me, what that is?

13 A Yes. Every three years we renew an enterprise  
14 licensing agreement which provisions an e-mail and  
15 archiving license for each user that will be  
16 using -- that will need an e-mail address and/or  
17 license to use office products.

18 Q Okay. And, you know, I'm not a tech person; so  
19 this is going to stretch my intellectual  
20 capabilities very far. Does that mean that you  
21 have an agreement -- or a licensing agreement with  
22 Microsoft so that you can use their software to set  
23 up e-mail accounts for the city?

24 A Yes. It's -- we consider it cloud hosted.

25 Q Now, "cloud hosted" meaning what?



1 A We buy licensing from Microsoft. They host all of  
2 our information in a -- in a repository.

3 Q I understand. So if someone has sent or received  
4 e-mails from a South Bend city e-mail address,  
5 those are held by Microsoft?

6 A Can I ask if you're -- to clarify if you're talking  
7 about current or former employees?

8 Q Sure. That's -- that's a great -- that's a great  
9 point. Let's talk about former employees. If  
10 someone worked for the City of South Bend in the  
11 last five years and they had a South Bend e-mail  
12 address and they left after their employment ended,  
13 where would their sent and received e-mails be  
14 held?

15 A When someone is terminated, we publish that  
16 information off and store it on our local file  
17 storage servers.

18 Q I understand. And where are those held?

19 A In a local cloud facility called MicroIntegration.

20 Q Where is that?

21 A The physical facility, I believe, is on Sample  
22 Street. I don't know the exact address.

23 Q And so there are physical servers at  
24 MicroIntegration that are holding the e-mails of  
25 former city employees?

1 A Yes.

2 Q Okay. How about for someone who is still employed  
3 with the city, has not been terminated? Where are  
4 their e-mails held?

5 A Within the Microsoft repository.

6 Q Okay. And that, in layman's terms, means there's a  
7 server somewhere else?

8 A Yes. And I have no knowledge to where that is.

9 Q Okay. But you just know that you license the  
10 ability to use it for Microsoft?

11 A Correct.

12 Q I want to talk to you about e-mails used for city  
13 purposes that are not controlled by you. I want to  
14 know if you know anything about that. Do you know  
15 if any city employees or officials use private  
16 e-mail accounts to conduct city-related business?

17 A I would have no knowledge of that, and then there's  
18 none that I'm aware of personally.

19 Q Okay. So, in your experience working for the city  
20 in the last 18 years, you've never seen an e-mail  
21 from a city official related to city business come  
22 from any account not affiliated with the City of  
23 South Bend?

24 A I personally have not, no.

25 Q Okay. You mentioned -- when I asked about what

1       you're prepared to testify about today, you  
2       mentioned retention policies. What is -- to your  
3       knowledge or your experience, your purview, what is  
4       the retention policy related to city e-mails?

5     A    Because all current employees are all held as live  
6       e-mails within Microsoft's environment, the  
7       retention policies are mainly towards terminated  
8       employees because those live outside of Microsoft.

9       We based our legal retention on Allen County's  
10      which I believe is for 60 days for terminated  
11      employees, but we've decided to go longer. So our  
12      retention is for three years for most general  
13      employees, ten years for legal employees, and  
14      indefinite for department heads. Also, items that  
15      are under current litigation -- we hold things for  
16      ten years past end of litigation.

17    Q    Okay. And you said you base that on what's done in  
18       Allen County, Indiana?

19    A    Correct.

20                   MS. DEROSE: I believe that  
21                   misstates his testimony. His  
22                   testimony was that -- let's stick  
23                   with the Allen County statement.  
24                   The Allen County retention is 60  
25                   days. We've elected to do three

1 years.

2 MR. JONES: I'm sorry. Yeah, I  
3 just -- I was referring to what you  
4 said at the start of your statement.  
5 I apologize. I don't mean to  
6 mischaracterize what -- what you've  
7 testified.

8 BY MR. JONES:

9 Q I just want to make sure we're -- we're clear on my  
10 question about the personal e-mail use. Have you  
11 heard of any city employees using personal e-mails  
12 for government actions, work, et cetera?

13 MS. DEROSE: Objection.  
14 Hearsay.

15 MR. JONES: This is a discovery  
16 deposition; so you can answer the  
17 question.

18 A Can you repeat the question?

19 BY MR. JONES:

20 Q Sure. Have you heard of any city employees or  
21 city-elected officials using private non-city  
22 e-mail accounts to conduct government business?

23 A Not that I can recall, no.

24 Q Okay. So going back to the retention policy that  
25 you discussed. When someone leaves the City of

1 South Bend, their employment here, or -- does that  
2 policy -- I'm sorry. I'm going to ask a question  
3 here.

4 Does that policy apply to elected officials as  
5 well who leave the city who are no longer in  
6 office?

7 A Yes. Anybody that had a city e-mail address.

8 Q Okay. So, if someone is on the city counsel and  
9 they decide not to run for reelection, once they're  
10 no longer in office, you download their e-mails,  
11 and you save them in accordance with the policies  
12 that you've outlined?

13 A That's correct.

14 Q And that's at MicroIntegration you said?

15 A Yes.

16 Q Great. Do you keep any city e-mails as part of  
17 your retention policy in paper form, or are they  
18 all kept electronically?

19 A All kept electronically.

20 Q I want to know a little bit more about the  
21 Microsoft -- you said it's Microsoft --

22 A Office 365.

23 Q -- Office 365. Are city employees and city-elected  
24 officials able to use that software on desktop  
25 computers?

1 A Yes.

2 Q Are they able to use them on smartphones?

3 A Yes.

4 Q Okay. So that would include iPhones or  
5 BlackBerries, et cetera?

6 A That's correct.

7 Q Can employees of the city, while they're employed  
8 with the city, or elected officials -- can they  
9 delete e-mails?

10 A They can delete e-mails from their viewable  
11 mailbox, but all e-mails that have come in or out  
12 of the city are archived within the Microsoft  
13 storage.

14 Q Got you. So --

15 A So even if they delete it, it's still saved within  
16 the Microsoft storage.

17 Q I understand. Mr. Delahanty, is there a written  
18 policy explaining the retention policy that you've  
19 outlined? Is it -- is it written somewhere?  
20 Recorded somewhere?

21 A I'm aware of Allen County's that we based ours off  
22 of; but as far as our -- our specific guidelines,  
23 not that I'm aware of, no.

24 Q Okay. So the process that you have outlined and  
25 the procedures that you've outlined for archiving

1 the former -- the e-mails of former city officials,  
2 that's not in writing anywhere?

3 A Not that I'm aware of.

4 MS. DEROSE: I think that  
5 mischaracterizes -- mischaracterizes  
6 the full testimony. His testimony  
7 was that the document pertaining to  
8 Allen County has been adopted and  
9 that's in written form.

10 MR. JONES: Well, no offense.  
11 You objected when I characterized it  
12 as the Allen County policy; so now  
13 we're going to get confused here.

14 Could you read my question  
15 back. Thank you.

16 (Court reporter read back the last  
17 question.)

18 A The city's based their retention policy on Allen  
19 County's which is a written document that I'm aware  
20 of, but I'm -- that's the only document that I'm  
21 aware of.

22 Q Okay. So Allen County has a document?

23 A Yes.

24 Q The City of South Bend doesn't have a document of  
25 their own?

1 A That's correct.

2 Q Okay. Thank you.

3 A That I'm aware of.

4 Q Have you, in your roles over the last 18 years,  
5 ever processed a public records request?

6 A Can you be more specific as far as "processed"?

7 Q Sure. If a public records request is delivered to  
8 the City of South Bend or has been delivered to the  
9 City of South Bend in the last 18 years, have you  
10 been tasked with going through either archived or  
11 live e-mails to respond to that request?

12 A I have through a request from the legal department,  
13 but I do not have any purview in what their  
14 original request was.

15 Q Okay. So you -- is that in your current role?

16 A Yes.

17 Q Okay. So, in your current role, you receive  
18 requests from the city's legal department to  
19 perform e-mail searches for specific -- for  
20 specific requests?

21 A Yes.

22 Q You don't know where they originate from, though?

23 A That's correct.

24 Q Okay. Could you start by going through the  
25 mechanics with me about how those requests are



1 processed?

2 So you get something from the city's legal  
3 department. I don't want to talk about specifics  
4 because I don't want to get into any sort of city's  
5 legal work product, confidentiality, et cetera.  
6 But can you give me, say, a hypothetical of a  
7 request that you would receive and how would -- you  
8 would process it?

9 A I created a form in a product called LincDocs  
10 that's a fillable form that the legal department  
11 fills out that when generated it comes to me via  
12 e-mail. The form asks for specific search terms to  
13 search for, specific date range to search for, and  
14 specific e-mail addresses or mailboxes to search.  
15 So those are what I'm delivered, and I run the  
16 search within Microsoft based on those search  
17 terms.

18 Q If information is missing from that form, are you  
19 still able to perform the search based on the  
20 residual information that is left there?

21 A Can you give an example for me --

22 Q I can. I gladly can. If somebody said -- filled  
23 out the link box form and didn't put in Pete  
24 Buttigieg's e-mail address, they just put I want  
25 e-mails between Pete Buttigieg and, say, another

1 e-mail address, would you be able to perform that  
2 search, or would you need Pete Buttigieg's e-mail  
3 address in order to perform that search?

4 A I do not need Pete's address if it's within the  
5 city address's structure. So if it's -- if it  
6 lives in Microsoft, I can enter it by name within  
7 Microsoft's search tool. If the address is outside  
8 of our Microsoft Office 365, I need the actual  
9 address to get the search results.

10 Q I understand. Are you, in your current role,  
11 familiar with, I guess, a current employee list  
12 with the -- the City of South Bend? Do you have  
13 access to a list of all the city employees?

14 A All city employees, no, I do not.

15 Q Okay. If I were to come to you and say I need to  
16 know the e-mail address of the mayor's chief of  
17 staff, are you able to procure that e-mail address  
18 for me?

19 A Yes.

20 Q Okay. So if I sent you this link box form and I  
21 said I want to see e-mails between the mayor's  
22 chief of staff and the police chief, that's the  
23 information that I give you, would you be able to  
24 perform that search?

25 A No.

1 Q Okay. Why not?

2 A I would need more information as far as -- well,  
3 who they are specifically looking for by name  
4 because I can't -- I cannot enter chief of police  
5 as a search term in Microsoft. I can enter a name  
6 as long as it's actually within Microsoft.

7 Q Okay. So if I came to you and said, "I want to see  
8 e-mails between" -- and I don't have the e-mail  
9 addresses -- I just say "between Scott Ruskowski  
10 and Laura Embler O'Sullivan," would you be able to  
11 perform that search?

12 A Yes.

13 Q Okay. You wouldn't need Scott Ruskowski e-mail  
14 address to perform that search?

15 A No, I would not.

16 Q If I said I want to see e-mails between the South  
17 Bend Police chief's city e-mail address and the  
18 current chief of staff for, let's say, last  
19 month -- so you know what month I'm talking about.  
20 You said you know, to some degree, who city  
21 employees are. You're able to procure that? If I  
22 sent -- if I asked for that, would you be able to  
23 perform the search?

24 A Not with the search terms given. I would ask --  
25 need to ask for clarification.

1 Q Okay. So giving the roles and things like that,  
2 that's just -- that's not enough for you to do it?

3 A Correct.

4 Q So if I came to you and said, "Who is the chief of  
5 police?", you wouldn't be able to answer that  
6 question?

7 A I could answer that question, yes.

8 Q Okay. I guess I'm just having trouble  
9 understanding this process. I'm not trying to  
10 confuse you or anything like that.

11 A Okay.

12 Q If you can tell me who the police chief is, why,  
13 when I request information, do I have to give you  
14 his name?

15 MS. DEROSE: Objection.

16 Objection. Speculative and  
17 relevancy. Form of the question.

18 A Can you repeat, please?

19 (Court reporter read back the last  
20 question.)

21 A I can tell you who the police chief is currently at  
22 any time. I do not want to make assumptions on  
23 search terms that I'm given; so that's why I would  
24 ask for clarification.

25

1 BY MR. JONES:

2 Q I understand. Okay. Got you. And these  
3 requests -- by the time they get to you, they've  
4 already filtered through the city's legal  
5 department?

6 A I get them directly from the city legal department.

7 Q Okay. So, to your knowledge -- and I don't want  
8 you to speculate. If you don't know, you don't  
9 know. These public records requests are -- they  
10 first go through the city's legal department before  
11 they come to you?

12 A That's how I understand that to work.

13 Q Okay. So when you get a request for e-mails -- the  
14 request from the city's legal department to search  
15 for e-mails, could you go through the mechanics  
16 with me of how you actually perform that search?

17 A Yep.

18 Q Thank you.

19 A There is a compliance and security portion of  
20 Microsoft Office 365 in our tenant portal which is  
21 dedicated only to southbend.in.gov,  
22 morriscenter.org, and palaisroyale.org because  
23 those are city addresses as well. I go into that  
24 portion, go to create a new search, and then it  
25 actually asks me what I want to search by.

1           I enter a date range, specific key terms, and  
2           whatever elements are on the -- the search request  
3           as far as where I want to search, what addresses I  
4           want to search, or I can enter by name if it's a  
5           city employee.

6   Q    Okay. Do you perform these searches yourself in  
7           your current role?

8   A    At least 95 percent of them I do. The only other  
9           person that has access is Sue Gerlach who reports  
10          to me.

11   Q    You said her name is Sue --

12   A    Gerlach, G-e-r-l-a-c-h.

13   Q    And when did she start working for the City of  
14          South Bend?

15   A    I don't know an exact date. I would say ballpark  
16          2007.

17   Q    And what is her current title?

18   A    Systems manager.

19   Q    Is she one of your subordinates?

20   A    Yes.

21   Q    In the last year, could you estimate how many of  
22          these e-mail searches you've done at the behest of  
23          the city's legal department?

24   A    It's hard for me to estimate. Some weeks I have  
25          none. Some weeks I have up to ten. I think a fair

1 estimate would be approximately three per week.

2 Q Okay. So would that be approximately more --  
3 would it be more than a 100 in the last year?

4 A I would say, yes, that's fair.

5 Q And, in performing all of those e-mail searches, do  
6 you ever look through the e-mails that are -- that  
7 are drawn up by your search?

8 Do you ever look over the e-mails?

9 A I do not, no.

10 Q Okay. Do you verify that the e-mails that you are  
11 returning to the city's legal department in  
12 response to their request are, in fact, between or  
13 involve the -- the things that they've requested  
14 between the people they've requested and involving  
15 the search terms that you've requested -- or  
16 they've requested?

17 A I do not. I -- I rely on the search tool to return  
18 the proper terms.

19 Q Okay. So in the 100 or so of these or more that  
20 you've done in the last year, have you seen any --  
21 have you seen any e-mails between City of South  
22 Bend e-mail addresses and private e-mail addresses  
23 that are not City of South Bend e-mail addresses?

24 A Can you clarify what you're asking? Are you --

25 Q Sure. I can do that. I want to know if, in the

1 public record searches that you've done in the last  
2 year, if you -- if you have seen any e-mails  
3 between city e-mail addresses, southbend.in.gov  
4 e-mail -- e-mails and private e-mail addresses, not  
5 city e-mail addresses?

6 A You're asking if I've seen the actual e-mails.

7 Q I'm asking if you have seen any e-mails like that  
8 in -- in performing these searches.

9 MS. DEROSE: He asked and  
10 answered. His testimony was that he  
11 does not look at the e-mails  
12 themselves.

13 A I have not seen any actual e-mails, no.

14 BY MR. JONES:

15 Q Are you aware of the existence of any e-mails that  
16 would fall within that category between a City of  
17 South Bend e-mail account, southbend@in.gov, and a  
18 private e-mail address that's not city?

19 A Are you asking specifically for ones that were  
20 requested through the legal department?

21 Q How about any?

22 A Yes.

23 Q Okay. And for the ones that involve the -- the  
24 senders from the private e-mail accounts, not a  
25 single one of those have been city officials?



1 A I -- I'm not exactly sure what you're asking.

2 Q Sure. So you've -- we've established that you are  
3 aware of e-mails that have been exchanged between  
4 city e-mail addresses and non-city e-mail  
5 addresses.

6 A That's correct.

7 Q Okay. I want to talk to you about the non-city  
8 e-mails. Have you seen any non-city e-mail  
9 accounts that have sent e-mails and those e-mail  
10 accounts are held or managed or sent by city  
11 officials?

12 A I have not seen any, no.

13 Q Okay. That's -- that was my question.

14 A Thank you for clarifying.

15 Q No problem. Like I said, this is -- you know,  
16 technology stuff is -- is not my -- not my forte;  
17 so...

18 Okay. I just want to make sure I understand  
19 everything involving what you request in order to  
20 perform a search. So you said -- I want to make  
21 sure I got the term right -- link box form?

22 A LincDocs.

23 Q LincDocs. I'm sorry.

24 A L-i-n-c-d-o-c-s.

25 Q LincDocs. Okay. A LincDocs form. Okay. What are

1 all the different categories on the LincDocs form?

2 A I can't say a 100 percent but -- because I've not  
3 looked at the form, but I can say that I do know it  
4 includes a date range, mailboxes to search,  
5 specific search terms, the name of the legal  
6 employee submitting the request, and the date  
7 requested. That's what I recall.

8 Q Once you have all that information, how long does  
9 it actually take to perform one search?

10 A For me to actually enter the search terms, it takes  
11 less than five minutes. Depending on how large the  
12 search area is and how fast the systems are -- the  
13 internet connection is, it can -- I've seen it take  
14 up to several hours.

15 Q Oh. Okay. Mr. Delahanty, are you able to perform  
16 a search using just terms and not sender or  
17 receiver e-mail addresses?

18 A Yes.

19 Q Are you able to perform a search just knowing the  
20 e-mail addresses?

21 A Yes.

22 Q Are you able to perform a search just based on a --  
23 on a date range?

24 A Yes.

25 Q So you outlined some circumstances in which you

1       have to ask the city legal department for more  
2       information.

3     A    Yes.

4     Q    Can you give me -- from -- from your experience,  
5       what are the things that you sometimes have to ask  
6       the city legal department about as far as more  
7       information?

8     A    Actually, I don't recall asking them for any more.

9     Q    Okay.

10    A    You posed that as an example, and I said that's  
11       when I would ask for more.

12    Q    Okay. I understand. So you've never had to ask  
13       the city legal department to clarify anything that  
14       they have sent into a linc -- LincDocs request?

15    A    Not that I -- that I recall, no.

16    Q    Great. If you receive a request in a LincDocs form  
17       from the city's legal department and it produces,  
18       say, 10,000 e-mails, do you make the decision as  
19       to -- whether to narrow the search or anything like  
20       that?

21    A    No.

22    Q    Okay. Do you turn over all 10,000 e-mails, then,  
23       to the city's legal department?

24    A    Yes.

25    Q    Mr. Delahanty, when was the LincDocs form created?

1 A I don't know an exact date for that. Best guess I  
2 would say 2012.

3 Q Did you create it?

4 A I did.

5 Q Okay. Could you tell me what LincDocs means? I'm  
6 sorry. I'm just ignorant of some of these things.

7 A Sure.

8 Q Yep.

9 A It's a proprietary name of the software. It's --  
10 it's basically the name. You can create forms that  
11 have fillable fields or drop-down fields. As  
12 people fill in the form, it generates it to a flat  
13 PDF file that is then either printable or e-mailed.

14 Q And you said it's "proprietary." Who owns it?

15 A I don't know off the top of my head. I'm sorry.

16 Q Okay. So it's not Microsoft?

17 A No. No.

18 Q It's another vendor?

19 A Correct.

20 Q Does the city have an ongoing contract with the  
21 LinksDocs vendor?

22 A Yes.

23 Q Is LincDocs used for anything other than record  
24 searches and retrievements?

25 A Yes.

1 Q What else can it be used for?

2 A It's just a basic forms program. So I know it's  
3 specifically used for people that want to terminate  
4 service with the waterworks or start new service.

5 Q Does it process payments?

6 A It does not. It's just a fillable form program.

7 Q I want to ask you about some public records  
8 requests that my client has filed, and I want you  
9 to know -- I know you're here. You've been  
10 incredibly cooperative; but if you don't know, I  
11 don't want you to speculate or anything like that.  
12 Okay?

13 Are you familiar with the community ID program?

14 A I am not.

15 Q Okay. You didn't help with creating or  
16 implementing it?

17 A No.

18 Q Are you familiar with Judicial Watch?

19 A I have heard the name recently, but I do not know  
20 anything about them honestly.

21 Q Where did you hear the name?

22 A My husband.

23 Q Okay. What did your husband tell you?

24 A I honestly --

25 MS. DEROSE: Objection.

1                   Objection. Outside the scope of  
2                   Rule 30(b). This is personal  
3                   knowledge. He's here for -- as a  
4                   city employee -- as the city's  
5                   representative for city business.

6                   MR. JONES: You're directing  
7                   him not to answer?

8                   MS. DEROSE: I am.

9                   MR. JONES: Okay. I'd like you  
10                  to certify the question, please.

11 BY MR. JONES:

12 Q   Has anyone in the city talked to you about Judicial  
13       Watch other than the city's legal department?

14 A   No.

15 Q   Do you have any opinion of Judicial Watch?

16 A   I do not.

17 Q   Okay. To your knowledge, have you ever worked on  
18       answering any of the public records requests made  
19       from Judicial Watch to the City of South Bend?

20 A   To my knowledge, no. I do not have any insight on  
21       where the requests are originated.

22                  (Plaintiff's Exhibit 1 marked for  
23                  identification.)

24 Q   Okay. Okay. I'm going to hand you -- I'm going to  
25       hand it to your counsel first. I'm going to hand

1       you what I've marked as Exhibit 1. There you go.  
2       Mr. Delahanty, I've handed you what I've marked as  
3       Plaintiff's Exhibit No. 1. Do you know what this  
4       is?

5       A    I do not.

6       Q    Okay. Have you ever seen it before?

7       A    I have not.

8       Q    Okay. On or about June 10, 2019, did you perform a  
9       public records search for any and all e-mails  
10      between mayor's office officials and  
11      representatives of the organization La Casa de  
12      Amistad?

13      A    I cannot recall one way or the other.

14      Q    To your knowledge, have you ever performed a public  
15      records search between mayor's office officials,  
16      employees, or representatives, and the organization  
17      La Casa de Amistad?

18      A    I cannot specifically recall one way or the other.

19      Q    Okay. Do you know whether Sue Gerlach performed  
20      these searches?

21      A    I'm not sure what she would have performed.

22      Q    Mr. Delahanty, on or around June 20, '19, until the  
23      present, have you performed any public records  
24      searches for e-mails between mayor's office  
25      officials, employees, or representatives of the

1 City of South Bend municipal agencies regarding the  
2 community resident card program or the use of  
3 community resident cards?

4 A I cannot recall a specific request about municipal  
5 ID cards, no. I -- I can't recall one way or the  
6 other. I go through so many that I'm not exactly  
7 sure.

8 Q Okay. So you said you go through so many. Let's  
9 see. Today is October 30th; so this was about four  
10 months ago. Would it be fair to say that you've  
11 done, averaging three a week, 40 or 50 public  
12 record searches in the last four months?

13 A I would say that's fair, yeah.

14 Q Okay. And you don't recall whether any of those  
15 public record searches involved the mayor's office  
16 and La Casa de Amistad?

17 A I can't confirm a 100 percent. Once I hand off, I  
18 honest don't remember those things.

19 Q And you don't remember whether you performed public  
20 records searches between the mayor's office and any  
21 other South Bend agencies regarding the community  
22 resident card?

23 A I specifically do -- can't remember one way or the  
24 other, no.

25 Q Mr. Delahanty, we're going to take a break for



1           about two minutes, if that's okay. Thank you.

2                       MR. JONES: Off the record,  
3                       please.

4                       (A recess was taken.)

5 BY MR. JONES:

6 Q    Thank you, Mr. Delahanty, for granting me a small  
7    break there.

8 A    Sure.

9 Q    You realize you're still under oath?

10 A   Yes.

11 Q   Great. Okay. I'm going -- I'm going to keep  
12   talking about Exhibit No. 1. Earlier in the  
13   deposition you discussed your ability to perform  
14   searches having search terms without e-mail  
15   addresses.

16 A   That's correct.

17 Q   Okay. Are you able to perform a search between  
18   city e-mail addresses and unknown other e-mail  
19   addresses if you have search terms that you're  
20   looking for?

21 A   I would be able to run the search for search terms;  
22   but unless I know an actual address, I can't  
23   guarantee that the results will be complete.

24 Q   Okay. Could you explain that for me?

25 A   Yes. As an example, if I had a personal e-mail

1       that was shawn@gmail.com, I wouldn't know what to  
2       search that e-mail by unless I had the actual  
3       address. I wouldn't know what terms to put in it  
4       for my search.

5       Q    Okay. How about if you're given people within the  
6       city -- your -- your task was searching their  
7       e-mail -- e-mail accounts for e-mails that are in  
8       their e-mail accounts with specific search terms?  
9       Are you able to do that?

10      A    Yes.

11      Q    Okay. Did you do that in response to any of the  
12      requests that Judicial Watch made?

13                   MS. DEROSE: Objection.

14      A    I'm not sure which --

15                   MS. DEROSE: Objection.

16      A    -- what requests --

17                   MR. JONES: Well, please.

18      A    -- would have come from Judicial --

19                   MR. JONES: Please.

20                   MS. DEROSE: Form of the  
21       question. It assumes facts -- it  
22       actually contradicts the deponent's  
23       testimony.

24                   MR. JONES: Sure. So I'm going  
25       to respond to that.

1           September 20, 2019, I received a  
2           letter from you, Ms. DeRose, and it  
3           said, "However, we can now designate  
4           now" -- I think that's a grammatical  
5           error -- "However we can now  
6           designate now one person who  
7           conducted the electronic searches  
8           required by the Access to Public  
9           Records Act requests of Judicial  
10          Watch at issue in this case."

11                 Is that this person?

12                 MS. DEROSE: It is this person.

13                 MR. JONES: Okay. So I'm going  
14           to go back to asking him questions  
15           about the searches that you told me  
16           he performed.

17                 MS. DEROSE: He did not know he  
18           performed them, and that's his  
19           testimony. He performed the -- the  
20           distinction is he was given the  
21           information -- this is in -- within  
22           the scope of his testimony -- he's  
23           given information. He's not told  
24           who -- who the actors are. He's not  
25           told who the requester is. He would

1 not have known that the material in  
2 the search -- the search terms he --  
3 he received were from Judicial --  
4 were from a request by Judicial  
5 Watch.

6 BY MR. JONES:

7 Q Mr. Delahanty, why do you think you're here today?

8 A Because I'm the person that performs the searches.

9 Q Is it your understanding that you perform the  
10 searches related to public records requests made by  
11 Judicial Watch?

12 A That's not my understanding, no.

13 Q Who did perform those searches?

14 A Can you be specific?

15 Q Absolutely. I can read you --

16 MS. DEROSE: For the record --

17 Q I can read you the actual requests that I made.

18 MS. DEROSE: For the record,

19 the only person in the city that --  
20 and consistent with Mr. Delahanty's  
21 testimony, the only person in the  
22 city that runs those searches is  
23 Mr. Delahanty; or in his absence,  
24 5 percent of the time, Sue Gerlach.

25 But Mr. Delahanty, by his own

1 testimony, does not know the  
2 identity of any requester. He would  
3 not be able to identify that he ran  
4 a specific request for a specific  
5 requester. He would be able to tell  
6 you, as he has, how he -- how he  
7 performs the request that a  
8 requester makes.

9 MR. JONES: Okay. I've given  
10 him the information about the  
11 specific requests beyond just the  
12 identity of the requester.

13 Does he have the ability to  
14 testify to the actual requests that  
15 he -- for the searches he performed?

16 MS. DEROSE: He does -- he  
17 would not know the searches that he  
18 performed, other than he searched  
19 all the terms.

20 MR. JONES: Okay. So we can  
21 agree that he would know whether he  
22 searched specific terms.

23 MS. DEROSE: If he can remember  
24 what -- what -- I think his  
25 testimony is that he performs

1 searches but doesn't recall all of  
2 the terms that are provided in every  
3 search. He's not given -- he's not  
4 given the access form.

5 MR. JONES: He's given a  
6 LincDocs request processed by your  
7 office.

8 MS. DEROSE: Correct, with the  
9 name of all the parties to be  
10 searched --

11 MR. JONES: Yeah.

12 MS. DEROSE: -- all the dates  
13 for search and any terms for search.  
14 That's what he's given.

15 BY MR. JONES:

16 Q All right. So, Mr. Delahanty, we've established --  
17 or I can reestablish for the record so there's no  
18 confusion here.

19 If I came to you and said, "I want to know -- I  
20 want to see e-mails from Mayor Buttigieg that he  
21 has received or sent that involve a specific search  
22 term," would you be able to process that and  
23 deliver those to me?

24 A You being --

25 Q Assuming that I was within the -- I worked for the

1 city's legal department.

2 A Yes. Those are the search terms that I can  
3 return -- that I could perform a search on.

4 Q Oh. Okay. So if I went to you -- if the city's  
5 legal department went to you, not me -- the city's  
6 legal department went to you and asked you to  
7 perform a search of e-mails sent by Mayor Buttigieg  
8 or received by Mayor Buttigieg involving the search  
9 term "La Casa de Amistad," would you be able to  
10 produce any of those e-mails if they exist?

11 A Yes.

12 Q Okay. If I or the city -- I keep saying "I." I'm  
13 sorry. If the city's legal department asked you to  
14 perform a search of e-mails and you used the --  
15 you -- you knew the e-mail or the -- the identities  
16 of both the parties with city e-mail addresses,  
17 would you be able to search their e-mails and  
18 return those e-mails to the city's legal department  
19 using the search term "community resident card"?

20 A Yes.

21 Q To your knowledge, did you ever perform such a  
22 search?

23 A I cannot recall.

24 Q Do you recall any public records searches that  
25 you've ever performed?

1 A As far as specific search terms, no, I -- I  
2 honestly cannot.

3 Q Okay. When's the last time you performed one?

4 A I -- I can't say a 100 percent. My guess -- best  
5 guess would be last week.

6 Q Okay. And you can't remember -- I'm not asking you  
7 what the identity of the --

8 A Sure.

9 Q -- parties are. You can't remember any of the  
10 e-mail addresses you searched in?

11 A Off the top of my head, no, I -- sorry, I can not.

12 Q Okay. Do you keep a record of all of the searches  
13 that you perform?

14 A I do not.

15 Q Okay. So once you perform the search, it's sort of  
16 out of mind?

17 A That's correct.

18 Q Okay. And you don't keep a record of what you've  
19 been requested to do?

20 A I do not keep a record.

21 Q Okay. So you don't know whether you were asked to  
22 perform these searches?

23 A I do not.

24 Q Is it possible that Sue Gerlach was tasked with  
25 performing these searches?



1 A It's possible.

2 Q Okay. Move on to -- Mr. Delahanty, you said you  
3 don't keep copies -- or excuse me -- you don't keep  
4 records of the searches that you perform; is that  
5 right?

6 A I do not keep them personally, no.

7 Q Okay. Do you know who does? If anyone?

8 A The -- are you asking about the requests that I  
9 receive from legal or the actual search terms? Or  
10 the --

11 Q Yeah.

12 A Clarify for me.

13 Q Okay. Yeah, I could -- I'd love to clarify that.

14 First of all, how about the requests from the  
15 legal department? Do you know if those retained or  
16 who they're retained by?

17 A Once forms are generated, they are saved on a  
18 network share just as a backup for one year, and  
19 then they're purged.

20 Q On that -- the LincDocs requests forms would fall  
21 under that category?

22 A Yes.

23 Q Okay. The actual mechanics of how you performed a  
24 search -- so you receive LincDocs requests from the  
25 legal department. It's given to you. You

1       translate that form into the actual mechanics of a  
2       search. Is that fair?

3       A    Yes.

4       Q    Okay. The way that you interpreted that form and  
5       created the search -- is a record of that kept  
6       anywhere? The way that you performed the search?

7       A    I don't know 100 percent. Not that I'm aware of.

8       Q    Okay. I'm going to hand you -- I'm going to hand  
9       it to your legal counsel first.

10       Before I do that -- Mr. Delahanty, when you  
11       perform a search, do you fill out a form?

12       A    What do you mean by "fill out a form"?

13       Q    Yeah. I'm trying to understand the mechanics  
14       of the -- of the lincs -- LincDocs. Docs lincs.

15       A    LincDocs is the form.

16       Q    LincDocs. There we go. I'm trying to figure out  
17       the -- the mechanics of this.

18       A    Yep.

19       Q    So, when you process a request from the city's  
20       legal department, do you fill out a form on the  
21       LincDocs system?

22       A    No, I do not do anything within LincDocs.

23       Q    Oh, okay. What do you do?

24       A    LincDocs is only the -- the form that comes  
25       directly to me that the legal department fills out.

1       Once I receive the -- the form, I go into  
2       Microsoft's security and compliance portal, and  
3       that's where there's a place for date range. I  
4       enter date range. A place for key words, and I  
5       translate the search terms over to Microsoft Office  
6       365's search tool.

7       Q   Okay. So, when you fill out that search tool, is  
8       there any record kept of the way that you filled  
9       out the search tool?

10      A   Not that I'm aware of.

11                       (Plaintiff's Exhibit 2 marked for  
12                       identification.)

13      Q   On -- I'm going to hand you this. This is  
14      Exhibit 2. Here you go. Okay. Mr. Delahanty, I'm  
15      handing you what I've marked as Exhibit 2. I would  
16      tender to you that this is a public records request  
17      made by my client to the City of South Bend. I'd  
18      like you to take a look at this. Have you ever  
19      seen this form before?

20      A   I have not.

21      Q   Okay. Well, this request was made at the end of  
22      June, June 24, 2019. Did you perform -- if you  
23      look on the first page, this is a records request  
24      for e-mails between Mayor Buttigieg, Chief of Staff  
25      Laura O'Sullivan, Genevieve Miller, Cherri Peate

1 Mark Bode or Bode, and Jamie Morgan, and officials  
2 from La Casa de Amistad including Executive  
3 Director Sam Centellas and President Felix Bueno,  
4 Jr.

5 Mr. Delahanty, do you know whether you were  
6 asked to perform such searches?

7 A Can you clarify? Are you asking if I received a  
8 form from legal department with these search terms?

9 Q Yes.

10 A I cannot specifically recall, no.

11 Q Okay. Do you know whether you ever performed a  
12 search for e-mails between Mayor Buttigieg and  
13 anyone from La Casa de Amistad?

14 A I can't recall one way or the other.

15 Q Okay. If you had the information that is on this  
16 form that I have in front of you, would you be able  
17 to perform an e-mail search?

18 A I'm not familiar with this form --

19 Q Okay.

20 A -- so I'm not sure what -- without deciphering  
21 this, what I would be able to do or not be able to  
22 do because I'm not familiar with it.

23 Q Would telling you to perform an e-mail search for  
24 Mayor Buttigieg -- would that be enough information  
25 for you to know to search the city e-mail address

1 of Pete Buttigieg?

2 A Specifically saying Mayor Buttigieg?

3 Q Yes.

4 A Yes.

5 Q Okay. If somebody asked you to perform an e-mail  
6 search for e-mails sent or received by Chief of  
7 Staff Laura O'Sullivan, would that be enough  
8 information for you to process that request?

9 A Yes.

10 Q If someone came to you and asked you to process an  
11 e-mail search for e-mails sent or received by  
12 Genevieve Miller, would that be enough information?

13 A Yes.

14 Q If someone came to you and asked you to search the  
15 e-mails sent or received by Cherri Peate, would  
16 that be enough information for you to perform the  
17 searches?

18 A Yes.

19 Q If someone came to you and asked you to look for  
20 e-mails sent or received by Mark Bode, would that  
21 be enough information for you to perform the  
22 search?

23 A Yes.

24 Q If someone came to you and asked you to perform a  
25 search of the e-mails sent or received by Jamie

1 Morgan, would that be enough for you to perform the  
2 search?

3 A Yes.

4 Q Okay. So we've established, then, that you don't  
5 necessarily need the e-mail addresses of the city  
6 officials in order to perform your searches.

7 MS. DEROSE: Objection. Asked  
8 and answered. You said -- his  
9 previous testimony was, as long as  
10 those persons are currently in the  
11 positions they have, he can perform  
12 the searches.

13 VIDEOGRAPHER: We're off  
14 record.

15 (A recess was taken.)

16 MR. JONES: We're back on the  
17 record here. Could you read me --  
18 or -- or read -- read the question  
19 back to the witness so that we can  
20 -- if we need to argue an objection  
21 again, we can do that.

22 (Court reporter read back the last  
23 question.)

24 A As long as it's city-specific e-mail, yes.  
25

1 BY MR. JONES:

2 Q Okay. So are you aware of whether you performed a  
3 search of Mayor Buttigieg's e-mail address, you  
4 know, sent to or from his e-mail involving search  
5 terms of La Casa de Amistad?

6 A I can't recall one way or another.

7 Q Do you know whether you performed a search of  
8 e-mails sent to or from Laura Ambler O'Sullivan and  
9 the search term La Casa de Amistad?

10 A I can't recall one way or the other.

11 Q Okay. Do you recall ever searching anybody's  
12 e-mail address, in your time working for the city,  
13 using the search term La Casa de Amistad?

14 A I honestly do not recall, no.

15 Q Okay. If somebody came to you from the city's  
16 legal department and they wanted to know about  
17 e-mails sent between a city e-mail account and a  
18 non-city e-mail account, would you be able to use  
19 search terms in place of the non-city e-mail  
20 account?

21 A Can you specify what you mean by "search terms"?

22 Q Sure. So let's say I come to you, and I say I need  
23 to see e-mails between Pete Buttigieg and Sam  
24 Centellas. You know Pete Buttigieg's e-mail  
25 address?

- 1 A I do.
- 2 Q You do. Let's say you don't know Sam Centellas's  
3 e-mail address.
- 4 A Okay.
- 5 Q Okay. And you don't think that Sam Centellas works  
6 for the City of South Bend.
- 7 A Correct.
- 8 Q Okay. Would you be able to perform a search using  
9 Sam Centellas as a key word rather than having to  
10 know his e-mail address?
- 11 A I would be able to perform that search. I can't  
12 guarantee that the search would also be complete.
- 13 Q Is that because you don't know Sam Centellas's  
14 e-mail address?
- 15 A That's correct.
- 16 Q Okay. Do you know if you produced any e-mails to  
17 the city's legal department in response to their  
18 request marked as Exhibit 2?
- 19 A I honestly have not seen -- this is the first time  
20 I've seen the request today; so I'm not sure what I  
21 would be performing searches against.
- 22 Q Okay. Do you know if you ever delivered e-mails to  
23 the city's legal department -- I'm trying think of  
24 the best way to say this. I'm going to scratch  
25 that question.



1           Have you ever performed any searches for the  
2           city's legal department for e-mails involving La  
3           Casa de Amistad?

4   A   Not that I can specifically recall one way or the  
5           other.

6                   (Plaintiff's Exhibit 3 marked for  
7                   identification.)

8   Q   Okay. I'm going to hand over to you Exhibit 3.  
9           Mr. Delahanty, I'm handing you what I've marked as  
10       Exhibit 3. Okay. This is an e-mail exchange  
11       between the City of South Bend and an employee from  
12       Judicial Watch. Have you ever seen these e-mails  
13       before?

14   A   I have not.

15   Q   Okay. We're going to go down the list here towards  
16       the bottom of this page; and if you look at the  
17       bottom of the page, there are four names listed.  
18       Can we agree on that?

19   A   Yes.

20   Q   Okay. And it's Executive Director Sam Centellas,  
21       President Felix Bueno, Jr., Vice President Tammy  
22       Bell, and Treasurer Molly Buser?

23   A   Yes.

24   Q   Okay. And next to those names there are what  
25       appear to be La Casa de Amistad-affiliated e-mail

1 addresses. Is that fair?

2 A Yes, there appears to be, but I can't confirm them.

3 Q Yeah. And I -- I wouldn't expect you to.

4 Mr. Delahanty, do you know whether you ever  
5 performed any searches related to any of those  
6 e-mail addresses?

7 A I cannot recall one way or the other.

8 Q If you had performed those searches or any searches  
9 involving these e-mail addresses, would there be a  
10 record somewhere that you performed those searches?

11 A If they were submitted on the LincDocs form within  
12 the last year, that would still be retained.

13 Q Okay. So the LincDocs form would be the place  
14 where that information would be stored?

15 A Yes.

16 Q Mr. Delahanty, do you know whether searches were  
17 performed of the city's e-mail accounts for the  
18 search terms "resident ID, community, or community  
19 ID"?

20 A I do not.

21 Q Do you know whether a search was performed of the  
22 city's e-mails for the search terms "community  
23 resident card, municipal ID, SBID" with no space,  
24 "SB" space, "ID, resident ID, or community ID"?

25 A I do not know.

1 (Plaintiff's Exhibit 4 marked for  
2 identification.)

3 Q Okay. I'm going to hand you Exhibit 4. Okay.  
4 I've handed you what I've marked as Exhibit 4.  
5 Have you ever seen this before?

6 A I have not.

7 Q Okay. This is a public records request filed by my  
8 client -- an employee of my client with the city.  
9 If you look at the top half of this form where it  
10 says "Records requested. Please be specific" it  
11 says "All e-mails sent to or from the chief of  
12 police of the South Bend Police Department from  
13 July to December 20, '16, mentioning community  
14 resident card, resident ID, community ID, SB ID,  
15 municipal ID, and/or SBID" with no space.

16 Does it appear that I read that correctly?

17 A I believe so.

18 Q Do you know whether -- well, first of all, let me  
19 ask -- if I came to you -- if the city's legal  
20 department came to you and made that request --  
21 they said we want to see e-mails sent to or from  
22 the South Bend chief of police from July to  
23 December 2016, mentioning those terms, would that  
24 be enough information for you to conduct those  
25 searches?

1 A I can't search by chief of police as a term; so I  
2 would ask for clarification.

3 Q Okay. And so the -- the holdup here for -- for you  
4 in performing this search would be that it doesn't  
5 specifically state the name of the chief of police?

6 A Can you clarify? Are you asking if the search  
7 terms that I received were amongst these?

8 Q Yeah. Let me -- I'm -- I'm sorry. I'm being  
9 unclear. I'm happy to rephrase this.

10 I asked you if this was enough information to  
11 perform a search, and you said just saying chief of  
12 police isn't enough. You would seek clarification.  
13 Is that fair?

14 A That's correct, yes.

15 Q Okay. So, if you knew the name of the chief of  
16 police or that was clarified for you, would you be  
17 able to perform this search?

18 A Theoretically, yes.

19 Q Okay. Are you able to perform this search without  
20 knowing who the receiving e-mail accounts would be?

21 A Yes.

22 Q Do you need to know specific individual senders or  
23 recipients with whom the chief of police would have  
24 been exchanging e-mails with in order to perform  
25 the search?

1 A No.

2 (Plaintiff's Exhibit 5 marked for  
3 identification.)

4 Q Okay. I want to move on to Exhibit No. 5. Okay,  
5 sir -- okay, Mr. Delahanty, I've handed you what  
6 I've marked as Exhibit No. 5. Have you ever seen  
7 this before?

8 A I have not.

9 Q Okay. This is a public records request submitted  
10 by my client to the City of South Bend in July of  
11 2019. If you look where it says records requested,  
12 it says "All records related to the community  
13 resident card program, excluding communications,  
14 but not -- but including, and not limited to,  
15 contracts, memoranda of understanding,  
16 monthly/yearly reports related to the number of  
17 cards issued and allocated, and policy documents  
18 related to the cards' use, eligibility of  
19 applicants," and then on the next page it says "and  
20 possible revocation."

21 Did you ever process a request like this?

22 A Not that I recall.

23 Q Okay. I know this process doesn't ask for  
24 e-mail -- it doesn't necessarily ask for any e-mail  
25 exchanges. Do you perform any searches beyond

1 e-mail searches as part of your job?

2 A No.

3 Q Okay. So if a request like this is made to the  
4 city, is it your understanding that what has been  
5 requested in here, those are not things that you're  
6 responsible for finding?

7 A I can't say a hundred percent. I'm not familiar  
8 with interpreting this; but just seeing this for  
9 the first time, I would say that it says "excluding  
10 communications." So I think that would be out of  
11 realm.

12 Q Okay.

13 A But, again, I cannot interpret this a hundred  
14 percent correctly.

15 Q Okay. Do you have any idea who within the city  
16 would perform a search for things such as what has  
17 been marked on Exhibit 5?

18 A I'm not familiar with who may do legal searches  
19 other than what I do, no.

20 (Plaintiff's Exhibit 6 marked for  
21 identification.)

22 Q Okay. Thank you. Okay. One second here. I'm  
23 going to hand you what I've marked as Exhibit 6.  
24 Okay. Mr. Delahanty, I've handed you what I've  
25 marked as Exhibit No. 6. Have you ever seen this

1 before?

2 A No, I have not.

3 Q Okay. It's two pages; so, on the first page where  
4 it says "records requested," it says e-mails  
5 between Mark -- excuse me -- Mayor Buttigieg, Chief  
6 of Staff Laura O'Sullivan, Genevieve Miller, Cherri  
7 Peate, Mark Bode, and Jamie Morgan on the one hand  
8 and the following accounts of La Casa de Amistad on  
9 the other. And then it's got Sam Centellas with  
10 his e-mail, President Felix Bueno with his e-mail,  
11 Tammy Bell with her e-mail, Molly Buser with her  
12 e-mail, and then it gives search terms, and then it  
13 gives a time frame.

14 Do you know whether you performed any such  
15 searches?

16 A I do not recall one way or the other, no.

17 Q Okay. On the second part of the request, which is  
18 on the second page, it asks for all e-mails between  
19 Mayor Buttigieg, Laura O'Sullivan, Genevieve  
20 Miller, Cherri Peate, Mark Bode, and Jamie Morgan  
21 on one hand, on the other hand Police Chief Scott  
22 Ruszkowski, Eric Horvath, Marcia Jones, John  
23 Collins. And it says it's regarding the community  
24 resident card program and/or the use of community  
25 resident cards employing the search terms community

1 resident card, CRC, Municipal ID, SB space ID,  
2 SBID, resident ID, and/or community ID.

3 Do you know whether you performed any such  
4 e-mail searches?

5 A I do not recall. I'm sorry.

6 Q Do you know whether, in response to such searches,  
7 you tendered e-mails to the city's legal  
8 department?

9 A I cannot recall.

10 (Plaintiff's Exhibit 7 marked for  
11 identification.)

12 Q I'm going to hand you what I mark as Exhibit 7.  
13 Okay. Mr. Delahanty, I'm handing you what I've  
14 marked as Exhibit 7. I'm going to tell you that  
15 this is a response that Judicial Watch received in  
16 August from the public records request that was  
17 marked as the previous exhibit. If you look past  
18 the first -- first of all, have you ever seen this  
19 before?

20 A I have not.

21 Q Okay. Well, look through all three pages, and let  
22 me know if you've ever seen it before. If you  
23 haven't, that's okay.

24 A No, I actually have not seen it.

25 Q Okay. So I would tender to you that these were



1 e-mails that we received from the city in response  
2 to the request marked as the previous exhibit.

3 So, if you look at the second page, does this  
4 appear to be an e-mail between Sam Centellas and  
5 Mayor Pete and Cherri Peate?

6 A It appears to be, yes.

7 Q Okay. And the third page -- does it appear to be  
8 an e-mail from Cherri Peate to someone with the  
9 e-mail address juan2@lacasadeamistad with a carbon  
10 copy to Sam Centellas?

11 A It does appears to be that, yes.

12 Q Okay. Have you ever seen these two e-mails before?

13 A Not specifically, no.

14 Q Okay. Do you know whether you performed the search  
15 to find these e-mails?

16 A I did -- I cannot recall. It does not seem  
17 familiar.

18 Q Okay. Have you ever seen a non-city e-mail address  
19 that you believed to be owned or controlled by Pete  
20 Buttigieg?

21 A I have not seen, no.

22 Q Okay. So, speaking in general terms, when you get  
23 a -- oh, gosh. LincDocs? Docs link?

24 A LincDocs.

25 Q LincDocs. Okay. I'm going to get it right one

1 day. LincDocs. When you get a LincDocs request  
2 from the city's legal department and you perform an  
3 e-mail search and you find e-mails, how do you give  
4 those e-mails to the city's legal department?

5 A If it only returns less than five, I specifically  
6 publish those e-mails off, attach them to an e-mail  
7 to send back to the requester.

8 Q Okay.

9 A If it's more, which it typically is, I publish off  
10 a PST file, which is a Microsoft type of file, move  
11 it to the legals -- either the legals shared drive  
12 with lockdown rights to the folder or directly to  
13 the network home directory of the requester.

14 Q Okay. When you said for searches that produce  
15 e-mails five or less you attach it to an e-mail to  
16 the city's legal department --

17 A Yes.

18 Q -- what format would those -- the e-mails that are  
19 the search responses -- would they be in?

20 A I'd have to check to be a hundred percent. I'm not  
21 sure, but I believe it's just the Outlook e-mail  
22 format, yeah.

23 Q Do you look through the search results when you get  
24 search results?

25 A I do not, no.

1 Q Okay. So you don't verify that the search was  
2 performed correctly?

3 A No. All I get is a number of returned search --  
4 or, you know, things that come back.

5 Q Got you. So you see the number, and then you make  
6 the decision as to whether to send those e-mails to  
7 the legal department as an attachment or as a --  
8 what you said -- a PST file?

9 A Yeah.

10 Q Okay. Tell me about the search process for former  
11 employees. If you receive a request from the  
12 city's legal department to search the e-mail  
13 addresses to and from former employees, how is that  
14 conducted?

15 A It's been a while since I've done one; but when  
16 someone leaves, we publish off their entire mailbox  
17 as one of those PST files. So I would then need to  
18 import it in to the Outlook clients; and from  
19 there, I can sort either by date range or by  
20 sender, receiver. I can sort different ways and  
21 then can drag and drop to a search results folder.  
22 There's also a search box area that I can put key  
23 terms in.

24 Q I understand. So if you were tasked with doing a  
25 search -- a term search without e-mail -- knowing

1 e-mail addresses -- you're just told we want to  
2 look through city e-mails from the last ten years  
3 for the term -- I don't know. You can come up with  
4 any term you want. What would be required to  
5 perform that search accurately?

6 A Are you speaking across all?

7 Q Yes.

8 A It would be very intensive. I would have to pull  
9 in each individual mailbox, allow time for it to  
10 load, and then run the search on each mailbox  
11 individually. It takes much, much longer than it  
12 does for current employees because those are held  
13 within Microsoft.

14 Q Okay. But it's -- it's possible to do that, but  
15 you would have to import the -- the boxes from  
16 every former employee from the last decade?

17 A Exactly.

18 Q Okay. I'm starting to understand.

19 A It's those that are retained by our retention  
20 policy, yes.

21 Q Is the searching of -- the actual functional  
22 searching of current city employee or affiliated,  
23 you know, officials e-mail accounts, current  
24 ones -- is that search as robust as the search that  
25 you would perform on the e-mail accounts of former

- 1 city officials or related people?
- 2 A How I understand it to work, yes.
- 3 Q Okay. If you receive a request and it produces  
4 thousands of results, do you make any determination  
5 or exercise any judgment in limiting that number;  
6 or do you just process the result and pass it on to  
7 the city legal department?
- 8 A When I see it, if it's a -- it comes back as a --  
9 like, a large number, I will then typically write  
10 back to the requester and ask if they want to  
11 narrow the terms at all.
- 12 Q Okay. How many e-mails -- what -- what is the --  
13 the number at which you exercise that discretion?
- 14 A There's no set limit. I would say anywhere over  
15 2,000 e-mails. I would typically say, "Do you want  
16 me to narrow it at all?"
- 17 Q I understand. The -- you're talking about when  
18 somebody leaves the City of South Bend and no  
19 longer has a city e-mail address the -- their  
20 e-mails are saved, you said, as a PST file?
- 21 A Correct.
- 22 Q Okay. And that is the entirety of the sent and  
23 received e-mails in their e-mail account?
- 24 A Correct.
- 25 Q Okay. Where is that file held?

1 A That's held on our network -- network storage  
2 server which is also housed in our virtual  
3 environment which is physically hosted at  
4 MicroIntegration.

5 (Discussion held off the record.)

6 Q Okay. Do you know whether you performed any  
7 searches involving La Casa de Amistad that produced  
8 so many e-mails that you asked for more guidance as  
9 to how to perform the search?

10 A Unfortunately, I don't recall one way or the other.

11 Q Okay. Have you ever been told, in your time  
12 processing e-mail searches, who a request has been  
13 made by?

14 A No.

15 Q Do you ever tell the city's legal department that a  
16 search that they've requested needs to be more  
17 specific?

18 A No.

19 Q Do you remember performing any searches ever for  
20 e-mails containing the term "community ID program"?

21 A Not that I can recall one way or the other.

22 Q Are you aware of any organization, other than  
23 Judicial Watch, that has ever made such a request?

24 MS. DEROSK: Objection.

25 Assumes facts not in evidence. He's

1                   never testified that he knew that  
2                   Judicial Watch made a request.

3 BY MR. JONES:

4 Q   Are you aware now today, as I've tendered  
5       documentation to you, that Judicial Watch has made  
6       such a request?

7 A   From making -- or from seeing these documents, I  
8       would assume; but I can't say that they were -- I  
9       don't know the legal department's process for  
10      processing that.

11 Q   Sure. So I can rephrase my question, then.

12           Are you aware of any organization that has ever  
13      made a request for e-mails involving the community  
14      ID program?

15 A   Are you asking if I know the organization or if any  
16      requests have been submitted?

17 Q   Well, let's take whether you know of any  
18      organization.

19 A   No.

20 Q   Do you know --

21 A   I do not know what organizations submit requests.

22 Q   Okay. And do you know whether any such requests  
23      were made by anybody?

24 A   Not that I can recall one way or the other.

25 Q   In performing the searches, I -- I don't want to

1 ask a question that assumes facts not in evidence;  
2 so I'm going to word this very carefully.

3 Mr. Delahanty, you've been tendered to us today  
4 as the person that performed the searches related  
5 to the public records requests that my -- or my  
6 clients made. Do you understand that?

7 A I've -- I've not been specifically told that, but  
8 I'm not sure.

9 Q Oh, okay.

10 MS. DEROSE: And I'll object to  
11 the whole course of -- line of  
12 questions upon privileged grounds  
13 because you're going into  
14 attorney-client.

15 BY MR. JONES:

16 Q Oh, okay. So I'm not trying to get into -- that  
17 was not my -- I apologize if that's where the  
18 question appeared to be going down.

19 It's been stated, on the record, by Mrs. DeRose  
20 I've tried to get -- understood on the record  
21 that --

22 Do you know whether you were the person that  
23 performed any searches for Judicial Watch?

24 A I do not know. There's no way that I can know  
25 where the searches came from.



1 Q Okay. Do you know whether you're the person that  
2 performed any searches reflected in the exhibits  
3 that have been tendered to you today?

4 A I can't say a hundred percent. I don't recall if I  
5 did the searches or not --

6 Q Okay.

7 A -- based on the evidence that I was given, no.

8 Q So any of the e-mail responses that may have been  
9 provided to Judicial Watch -- you don't recall  
10 seeing any such responses?

11 A You're asking the actual e-mails that were returned  
12 as search results. I don't see those when I run  
13 the searches; so they do not look familiar to me.  
14 I would not have seen them either way.

15 MR. JONES: Okay. Yeah, we're  
16 going to take one more short break,  
17 and then we'll wrap up. Okay?

18 THE WITNESS: Sure.

19 (A recess was taken.)

20 BY MR. JONES:

21 Q Mr. Delahanty, were you ever provided with a notice  
22 of today's deposition?

23 A Yes.

24 Q Okay. And was that notice, to your knowledge,  
25 signed by me or someone from my office?

1 A I'd have to look to be a hundred percent, yeah.

2 Q Okay. Well, I want to talk to you about the topics  
3 that you were tendered here to testify to, to your  
4 knowledge. Okay?

5 A Okay.

6 Q Mr. Delahanty, are you here -- do you have  
7 knowledge or are you prepared to testify regarding  
8 the creation of the city-recognized ID card program  
9 including the identities of the South Bend  
10 officials involved in the process?

11 A No.

12 Q Are you here to testify regarding Executive Order  
13 02-2016 including the involvement of Mayor  
14 Buttigieg and La Casa de Amistad in issuing the  
15 order?

16 A No.

17 Q Mr. Delahanty, are you here to testify to the means  
18 by which Mayor Buttigieg and his staff communicate  
19 within and outside the South Bend government about  
20 policy proposals and municipal programs?

21 A Can you specify? Are you talking about e-mail?

22 Q So it's any type of communication.

23 A Not completely, no.

24 Q Okay. Are you here to testify or can you testify  
25 to the names of all city employees past and present

1       who were involved in the process of creating and/or  
2       implementing the ID card program?

3       A    No.

4       Q    Can you or are you here to testify to the means by  
5       which the South Bend chief of police communicates  
6       within and outside the South Bend government about  
7       policy proposals and municipal programs?

8       A    Not a hundred percent, no.

9       Q    Can you testify to South Bend's record retention  
10       policy, including how records related to Executive  
11       Order 02-2016 have been retained, stored, and  
12       managed?

13      A    Not completely, no.

14      Q    Okay. Are you -- or can you testify to the  
15       processing of all access to public records act  
16       requests related to the lawsuit in this case?

17      A    No.

18      Q    Can you testify to the policies concerning  
19       responding to access to public records act  
20       requests?

21      A    No.

22      Q    Can you respond to the internal process, including  
23       the criteria utilized in the types of inquiries  
24       conducted within the office of the mayor for  
25       determining that Judicial Watch's APRA requests

1           were not reasonably particular?

2     A     No.

3     Q     Can you testify to the instructions provided to any  
4           South Bend employee tasked with searching for  
5           records responsive to South -- to Judicial Watch's  
6           APRA requests?

7     A     No.

8     Q     Can you testify to the legal authorities the office  
9           of the mayor relied on in conducting that Judicial  
10          Watch's APRA requests and -- and determined that  
11          they were not reasonably particular and that the  
12          reasoning behind -- I'm going to rephrase this  
13          question.   Strike that.

14                 Mr. Delahanty, can you testify to the legal  
15          authorities the office of the mayor relied on in  
16          concluding that Judicial Watch's APRA requests were  
17          not reasonably particular and the reasoning behind  
18          why such authorities were relevant and/or analogous  
19          to such requests?

20     A     No.

21     Q     Mr. Delahanty, is it your understanding that there  
22           are public records maintained by the City of South  
23           Bend that you are not tasked with searching?

24     A     Yes.

25     Q     What kind of records are those?

1 A Anything other than e-mail communications --

2 Q Okay.

3 A -- to or from city addresses.

4 Q So, if other requests are made for communications  
5 beyond simply e-mail communications, that is beyond  
6 your responsibility?

7 A That's correct.

8 Q Who in the legal department provides you with  
9 requests for e-mail searches?

10 A I've gotten them from two people: Assistant City  
11 Attorney Daniel Campbell Weiss and April Sniadecki.

12 Q Okay. Is April Sniadecki an attorney?

13 A I believe she's -- I don't know her exact title.  
14 She's not an attorney.

15 Q Okay. But you know that you receive public records  
16 requests from her?

17 A Yes.

18 Q And the same for Mrs. Weiss?

19 A Yes.

20 Q Is there anything that I have asked you about today  
21 or that we've -- any topics that we've discussed  
22 today that you have information on that you  
23 didn't --

24 MS. DEROSE: Object to the form  
25 of the question. Too broad.

1 MR. JONES: I wasn't finished  
2 answering the -- asking the  
3 question; so I'll start over.

4 MS. DEROSE: Sorry.

5 BY MR. JONES:

6 Q Yeah. Let me think about this. How to best ask  
7 this. When did you give money to Pete Buttigieg's  
8 campaign?

9 MS. DEROSE: Objection.

10 Relevancy. You may answer.

11 A I gave \$3 not long after he announced his bid for  
12 presidency. I can't give you an exact date. \$3 is  
13 the amount I gave.

14 BY MR. JONES:

15 Q Any other donations to Mr. Buttigieg?

16 A No.

17 Q Have we covered the topics that you thought you'd  
18 be asked about today?

19 A Yes.

20 Q For the topics that you thought we were going to  
21 ask you about today, did you feel that you were  
22 prepared to answer the questions?

23 A For what I thought I was going to be asked about,  
24 yes, I feel I was prepared.

25 Q What do you feel like you weren't prepared to be

1 asked about?

2 A Specifics --

3 MS. DEROSE: I'm going to  
4 object to the form of that question  
5 as speculative. He cannot predict  
6 what he wasn't supposed to be asked  
7 about.

8 MR. JONES: Okay. I probably  
9 used a double negative incorrectly  
10 there.

11 BY MR. JONES:

12 Q What topics, Mr. Delahanty, did we discuss today  
13 that you believed you were not prepared to testify  
14 about?

15 A Specifics regarding the specific searches that were  
16 submitted by the legal team to me.

17 Q Any other topics?

18 A Not that I can recall, no.

19 Q One more second here. Do you know who in the city  
20 is responsible for performing searches of  
21 communications other than e-mails?

22 A I do not know.

23 MR. JONES: Mr. Delahanty, I  
24 thank you very much for your  
25 patience and your time today.

1 THE WITNESS: Thank you.

2 MR. JONES: Pass the witness.

3 MS. DEROSE: Thank you.

4 MR. JONES: Mrs. DeRose.

5 MS. DEROSE: Let's go back to  
6 the question that was certified. I  
7 will now withdraw my instructions  
8 not to answer that question. You  
9 may answer, if you remember.

10 MR. JONES: Thank you.

11 BY MR. JONES:

12 Q I asked you what your husband told you about  
13 Judicial Watch?

14 A He did not tell me anything but --

15 MS. DEROSE: Before you answer,  
16 I want to preserve my relevancy  
17 objection.

18 MR. JONES: Of course. Yes.  
19 Actually, could you read the  
20 question as I read it; so we're all  
21 on the same page here. It's the  
22 certified question from the first, I  
23 think, five minutes of the  
24 deposition.

25 (Court reporter read back the last



1 question.)

2 COURT REPORTER: Well, the -- I  
3 have "What did your husband tell  
4 you?"

5 MR. JONES: Yeah. Okay.

6 MS. DEROSE: And it's --  
7 it's -- and also it's hearsay.

8 BY MR. JONES:

9 Q So it's a hearsay-and-a-relevancy objection, but  
10 you're no longer instructed not to answer.

11 A Sure.

12 Q So, Mr. Delahanty, what did your husband tell you  
13 about Judicial Watch?

14 A He didn't say anything specific really to me. I  
15 heard -- overheard him say the name of it from a  
16 conversation he was having with somebody. All I  
17 heard was the name. I didn't really even hear what  
18 the conversation was about. That's just why the  
19 name sounded familiar.

20 Q Okay. So other than that, have you ever heard the  
21 name Judicial Watch before?

22 A I honestly have not, no.

23 Q Okay. Are you aware of Judicial Watch's mission?

24 A No.

25 MR. JONES: Okay. I pass the

1 witness once again back to  
2 Mrs. DeRose. Thank you.

3 CROSS-EXAMINATION

4 BY MS. DEROSE:

5 Q Mr. Delahanty, is there anyone else within the city  
6 that has more knowledge than you regarding the  
7 performance of electronics e-mail searches under  
8 the Access to Public Records Act?

9 MR. JONES: I would object  
10 under -- as to speculation. You're  
11 asking him to testify to the  
12 knowledge that other people would  
13 have within the city. Of course,  
14 you can still answer.

15 A I would say no. I have -- Sue Gerlach and I are  
16 the only person that are here that are admins of  
17 the admin -- or admins of the e-mail system from  
18 before Microsoft was taken on as our e-mail system  
19 implemented. So I feel that I'm the expert  
20 in-house of our e-mail system and searches.

21 Q And at what time would Sue Gerlach perform  
22 searches?

23 A She would only perform searches if I was out of the  
24 office or scheduled times or sick which would be  
25 noted within timecards.

- 1 Q And you -- what you said was that you would -- that  
2 you typically do 95 percent of the searches, and  
3 she would do 5 percent of the electronic e-mail  
4 searches under the Access to Public Records --
- 5 A That's a round number guess, but that's probably  
6 close to accurate.
- 7 Q If you receive a -- now I'm going to forget the  
8 name of it. Doc links.
- 9 A LincDocs.
- 10 Q LincDocs. If you receive a LincDocs form from the  
11 legal department, do you actually -- do you or Sue  
12 Gerlach perform the search that's requested?
- 13 A Are you asking if -- if it's one of the two of us  
14 or --
- 15 Q If -- if a LincDocs form is sent over to the IT  
16 department, will it be performed?
- 17 A Yes.
- 18 Q Will that search be performed?
- 19 A Yes.
- 20 Q And why do you say that?
- 21 A It's part of our job. It's part of our  
22 responsibilities as a department.
- 23 Q If there's an omission, is there -- has -- have  
24 there been any omissions of your performance of  
25 those searches?

1 A Not that I'm aware of, no.

2 Q And what percent of your entire time, your 40 hours  
3 a week plus that you work, is devoted to APRA  
4 searches?

5 A A small amount, I would say. Easily less than  
6 5 percent.

7 MS. DEROSE: That's all I have.

8 REDIRECT EXAMINATION

9 BY MR. JONES:

10 Q I have a couple -- two follow-up questions. You  
11 mentioned a moment ago when Microsoft took over  
12 your e-mail hosting. When did that occur?

13 A 2012.

14 Q Okay. So for e-mails affiliated with the City of  
15 South Bend that predate 2012, what system did you  
16 use?

17 A Novell GroupWise.

18 Q Okay. And when you went from Novell GroupWise to  
19 Microsoft, what happened to the e-mails that were  
20 managed by Novell GroupWise?

21 A We did not have, to my knowledge, a litigation hold  
22 policy or a legal hold policy, retention policy, in  
23 place until 2014; but I do still have -- from  
24 active employees that transitioned from GroupWise  
25 over to Outlook -- Microsoft Outlook, I do still

1 have those GroupWise files.

2 Q Going back how far?

3 A I would have to check to be sure.

4 Q Before 2012?

5 A Yes.

6 Q When you receive a request to perform an e-mail  
7 search, do you know whether it's an APRA request or  
8 a different kind of request?

9 A I do not know, no.

10 Q Okay. So you receive searches to -- requests to  
11 perform e-mail searches, and you don't know what  
12 the -- the cause or the requester -- ultimate  
13 requester is?

14 A That's correct.

15 Q Other than from Ms. Sniadecki and Ms. Weiss, have  
16 you ever received a request to perform an e-mail  
17 search?

18 A I do recall one time that Aladean DeRose submitted  
19 one, but that's the only I can recall outside of  
20 the other two people.

21 Q When did you first become responsible for  
22 performing these searches?

23 A 2012 when -- I can't give an exact date. I'm  
24 sorry -- when we went to the new Microsoft system.

25 Q Okay. So, in the last seven years, you've only

1 received e-mail search requests from Mrs. Weiss,  
2 Ms. Sniadecki, and Mrs. DeRose.

3 A No. I'm sorry. The assistant city attorneys that  
4 were present before Ms. Weiss, Andrea Huntington;  
5 and I can't recall who would have been in place  
6 before that.

7 Q Okay. So beyond city attorneys, including  
8 Ms. Huntington, Mrs. Weiss, Ms. Sniadecki,  
9 Mrs. DeRose, anybody else ever ask you to perform  
10 an e-mail search?

11 A Outside of city attorneys, no.

12 Q Now, the -- you just mentioned an e-mail search  
13 that you were asked to perform by Mrs. DeRose.  
14 When was that?

15 A I can't give an exact time. I believe it was  
16 earlier this year, and I believe it's because  
17 Mrs. Weiss was out.

18 Q Oh, okay. What was it related to?

19 A I honestly cannot tell you because I don't know.

20 MR. JONES: Pass the witness  
21 back.

22 MS. DEROSE: No other  
23 questions.

24 MR. JONES: Great. Do you want  
25 to explain errata to him?

1 MS. DEROSE: We did, and he  
2 will be signing. Thank you.

3 MR. JONES: Awesome. Do you  
4 want a copy of this?

5 MS. DEROSE: Absolutely.

6 MR. JONES: Okay. So you got  
7 his card.

8 VIDEOGRAPHER: We are off the  
9 record at 3:14.

10 (Deposition concluded and witness  
11 excused at 3:14 P.M.)

12 \* \* \*