

## Interactions with Voice of San Diego

### “City IT Director: Ex-COO Didn’t Order IT Staff to Delete Ash Records”

Sept. 9, 2022

#### Questions:

The attorney questioning Kris Michell on the city’s behalf last month didn’t shed light on evidence the city may have that Michell ordered the IT Department to destroy “cell phone(s) and computer public records found in email, text messages and other chat tools” related to the city’s 101 Ash and Civic Center Plaza litigation. Is there additional information the City Attorney’s Office can provide regarding the substance of these allegations? Is there a reason more details weren’t shared during the deposition in an effort to elicit more information from Michell?

Michell said under oath in her deposition that the allegations that she ordered documents to be deleted regarding 101 Ash and CCP were inaccurate and unfair. She did say that she had directed duplicate versions of various 101 Ash legal memos to be shredded to try to lessen confusion and that some personal (or perhaps personnel) be destroyed that were saved on other servers. These comments under oath don’t seem to match up with the gravity of the allegations raised in the May 11 City Attorney’s Office letter. Does your office have more information than Michell provided under oath and if so, what can you share about it?

Does the City Attorney’s Office believe documents that Michell allegedly ordered to be destroyed were indeed duplicates or might there have been any original documents lost if documents were truly destroyed at her direction?

Michell said she only deleted and/or had shredded documents that would be considered “non-records” per the [city’s administrative regulation 85.10](#) since there were other city copies/originals, drafts and emails not related to city business. How would the City Attorney’s Office respond?

Michell also said under oath that she made no orders to the IT Department to destroy records on her computer or cell phone. Does the City Attorney’s Office want to provide any additional context?

Can you provide an update on efforts to schedule a deposition by Jason Hughes’ attorneys of a person most qualified to discuss the allegations raised against Michell?

#### Response:

We expect that many of your questions will be answered at the deposition of the PMK. We will provide you with details of that deposition once they are confirmed.

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#### Questions:

I just spoke with Jason Hughes’ attorney Michael Attanasio and he says he’s thus far been unable to secure a date for the PMK deposition and is eager to settle on one.

He shared this statement: “We look forward to taking the deposition of the city’s most knowledgeable witness regarding the city’s mishandling and destruction of evidence. We have been waiting months for that witness, and the city has repeatedly delayed producing such a witness. The city’s inability to produce such a witness raises questions that are very interesting to us.”

- Does the City Attorney's Office have a response to the issues Attanasio is raising here?
- Does the city have a witness (or witnesses) that can speak to the allegations raised in the May 11 letter?
- Does the city have a forensic trail that documents the allegations raised in May 11 letter?

**Response:**

This was our response to you on May 25. Feel free to use these answers:

*Is there a record of Michell instructing IT to erase records, as alleged? Can you explain how the City Attorney's Office knows this occurred? **We learned this from the San Diego Police Department.***

*Has the city confirmed that records were in fact destroyed following Michell's alleged direction? **See above.***

*Can you provide an update on the status of the investigation involving the footnote included in a version of an outside attorneys' investigation that was leaked to NBC 7 in 2020? Has that investigation been concluded and if so, what were the findings? **The City Attorney's Office referred this matter to the San Diego Police Department, the District Attorney's Office, the Federal Bureau of Investigations, and the United States Attorney. We cannot answer for those agencies.***

This was our response to you on June 1. Feel free to use this answer:

*When did the San Diego Police Department inform the City Attorney's Office of Michell's alleged order for the IT department to delete records? When did SDPD learn of this? (FYI, the San Diego Police Department has confirmed there is an ongoing investigation into the matters we discussed over email earlier this week.) **We defer to the San Diego Police Department Communications Office on this and any other questions concerning its ongoing investigations.***

Regarding the deposition of the PMK, we expect to agree on a date and time that would occur sometime after Labor Day.

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**Questions:**

I wanted to check in on Wednesday's scheduled deposition with the person(s) most knowledgeable on the allegations the City Attorney's Office raised against former COO Kris Michell back in May. I'm hoping to get these details nailed down by sometime tomorrow so I can plan accordingly.

- Can you confirm the deposition is still scheduled to occur Wednesday 8/31?
- Who has been selected to testify?
- What parties will be questioning this individual(s)? Jason Hughes' attorney Michael Attanasio has been pursuing this deposition most recently but I am aware others may also be interested.
- Will the city be ordering a transcript of this deposition? If so, I'd like to request one as soon as it is available.

**Response:**

The deposition is still scheduled to occur Wednesday. We will provide you a transcript when it is available.

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**Questions:**

I have obtained a draft transcript of the person most knowledgeable deposition that Jason Hughes' attorney conducted last week and have a number of questions.

On May 11, the City Attorney's Office delivered a letter to former city COO Kris Michell accusing her "direct(ing) city staff in the Information Technology Department to erase from (her) cell phone(s) and computer public records found in email, text messages and other chat tools relating to" 101 Ash St. and Civic Center Plaza.

City CIO Jonathan Behnke testified under oath last week that he spoke with members of the IT department and never got "any feedback saying they were directed to erase information." He also said his understanding is that "Ms. Michell did not direct anyone in my department to delete any data." Would the City Attorney's Office like to clarify the accusation in its May 11 letter and/or provide more context on Behnke's statements under oath? Does it stand by the accusations it made in the letter?

Behnke testified that Jessica Gonzalez, Michell's executive assistant, was the "catalyst" for the statement in the letter that Michell ordered documents to be purged. He said he learned that Michell directed Gonzalez to have her phone "reset" as she was leaving City Hall. He shared that Gonzalez did not know anything about a request to "delete records" and that he did not believe she was aware of whether there were official records remaining on Michell's phone before it was wiped.

Can the City Attorney's Office confirm whether Gonzalez's statements were indeed the catalyst for the allegation in the letter that Michell ordered IT to delete documents? Would the City Attorney's Office like to provide additional context about the testimony above? Does it have reason to believe there were official records remaining on Michell's cell phone before it was purged? Please elaborate.

Does the City Attorney's Office currently believe that Michell ordered IT department staff to purge or delete documents/records/data? Why or why not?

Behnke testified that former Assistant Chief Operating Officer/Deputy Chief Operating Officer Jeff Sturak shared with him that he had learned that Michell ordered a management analyst to shred documents in her final week at City Hall. It seems that Behnke became aware of this allegation while preparing for the PMK deposition. Michell has testified under oath previously that she only had documents shredded that were drafts or copies of city documents that already existed elsewhere, including multiple versions of investigations into city dealings on 101 Ash. She is adamant that her destruction of documents was in compliance with city document retention policies.

Was the City Attorney's Office aware of this allegation when it sent its May 11 letter? Does it believe Michell's order to shred documents was appropriate under city policy and the law?

Does the City Attorney's Office have any knowledge of the subject matter of the shredded records?

Behnke also testified that Sturak also told him that he requested after Michell departed the city that her email, home drive and One Drive records should be backed up. Was the City Attorney's Office aware of this when it sent its May 11 letter?

Behnke testified that the City Attorney's Office learned of Michell's alleged direction to erase phone and cell phone records at a Feb. 25 briefing by the San Diego Police Department. Can the City Attorney's Office confirm this is accurate?

Can the City Attorney's Office shed any light on what was covered at the Feb. 25 briefing? Was the briefing an update on the investigation into the Footnote 15 situation or a separate investigation?

Why did the City Attorney's Office opt to send the letter to Kris Michell on May 11, months after the Feb. 25 briefing?

Can you share why the City Attorney's Office decided that the letter was the most appropriate way to convey allegations regarding the alleged order to destroy documents to Michell? Had it attempted/had previous contact with Michell regarding the allegations?

Is it the City Attorney's Office's understanding that the SDPD investigation is ongoing? (I will also be reaching out to SDPD shortly.)

How would you respond to the contention that the City Attorney's Office sent a letter alleging Michell ordered documents destroyed as a response to allegations in Superior Court that the city hadn't provided all requested documents to Hughes' attorney in the discovery process?

Would the City Attorney's Office like to provide any additional context on the discrepancies between what Behnke shared in his deposition last week and what was included in the May 11 letter?

Would the City Attorney's Office like to provide any additional context or information on its understanding of actions taken by Michell that I have not directly asked about or on any related issues? If so, please share.

**Additional Question:**

Wanted to share this statement I just got from Jason Hughes' attorney Michael Attanasio so you have a chance to respond to this as well:

"The deposition of Mr. Behnke proved one of two things. Either City insiders are engaged in the destruction of key emails that would help Mr. Hughes, and are now covering it up, or the City Attorney is willing to make wild accusations against just about anybody. If the City Attorney's serious accusations against Ms. Michell were false, as the City's own witness said they were, then just imagine the lengths to which the City Attorney would go to falsely accuse Mr. Hughes in order to divert attention from the City's repeated failures on 101 Ash."

**Response:**

Below is a statement from our Office that addresses Mr. Attanasio's comments, and your earlier questions as well –

Statement from the City Attorney's Office:

Earlier this year, the City Attorney's Office learned that an SDPD investigation had ruled out every City employee but Kris Michell as the leaker of a confidential document that was later doctored with a fabricated footnote and given to NBC7. Additionally, SDPD told our Office that (a) Ms. Michell was not cooperative with its investigation and hired a criminal defense attorney once SDPD asked to speak with her and (b) investigators learned that Ms. Michell had directed City staff to shred City records and swipe her phone before leaving the City. Subsequently, we learned that Ms. Michell had given Cybele Thompson (who was no longer with the City) a number of 101 Ash-related documents that our attorneys had not seen before. Our Office contacted Ms. Michell to secure her cooperation in determining what

101 Ash records she had retained and what City records had been destroyed. She did not respond to our request, so we subpoenaed and deposed her under oath.

The City has already benefitted from our Office's pursuit of these questions. Our Office acquired information about Jason Hughes's role in the 101 Ash transaction that will be helpful in the City's lawsuit to recover taxpayer funds from Hughes. Additionally, it has confirmed that Ms. Michell's unusual actions to delete and shred records before she left the City resulted in the City having no records of her text messages during her tenure as CEO, particularly text exchanges with persons outside the City. The deposition also confirmed that SDPD's investigation was on target. Ms. Michell admitted under oath that she leaked confidential City documents to a candidate for City Attorney, and that she concealed this illegal action from the City and the public even after a document was doctored to contain false statements that became a central issue in the 2020 City Attorney's race.

If Kris Michell wants to make this right, and has nothing further to hide, she will voluntarily agree to allow the City to review City records on her personal devices.

As for Jason Hughes's criminal attorney, Attanasio continues to cry wolf in a pathetic effort to distract attention from his client's actions. There are no emails that can absolve Hughes of a 1090 violation, as disclosure does not cure a 1090 violation. Hughes was the City's agent in both the CCP and 101 Ash transactions, he said so himself, and he received secret kickbacks for steering both of those deals to his partners under those partners' terms. Bottom line, it's a jury's view of Hughes' backroom payoff that will matter – not Attanasio's.

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**Questions:**

-How would the City Attorney's Office respond to concerns that it publicly accused a former city official of allegations that the person it later selected as most knowledgeable to address questions about those allegations refuted? I imagine there will be speculation and concern once I report on the Behnke deposition that Kris Michell was being scapegoated publicly for allegations it could not prove and want to give you the opportunity to respond to this question directly.

-Did the City Attorney's Office reach out to Michell prior to its May 11 letter to try to seek information regarding actions she took related to city records?

-In your response, you stated that your office learned that an SDPD investigation had ruled out every City employee but Kris Michell as the "leaker of a confidential document that was later doctored with a fabricated footnote and given to NBC7." Does the city/SDPD have evidence that the Burke, Williams & Sorensen memo that Michell leaked was the same version of the memo as the document that included Footnote 15?

**Response:**

\*Note: The City Attorney and Assistant City Attorney responded via telephone.

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