



Jessica L. Blome
Deputy Director
Enforcement & Legal Affairs
Ethics Commission
Steve.Kawa@sfgov.org
Sent via email only

October 7, 2016

**Re: Request for Data Backup Files
In the matter of SFEC Complaint No. 04-160718, Michael Petrelis v. Steve Kawa**

Dear Ms. Blome:

I write in response to your September 29, 2016 letter in which you request, on behalf of the Ethics Commission, information regarding whether my deleted electronic calendar entries for the months of July, August, and September 2015 could be retrieved through an investigation or examination of data backup files.

To obtain the information requested in your letter, our office consulted with Norman Goldwyn, Information Technology Director for the Mayor's Office and the General Services Agency, who provided us with the following information. The electronic calendar entries in question were in Microsoft Outlook. As a general matter, once deleted items are emptied from an Outlook user's trash can, they can be retrieved by the user only for a 14-day period, by using the "Recover from Deleted Items" feature under the folder tab of Outlook. After the 14 days has run, they are no longer recoverable and the City does not have any back-up files or other mechanism for retrieving such deleted items. If a user's account is de-licensed – which can occur either when an employee moves to a different City department or separates from the City – there is a 30-day window to retrieve the user's mailbox from Microsoft's cloud. But such retrieval would only be able to access deleted items that are still in the user's trash can and had not yet been emptied from the trash can; items that had been emptied from the trash can would not be recoverable. After that 30-day period, the mailbox files are permanently deleted from Microsoft's cloud and are completely irretrievable.

Mr. Goldwyn searched the trash cans in the Outlook accounts for me and two other Mayor's Office staffers who had access to my Outlook calendar, and he determined that those trash cans do not contain any deleted items pre-dating June 2016. Accordingly, calendar entries from 2015 are no longer retrievable either from Mayor's Office computers or from the Microsoft cloud.

However, Mr. Goldwyn did ascertain that in October 2014, the Department of Technology (DT) placed my Outlook account, as well as the account of the two staffers who had access to my calendar, on what is termed a "litigation hold." Generally, this type of "hold" is used in the context of an investigation or litigation where the City may have a legal interest or duty to preserve documents related to a particular matter. It is my understanding that litigation holds are



used for discovery in litigation or for particular legal proceedings, and not for public records requests. It appears that the hold on my account is in fact not related to litigation, but rather was implemented by DT in 2014 during a migration to a new email system, and the hold was inadvertently never lifted.

According to Mr. Goldwyn, if an employee's email account is on a litigation hold, even if the employee empties his or her trash can and therefore the email is no longer visible or accessible from the employee's computer, it is accessible via an "e-discovery portal" located on Microsoft's cloud. It is possible that data files being retained pursuant to this litigation hold may include files related to calendar entries from July, August and September 2015, but we do not know at this time. Because Mr. Goldwyn does not have access to any data that is on litigation hold for the Mayor's Office, he referred us to DT for further investigation. We have reached out to DT for information regarding whether calendar entries (as opposed to emails) could be searched for and recovered from the litigation hold, and the procedure, time, and costs of conducting such a search and data extraction from the e-discovery portal. We have not yet received an answer from DT, but will follow up with another letter to the Commission as soon as we do.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Kawa".

Steve Kawa
Chief of Staff

cc: Michael Petrelis, mpetrelis@aol.com
Norman Goldwyn, GSA