

June 13, 2017

VIA EMAIL

Senator Joe Negron
409, The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100
negron.joe@flsenate.gov

Representative Richard Corcoran
420, The Capitol
402 S. Monroe Street
Tallahassee, FL 32399-1300
richard.corcoran@myfloridahouse.gov

**Re: POLITICO Public Records Requests, dated April 27 & 28,
and May 1 & 3, 2017**

Dear President Negron and Speaker Corcoran:

This firm represents POLITICO and its reporter, Matthew Dixon (together, “POLITICO”). On April 27 & 28, and May 1 & 3, 2017, POLITICO submitted five separate public records requests to the Florida House of Representatives and Senate. The requests seek text messages relating to state business from you, your chiefs of staff, and eight subcommittee chairs in each chamber (the “Officials”).¹ The requests are limited to messages sent or received between April 26 and May 3, 2017, a period during which the Florida Legislature was debating the 2017 budget. All of the Officials were deeply involved in the budget process.

Six Senate and eight House officials—namely, President Negron, Senators Bean, Bradley, Galvano, Simmons, and Ms. Vancura, and Speaker Corcoran, Representatives Brodeur, Diaz, Jr., Hager, Ingoglia, Ingram, Trujillo, and Mr. Bahl—have responded by stating that they have no

¹ Specifically, on the Senate side, the requests seek messages from President Negron, his chief of staff Cheri Vancura, and Senators Aaron Bean, Rob Bradley, Jeff Brandes, Anitere Flores, Bill Galvano, Denise Grimsley, Jack Latvala, and David Simmons. On the House side, the requests seek messages from Speaker Corcoran, his chief of staff Mat Bahl, and Representatives Larry Ahern, Ben Albritton, Jason Brodeur, Manny Diaz, Jr., Bill Hager, Blaise Ingoglia, Clay Ingram, and Carlos Trujillo.

June 13, 2017

Page 2

such text messages.² It is clear, however, that some officials *did* discuss state business via text message during this time, and have failed to produce those responsive messages. For example, records produced to POLITICO by Representative Ben Albritton (enclosed herein) indicate that he exchanged messages with two other Officials who say they possess no responsive records—Senator Rob Bradley and you, Speaker Corcoran. Likewise, while Representative Ingoglia has represented that he has no responsive messages, Mr. Dixon himself sent him a message (enclosed herein) on April 30. It is therefore clear that at least some of the Officials either do not understand the nature of POLITICO’s request, or have not conducted a sufficient search of their records.³

Whatever the reasons, this failure to produce responsive records violates both the Florida Constitution and the Public Records Act. *See* Fla. Const. art. 1, § 24(a); Fla. Stat. § 119.07(1)(a); *Bd. of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 124 (Fla. 2016) (describing the right of access to public records as a “cornerstone” of Florida’s “political culture”); *State v. City of Clearwater*, 863 So. 2d 149, 152-53 (Fla. 2003) (electronic documents “made or received . . . in connection with the transaction of official business” can be public records (citation omitted)). And the problems here were exacerbated by the fact that there is no system in place to ensure that officials in the Florida Legislature comply with their obligations in responding to public records requests.

POLITICO accordingly requests that you, in your capacities as House Speaker and Senate President, fulfill your obligations to enforce the requirements of the Public Records Act. Specifically, POLITICO requests that you direct the Officials who claim to have no responsive records (identified above) to conduct a thorough search of their text messages and promptly produce any that are responsive.

More broadly, in light of the fundamental importance of access to public records, POLITICO requests that you take concrete steps to ensure that future public records requests to members of the Florida Legislature are given the attention required by Florida law. As it stands, there is effectively no oversight mechanism that guarantees legislative officials are retaining—or making reasonable and good faith efforts to produce—records found on personal electronic devices, such as text messages. “It is the duty of public agencies, and those acting on behalf of public agencies, to provide access to public records.” *Timoney v. City of Miami Civilian Investigative Panel*, 917 So. 2d 885, 886 (Fla. 3d DCA 2005). Electronic records, like all other public records, “are subject to the statutory restrictions on destruction of public records.” Fla. Att’y Gen. Informal Advisory Op., 2007 WL 1703485, at *1 & n.4 (June 11, 2007) (“[A] public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the [Division of Library and Information Services of the Department of State]” (citing Fla. Stat.

² Senator Brandes has produced records in response to some, but not all, of the requests.

³ To take yet another example, Senate Appropriations Chairman Jack Latvala has produced dozens of responsive messages, including a text message exchange with his House counterpart, Chairman Carlos Trujillo. Representative Trujillo, however, has stated that he has no records responsive to any of POLITICO’s requests.

June 13, 2017

Page 3

§ 257.36(6)) and “each agency shall comply with the rules establishing retention schedules and disposal processes for public records which are adopted by the records and information management program of the division” (citing Fla. Stat. § 119.021(2)(b))).⁴ As the heads of your respective legislative chambers, it is up to you to enforce these requirements and exercise the required oversight.

We appreciate your prompt attention to this matter.

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: _____

Al-Amyr Sumar

Enclosures

⁴ The “[f]ailure of agencies to properly retain public records, including those records generated by public officials from their personal computers[,] can result in costly lawsuits for the agency.” Maggie D. Mooney-Portale & Kevin S. Hennessy, *The Government in Your Facebook: An Examination of Social Networking Sites and Florida's Public Records Law*, Fla. Bar J. (May 2011) at 41- 42 (citing *Lorenzo v. City of Venice*, No. 2008 CA 8108 SC (Fla. 12th Cir. Ct. Oct. 7, 2009)). In *Lorenzo*, for example, the court ordered the city of Venice to pay a substantial sum in attorney’s fees and costs after the city could not produce emails exchanged between city council members, because several members “failed to copy the clerk on emails transmitted from their personal email accounts” and “deleted their emails from their personal computers.” *Id.*

Rep. Ben Albritton – Text messages for public records request

Texts from 1:55pm to midnight, Friday, 4/28

Received from Rob Bradley at 4:46pm “20 minutes from now”

Reply “Ok”

Received “I have bill”

Reply “Can we do 30 mins please? Scarlet is on a task by big Approps and should be done then.”

Received “Yes” “I won’t move until I hear from you again”

Reply “Thank you!” “She should be finished shortly. Sorry for the delay.”

Received “No problem”

Reply “I’m good now” “Whenever you are ready will be fine. Scarlet is still tied up.”

Received “Just tell me when”

Reply “I’m ready now”

Received from Neil Combee at 6:12pm “Are we meeting at 6:15?”

Reply “No. Don’t know when we are going to meet”

Reply “8pm”

Received “Roger”

Received from Cynthia Stafford at 6:48pm “Please try to protect Healthy Plate/Healthy Living (#73). Thanks”

Reply “I’m trying for you”

Received “Thank you”

Received from Shawn Harrison at 7:15pm “Hey bud I was walking out the door to head home. May I be excused tonight?”

Reply at 9:11pm “Safe travels!” “Sorry I just saw this”

Received from Chuck Clemons at 6:00pm “When is our meeting tonight??”

Reply “Don’t know yet”

Received “Sometime tonight??”

Reply “I hope. Sorry Cuz, I just don’t know.”

Reply at 7:05pm “8pm”

Received “Thanks”

Received from Heather Fitzenhagen at 9:55pm “Very pleased with the Senate offer on Chapin, would be over the moon “moon icon” if we could meet it!”

Reply “(dollar sign, thumbs up icons)”

Received from Neil Combee at 10:04pm “Can we take the Senates position on Centennial Park, St Cloud? 100k. Line 265??”

No reply

Received from Derek Whitis at 2:09pm "Any luck w Polk State base cut intel Chairman?" "Please don't read if in session or committee."

No reply to Whitis

Received from Matt Caldwell at 3:08pm "Line 102 and Line 87. What are those about?"

Reply "102 - I'm planning on going to him, but it's his call as per he has another issue for me he needs to do. 87 - I'm planning to bump if he won't come to us."

Received "What is 102?"

Reply "Ag Facilities - examples would be regionally impactful rodeo arenas, rural area Ag meeting facilities..." "Comes from a prequalified DACS list"

Received from Matt Caldwell at 7:33pm "What is the line for RFL in the budget? The zero line."

Reply "Yes. Zero."

Received "Ha. The line #?"

Reply "Please call me"

Texts from 12:00am to midnight, Saturday, 4/29

Received from Chris Lyon at 9:09am "Any update on my request to remove that unnecessary paragraph of proviso for Mosquito Control research?"

No reply to C. Lyon

Received from Robert Coker at 7:32am "Has your sub committee finished its work and are you bumping the remaining issues to the Chairs?"

Reply at 8:57am "We are planning on meeting at 11:30"

Received - three thumbs up symbols

Reply "Noon"

Received from Neil Combee at 8:03am "Approximate meeting time?"

Reply "11:30"

Received "Roger"

Reply "Noon"

Received "Roger" "I really believe in that Lakes Region project. Please take the Senates position if you can!"

Reply at 3:37pm "It's on my radar"

Received from Chuck Clemons at 8:56am "Meeting this morning??"

Reply "Probably 11:30"

Received "10-4, thanks"

Reply "Noon"

Received "Thanks"

Received from Doug Mannheimer at 10:10am "appreciate your help closing out sand/grit! Always been all Fed TF. tx"

Reply "(thumbs up icon)"

Received "thank you!"

Sent to Rob Bradley at 10:18am "Call you just a few minutes. Sorry. On a day job call"

No reply from Bradley

Received by Larry Lee at 10:35am "Check the voicemail I left you. Please"

No reply to Lee

Received from Melony Bell at 11:03am "Will you please contact Ingram and ask him to support the bartow Northern Connector, now is the time. Like the next 20 min."

Reply "I already have, like 5 times"

Received "Thx so much"

Received from George Lindsey at 11:06am "My feelings are still hurt...but if you're going to take my homestead...let me have Bartow northern connector"

Reply "I'm a tryin' boss" "Won't stop tryin' either"

Received "Thanks"

Reply "Just had my 6th conversation about it with the transportation Approps chair"

Sent to Matt Caldwell at 11:44am "RFL is at 11m. Call and I'll explain."

Received from Todd Dantzler at 12:31pm "Ben, any help we can get from Rep INGRAM on Northern Connector will be greatly appreciated"

No reply to Dantzler

Received from Trish Phiffer "Hey Ben, please remember Bartow regarding the northern connector. It is a short stretch to complete. We need it to finish it. PLEASE HELP GET IT FUNDED!!! Thanks...Trish"

No reply to Phiffer

Received from Heather Fitzenhagen at 12:31pm "Thank you so much!!!!!"

Reply "(thumbs up icon)"

Received from Nick Willey at 11:12am "I talked to Mike Hansen in Senate. They need the \$7.5 m from LATF – Invasive Plants Program. We are standing down on this. We are grateful for where we are all things considered. We greatly appreciate you. Nick"

No reply to Willey

Sent to Matt Caldwell at 6:34pm "Back door"

Received "So, can you tell me some more answers?" "What's in the base for Lines: 91b 269a 270" "Or better, can she pull all the lines that are actually spending LATF, whether base or changed?"

Received from Jim Boyd at 7:15pm "Pls call when u have a minute" "Thanks!"
No reply to Boyd

Received from Derek Whitis at 4:29pm "Looks like y'all just zero'd out the Northern Everglades \$. That covers Alico, Evans, Lykes, Duda, ect." "You in the building?"
Reply "In my office. Come in the back door by the vending machines."
Received "Thx"

Sent to Derek Whitis at 5:54pm "It's officially on my Chairs list going forward."
Received "Thank you. When should we hear more?"
Reply "I'm asking for 10m to be plugged in there. As soon as I do."
Received "Thanks. The \$34m covers all the projects in the pipeline."
Reply "Can I call you?"

Received from Carrie Roth at 4:21pm "Tell me I shouldn't be panicking about the N. Everglades funding!"
Reply "Take deep breaths"
Received "Lots of time and money invested..." "Including state money!"
Reply "It's 3.925 million right?" "It's in as NRGR at that number. We are at 15m current year right?"
Received "For Brighton Valley alone, we have 9 M for construction in current year and will need \$3M year for lease and operation once constructed in the 17-18FY"

Received from Ernie Barnett at 5:58pm "Mr. Chairman. The Florida Land Council is very concerned that the Northern Everglades line being zeroed out by the House." "Do you have any advise on how to get line 251 restored?" "*advice"

Sent to Carrie Roth at 11:01pm "It's going to be ok. I think we have been talking past each other. The project funding for Northern Everglades in DEP is in the House offer for the base at full recurring funding (no reductions). The Sen has it shifted to non-recurring but it is still there. I'll explain when we talk next week. It's going to be ok I'm pretty sure."

Received "Thanks. Sorry for the unnecessary drama! Plenty other things to get worked out - glad this isn't one of them."
Reply "It's not unnecessary drama. I'm glad my friends are being watchful to help me stay on task. We need to get the Senate to back off of the move to make the budget item from recurring in the base to non-recurring. As long as it is on the budget spreadsheet, it is a conversation point"
Received "Something constructive for me to work on. Thanks so much Ben."
Reply "(thumbs up icon)"

Texts from 12:00am to midnight, Sunday, 4/30

Received from Nick Iarossi at 10:54am "Chairman, keeping on your radar the ask for help on City of Venice Water project for 700k. They are putting 1.3 million of their own money in. Just need the 700k to get them through the final phase and complete construction. It's been blessed by DEP. Thank you"

No reply to Iarossi

Received from Chip Case at 12:19pm "Look forward to circling up after session. Hope this last week goes well for you."

No reply to Case

Sent to Chip Case at 2:17pm "Are you around the Cap today?"

Received "Oh yes sir! Senate has my stuff funded and fighting until the end...house has me zeroed out...#nevergiveup!"

Reply "If you want to come by my office you are welcome to."

Received "On my way"

Reply "Come in the back door by the coke machines."

Received "Yes sir. Close."

Received from Emily Buckley at 2:48pm "Got your voicemail sorry I didn't get back to you sooner. I heard there was some misunderstanding so I'm all good now!!

Thanks for reaching back out!"

No reply to Buckley

Received from Jose Diaz at 12:26pm "Please don't forget about Miami river Commission and Miami Ag and Cattle Show. I love you"

Reply "How could I forget about your stuff? (thumbs up, peace sign, smile face icons)"

Received "Thanks bro"

Received from Greg Black at 3:47pm "Thanks for the help on the 75/47 project in the first pass! Hope it can stay in, especially since senate had it originally."

No reply to Black

Received from Rick Roth at 2:44pm "Good afternoon noon sir." "Do u have Rep Trujillos cell phone?"

No reply to Roth

Received from Rick Roth at 3:50pm "Never mind I got it"

No reply to Roth

Received from Doug Bell at 3:45pm "Ben. You around? Haven't seen you all day. Any Intel on FRDAP? I hope you did ok in water."

Reply "Nothing about FRDAP so far"

Received from Charlie Stone at 4:29pm "Hi Rep. where can I find a list of the approved water projects?"

Reply "Scarlet"

Received "Thanks"

Sent to Matt Caldwell at 4:27pm "Any news?"

Received "Put it in his hands and explained to Bahl too. I will await his phone call, etc."

Reply "(thumbs up icon)"

Texts from 12:00am to midnight, Monday, 5/1

Received from JD Alexander at 10:24am "Cuts to developmental ed at polk State costs them 500k. Performance dollars will not make up because 77% of students are part time. Net effect to Polk is a 500k cut. Any help would be much appreciated. Thx"

No reply to Alexander

Received from Derek Whitis at 10:24am "Need help Chairman (praying hands icon)"

No reply to Whitis

Received from Vanessa Hernandez at 10:11am "Hey Ben – Just curious...do you have any info or update on the legislation re: credit unions being recognized as qualified public depositories?"

Reply "I found it. SB 1170 by Garcia. It looks dead to me."

Sent to Richard Corcoran at 11:55am "Praying for your clarity of thought and strength today!"

Received "Great text. Thanks so much"

Sent to Randy Fine at 1:09pm "FYI – I'm thinking I should be to the Cap by 3pm."

Received "Let me know"

Reply "Where are you?" "I'm in your office"

Received from Doug Mannheimer at 5:53pm "must be proviso time!"

Reply "(questioning face icon)"

Received from Brewster Bevis at 9:50pm "Chair, hope all is well. Can you push for your public records bill to be taken back up in messages?" "Perry amended it today to do some "fixes" which we encouraged them to forgo"

Reply "I'll get with Oliva tomorrow."

Received "10-4. Bradley willing to help I think"

Reply "ok"

Received "He was upset Perry amended the bill."

Reply "Let's see what Oliva says before we talk to Rob. Ok?"

Received "10-4"

Texts from 12:00am to midnight, Tuesday, 5/2

Received from Cindi Steverson at 9:26am "SB 10. Ugh"

Reply "I hear ya. Grin and bear it is my advice."

Received "How's this for a grin (smiling face icon)" "Thx Ben. C"

Received from Dean Saunders at 10:00am "Ben what got worked out on conservation funding?"

Reply "Still working on it"

Received "Can you call me I have an idea"

Received from Brian Haas at 4:56pm "Hey Ben, I hope you're doing well. I just heard that the final budget includes a \$6,000 raise for asst public defenders and a \$1000 raise for asst state attorneys. I know it's late. Is there anything you can do about this? It doesn't make sense to me. Our prosecutors are going to be really disappointed."

No reply to Haas

Sent to Matt Caldwell at 7:14pm "Do we have a budget on the desk yet?"

Received "Not that I know."

Reply "10-4"

Sent to Ashley Kalleif at 12:02pm "Please call me when you get a chance regarding 1107."

Send to Ashley Kalleif at 1:28pm "I'm outside"

Received "I left but I'll be back in a few. Will put another card in!" "Or while you're off the floor, I can talk on my phone now!" "DFS/Elizabeth is good. She will confirm with John too."

Reply "ok"

Received "And we (AIF) are good too"

Reply "(thumbs up icon) I'll tell Oliva."

Receive "Many thanks."

Received from Jon Johnson at 3:35pm "Any word on Feeding Florida" "I can't change anything but must curious"

Reply "No word"

Texts from 12:00am to 10:57am, Wednesday, 5/3

Received from Ashley Kalleif at 9:47am "Need anything for today's returning message? Let me know! Excited to see this one cross the finish line! (checkered flag icon)"

Reply "I'm good. Thank you Mam!"

Received "Congratulations and most importantly, THANK YOU!!!"

Received from Jon Johnson at 10:10am "Any change you can Final Feeding Florida number"

Sun, Apr 30, 4:10 PM

Call when your done. Want
your thoughts on where AST
landed