

EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY,  
FLORIDA

JENNIFER JENKINS,

Plaintiff,

v.

CASE NO. 05-2023-CA-018437-XXXX-XX

BREVARD COUNTY SCHOOL  
BOARD; and  
MATTHEW SUSIN,  
in his official and individual  
capacity,

Defendants.

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**FOURTH AMENDED COMPLAINT**  
**UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**

COMES NOW Plaintiff JENNIFER JENKINS, by and through undersigned counsel, and hereby sues the BREVARD COUNTY SCHOOL BOARD and MATTHEW SUSIN, in his official and individual capacity, and says:

- 1) This is an action pursuant to Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, by JENNIFER JENKINS for access to certain public records – phone logs, emails, and text messages as specified herein - pertaining to phone and other communication records of the BREVARD COUNTY SCHOOL BOARD and/ or MATTHEW SUSIN.
- 2) This Court has subject matter jurisdiction pursuant to Article V, Section 5(b) of the Florida Constitution and Section 119.11, Florida Statutes.
- 3) Venue is appropriate in Brevard County because all material events took place in Brevard County, Florida.

- 4) Defendant BREVARD COUNTY SCHOOL BOARD (BOARD) is the school board presiding over Brevard County and maintains offices in Brevard County, Florida.
  - a) The BOARD incurs official liability because it is an “agency” and “records custodian” as defined in § 119.011, Florida Statutes, and is obligated to maintain, preserve, and produce public records and provide a good faith response pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes. “A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.” § 119.07(1)(c), Fla. Stat. Agencies must have a process available to offer the public a way to obtain those records held by individual employees or officials – regardless of whether they are located on private or state accounts or devices - and resolve disputes about the extent of compliance. *O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036 (Fla. 4<sup>th</sup> DCA 2018). Here, the BOARD did not make reasonable efforts and had no process in place to promptly compel or ensure the accuracy of SUSIN’s responses and, therefore, did not provide a good faith response.
- 5) Defendant MATTHEW SUSIN (SUSIN) is a private individual, member of the Board, and resident of Brevard County, Florida.

- a) SUSIN incurs official liability because he is an “agency” and “records custodian” as defined in § 119.011, Florida Statutes, and is obligated to maintain, preserve, and produce public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes. Further, SUSIN incurred official liability when he caused the records to be created by conducting official business on his personal cell phone.
- b) SUSIN has incurred individual liability because some of his conduct falls outside the scope of his authority and duties as a member of the BOARD and, therefore, he cannot claim that he acted under color of state law. *See Bear v. Escambia Cnt’y. Bd.*, 2023 U. S. Dist. LEXIS 50924, 2023 WL 2632103, No. 3:19cf4424-MCR/HTC, Fn. 16 (N.D. Fla. March 25, 2023); *citing Attwood v. Clemons*, 818 F. App’x 863, 871 (11<sup>th</sup> Cir. 2020) (quoting *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989)).

In sum:

- i) SUSIN failed to provide the BOARD records until on or about September 19, 2023 when he accessed his cell phone records by computer and gave them, or the information from them, to Attorney Mora at which time an excel spreadsheet was created and provided to JENKINS. This excel spreadsheet showed that calls existed despite SUSIN’s failure to produce them and despite SUSIN’s denial on two occasions - an email dated

September 2, 2022 and comments at a Board meeting on September 8, 2022 – that they did not exist.

- ii) SUSIN advised Attorney Quick on or about February 10, 2023, that there were no responsive records to JENKINS PRR #23-377 requesting communications between SUSIN and BCSO, yet BCSO produced a phone log and seven calls to JENKINS' identical request and the Defendants later created excel spreadsheet, as set forth in paragraph 5bi, that shows 9 calls.
- iii) On or about August 31, 2023, SUSIN advised BOARD Attorney Quick that there were no responsive records to JENKINS PRR #24-176 which requested communications between SUSIN and Commissioner Tobia, yet Commissioner Tobia produced records in response to JENKINS' identical request and the Defendants created excel spreadsheet, as set forth in paragraph 5bi, that shows 11 calls.
- iv) SUSIN has, at best, consulted, or, at worst, collaborated with Commissioner TOBIA in responding to PRR #23-904.
- v) Instead of using his district-issued cell phone, which would clearly be subject to the Public Records Act and would maintain records easily accessible by the BOARD, SUSIN has used his personal cell phone device for official communications, ignored advice of Board attorneys, and,

instead, asserted inapplicable out-of-state case law, all in an effort to thwart JENKINS' public records requests.

### **FACTS**

- 6) At all times relevant hereto, SUSIN used his personal cell phone for BOARD-related business.
  - a) SUSIN admitted during a November 22, 2022 board meeting that he was using his personal cell phone for BOARD-related business stating, "My district cell phone, the times and the months that was in question was over the summer. My district cell phone was broken. I had to bring it back in to have the district cell phone worked on. Our own IT person that's inside of here fixed it and everything's fine. So yes, until I had my district phone to use then I used my personal cell."
  - b) Reporter Bailey Gallion has confirmed that SUSIN used his personal cell phone to discuss BOARD-related business.
  - c) The Brevard County Sheriff's Office (BCSO) has produced records including text messages and seven calls between BCSO and SUSIN's personal cell phone.
  - d) The BOARD has provided the phone bills for SUSIN's district-issued phone, which included a phone log verifying that SUSIN's district-issued phone neither received nor placed calls during the time from June to August 2022.

- e) At his deposition on November 17, 2023, SUSIN testified that he used his personal cell phone to discuss Board-related business with Randy Fine, BCSO, reporter Bailey Gallion, the Florida Department of Education, and County Commissioner John Tobia.
- 7) PUBLIC RECORDS REQUEST #23-156 – Call Logs between SUSIN and Randy Fine – Personal cell phone logs not produced: On August 12, 2022, JENKINS made a public records request to the Defendants requesting, "[C]all log of Mr. Susin, both personal and school board issued. Calls to/from Randall 'Randy' Fine. Date range June 1, 2022 to present day (August 12, 2022)." (Exhibit A - PRR #23-156.)
- a) JENKINS requested the above records after Florida State Representative Randy Fine claimed a transgender student had committed a sexual assault on another student at Johnson Middle School and alleged that the staff of Brevard Public Schools knew about the event but failed to comply with mandatory reporting requirements. Fine's accusations were sustained by public statements and private inquiries about the incident by SUSIN. A weeks-long investigation by the Melbourne Police Department, found that the claim was "unfounded." As Fine's allegation began to unravel, in an effort to justify his claims, he and SUSIN intentionally publicized a past sexual assault incident at Space Coast Junior/ Senior High. This allegation of sexual assault was also found to be "unfounded" after an investigation by the Brevard

County Sheriff's Department. Fine's allegations – and SUSIN's support – came at time which certain politicians were focused on LGBTQ+ students.<sup>1</sup> The allegations resulted in dangerous public scrutiny to a precise minority group of children and Brevard Public Schools staff at specific schools who then received threats of violence and had to take extra security precautions.

- b) On August 15, 2023, the BOARD records custodian acknowledged JENKINS' request and on August 16, 2023 assigned it PRR # 23-156.
- c) On September 2, 2022, Holly Christmas, records custodian for the Board, responded, "There are no phone calls placed or received on Matt Susin's *district* phone. I have attached them and an example of a district phone bill for another employee with calls placed and received. Mr. Susin will need to bring his *personal* phone to ESF in order for us to retrieve anything from it, and *he would need to supply his personal phone bill for a call log.*" (Emphasis added.)
- d) On September 2, 2022, SUSIN stated in an email to Brevard County School Board Attorney Paul Gibbs, "I am not asserting any exemption regarding the requested phone logs. Rather, there simply are no public records to provide."

<sup>1</sup> March 28, 2023, Governor DeSantis signed the "Don't Say Gay" bill, see <https://apnews.com/article/florida-dont-say-gay-law-signed-56aee61f075a12663f25990c7b31624d>

e) On September 8, 2022, at a publicly noticed business meeting of the Brevard County School Board, SUSIN stated, "...the public records request was for a record that doesn't exist and I put plain caselaw, just like other people who said this to her previously also and now I sent that to you for review right?...the public record doesn't exist period."

f) The BOARD then sought "an opinion as to the potential application of Florida's Public Records Act to certain cell phone logs in connection with [JENKINS]' public records requests." A memorandum drafted by John J Quick, Esq. to the BOARD dated October 28, 2022 concluded,

"To the extent that any phone records might reflect calls including conversations which took place in connection with the School Board Member's official business, the **record of those calls should be produced** in response to this public records request. However, if no phone calls took place in connection with the School Board Member's official business, then those records would not be public records and, as a result, do not need to be produced.

**Should the phone records contain a mix of both public and private calls, all private calls should be redacted from the record and produced accordingly. Insofar as the School Board Member is unable to determine whether a call is either public or private in nature, then, in abundance of caution, the calls of undetermined nature should not be redacted** from the records produced." (Emphasis added.)

g) Pre-suit Notice: On February 8, 2023, both the BOARD and SUSIN received JENKINS' "Notice of Unsatisfied Public Records Request And Intent To File Civil Action Pursuant to § 119.12, Florida Statutes And Public Records Request (Restated)" dated February 7,



2023 pertaining to Public Record Requests #23-156, 23-173, 23-222, and 23-377.

- h) On March 7, 2023, Plaintiff filed her initial complaint alleging a failure to provide records in response to PRR #23-156.
- i) After suit, on September 19, 2023, 403 days after the public records request, Defendants provided an excel spreadsheet, purporting to represent the call logs requested. The newly created spreadsheet is not the document requested in its original form – an automated electronically maintained billing record or screen shot of SUSIN’s phone as required by § 119.01(2)(a), Florida Statutes. Further, the letter accompanying the spreadsheet stated that “Defendants do not concede that these documents are public records” or admit “that each of the calls identified ... involved ... any school board business” and “it is impossible to determine the nature and substance of each call reflected...”
- j) On November 17, 2023, SUSIN testified at deposition that he created the excel spreadsheet by accessing his personal cell phone records through his cell phone provider website.
- k) The created excel spreadsheet lists *three* calls between SUSIN with Randy Fine during the time frame set forth in PRR #23-156.
- l) At no time have Defendants produced the actual phone logs requested PRR #23-156.

- m) At no time have Defendants claimed an exemption to Chapter 119, Florida Statutes. In fact, SUSIN stated in a September 2, 2022 email BOARD attorney Paul Gibbs that he has never intended to claim an exemption. SUSIN also stated in a September 9, 2022 email to Brevard County Superintendent Dr. Mark Mullins that, “I have never sent an email nor have I ever made a statement that my *personal phone* is exempt from public records.” (Emphasis added.)
- 8) PUBLIC RECORDS REQUEST #23-173 – Call logs between SUSIN and FDOE – Personal phone logs not produced: On August 19, 2022, JENKINS made a public records request to the Defendants requesting, “[T]he call log of all calls made to the FDOE (Florida Department of Education) made by Mr. Susin from both personal and/or district issued phones” from “June 21 to present.” (Exhibit B – PRR #23-173.)
- a) JENKINS requested the above records after an article pertaining to Fine’s claim that a transgendered student had committed sexual assault at Johnson Middle School was published by Florida Today on August 18, 2022 stating, “School Board Member Matt Susin said he has been in daily contact with the Florida Department of Education about an investigation into the allegations which became public last week when State Rep. Randy Fine sent a letter to Florida Education Commissioner Manny Diaz, Jr., repeating the claims of the transgender bathroom assault over the summer at Johnson Middle School.”

- b) On August 22, 2022, the BOARD records custodian acknowledged JENKINS' request and assigned it PRR #23-173.
- c) On August 31, 2022, the BOARD records custodian advised, "There were no records found for [SUSIN's] *district* phone. I did send him a reminder for the requests to his *personal* phone." (Emphasis added.)
- d) On September 2, 2022, JENKINS emailed the BOARD records custodian stating, "I am adding these logs be direct copies from the phone provider, not screen shots to ensure accuracy."
- e) On October 5, 2022, JENKINS emailed the BOARD records custodian stating, "Does Mr. Susin have a response to this records request? The BOARD records custodian replied on October 6, 2022, "I did not ask Mr. Susin for his personal cell phone log again after this email for this request. Would you like me to ask him again?"
- f) The BOARD then sought "an opinion as to the potential application of Florida's Public Records Act to certain cell phone logs in connection with [JENKINS'] public records requests." A memorandum drafted by John J Quick, Esq. to the BOARD dated October 28, 2022 concluded,

"To the extent that any phone records might reflect calls including conversations which took place in connection with the School Board Member's official business, the **record of those calls should be produced** in response to this public records request. However, if no phone calls took place in connection with the School Board Member's official business, then those records would not be public records and, as a result, do not need to be produced.

**Should the phone records contain a mix of both public and private calls, all private calls should be redacted from the record**

**and produced accordingly. Insofar as the School Board Member is unable to determine whether a call is either public or private in nature, then, in abundance of caution, the calls of undetermined nature should not be redacted** from the records produced.” (Emphasis added.)

- g) Pre-suit Notice: On February 8, 2023, both the BOARD and SUSIN received JENKINS’ “Notice of Unsatisfied Public Records Request And Intent To File Civil Action Pursuant to § 119.12, Florida Statutes And Public Records Request (Restated)” dated February 7, 2023 pertaining to Public Record Requests #23-156, 23-173, 23-222, and 23-377.
- h) On March 7, 2023, Plaintiff filed her initial complaint alleging a failure to provide records in response to PRR #23-173.
- i) After suit, on September 19, 2023, 397 days after the request, Defendants advised that there were no calls made to the FDOE from SUSIN’s *personal* cell phone.
- j) However, at his deposition on November 17, 2023, SUSIN testified that he *did* contact FDOE during the requested time frame. When asked why no records were produced and why his counsel had advised no calls were made, SUSIN speculated he must have used a phone “outside my personal phone.” *Deposition video* at appx 12:20.
- k) At no time have Defendants produced phone logs in response to PRR #23-173.

- l) At no time have Defendants explained the delay in the response as to SUSIN's personal cell phone which is arguably a violation of their duty to make a good-faith response.
  - m) At no time have Defendants claimed an exemption to Chapter 119, Florida Statutes. In fact, SUSIN stated in a September 2, 2022 email BOARD attorney Paul Gibbs that he has never intended to claim an exemption. SUSIN also stated in a September 9, 2022 email to Brevard County Superintendent Dr. Mark Mullins that, "I have never sent an email nor have I ever made a statement that my *personal phone* is exempt from public records." (Emphasis added.)
- 9) PUBLIC RECORDS REQUEST #23-222 – Call logs and text messages between SUSIN and Reporter Gallion – *Personal* phone logs not produced – Text messages from *personal* cell phone timely produced: On September 9, 2022, JENKINS made a public records request to the Defendants requesting, "[A]ll phone calls and text messages to/from/between Matt Susin and Bailey Gallion, reporter at FL Today from the date range June 1, 2022 to present day (September 9, 2022) on both business and personal communication devices." (Exhibit C – PRR #23-222.)
- a) JENKINS requested the above records after Reporter Gallion advised SUSIN had communicated with her on numerous occasions during the Johnson Middle School and Space Coast Junior/ Senior High sexual assault investigations using his personal cell phone.

- b) On September 12, 2022, the BOARD records custodian acknowledged JENKINS' request and assigned it PRR #23-222.
- c) On September 26, 2022, the BOARD records custodian provided *text* messages between SUSIN and Reporter Gallion from SUSIN's *personal* cell phone and stated, "Per Matt Susin, 'Please find the attached text messages from my *personal* phone for PRR 23-222'" and "There are no phone calls or texts for Matt Susin's *business* phone responsive to your request." (Emphasis added.)
- d) On September 26, 2022, JENKINS replied to the BOARD records custodian, "Can you clarify if there is no response to phone calls on personal phone for this request. I just want to response to be clearly in writing and not just based off my own interpretation." The BOARD records custodian replied, "I will clarify with Mr. Susin."
- e) The BOARD then sought "an opinion as to the potential application of Florida's Public Records Act to certain cell phone logs in connection with [JENKINS'] public records requests." A memorandum drafted by John J Quick, Esq. to the BOARD dated October 28, 2022 concluded,

"To the extent that any phone records might reflect calls including conversations which took place in connection with the School Board Member's official business, the **record of those calls should be produced** in response to this public records request. However, if no phone calls took place in connection with the School Board Member's official business, then those records would not be public records and, as a result, do not need to be produced.

**Should the phone records contain a mix of both public and private calls, all private calls should be redacted from the record**

**and produced accordingly. Insofar as the School Board Member is unable to determine whether a call is either public or private in nature, then, in abundance of caution, the calls of undetermined nature should not be redacted** from the records produced.” (Emphasis added.)

- f) Pre-suit Notice: On February 8, 2023, both the BOARD and SUSIN received JENKINS’ “Notice of Unsatisfied Public Records Request And Intent To File Civil Action Pursuant to § 119.12, Florida Statutes And Public Records Request (Restated)” dated February 7, 2023 pertaining to Public Record Requests #23-156, 23-173, 23-222, and 23-377.
- g) On March 7, 2023, Plaintiff filed her initial complaint alleging a failure to provide records in response to PRR #23-222.
- h) After suit, on September 19, 2023, 375 days after the public records request, Defendants provided an excel spreadsheet, purporting to represent the call logs requested. The newly created spreadsheet is not the document requested in its original form – an automated electronically maintained billing record or screen shot of SUSIN’s phone as required by § 119.01(2)(a), Florida Statutes. Further, the letter accompanying the spreadsheet stated that “Defendants do not concede that these documents are public records” or admit “that each of the calls identified ... involved ... any school board business” and “it is impossible to determine the nature and substance of each call reflected...”

- i) On November 17, 2023, SUSIN testified at deposition that he created the excel spreadsheet by accessing his personal cell phone records through his cell phone provider website.
  - j) The created excel spreadsheet shows *18 calls* between SUSIN and Bailey Gallion within the requested time frame.
  - k) To date, Defendants have not produced the actual phone calls (logs) in response to PRR #23-222.
  - l) At no time have Defendants claimed an exemption to Chapter 119, Florida Statutes.
- 10) PUBLIC RECORDS REQUEST #23-377 – Text, email, and phone logs between SUSIN and BCSO – Not produced: On November 25, 2022, JENKINS made a public records request to the Defendants requesting, "[A]ll communication including text, email, and phone logs of calls received and sent to BCSO from Matt Susin on both business and/ or personal cell phones from August 1, 2022 to August 18, 2022." (Exhibit D – PRR #23-377.)
- a) JENKINS requested the above records after Reporter Gallion advised SUSIN had communicated with her on numerous occasions during the Johnson Middle School and Space Coast Junior/ Senior High sexual assault investigations using his personal cell phone. Further, Reporter Gallion advised SUSIN called and provided her with the Brevard County Sheriff's Office (BCSO) investigation file case number regarding the sexual assault claim that allegedly



occurred at Space Coast Junior/ Senior High and encouraged her to review it.<sup>2</sup>

- b) On November 29, 2022, the BOARD records custodian acknowledged JENKINS' request and assigned it PRR #23-377.
- c) In January 2023, the BOARD altered its public records request procedures pertaining to requests made from an individual School Board member of another school board member(s). The BOARD required requests made by an individual school board member of another school board member(s) be forwarded by the records custodian of the BOARD, Holly Christmas, to John J Quick, Esq., council of the BOARD. Mr. Quick communicated directly with the records custodian of the BOARD, the school board member requestor, and the school board member respondent(s) of the public records request.
- d) On January 19, 2023, 57 days after the request, the BOARD records custodian provided a record of the August 2022 phone bill for SUSIN's *district* phone, advising, "[t]here were no emails or texts responsive to your requests," and "[t]he School Board of Brevard County does not have access to *personal* cell phone records. Any

<sup>2</sup> A later public records request conformed that the individuals who accessed the BCSO investigation file of the sexual assault alleged at Space Coast Junior / Senior High included Randy Fine and Reporter Bailey Gallion who accessed it on August 16, 2022.

records available for personal devices or accounts will be sent by Mr. Quick.” (Emphasis added.)

- e) Pre-suit Notice: On February 8, 2023, both the BOARD and SUSIN received JENKINS’ “Notice of Unsatisfied Public Records Request And Intent To File Civil Action Pursuant to § 119.12, Florida Statutes And Public Records Request (Restated)” dated February 7, 2023 pertaining to Public Record Requests #23-156, 23-173, 23-222, and 23-377.
- f) On February 10, 2023, 79 days after the request, BOARD Attorney Quick emailed JENKINS stating, “I have been advised that there are no responsive documents to those requests.” Later, on February 16, 2023, Mr. QUICK clarified, “This response related to Chair Susin’s *personal* phone. Records from his *District* phone which are responsive will be forthcoming.” (Emphasis added.)
- g) On February 14, 2023, Brevard County Sheriff’s Office (BCSO) responded to a public records request from JENKINS that requested the same communications: “[A]ny incoming and outgoing calls and emails to/from Matthew Susin from the date range August 1, 2022 to August 18, 2022.” BCSO’s response contained a phone log of 7 *calls* between SUSINS’s personal cell phone and BCSO during the time frame of the records request, specifically on August 14, 2022 and August 15, 2022.

- h) On March 7, 2023, Plaintiff filed her initial complaint alleging a failure to provide records in response to PRR #23-377.
  - i) After suit, on September 19, 2023, 300 days after the public records request, Defendants provided an excel spreadsheet, purporting to represent the call logs requested. The newly created spreadsheet is not the document requested in its original form – an automated electronically maintained billing record or screen shot of SUSIN’s phone as required by § 119.01(2)(a), Florida Statutes. Further, the letter accompanying the spreadsheet stated that “Defendants do not concede that these documents are public records” or admit “that each of the calls identified ... involved ... any school board business” and “it is impossible to determine the nature and substance of each call reflected...”
  - j) The created excel spreadsheet shows *9 calls* between SUSIN and BCSO within the requested time frame.
  - k) At no time have Defendant’s provided the actual requested records.
  - l) At no time have Defendants claimed an exemption to Chapter 119, Florida Statutes.
- 11) Public Records Request #23-904 – Phone calls, text messages, and emails between SUSIN and Commissioner Tobia – Personal phone logs not produced - Text messages from personal phone untimely produced – Emails not produced: On June 1, 2023, JENKINS made a public records request to the Defendants requesting, “[A]ll phone calls, texts, and/ or

emails between John Tobia and Matthew Susin from the date range of 03/01/2023 to present day regarding any communication about school board and school board redistricting.” (Exhibit E – PRR #23-904.)

- a) JENKINS made the above request after both SUSIN and Brevard County Commissioner John Tobia made similar, but separate, public statements that the Brevard County Commission had offered to pay for the cost associated with redistricting the Brevard County School District.<sup>3</sup>
- b) On June 5, 2023, the BOARD records custodian acknowledged JENKINS’ request and assigned it PRR #23-904.
- c) Also on June 1, 2023, JENKINS sent an identical request to Brevard County Commissioner John Tobia who responded on the same day with screenshots, transcripts of text messages, and phone calls from his *personal cell phone*. However, some items provided by Commissioner Tobia were not in their original format and appeared to be incomplete communications.
- d) On June 30, 2023, JENKINS sent an email to the BOARD records custodian inquiring about the status PRR #23-904.
- e) On July 6, 2023, attorney John Quick sent JENKINS an email addressing a different request but continued by acknowledging JENKINS’ request for SUSIN-Tobia communications (#23-904),

<sup>3</sup>The redistricting plan eventually passed and changed the district lines such that Ms. JENKINS will no longer live in her district.

stating, “Separately, I am aware of your other records request related to communications with John Tobia and expect to respond to that shortly.”

- f) On July 11, 2023, 40 days after the request, SUSIN stated during a Board meeting that he had not yet had time to respond to the request (#23-904). JENKINS advised SUSIN that Mr. Tobia had received an identical request on the same day, June 1<sup>st</sup>, and had responded within hours.
- g) After the Board meeting, SUSIN, who appeared to have just learned that Commissioner Tobia had responded to an identical request, was seen waiting in the back of the County Commission chambers on his phone and approaching Commissioner Tobia when the Brevard County Commission meeting had concluded. During his deposition on November 17, 2023, when asked if he talked to Commissioner Tobia after the July 11, 2023 meeting he replied, “not that I know of.” However, SUSINS’ attendance at the meeting is documented in the video of the Brevard County Commission meeting on July 11, 2023. (Exhibit F – Screen capture from video of Brevard County Commission meeting of July 11, 2023 showing SUSIN.)
- h) On July 14, 2023, JENKINS emailed attorney John Quick about the unfulfilled request, stating, “This request was brought up publicly at the board meeting Tuesday (July 11<sup>th</sup>) because Mr. Susin placed

an agenda item for voting on redistricting fees.<sup>4</sup> Mr. Susin said “he hasn’t had time yet” to respond to the request. It has now been about 40 days since the request was sent. Unless Mr. Susin communicates incessantly with Mr. Tobia, this is unacceptable.”

- i) Pre-Suit Notice: On July 18, 2023, JENKINS sent the BOARD, SUSIN, and counsel for the BOARD and SUSIN, Randy Mora, JENKINS’ “Notice of Unsatisfied Public Records Request And Intent To File Civil Action Pursuant to § 119.12, Florida Statutes And Public Records Request (Restated)” pertaining to PRR #23-904 by email. On July 20, 2023, the BOARD, SUSIN, and Mr. Mora, received copies of the Notice by certified email.
- j) On July 31, 2023, Plaintiff’s counsel filed Plaintiff’s Motion For Leave To File Second Amended Complaint [Dkt. 22] seeking to the add failure to respond to PRR #23-904.
- k) On August 4, 2023, 64 days after the request and 19 days after notice, Defendants, through Attorney Quick, provided screen shots of text messages between SUSIN and Tobia in response to request #23-904.
- l) At his deposition on November 3, 2023, Commissioner Tobia testified that SUSIN had asked him for his response to the June 1, 2023 public records request and that he (Tobia) had provided it to

<sup>4</sup> SUSIN moved to allow the fee associated with redistricting the Brevard County School Board to be paid for by the Brevard County Commission, as offered, but the motion did not pass.

SUSIN by *email*. At his second deposition on December 14, 2023, Commissioner Tobia testified he has sent his response to the June 1, 2023 public records request to SUSIN by *mail*.

- m) After suit, on September 19, 2023, 110 days after the public records request, Defendants provided an excel spreadsheet, purporting to represent the call logs requested. The newly created spreadsheet is not the document requested in its original form – an automated electronically maintained billing record or screen shot of SUSIN’s phone as required by § 119.01(2)(a), Florida Statutes. Further, the letter accompanying the spreadsheet stated that “Defendants do not concede that these documents are public records” or admit “that each of the calls identified ... involved ... any school board business” and “it is impossible to determine the nature and substance of each call reflected...”
  - n) The created excel spreadsheet shows *11 calls* between SUSIN and Tobia within the requested time frame.
  - o) At no time have Defendants produced the call logs in response to PRR #23-904.
  - p) At no time have Defendants claimed an exemption to Chapter 119, Florida Statutes.
- 12) PUBLIC RECORDS REQUEST #24-176 – Phone, text, and email communications between SUSIN and Commissioner Tobia – Not produced:  
On August 2, 2023, JENKINS sent a public records request to the

Defendants requesting, “[A]ll communication (phone, text, email) between, to/from Matthew Susin and John Tobia from the date range June 1, 2023 to present day [August 2, 2023.]” (Exhibit G – PRR #24-176.)

- a) JENKINS made the above request after several observations indicated that SUSIN was attempting to correlate his response to her June 1, 2023 public records request, PRR #23-904, with Commissioner Tobia, to wit: Following the July 11, 2022 Board meeting in which SUSIN stated that he had not yet had time to respond to PRR #23-904 and JENKINS advised him that Commissioner Tobia had received an identical request on the same day and responded within hours, SUSIN, who appeared to have just learned that Commissioner Tobia had responded to an identical request, was seen waiting in the back of the County Commission chambers on his phone and approaching Commissioner Tobia when the Brevard County Commission meeting had concluded. SUSIN’S attendance at the meeting is documented in the video of the Brevard County Commission Meeting on July 11, 2023. (Exhibit F – Screen capture from video of Brevard County Commission meeting of July 11, 2023 showing SUSIN.)
- b) On August 8, 2023, the BOARD records custodian acknowledged JENKINS’ request and assigned it PRR #24-176.
- c) On August 31, 2023, the Defendants, through attorney John J Quick, advised, “there are no documents responsive to this request.”



- d) However, on August 3, 2023, JENKINS had made a nearly identical public records request to Commissioner Tobia requesting, “I would like to request all communication (phone, text, email) regarding official board business between Matthew Susin and John Tobia from June 1, 2023 to present day [August 3].” On August 24, 2023, Commissioner Tobia responded by providing text messages and emails.
- e) Pre-Suit Notice: On September 6, 2023, JENKINS sent the BOARD, SUSIN, and counsel for the BOARD and SUSIN, Randy Mora, JENKINS’ “Notice of Unsatisfied Public Records Request And Intent To File Civil Action Pursuant to § 119.12, Florida Statutes (Five-Day, Presuit Notice) And Demand To Obtain And Preserve Evidence” by email. The Notice was received by the BOARD and Mr. Mora on September 8 and by Mr. Quick and on September 11, 2023 by certified mail.
- f) On September 22, 2023, JENKINS filed a motion for leave to amend the complaint to add the violation of PRR # 24-176. [Dkt. 32.]
- g) On November 1, 2023, the Court granted JENKINS’ motion for leave to amend the complaint and the violation of PRR #24-176 was added. [Dkt. 52.]
- h) At no time have Defendants provided any records.
- i) At no time have Defendants claimed an exemption to Chapter 119, Florida Statutes.

- 13) On December 14, 2023, the BOARD records custodian, Holly Christmas, testified at deposition that, in sum, the BOARD does not have a procedure in place to enforce and insure full or prompt compliance by individual employees or officials, and, further, that the BOARD does not have a procedure in place to resolve disputes between individual employees or officials and the public.

**COUNT 1: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**  
**PUBLIC RECORDS REQUEST #23-156**  
**PURSUANT TO CHAPTER 119, FLORIDA STATUTES**  
**Call logs from SUSIN personal phone between SUSIN**  
**and Randy Fine: Personal phone logs not produced.**  
**Against the BOARD and SUSIN in his official and individual capacity**

- 14) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 15) CONSTITUTIONAL AND STATUTORY RIGHT: Plaintiff has a constitutional and statutory right to require the production of public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 16) AGENCY AND RECORDS CUSTODIAN: Both the BOARD and SUSIN are an “agency” under § 119.011(2) and of “custodian of public records” as defined by § 119.011(5), Florida Statutes, and have a duty to produce the public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 17) PUBLIC RECORDS: The records sought are public records because they meet the definition of “public records” as defined in § 119.011(12), Florida

Statutes, and encompassed within Article I, Section 24 of the Florida Constitution.

- 18) NO EXEMPTIONS: No exemptions apply that would prevent inspection or copying and Defendants have claimed no exemptions.
- 19) UNREASONABLE REFUSAL: Defendants' failure to provide, fully provide, or promptly provide the records or a good faith response to the public records request is unreasonable because the records were accessible to SUSIN and the BOARD failed to make reasonable efforts and to have a reliable process available to offer the public a way to obtain records held by individual employees or officials on private devices and to resolve disputes about the extent of compliance. *See O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036 (Fla. 4<sup>th</sup> DCA 2018).
- 20) ACTUAL REFUSAL/ LACK OF GOOD FAITH RESPONSE: Defendants have failed to provide the requested records in a full and in a timely manner. Further, Defendants failed to make a prompt and good faith response to the public records request. A "good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be assessed." § 119.07(1)(c), Fla. Stat.
- 21) VIOLATION OF CHAPTER 119 AND FLORIDA CONSTITUTION: Defendant's failure to provide Plaintiff with the records in their automated electronically maintained form and/ or make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process

in place to ensure compliance, violates the Florida's Public Records Act and Article I, Section 24(e) of the Florida Constitution.

- 22) RELIEF REQUESTED: Plaintiff seeks an order compelling the Defendants to produce the public records requested herein and an order requiring them to pay attorney's fees and costs due to their failure to promptly produce the records and/ or to make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes. *See Shea v. Cochran*, 680 So. 2d 628 (Fla. 4<sup>th</sup> DCA 1996) (finding the Florida Public Records Act provides a cause of action for relief); *Poole v. City of Port Orange*, 33 So. 3d 739, n.3 (Fla. 5<sup>th</sup> DCA 2010).

**COUNT 2: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**  
**PUBLIC RECORDS REQUEST #23-156**  
**MANDAMUS PURSUANT TO FLA. R. CIV. P. 1.630**  
**Call logs between SUSIN and Randy Fine:**  
**Personal phone logs not produced.**  
**Against the BOARD and SUSIN in his official and individual capacity**

- 23) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 24) CLEAR LEGAL RIGHT: Plaintiff has a clear legal right to require the production of public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 25) DUTY: Both the BOARD and SUSIN have an indisputable duty to produce public records pursuant to Article I, Section 24 of the Florida Constitution

and Chapter 119, Florida Statutes, because both the BOARD and SUSIN meet the definition of an “agency” as defined by § 119.011(2) and of “custodian of public records” as defined by § 119.011(5), Florida Statutes, and the records sought meet the definition of “public records” as defined in § 119.011(12), Florida Statutes. “Providing access to public records is the duty of each agency.” § 119.01(1), Fla. Stat. The duty includes having a process available to offer the public a way to obtain those records held by individual employees or officials – regardless of whether they are located on private or state accounts or devices - and resolve disputes about the extent of compliance. *O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036 (Fla. 4<sup>th</sup> DCA 2018). “Automation of public records must not erode the right of access to those records.” § 119.01(2)(a), Fla. Stat. Defendants are obligated to promptly acknowledge public records requests and to respond to requests in good faith. § 119.07(1)(c), Fla. Stat. “A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.” *Id.* “An unjustified delay in complying with a public records request amounts to an unlawful refusal under section 119.12(1).” *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (Fla. 5<sup>th</sup> DCA 1996). The duty to produce public records is ministerial in nature, not discretionary. *Poole v. City of Port Orange*, 33 So. 3d 739 (Fla. 5<sup>th</sup> DCA 2010).

- 26) NO ADEQUATE REMEDY AVAILABLE: Plaintiff has no other adequate remedy available to enforce her established right.
- 27) RELIEF REQUESTED: Plaintiff seeks an immediate alternative writ of mandamus (order to show cause) and final writ of mandamus pursuant to Florida Rule of Civil Procedure 1.630 compelling the Defendants to produce the public records requested herein and an order requiring them to pay attorney's fees and costs due to their failure to promptly produce the records and/ or to make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

**COUNT 3: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**  
**PUBLIC RECORDS REQUESTS #23-156**  
**DECLARATORY JUDGMENT**  
**PURSUANT TO CHAPTER 86, FLORIDA STATUTES**  
**Call logs between SUSIN and Randy Fine:**  
**Personal phone logs not produced.**  
**Against the BOARD and SUSIN in his official and individual capacity**

- 28) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 29) ACTUAL CONTROVERSEY: A present, actual bona fide controversy exists over the parties' rights and obligations with respect to the phone records requested by JENKINS from the BOARD and SUSIN, to wit: a) whether personal cell phone logs/ records exist; b) whether the personal cell phone logs/ records of an official are public records as defined by § 119.011(12),

Fla. Stat, when the personal cell phone is used for agency or official business; and c) whether Defendants made a prompt and good faith response.

- 30) ASCERTAINABLE FACTS: The declarations sought deal with a present, ascertainable state of facts or present controversy as to the state of facts as referenced herein.
- 31) DEPENDENT RIGHT: There is an immunity, power, privilege, or right of Ms. JENKINS' that is dependent upon the facts or law applicable to the facts, to wit: JENKINS' constitutional right of access to public records which applies to citizens requesting records from "any public body, officer, or employee of the state, or persons acting on their behalf.. " Art. I, § 24, Florida Constitution.
- 32) ANTAGONISTIC INTERESTS: There are persons who have an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law, to wit: the Defendants who meet the definition of an "agency" as defined by § 119.011(2) and of "custodian of public records" as defined by § 119.011(5), Florida Statutes, which obligates him to produce public records, verses JENKINS who is both a private person and a member of the Board.
- 33) PROPERLY BEFORE THE COURT: All antagonistic and adverse interests are before the Court by proper process, notice and service, such that this Court has jurisdiction over all parties, and the relief sought is not merely the giving of legal advice by the Court. JENKINS has requested the records

and the BOARD and SUSIN have objected. An order by this Court would require the BOARD and SUSIN to produce records made using his personal cell phone for official conduct creating both an individual and official adverse interest.

- 34) RELIEF REQUESTED: Plaintiff seeks a declaratory judgment pursuant to Chapter 86, Florida Statutes that the records requested herein are public records and have been unlawfully and/ or unreasonably withheld and that Defendants have failed to make a good faith response. Further, Plaintiff requests the Court declare that the BOARD and SUSIN must produce the phone records requested herein and pay attorney's fees and costs due to their failure to promptly produce the records and/ or make a good faith response, which for purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Florida Statutes and Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

**COUNT 4: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**  
**PUBLIC RECORDS REQUEST #23-173**  
**PURSUANT TO CHAPTER 119, FLORIDA STATUTES**  
**Call logs between SUSIN and FDOE:**  
**Personal phone logs not produced.**  
**(Defendants claim record does not exist because**  
**phone logs do not show calls were made.)**  
**Against the BOARD and SUSIN in his official and individual capacity**

- 35) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.



- 36) CONSTITUTIONAL AND STATUTORY RIGHT: Plaintiff has a constitutional and statutory right to require the production of public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 37) AGENCY AND RECORDS CUSTODIAN: Both the BOARD and SUSIN are an “agency” under § 119.011(2) and of “custodian of public records” as defined by § 119.011(5), Florida Statutes, and have a duty to produce the public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 38) PUBLIC RECORDS: The records sought are public records because they meet the definition of “public records” as defined in § 119.011(12), Florida Statutes, and encompassed within Article I, Section 24 of the Florida Constitution.
- 39) NO EXEMPTIONS: No exemptions apply that would prevent inspection or copying and Defendants have claimed no exemptions.
- 40) UNREASONABLE REFUSAL: Defendants’ failure to provide, fully provide, or promptly provide the records or a good faith response to the public records request is unreasonable because the records were accessible to SUSIN and the BOARD failed to make good faith efforts and to have a reliable process available to offer the public a way to obtain records held by individual employees or officials on private devices and to resolve disputes about the extent of compliance. *See O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036 (Fla. 4<sup>th</sup> DCA 2018).

- 41) ACTUAL REFUSAL/ LACK OF GOOD FAITH RESPONSE: Defendants failed make a prompt and good faith response to the public records request. A “good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be assessed.” § 119.07(1)(c), Fla. Stat.
- 42) VIOLATION OF CHAPTER 119 AND FLORIDA CONSTITUTION: Defendant’s failure to provide Plaintiff with the records in their automated electronically maintained form and/ or make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, violates the Florida’s Public Records Act and Article I, Section 24(e) of the Florida Constitution.
- 43) RELIEF REQUESTED: Plaintiff seeks an order compelling the Defendants to produce the public records requested herein and an order requiring them to pay attorney’s fees and costs due to their failure to promptly produce the records and/ or to make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes. *See Shea v. Cochran*, 680 So. 2d 628 (Fla. 4<sup>th</sup> DCA 1996) (finding the Florida Public Records Act provides a cause of action for relief); *Poole v. City of Port Orange*, 33 So. 3d 739, n.3 (Fla. 5<sup>th</sup> DCA 2010).

**COUNT 5: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**  
**PUBLIC RECORDS REQUEST #23-173**  
**MANDAMUS PURSUANT TO FLA. R. CIV. P. 1.630**  
**Call logs between SUSIN and FDOE:**  
**Personal phone logs not produced.**  
**(Defendants claim record does not exist because**  
**phone logs do not show calls were made.)**  
**Against the BOARD and SUSIN in his official and individual capacity**

- 44) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 45) CLEAR LEGAL RIGHT: Plaintiff has a clear legal right to require the production of public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 46) DUTY: Both the BOARD and SUSIN have an indisputable duty to produce the public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes, because both the BOARD and SUSIN meet the definition of an “agency” as defined by § 119.011(2) and of “custodian of public records” as defined by § 119.011(5), Florida Statutes, and the records sought meet the definition of “public records” as defined in § 119.011(12), Florida Statutes. “Providing access to public records is the duty of each agency.” § 119.01(1), Fla. Stat. The duty includes having a process available to offer the public a way to obtain those records held by individual employees or officials – regardless of whether they are located on private or state accounts or devices - and resolve disputes about the extent of compliance. *O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036 (Fla. 4<sup>th</sup> DCA 2018). “Automation of public records must

not erode the right of access to those records.” § 119.01(2)(a), Fla. Stat. Defendants are obligated to promptly acknowledge public records requests and to respond to requests in good faith. § 119.07(1)(c), Fla. Stat. “A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.” *Id.* “An unjustified delay in complying with a public records request amounts to an unlawful refusal under section 119.12(1).” *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (Fla. 5<sup>th</sup> DCA 1996). The duty to produce public records is ministerial in nature, not discretionary. *Poole v. City of Port Orange*, 33 So. 3d 739 (Fla. 5<sup>th</sup> DCA 2010).

- 47) NO ADEQUATE REMEDY AVAILABLE: Plaintiff has no other adequate remedy available to enforce her established right.
- 48) RELIEF REQUESTED: Plaintiff seeks an immediate alternative writ of mandamus (order to show cause) and final writ of mandamus pursuant to Florida Rule of Civil Procedure 1.630 compelling the Defendants to produce the public records requested herein and an order requiring them to pay attorney’s fees and costs due to their failure to promptly produce the records and/ or to make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

**COUNT 6: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**  
**PUBLIC RECORDS REQUESTS #23-173**

**DECLARATORY JUDGMENT**

**PURSUANT TO CHAPTER 86, FLORIDA STATUTES**

**Call logs between SUSIN and FDOE:**

**Personal phone logs not produced.**

**(Defendants claim record does not exist because  
phone logs do not show calls were made.)**

**Against the BOARD and SUSIN in his official and individual capacity**

- 49) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 50) ACTUAL CONTROVERSEY: A present, actual bona fide controversy exists over the parties' rights and obligations with respect to the phone records requested by JENKINS from the BOARD and SUSIN, to wit: a) whether personal cell phone logs/ records exist; b) whether the personal cell phone logs/ records of an official are public records as defined by § 119.011(12), Fla. Stat, when the personal cell phone is used for agency or official business; and c) whether Defendants responded in a prompt and good faith manner.
- 51) ASCERTAINABLE FACTS: The declarations sought deal with a present, ascertainable state of facts or present controversy as to the state of facts as referenced herein.
- 52) DEPENDENT RIGHT: There is an immunity, power, privilege, or right of Ms. JENKINS' that is dependent upon the facts or law applicable to the facts, to wit: JENKINS' constitutional right of access to public records which applies to citizens requesting records from "any public body, officer,

or employee of the state, or persons acting on their behalf... " Art. I, § 24, Florida Constitution.

- 53) ANTAGONISTIC INTERESTS: There are persons who have an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law, to wit: the Defendants who meet the definition of an "agency" as defined by § 119.011(2) and of "custodian of public records" as defined by § 119.011(5), Florida Statutes, which obligates him to produce public records, verses JENKINS who is both a private person and a member of the Board.
- 54) PROPERLY BEFORE THE COURT: All antagonistic and adverse interests are before the Court by proper process, notice and service, such that this Court has jurisdiction over all parties, and the relief sought is not merely the giving of legal advice by the Court. JENKINS has requested the records and the BOARD and SUSIN have objected. An order by this Court would require the BOARD and SUSIN to produce records, should they exist, made using his personal cell phone for official conduct creating both an individual and official adverse interest.
- 55) RELIEF REQUESTED: Plaintiff seeks a declaratory judgment pursuant to Chapter 86, Florida Statutes that the records requested herein are public records and have been unlawfully and/ or unreasonably withheld and that Defendants have failed to make a good faith response. Further, Plaintiff requests the Court declare that the BOARD and SUSIN must produce the phone records requested herein and pay attorney's fees and costs due to

their failure to promptly produce the records and/ or make a good faith response, which for purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Florida Statutes and Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

**COUNT 7: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**

**PUBLIC RECORDS REQUEST #23-222**

**PURSUANT TO CHAPTER 119, FLORIDA STATUTES**

**Call logs and text messages between SUSIN and Reporter Gallion:**

**Personal phone logs not produced - Text messages from**

**SUSIN's personal phone timely produced.**

**Against the BOARD and SUSIN in his official and individual capacity**

- 56) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 57) CONSTITUTIONAL AND STATUTORY RIGHT: Plaintiff has a constitutional and statutory right to require the production of public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 58) AGENCY AND RECORDS CUSTODIAN: Both the BOARD and SUSIN are an “agency” under § 119.011(2) and of “custodian of public records” as defined by § 119.011(5), Florida Statutes, and have a duty to produce the public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 59) PUBLIC RECORDS: The records sought are public records because they meet the definition of “public records” as defined in § 119.011(12), Florida

Statutes, and encompassed within Article I, Section 24 of the Florida Constitution.

- 60) NO EXEMPTIONS: No exemptions apply that would prevent inspection or copying and Defendants have claimed no exemptions.
- 61) UNREASONABLE REFUSAL: Defendants' failure to provide, fully provide, or promptly provide the records or a good faith response to the public records request is unreasonable because the records were accessible to SUSIN and the BOARD failed make good faith efforts and to have a reliable process available to offer the public a way to obtain records held by individual employees or officials on private devices and to resolve disputes about the extent of compliance. *See O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036 (Fla. 4<sup>th</sup> DCA 2018).
- 62) ACTUAL REFUSAL/ LACK OF GOOD FAITH RESPONSE: Defendants have failed to provide the requested records in full and in a timely manner. Further, Defendants failed to make a prompt and good faith response to the public records request. A "good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be assessed." § 119.07(1)(c), Fla. Stat.
- 63) VIOLATION OF CHAPTER 119 AND FLORIDA CONSTITUTION: Defendant's failure to provide Plaintiff with the records in their automated electronically maintained form and/ or make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process



in place to ensure compliance, violates the Florida's Public Records Act and Article I, Section 24(e) of the Florida Constitution.

- 64) RELIEF REQUESTED: Plaintiff seeks an order compelling the Defendants to produce the public records requested herein and an order requiring them to pay attorney's fees and costs due to their failure to promptly produce the records and/ or to make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes. *See Shea v. Cochran*, 680 So. 2d 628 (Fla. 4<sup>th</sup> DCA 1996) (finding the Florida Public Records Act provides a cause of action for relief); *Poole v. City of Port Orange*, 33 So. 3d 739, n.3 (Fla. 5<sup>th</sup> DCA 2010).

**COUNT 8: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**

**PUBLIC RECORDS REQUEST #23-222**

**MANDAMUS PURSUANT TO FLA. R. CIV. P. 1.630**

**Call logs and text messages between SUSIN and Reporter Gallion:**

**Personal phone logs not produced - Text messages from**

**SUSIN's personal phone timely produced.**

**Against the BOARD and SUSIN in his official and individual capacity**

- 65) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 66) CLEAR LEGAL RIGHT: Plaintiff has a clear legal right to require the production of public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

67) DUTY: Both the BOARD and SUSIN have an indisputable duty to produce the public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes, because both the BOARD and SUSIN meet the definition of an “agency” as defined by § 119.011(2) and of “custodian of public records” as defined by § 119.011(5), Florida Statutes, and the records sought meet the definition of “public records” as defined in § 119.011(12), Florida Statutes. “Providing access to public records is the duty of each agency.” § 119.01(1), Fla. Stat. The duty includes having a process available to offer the public a way to obtain those records held by individual employees or officials – regardless of whether they are located on private or state accounts or devices - and resolve disputes about the extent of compliance. *O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036 (Fla. 4<sup>th</sup> DCA 2018). “Automation of public records must not erode the right of access to those records.” § 119.01(2)(a), Fla. Stat. Defendants are obligated to promptly acknowledge public records requests and to respond to requests in good faith. § 119.07(1)(c), Fla. Stat. “A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.” *Id.* “An unjustified delay in complying with a public records request amounts to an unlawful refusal under section 119.12(1).” *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (Fla. 5<sup>th</sup> DCA 1996). The duty to produce public records is

ministerial in nature, not discretionary. *Poole v. City of Port Orange*, 33 So. 3d 739 (Fla. 5<sup>th</sup> DCA 2010).

- 68) NO ADEQUATE REMEDY AVAILABLE: Plaintiff has no other adequate remedy available to enforce her established right.
- 69) RELIEF REQUESTED: Plaintiff seeks an immediate alternative writ of mandamus (order to show cause) and final writ of mandamus pursuant to Florida Rule of Civil Procedure 1.630 compelling the Defendants to produce the public records requested herein and an order requiring them to pay attorney's fees and costs due to their failure to promptly produce the records and/ or to make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

**COUNT 9: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**  
**PUBLIC RECORDS REQUESTS #23-222**  
**DECLARATORY JUDGMENT**  
**PURSUANT TO CHAPTER 86, FLORIDA STATUTES**

**Call logs and text messages between SUSIN and Reporter Gallion:  
Personal phone logs not produced - Text messages from  
SUSIN's personal phone timely produced.**

**Against the BOARD and SUSIN in his official and individual capacity**

- 70) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 71) ACTUAL CONTROVERSEY: A present, actual bona fide controversy exists over the parties' rights and obligations with respect to the phone records requested by JENKINS from the BOARD and SUSIN, to wit: a) whether

personal cell phone logs/ records exist; b) whether the personal cell phone logs/ records of an official are public records as defined by § 119.011(12), Fla. Stat, when the personal cell phone is used for agency or official business; and c) whether Defendants made a prompt and good faith response.

- 72) ASCERTAINABLE FACTS: The declarations sought deal with a present, ascertainable state of facts or present controversy as to the state of facts as referenced herein.
- 73) DEPENDENT RIGHT: There is an immunity, power, privilege, or right of Ms. JENKINS' that is dependent upon the facts or law applicable to the facts, to wit: JENKINS' constitutional right of access to public records which applies to citizens requesting records from "any public body, officer, or employee of the state, or persons acting on their behalf... " Art. I, § 24, Florida Constitution.
- 74) ANTAGONISTIC INTERESTS: There are persons who have an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law, to wit: the Defendants who meet the definition of an "agency" as defined by § 119.011(2) and of "custodian of public records" as defined by § 119.011(5), Florida Statutes, which obligates him to produce public records, verses JENKINS who is both a private person and a member of the Board.
- 75) PROPERLY BEFORE THE COURT: All antagonistic and adverse interests are before the Court by proper process, notice and service, such that this

Court has jurisdiction over all parties, and the relief sought is not merely the giving of legal advice by the Court. JENKINS has requested the records and the BOARD and SUSIN have objected. An order by this Court would require SUSIN to produce records made using his personal cell phone for official conduct creating both an individual and official adverse interest.

- 76) RELIEF REQUESTED: Plaintiff seeks a declaratory judgment pursuant to Chapter 86, Florida Statutes that the records requested herein are public records and have been unlawfully and/ or unreasonably withheld and that Defendants have failed to make a good faith response. Further, Plaintiff requests the Court declare that the BOARD and SUSIN must produce the phone records requested herein and pay attorney's fees and costs due to their failure to promptly produce the records and/ or make a good faith response, which for purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Florida Statutes and Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

**COUNT 10: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**

**PUBLIC RECORDS REQUEST #23-377**

**PURSUANT TO CHAPTER 119, FLORIDA STATUTES**

**Text, email, and phone logs between SUSIN and BCSO:**

**No records produced.**

**Against the BOARD and SUSIN in his official and individual capacity**

- 77) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.

- 78) CONSTITUTIONAL AND STATUTORY RIGHT: Plaintiff has a constitutional and statutory right to require the production of public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 79) AGENCY AND RECORDS CUSTODIAN: Both the BOARD and SUSIN are an “agency” under § 119.011(2) and of “custodian of public records” as defined by § 119.011(5), Florida Statutes, and have a duty to produce the public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 80) PUBLIC RECORDS: The records sought are public records because they meet the definition of “public records” as defined in § 119.011(12), Florida Statutes, and encompassed within Article I, Section 24 of the Florida Constitution.
- 81) NO EXEMPTIONS: No exemptions apply that would prevent inspection or copying and Defendants have claimed no exemptions.
- 82) UNREASONABLE REFUSAL: Defendants’ failure to provide, fully provide, or promptly provide the records or a good faith response to the public records request is unreasonable because the records were accessible to SUSIN and the BOARD failed to make good faith efforts and to have a reliable process available to offer the public a way to obtain records held by individual employees or officials on private devices and to resolve disputes about the extent of compliance. *See O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036 (Fla. 4<sup>th</sup> DCA 2018).

- 83) ACTUAL REFUSAL/ LACK OF GOOD FAITH RESPONSE: Defendants have failed to provide the requested records in full and in a timely manner. Further, Defendants failed to make a prompt and good faith response to the public records request. A “good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be assessed.” § 119.07(1)(c), Fla. Stat.
- 84) VIOLATION OF CHAPTER 119 AND FLORIDA CONSTITUTION: Defendant’s failure to provide Plaintiff with the records in their automated electronically maintained form and/ or make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, violates the Florida’s Public Records Act and Article I, Section 24(e) of the Florida Constitution.
- 85) RELIEF REQUESTED: Plaintiff seeks an order compelling the Defendants to produce the public records requested herein and an order requiring them to pay attorney’s fees and costs due to their failure to promptly produce the records and/ or to make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes. *See Shea v. Cochran*, 680 So. 2d 628 (Fla. 4<sup>th</sup> DCA 1996) (finding the Florida Public Records Act provides a cause of action for relief); *Poole v. City of Port Orange*, 33 So. 3d 739, n.3 (Fla. 5<sup>th</sup> DCA 2010).

**COUNT 11: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**

**PUBLIC RECORDS REQUEST #23-377**

**MANDAMUS PURSUANT TO FLA. R. CIV. P. 1.630**

**Text, email, and phone logs between SUSIN and BCSO:**

**No records produced.**

**Against the BOARD and SUSIN in his official and individual capacity**

- 86) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 87) CLEAR LEGAL RIGHT: Plaintiff has a clear legal right to require the production of public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 88) DUTY: Both the BOARD and SUSIN have an indisputable duty to produce the public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes, because both the BOARD and SUSIN meet the definition of an “agency” as defined by § 119.011(2) and of “custodian of public records” as defined by § 119.011(5), Florida Statutes, and the records sought meet the definition of “public records” as defined in § 119.011(12), Florida Statutes. “Providing access to public records is the duty of each agency.” § 119.01(1), Fla. Stat. The duty includes having a process available to offer the public a way to obtain those records held by individual employees or officials – regardless of whether they are located on private or state accounts or devices - and resolve disputes about the extent of compliance. *O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036 (Fla. 4<sup>th</sup> DCA 2018). “Automation of public records must not erode the right of access to those records.” § 119.01(2)(a), Fla. Stat.



Defendants are obligated to promptly acknowledge public records requests and to respond to requests in good faith. § 119.07(1)(c), Fla. Stat. “A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.” *Id.* “An unjustified delay in complying with a public records request amounts to an unlawful refusal under section 119.12(1).” *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (Fla. 5<sup>th</sup> DCA 1996). The duty to produce public records is ministerial in nature, not discretionary. *Poole v. City of Port Orange*, 33 So. 3d 739 (Fla. 5<sup>th</sup> DCA 2010).

- 89) NO ADEQUATE REMEDY AVAILABLE: Plaintiff has no other adequate remedy available to enforce her established right.
- 90) RELIEF REQUESTED: Plaintiff seeks an immediate alternative writ of mandamus (order to show cause) and final writ of mandamus pursuant to Florida Rule of Civil Procedure 1.630 compelling the Defendants to produce the public records requested herein and an order requiring them to pay attorney’s fees and costs due to their failure to promptly produce the records and/ or to make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

**COUNT 12: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**  
**PUBLIC RECORDS REQUESTS #23-377**

**DECLARATORY JUDGMENT**

**PURSUANT TO CHAPTER 86, FLORIDA STATUTES**

**Text, email, and phone logs between SUSIN and BCSO:**

**No records produced.**

**Against the BOARD and SUSIN in his official and individual capacity**

- 91) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 92) ACTUAL CONTROVERSEY: A present, actual bona fide controversy exists over the parties' rights and obligations with respect to the phone records requested by JENKINS from the BOARD and SUSIN, to wit a) whether personal cell phone logs/ records exist; b) whether the personal cell phone logs/ records of an official are public records as defined by § 119.011(12), Fla. Stat, when the personal cell phone is used for agency or official business; and c) whether Defendants made a prompt and good faith response.
- 93) ASCERTAINABLE FACTS: The declarations sought deal with a present, ascertainable state of facts or present controversy as to the state of facts as referenced herein.
- 94) DEPENDENT RIGHT: There is an immunity, power, privilege, or right of Ms. JENKINS' that is dependent upon the facts or law applicable to the facts, to wit: JENKINS' constitutional right of access to public records which applies to citizens requesting records from "any public body, officer,

or employee of the state, or persons acting on their behalf... " Art. I, § 24, Florida Constitution.

- 95) ANTAGONISTIC INTERESTS: There are persons who have an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law, to wit: the Defendants who meet the definition of an "agency" as defined by § 119.011(2) and of "custodian of public records" as defined by § 119.011(5), Florida Statutes, which obligates him to produce public records, verses JENKINS who is both a private person and a member of the Board.
- 96) PROPERLY BEFORE THE COURT: All antagonistic and adverse interests are before the Court by proper process, notice and service, such that this Court has jurisdiction over all parties, and the relief sought is not merely the giving of legal advice by the Court. JENKINS has requested the records and the BOARD and SUSIN have objected. An order by this Court would require SUSIN to produce records made using his personal cell phone for official conduct creating both an individual and official adverse interest.
- 97) RELIEF REQUESTED: Plaintiff seeks a declaratory judgment pursuant to Chapter 86, Florida Statutes that the records requested herein are public records and have been unlawfully and/ or unreasonably withheld and that Defendants have failed to make a good faith response. Further, Plaintiff requests the Court declare that the BOARD and SUSIN must produce the phone records requested herein and pay attorney's fees and costs due to their failure to promptly produce the records and/ or make a good faith

response, which for purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Florida Statutes and Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

**COUNT 13: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**  
**PUBLIC RECORDS REQUEST #23-904**

**PURSUANT TO CHAPTER 119, FLORIDA STATUTES**

**Phone, text, and email communications between SUSIN  
and Commissioner Tobia: Personal phone logs not produced –  
Text messages from SUSIN’s personal cell phone untimely produced –  
Emails not produced.**

**Against the BOARD and SUSIN in his official and individual capacity**

- 98) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 99) CONSTITUTIONAL AND STATUTORY RIGHT: Plaintiff has a constitutional and statutory right to require the production of public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 100) AGENCY AND RECORDS CUSTODIAN: Both the BOARD and SUSIN are an “agency” under § 119.011(2) and of “custodian of public records” as defined by § 119.011(5), Florida Statutes, and have a duty to produce the public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 101) PUBLIC RECORDS: The records sought are public records because they meet the definition of “public records” as defined in § 119.011(12), Florida

Statutes, and encompassed within Article I, Section 24 of the Florida Constitution.

- 102) NO EXEMPTIONS: No exemptions apply that would prevent inspection or copying and Defendants have claimed no exemptions.
- 103) UNREASONABLE REFUSAL: Defendants' failure to provide, fully provide, or promptly provide the records or a good faith response to the public records request is unreasonable because the records were accessible to SUSIN and the BOARD failed to make good faith efforts and to have a reliable process available to offer the public a way to obtain records held by individual employees or officials on private devices and to resolve disputes about the extent of compliance. *See O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036 (Fla. 4<sup>th</sup> DCA 2018).
- 104) ACTUAL REFUSAL/ LACK OF GOOD FAITH RESPONSE: Defendants failed to make a prompt and good faith response to the public records request. A "good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be assessed." § 119.07(1)(c), Fla. Stat.
- 105) VIOLATION OF CHAPTER 119 AND FLORIDA CONSTITUTION: Defendant's failure to provide Plaintiff with the records in their automated electronically maintained form and/ or make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process

in place to ensure compliance, violates the Florida's Public Records Act and Article I, Section 24(e) of the Florida Constitution.

- 106) RELIEF REQUESTED: Plaintiff seeks an order compelling the Defendants to produce the public records requested herein and an order requiring them to pay attorney's fees and costs due to their failure to promptly produce the records and/ or to make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes. *See Shea v. Cochran*, 680 So. 2d 628 (Fla. 4<sup>th</sup> DCA 1996) (finding the Florida Public Records Act provides a cause of action for relief); *Poole v. City of Port Orange*, 33 So. 3d 739, n.3 (Fla. 5<sup>th</sup> DCA 2010).

**COUNT 14: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**

**PUBLIC RECORDS REQUEST #23-904**

**MANDAMUS PURSUANT TO FLA. R. CIV. P. 1.630**

**Phone, text, and email communications between SUSIN  
and Commissioner Tobia: Personal phone logs not produced –  
Text messages from SUSIN's personal cell phone untimely produced –  
Emails not produced.**

**Against the BOARD and SUSIN in his official and individual capacity**

- 107) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 108) CLEAR LEGAL RIGHT: Plaintiff has a clear legal right to require the production of public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

109) DUTY: Both the BOARD and SUSIN have an indisputable duty to produce the public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes, because both the BOARD and SUSIN meet the definition of an “agency” as defined by § 119.011(2) and of “custodian of public records” as defined by § 119.011(5), Florida Statutes, and the records sought meet the definition of “public records” as defined in § 119.011(12), Florida Statutes. “Providing access to public records is the duty of each agency.” § 119.01(1), Fla. Stat. The duty includes having a process available to offer the public a way to obtain those records held by individual employees or officials – regardless of whether they are located on private or state accounts or devices - and resolve disputes about the extent of compliance. *O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036 (Fla. 4<sup>th</sup> DCA 2018). “Automation of public records must not erode the right of access to those records.” § 119.01(2)(a), Fla. Stat. Defendants are obligated to promptly acknowledge public records requests and to respond to requests in good faith. § 119.07(1)(c), Fla. Stat. “A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.” *Id.* “An unjustified delay in complying with a public records request amounts to an unlawful refusal under section 119.12(1).” *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (Fla. 5<sup>th</sup> DCA 1996). The duty to produce public records is

ministerial in nature, not discretionary. *Poole v. City of Port Orange*, 33 So. 3d 739 (Fla. 5<sup>th</sup> DCA 2010).

- 110) NO ADEQUATE REMEDY AVAILABLE: Plaintiff has no other adequate remedy available to enforce her established right.
- 111) RELIEF REQUESTED: Plaintiff seeks an immediate alternative writ of mandamus (order to show cause) and final writ of mandamus pursuant to Florida Rule of Civil Procedure 1.630 compelling the Defendants to produce the public records requested herein and an order requiring them to pay attorney's fees and costs due to their failure to promptly produce the records and/ or to make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

**COUNT 15: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**

**PUBLIC RECORDS REQUESTS #23-904**

**DECLARATORY JUDGMENT**

**PURSUANT TO CHAPTER 86, FLORIDA STATUTES**

**Phone, text, and email communications between SUSIN  
and Commissioner Tobia: Personal phone logs not produced –  
Text messages from SUSIN's personal cell phone untimely produced –  
Emails not produced.**

**Against the BOARD and SUSIN in his official and individual capacity**

- 112) Paragraphs 1 through 15, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 113) ACTUAL CONTROVERSEY: A present, actual bona fide controversy exists over the parties' rights and obligations with respect to the phone records



requested by JENKINS from the BOARD and SUSIN, to wit: a) whether personal cell phone logs/ records exist; b) whether the personal cell phone logs/ records of an official are public records as defined by § 119.011(12), Fla. Stat, when the personal cell phone is used for agency or official business; and c) whether Defendants made a prompt and good faith response.

- 114) ASCERTAINABLE FACTS: The declarations sought deal with a present, ascertainable state of facts or present controversy as to the state of facts as referenced herein.
- 115) DEPENDENT RIGHT: There is an immunity, power, privilege, or right of Ms. JENKINS' that is dependent upon the facts or law applicable to the facts, to wit: JENKINS' constitutional right of access to public records which applies to citizens requesting records from "any public body, officer, or employee of the state, or persons acting on their behalf..." Art. I, § 24, Florida Constitution.
- 116) ANTAGONISTIC INTERESTS: There are persons who have an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law, to wit: the Defendants who meet the definition of an "agency" as defined by § 119.011(2) and of "custodian of public records" as defined by § 119.011(5), Florida Statutes, which obligates him to produce public records, verses JENKINS who is both a private person and a member of the Board.

- 117) PROPERLY BEFORE THE COURT: All antagonistic and adverse interests are before the Court by proper process, notice and service, such that this Court has jurisdiction over all parties, and the relief sought is not merely the giving of legal advice by the Court. JENKINS has requested the records and the BOARD and SUSIN have objected. An order by this Court would require the BOARD and SUSIN to produce records, should they exist, made using his personal cell phone for official conduct creating both an individual and official adverse interest.
- 118) RELIEF REQUESTED: Plaintiff seeks a declaratory judgment pursuant to Chapter 86, Florida Statutes that the records requested herein are public records and have been unlawfully and/ or unreasonably withheld and that Defendants have failed to make a good faith response. Further, Plaintiff requests the Court declare that the BOARD and SUSIN must produce the phone records requested herein and pay attorney's fees and costs due to their failure to promptly produce the records and/ or make a good faith response, which for purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Florida Statutes and Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

**COUNT 16: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**  
**PUBLIC RECORDS REQUEST #24-176**  
**PURSUANT TO CHAPTER 119, FLORIDA STATUTES**  
**Phone, text, and email communications between SUSIN and**  
**Commissioner Tobia: No records produced.**  
**Against the BOARD and SUSIN in his official and individual capacity**

- 119) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 120) CONSTITUTIONAL AND STATUTORY RIGHT: Plaintiff has a constitutional and statutory right to require the production of public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 121) AGENCY AND RECORDS CUSTODIAN: Both the BOARD and SUSIN are an “agency” under § 119.011(2) and of “custodian of public records” as defined by § 119.011(5), Florida Statutes, and have a duty to produce the public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 122) PUBLIC RECORDS: The records sought are public records because they meet the definition of “public records” as defined in § 119.011(12), Florida Statutes, and encompassed within Article I, Section 24 of the Florida Constitution.
- 123) NO EXEMPTIONS: No exemptions apply that would prevent inspection or copying and Defendants have claimed no exemptions.
- 124) UNREASONABLE REFUSAL: Defendants’ failure to provide, fully provide, or promptly provide the records or a good faith response to the public

records request is unreasonable because the records were accessible to SUSIN and the BOARD failed to make good faith efforts and to have a reliable process available to offer the public a way to obtain records held by individual employees or officials on private devices and to resolve disputes about the extent of compliance. *See O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036 (Fla. 4<sup>th</sup> DCA 2018).

- 125) ACTUAL REFUSAL/ LACK OF GOOD FAITH RESPONSE: Defendants failed to make a prompt and good faith response to the public records request. A “good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be assessed.” § 119.07(1)(c), Fla. Stat.
- 126) VIOLATION OF CHAPTER 119 AND FLORIDA CONSTITUTION: Defendant’s failure to provide Plaintiff with the records in their automated electronically maintained form and/ or make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, violates the Florida’s Public Records Act and Article I, Section 24(e) of the Florida Constitution.
- 127) RELIEF REQUESTED: Plaintiff seeks an order compelling the Defendants to produce the public records requested herein and an order requiring them to pay attorney’s fees and costs due to their failure to promptly produce the records and/ or to make a good faith response, which for the purposes of the BOARD requires reasonable efforts and a process in place

to ensure compliance, pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes. *See Shea v. Cochran*, 680 So. 2d 628 (Fla. 4<sup>th</sup> DCA 1996) (finding the Florida Public Records Act provides a cause of action for relief); *Poole v. City of Port Orange*, 33 So. 3d 739, n.3 (Fla. 5<sup>th</sup> DCA 2010).

**COUNT 17: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**

**PUBLIC RECORDS REQUEST #23-176**

**MANDAMUS PURSUANT TO FLA. R. CIV. P. 1.630**

**Phone, text, and email communications between SUSIN and  
Commissioner Tobia: No records produced.**

**Against the BOARD and SUSIN in his official and individual capacity**

- 128) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 129) CLEAR LEGAL RIGHT: Plaintiff has a clear legal right to require the production of public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.
- 130) DUTY: Both the BOARD and SUSIN have an indisputable duty to produce the public records pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes, because both the BOARD and SUSIN meet the definition of an “agency” as defined by § 119.011(2) and of “custodian of public records” as defined by § 119.011(5), Florida Statutes, and the records sought meet the definition of “public records” as defined in § 119.011(12), Florida Statutes. “Providing access to public records is the duty of each agency.” § 119.01(1), Fla. Stat. The duty includes having a process available to offer the public a way to obtain those

records held by individual employees or officials – regardless of whether they are located on private or state accounts or devices - and resolve disputes about the extent of compliance. *O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036 (Fla. 4<sup>th</sup> DCA 2018). “Automation of public records must not erode the right of access to those records.” § 119.01(2)(a), Fla. Stat. Defendants are obligated to promptly acknowledge public records requests and to respond to requests in good faith. § 119.07(1)(c), Fla. Stat. “A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.” *Id.* “An unjustified delay in complying with a public records request amounts to an unlawful refusal under section 119.12(1).” *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (Fla. 5<sup>th</sup> DCA 1996). The duty to produce public records is ministerial in nature, not discretionary. *Poole v. City of Port Orange*, 33 So. 3d 739 (Fla. 5<sup>th</sup> DCA 2010).

- 131) NO ADEQUATE REMEDY AVAILABLE: Plaintiff has no other adequate remedy available to enforce her established right.
- 132) RELIEF REQUESTED: Plaintiff seeks an immediate alternative writ of mandamus (order to show cause) and final writ of mandamus pursuant to Florida Rule of Civil Procedure 1.630 compelling the Defendants to produce the public records requested herein and an order requiring them to pay attorney’s fees and costs due to their failure to promptly produce the records and/ or to make a good faith response, which for the purposes

of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

**COUNT 18: UNLAWFUL WITHHOLDING OF PUBLIC RECORDS**  
**PUBLIC RECORDS REQUESTS #24-176**  
**DECLARATORY JUDGMENT**  
**PURSUANT TO CHAPTER 86, FLORIDA STATUTES**  
**Phone, text, and email communications between SUSIN and**  
**Commissioner Tobia: No records produced.**  
**Against the BOARD and SUSIN in his official and individual capacity**

- 133) Paragraphs 1 through 13, excluding paragraphs pertaining exclusively to public records requests not referenced in the title of this count, are incorporated by reference and re-alleged as if fully set forth herein.
- 134) ACTUAL CONTROVERSEY: A present, actual bona fide controversy exists over the parties' rights and obligations with respect to the phone records requested by JENKINS from the BOARD and SUSIN, to wit: a) whether personal cell phone logs/ records exist; b) whether the personal cell phone logs/ records of an official are public records as defined by § 119.011(12), Fla. Stat, when the personal cell phone is used for agency or official business; and c) whether Defendants responded in a prompt and good faith manner.
- 135) ASCERTAINABLE FACTS: The declarations sought deal with a present, ascertainable state of facts or present controversy as to the state of facts as referenced herein.
- 136) DEPENDENT RIGHT: There is an immunity, power, privilege, or right of Ms. JENKINS' that is dependent upon the facts or law applicable to the

facts, to wit: JENKINS' constitutional right of access to public records which applies to citizens requesting records from "any public body, officer, or employee of the state, or persons acting on their behalf..." Art. I, § 24, Florida Constitution.

- 137) ANTAGONISTIC INTERESTS: There are persons who have an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law, to wit: the Defendants who meet the definition of an "agency" as defined by § 119.011(2) and of "custodian of public records" as defined by § 119.011(5), Florida Statutes, which obligates him to produce public records, verses JENKINS who is both a private person and a member of the Board.
- 138) PROPERLY BEFORE THE COURT: All antagonistic and adverse interests are before the Court by proper process, notice and service, such that this Court has jurisdiction over all parties, and the relief sought is not merely the giving of legal advice by the Court. JENKINS has requested the records and the BOARD and SUSIN have objected. An order by this Court would require the BOARD and SUSIN to produce records, should they exist, made using his personal cell phone for official conduct creating both a personal or individual and official adverse interest.
- 139) RELIEF REQUESTED: Plaintiff seeks a declaratory judgment pursuant to Chapter 86, Florida Statutes that the records requested herein are public records and have been unlawfully and/ or unreasonably withheld and that Defendants have failed to make a good faith response. Further, Plaintiff



requests the Court declare that the BOARD and SUSIN must produce the phone records requested herein and pay attorney's fees and costs due to their failure to promptly produce the records and/ or make a good faith response, which for purposes of the BOARD requires reasonable efforts and a process in place to ensure compliance, pursuant to Florida Statutes and Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

**RELIEF REQUESTED:**  
**HEARING & PRIORITY**

- 140) Courts must set early hearings in actions to enforce the provisions of the Public Records Act and must give such cases priority over other pending cases pursuant to Section 119.11(1), Florida Statutes. *See also Salvador v. Fennelly*, 593 So. 2d 1091, 1094 (Fla. 4th DCA 1992), *disapproved on other grounds, Abdool v. Bondi*, 141 So. 3d 529 (Fla. 2014).
- 141) JENKINS requests that the Court give this case priority over other pending cases in compliance with the Public Records Act.

**RELIEF REQUESTED:**  
**ATTORNEYS FEES & COSTS**

- 142) JENKINS has complied with the requirements of Section 119.12(b), Florida Statutes, by providing adequate advance notice to the BOARD and SUSIN of her intent to commence this action via her pre-suit notices received by the BOARD and SUSIN on February 8, 2023; July 18 and 20<sup>th</sup>; and September 6 and 11, 2023.

- 143) The Public Records Act states if a court determines that an agency unlawfully refused to permit access to a public record, “the court *shall* assess and award, against the agency responsible, the reasonable cost of enforcement including reasonable attorneys’ fees.” § 119.12, Fla. Stat. (Emphasis added.)
- 144) The Florida Supreme Court has explained that the attorney's fee provision of Chapter 119 contains no good faith or reasonableness exception. *See Bd. of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 128 (Fla. 2016).
- 145) Even if the requested documents are produced after this action is commenced, but prior to final adjudication by the court, JENKINS is entitled to attorneys’ fees and costs. *Mazer v. Orange County*, 811 So. 2d 857 (Fla. 5th DCA 2022) (finding that requested document was produced after action was commenced but prior to final adjudication did not render the case moot or preclude consideration of entitlement to attorneys’ fees); *Cookston v. Office of the Public Defender*, 204 So. 3d 480 (Fla. 5th DCA 2016) (holding unjustified delay amounts to a refusal under Section 119.12 and remanding for determination whether fees and costs should be awarded.)
- 146) Section 86.081, Florida Statutes, grants the court the power to award equitable costs in a declaratory judgment action.

147) JENKINS has retained undersigned counsel and is obligated to pay counsel reasonable attorneys' fees, costs, and expenses in connection with this matter.

### **CONCLUSION**

WHEREFORE, Plaintiff JENKINS prays this Court will:

- 148) Issue an alternative writ of mandamus as requested herein.
- 149) Order an expedited hearing on JENKINS's complaint pursuant to Section 119.11(1), Florida Statutes.
- 150) Grant a jury trial on any issues of fact.
- 151) Absent any issues of fact, find that as a matter of law the requested records are public records subject to Florida's Public Records Act, Chapter 119, Florida Statutes.
- 152) Preliminarily order the BOARD and SUSIN to maintain and not dispose of the requested records until further order by the Court pursuant to § 119.11(4), Florida Statutes.
- 153) Should the BOARD and SUSIN assert that no records exist or provide any record other than the original maintained form, order an in-camera inspection of SUSIN's personal cell phone logs and other records, and inquire as to whether SUSIN has deleted any records.
- 154) Find the BOARD and SUSIN have failed to meet their burden should they assert that the records are confidential or exempt.

- 155) Find that SUSIN has waived any privacy interest he may have held by use of his personal phone for BOARD-related business, should the BOARD or SUSIN claim such a privacy interest.
- 156) Find that SUSIN has waved any privacy interest he may have held by providing text messages in partial response to public records request #23-222, should the BOARD or SUSIN claim such a privacy interest.
- 157) Find that the BOARD and SUSIN unlawfully refused records, did not promptly reply, or did not make a good faith response to JENKINS' public records requests.
- 158) Given that SUSIN testified at his deposition on November 17, 2023, that he used his personal cell phone to discuss Board-related business with Randy Fine, reporter Bailey Gallion, the Florida Department of Education, that County Commissioner John Tobia, admitted difficulty in recalling which calls were regarding official business, and that attorney Mora stated in correspondence on September 19, 2023, "Mr. Susin has had long-standing personal relationships with some of these individuals and it is impossible to determine the nature or substance of each call reflected on an otherwise threadbare call log," order the BOARD and SUSIN to provide JENKINS the requested phone records in unredacted and unmodified format.
- 159) Order that the BOARD and SUSIN must provide JENKINS with the records within 48 hours of the Court's order pursuant to Section 119.11(2), Florida Statutes.

- 160) Award JENKINS reasonable attorneys' fees, costs, and expenses incurred in this action against the BOARD for failing to make reasonable efforts and having a process in place to ensure compliance and resolve disputes.
- 161) Award JENKINS reasonable attorneys' fees, costs, and expenses incurred in this action against SUSIN in his official capacity for failing to comply with his duties as an "agency" and "records custodian."
- 162) Award JENKINS reasonable attorneys' fees, costs, and expenses incurred in this action against SUSIN in his individual capacity for acting outside the scope of his duties and authority as a school board member as set forth in paragraph 5b thereby thwarting JENKINS' public records requests.
- 163) Grant such further relief as the Court deems just and proper.

Respectfully submitted this 18<sup>th</sup> day of December, 2023.



By: \_\_\_\_\_

**Jessica J. Travis, FBN 76701**  
Attorney for JENNIFER JENKINS

**DefendBrevard.com**

1370 Bedford Drive, Suite 104

Melbourne, FL 32940

Ph: 321 - 728 - 7280

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Eservice: [eservice1@DefendBrevard.com](mailto:eservice1@DefendBrevard.com)

Eservice: [eservice2@DefendBrevard.com](mailto:eservice2@DefendBrevard.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Fourth Amended Complaint and attachments were served on counsel for the BREVARD COUNTY SCHOOL BOARD and MATTHEW SUSIN by eservice through the Florida Court's eportal on the 18<sup>th</sup> day of December, 2023 as set forth below:

Randy D. Mora and Jay Daigneault, Esquires  
Trask, Daigneault, LLP, Attorneys for Defendants, Brevard County School Board and Matthew Susin, at: [randy@cityattorneys.legal](mailto:randy@cityattorneys.legal), [jay@cityattorneys.legal](mailto:jay@cityattorneys.legal), and [jennifer@cityattorneys.legal](mailto:jennifer@cityattorneys.legal).

/s/ Jessica J. Travis  
**Jessica J. Travis, FBN 76701**  
Attorney for JENNIFER JENKINS

**ATTACHMENTS**

to

**FOURTH AMENDED COMPLAINT**

In

JENNIFER JENKINS  
Plaintiff,

vs.

BREVARD COUNTY SCHOOL  
BOARD; And  
MATTHEW SUSIN,  
in his individual capacity,  
Defendants.

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**PUBLIC RECORDS REQUESTS**

**Exhibit A - #23-156**

**Exhibit B - #23-173**

**Exhibit C - #23-222**

**Exhibit D - #23-377**

**Exhibit E - #23-904**

**Exhibit F – Screen capture from video of Brevard County  
Commission meeting of July 11, 2023 showing SUSIN**

**Exhibit G - #24-176**



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**From:** Jenkins.JenniferD@School Board <Jenkins.JenniferD@Brevardschools.org>  
**Sent:** Monday, August 15, 2022 11:18 PM  
**To:** recordsrequest <recordsrequest@Brevardschools.org>  
**Subject:** Re: PRR

Between the two parties.

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**From:** recordsrequest <recordsrequest@Brevardschools.org>  
**Sent:** Monday, August 15, 2022 4:03 PM  
**To:** Jenkins.JenniferD@School Board <Jenkins.JenniferD@Brevardschools.org>  
**Subject:** RE: PRR

Good Afternoon Ms. Jenkins,

I just want to clarify your request please. Do you just want any calls that were made between Mr. Susin and Randy Fine or any calls to/from Mr. Susin including Randy Fine?

Thank you.

*Holly Christmas*

Records Management Specialist  
Brevard Public Schools  
Division of Government and Community Relations  
2700 Judge Fran Jamieson Way  
Viera, FL 32940  
321 633-1000 x11453



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**From:** Jenkins.JenniferD@School Board <Jenkins.JenniferD@Brevardschools.org>  
**Sent:** Friday, August 12, 2022 4:59 PM  
**To:** recordsrequest <recordsrequest@Brevardschools.org>  
**Subject:** PRR

PRR #23-156 ^

Good evening,

I am requesting the call log of Mr. Susin, both personal and school board issued. Calls to/from Randall 'Randy' Fine. Date range June 1, 2022 to present day.

Jennifer Jenkins



Exhibit B - #23-173

**From:** Jenkins.JenniferD@School Board <Jenkins.JenniferD@Brevardschools.org>

**Sent:** Friday, August 19, 2022 2:11 PM

**To:** recordsrequest <recordsrequest@Brevardschools.org>

**Subject:** PRR

Good afternoon,

I am requesting the call log of all calls made to the FDOE made by Mr. Susin from both personal and/or district issued phones.

Jennifer Jenkins

**From:** [Jenkins.JenniferD@School Board <Jenkins.JenniferD@Brevardschools.org>](mailto:Jenkins.JenniferD@SchoolBoard.org)  
**Sent:** Monday, August 22, 2022 9:06 AM  
**To:** [recordsrequest <recordsrequest@Brevardschools.org>](mailto:recordsrequest@Brevardschools.org)  
**Subject:** Re: PRR

I'm sorry yes, June 21 to present.

**From:** [recordsrequest <recordsrequest@Brevardschools.org>](mailto:recordsrequest@Brevardschools.org)  
**Sent:** Monday, August 22, 2022 9:02 AM  
**To:** [Jenkins.JenniferD@School Board <Jenkins.JenniferD@Brevardschools.org>](mailto:Jenkins.JenniferD@SchoolBoard.org)  
**Subject:** RE: PRR

Good Morning Ms. Jenkins,

Do you want to give a timeframe please? Is there a specific phone number at the FDOE you had in mind? Thank you.

*Holly Christmas*

Records Management Specialist  
Brevard Public Schools  
Division of Government and Community Relations  
2700 Judge Fran Jamieson Way  
Viera, FL 32940  
321 633-1000 x11453



Exhibit C - #23-222

**From:** [Jenkins.JenniferD@School Board <Jenkins.JenniferD@Brevardschools.org>](mailto:Jenkins.JenniferD@SchoolBoard.org)  
**Sent:** Friday, September 9, 2022 11:51 AM  
**To:** recordsrequest <[recordsrequest@Brevardschools.org](mailto:recordsrequest@Brevardschools.org)>  
**Subject:** Requested record

Good morning!

I would like to request all phone calls and text messages to/from/between Matt Susin and Bailey Gallion, reporter at FL Today from the date range June 1, 2022 to present day on both business and personal communication devices.

Jennifer Jenkins

Exhibit D - #23-377

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**From:** [Jenkins.JenniferD@School Board](mailto:Jenkins.JenniferD@SchoolBoard.org) <[Jenkins.JenniferD@Brevardschools.org](mailto:Jenkins.JenniferD@Brevardschools.org)>  
**Sent:** Friday, November 25, 2022 8:48 PM  
**To:** recordsrequest <[recordsrequest@Brevardschools.org](mailto:recordsrequest@Brevardschools.org)>  
**Subject:** PRR Susin BC SO

Hello,

I am requesting all communication including text, email, and phone logs of calls received and sent to BC SO from Matt Susin on both business and/or personal cell phones from August 1, 2022 to August 18, 2022.

*Jennifer Jenkins*

Brevard Public Schools Board Member, District 3  
2700 Fran Jamieson Way  
Viera, FL 32937  
321-271-9495

Exhibit E - #23-904

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**From:** [Jenkins.JenniferD@School Board <Jenkins.JenniferD@Brevardschools.org>](mailto:Jenkins.JenniferD@School Board <Jenkins.JenniferD@Brevardschools.org>)  
**Sent:** Friday, June 30, 2023 11:40:28 PM  
**To:** recordsrequest <[recordsrequest@Brevardschools.org](mailto:recordsrequest@Brevardschools.org)>  
**Subject:** Re: School Board Redistricting Susin Tobia - Jenkins-PRR-#23-904

Just following up on this request.

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**From:** recordsrequest <[recordsrequest@Brevardschools.org](mailto:recordsrequest@Brevardschools.org)>  
**Sent:** Monday, June 5, 2023 12:42:57 PM  
**To:** [Jenkins.JenniferD@School Board <Jenkins.JenniferD@Brevardschools.org>](mailto:Jenkins.JenniferD@School Board <Jenkins.JenniferD@Brevardschools.org>)  
**Subject:** RE: School Board Redistricting Susin Tobia - Jenkins-PRR-#23-904

June 5, 2023

*School Board of Brevard County*  
*Attn: Jennifer Jenkins*  
P: 321-242-6430  
E: [jenkins.jenniferd@brevardschools.org](mailto:jenkins.jenniferd@brevardschools.org)

RE: Acknowledgement of Records Request Ticket ID# 23-904

Dear Ms. Jenkins,

We have received your public records request.

Your request will be processed in accordance with the Florida Public Records Law.

Please be advised there are potentially fees to cover the cost of reproduction, including copier expenses, supplies and staff time associated with all requests. You will be advised as soon as possible regarding estimated costs. Payment will be due in advance by check or money order made payable to **School Board of Brevard County**. If the actual cost is more than the estimate, your records will be released when payment in

full has been received. If actual cost is less than the estimate, a check for reimbursement will be requested and mailed to you.

**PLEASE NOTE:** Not all completed public records are in a digitized format. To receive a digitized version of a redacted record may require additional time and resources, resulting in additional expense.

You will be notified if records are exempt from public disclosure. Under public records laws, the district is not obliged to create a new document or records in response to a request for public records. Likewise, the district will not acquire computer software for the sole purpose of providing access or delivery of public records that are accessible by other means.

If you have any questions, please contact me at [recordsrequest@brevardschools.org](mailto:recordsrequest@brevardschools.org).

*Holly Christmas*

Records Management Specialist  
Brevard Public Schools  
Division of Government and Community Relations  
2700 Judge Fran Jamieson Way  
Viera, FL 32940  
321 633-1000 x11453



*You can't change the past but you can ruin the present by worrying about the future*

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**From:** [Jenkins.JenniferD@School](mailto:Jenkins.JenniferD@School) Board <[Jenkins.JenniferD@Brevardschools.org](mailto:Jenkins.JenniferD@Brevardschools.org)>

**Sent:** Thursday, June 1, 2023 10:34 AM

**To:** recordsrequest <[recordsrequest@Brevardschools.org](mailto:recordsrequest@Brevardschools.org)>

**Cc:** [PublicRecordsRequest@BrevardFL.gov](mailto:PublicRecordsRequest@BrevardFL.gov)

**Subject:** School Board Redistricting Susin Tobia

PRR #23-904 ^

Good morning,

I would like to request all phone calls, texts, and/or emails between John Tobia and Matthew Susin from the date range of 03/01/2023 to present day regarding any communication about school board and school board redistricting.

Due to Florida's broad public records law, most written communications to or from government employees regarding public education are public records. Therefore, this e-mail communication may be subject to public disclosure.

**Exhibit F – Screen capture from video of Brevard County Commission meeting of July 11, 2023 showing SUSIN**



Exhibit G - #24-176

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**From:** recordsrequest <recordsrequest@Brevardschools.org>  
**Sent:** Tuesday, August 8, 2023 11:50:07 AM  
**To:** Jenkins.JenniferD@School Board <Jenkins.JenniferD@Brevardschools.org>  
**Subject:** RE: Tobia Susin Request 2 - Jenkins-PRR-#24-176

August 8, 2023

*School Board of Brevard County*  
*Attn: Jennifer Jenkins*  
P: 321-242-6430  
E: [jenkins.jenniferd@brevardschools.org](mailto:jenkins.jenniferd@brevardschools.org)

RE: Acknowledgement of Records Request                      Ticket ID# 24-176

Dear Ms. Jenkins,

We have received your public records request.

Your request will be processed in accordance with the Florida Public Records Law.

Please be advised there are potentially fees to cover the cost of reproduction, including copier expenses, supplies and staff time associated with all requests. You will be advised as soon as possible regarding estimated costs. Payment will be due in advance by check or money order made payable to **School Board of Brevard County**. If the actual cost is more than the estimate, your records will be released when payment in full has been received. If the actual cost is less than the estimate, a check for reimbursement will be requested and mailed to you.

**PLEASE NOTE:** Not all completed public records are in a digitized format. To receive a digitized version of a redacted record may require additional time and resources, resulting in additional expense.

You will be notified if records are exempt from public disclosure. Under public records laws, the district is not obliged to create a new document or records in response to a request for public records. Likewise, the district will not acquire computer software for the sole purpose of providing access or delivery of public records that are accessible by other means.



If you have any questions, please contact me at [recordsrequest@brevardschools.org](mailto:recordsrequest@brevardschools.org).

*Holly Christmas*

Florida Certified Records Manager  
Brevard Public Schools  
Division of Government and Community Relations  
2700 Judge Fran Jamieson Way  
Viera, FL 32940  
321 633-1000 x11453



*You can't change the past but you can ruin the present by worrying about the future*

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**From:** Jenkins.JenniferD@School Board <Jenkins.JenniferD@Brevardschools.org>  
**Sent:** Wednesday, August 2, 2023 9:41 PM  
**To:** recordsrequest <recordsrequest@Brevardschools.org>  
**Subject:** Tobia Susin Request 2

Hello,

I would like to request all communication (phone, text, email) between, to/from Matthew Susin and John Tobia from the date range June 1, 2023 to present day.

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Due to Florida's broad public records law, most written communications to or from government employees regarding public education are public records. Therefore, this e-mail communication may be subject to public disclosure.