



State of South Carolina

Office of the Governor

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GOVERNOR

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ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

TO: Ralph W. Barbier, S. Gray Wallington, and Virginia Williamson

FROM: Rebecca Schimsa, Staff Attorney
Swati S. Patel, Chief Legal Counsel

DATE: September 24, 2013

SUBJECT: Explanation of Electronic Records produced by Staff in reference to the FOIA request to the Governor's Office from Nelson Mullins on behalf of HP

This memorandum attempts to explain and give context to electronic records, both documents and emails, produced by Governor's Office Staff. Please be advised of the following:

Staff produced all electronic documents in its possession without regard to any Freedom of Information Act exemption, including confidential attorney communications or confidential attorney work product. Therefore, many of the documents produced will be exempt from disclosure.

Staff produced all electronic documents in its possession without regard to the date the Freedom of Information Act request was received by Nelson Mullins on behalf of Hewlett Packard. Therefore, please note that a significant number of the documents produced are communications about the Freedom of Information Act request, itself, and the compilation of records by Staff thereafter.

Two log sheets accompany this memorandum for cost calculation purposes: (1) Staff Electronic Records; and (2) Former Staff Electronic Records. The log sheets show the amount of time spent searching and compiling these records along with the searcher's average hourly rate.

The following provides explanations for the records of every staff member who produced electronic records.

I. Baker, Josh (Director of Budget and Policy) – Electronic Documents and Emails.

Be advised that Mr. Baker, as the Budget and Policy Director, produced all budget-related files on behalf of the entire office. Through a shared network drive (“Share Drive” or “S-Drive”), every staff member had access to view and edit the bulk of the budget-related documents. Therefore, although Mr. Baker has individually produced the budget-related documents, the documents were available for editing by other staff as needed.

- A. Multiple Document Versions – Many of the budget files produced by Mr. Baker (such as “Budget Status” and “Executive Budget”) have similar file names but different dates and version numbers, referencing Executive Budgets from multiple budget years, Fiscal Years 2012-13 and 2013-14. This is the result of drafting multiple versions of the year’s annual Executive Budget and corresponding related documents, such as briefing materials and balance spreadsheets. Some of the budget-related documents are named, L04, which is the budget code for DSS.
- B. Missing Document Versions – It is important to note that not every version of every document was saved, creating gaps in the numbering of document versions in this production. The Office’s Records and Retention Policy does not require every version of a working budget to be retained for archival purposes, so staff appears to have inadvertently deleted or saved over some document versions.
- C. Child Support Enforcement System (CSES project) – It is not necessary to analyze every similarly named file to gauge the Administration’s approach to funding the System. Once the Governor decided to fund the System at the beginning of her term in 2011, the only determination that remained was how to fund the System in her Executive Budget each year. Therefore, the content regarding the System does not substantively change from draft to draft within each fiscal year. However, the substantive content regarding the System, including the funding amount and funding source, does change from FY 12-13 to FY 13-14.
- D. Department of Social Services’ Documents – Some of the documents produced are in the possession of the Governor’s Office but were created by DSS and sent to our office, including PDF, WORD, and EXCEL documents. Most of these documents were in response to our office’s request to all Cabinet agencies, which is an annual practice in the months prior to the drafting of the Executive Budget.
- E. Emails – While the bodies of the emails do not appear to reference the System, the emails produced by Mr. Baker contain attachments that include budgetary references to the System. It is important to note that many of the attachments are duplicative of the documents produced.

II. Lemoine, Leigh (Scheduler) – Electronic Documents and Emails.

Emails produced by Ms. LeMoine reference meetings and phone calls scheduled for the Governor, which also include briefing documents and talking points prepared for the Governor by staff. Because the office uses Microsoft Outlook for email and calendar features, Ms. LeMoine also produced calendar entries referencing the Governor's scheduled meetings and phone calls, which had to be printed and scanned as PDFs but nonetheless represent electronic records.

III. Patel, Swati (Chief Legal Counsel) – Electronic Documents and Emails.

Virtually all electronic records and emails in Mrs. Patel's possession are attorney-work product or communications with Marc Manos and other CFS committee members. She has the largest number of records due to the fact that she has been a member of the CFS committee since 2007. However, electronic records and emails are only available since the beginning of the Haley Administration (January 2011). Records that may be responsive prior to that time during the Sanford Administration are now housed at the SC Department of Archives and History.

IV. Peters, Hal (Policy Analyst) – Electronic Documents and Emails.

Most of the documents produced by Mr. Peters, as a policy analyst under Mr. Soura and Mr. Baker, are working documents that Mr. Peters generated, himself, or tasked interns to generate.

V. Schimsa, Rebecca (Staff Counsel) – Emails only.

The bulk of emails produced by Ms. Schimsa are either confidential attorney communications referencing the underlying FOIA request or communications with DSS on the Agency's accomplishments. It is longstanding practice for the Governor's Office to request Cabinet agencies to provide lists of accomplishments, which are then used for a variety of purposes, including the Governor's annual State of the State Address and other public events throughout the year.

VI. Soura, Christian (Deputy Chief of Staff for Budget and Policy) – Emails only.

Be advised that emails produced by Mr. Soura are not in PST format. Early on in the Administration, Mr. Soura removed emails from Microsoft Outlook and saved the emails onto the shared network ("Share Drive" or "S-Drive") as an individual archiving practice. As such, the emails Mr. Soura has produced no longer exist in his Microsoft Outlook and are therefore unable to be exported in PST format.

VII. Stirling, Bryan (Outgoing Chief of Staff) – Electronic Documents and Emails.

Documents produced by Mr. Stirling include email correspondence and PDF copies of correspondence with representatives from HP. Please note that at the time the

FOIA request was received on July 25, 2013, Mr. Stirling was Chief of Staff, his last day serving in this position will be September 30, 2013.

VIII. Former Staff Members

The Records and Retention Policy for the Governor's Office requires that documents and correspondence in the possession of staff members be retained until the close of the Governor's last term, at which point only selected documents and correspondence of executive staff are archived. Accordingly, our office possesses an electronic record of all emails in the possession of former staffers and some electronic documents in the possession of former staff members.

- A. Godfrey, Rob (former Communications Director 2011-13);
- B. Hall, Taylor (former Cabinet Liaison 2011-12) – No records;
- C. Pearson, Tim (former Chief of Staff 2011-12) – No records;
- D. Price, Blanche (former Governor's Aide 2011-12) – No records;
- E. Shuster, Jamie (former Budget Director 2011-12);
- F. Walker, Madison (former Director of Boards and Commissions 2011-2012); and
- G. Walker, Trey (former Deputy Chief of Staff for Legislative Affairs) – No records.

All electronic documents and emails belonging to former staff members are in the process of being searched. At this time, no responsive records have been located.

Nelson Mullins (HP) FOIA – STAFF ELECTRONIC RECORDS

| | Electronic Records | Notes | Search Time | Average Hourly Rate |
|--------------------|---------------------------|----------------------|--------------------|-------------------------------|
| 1. Baker | ✓ | Documents and Emails | 3.5 hours | \$36.64 |
| 2. Card | None | N/A | 5 minutes | \$25.13 |
| 3. Carroll | None | N/A | 0 | N/A |
| 4. Haley | None | N/A | 5 minutes | \$31.69 (Rebecca Schimsa) |
| 5. Haltiwanger | None | N/A | 0 | N/A |
| 6. Jones | None | N/A | 2 minutes | \$18.49 |
| 7. LeMoine | ✓ | Documents and Emails | 15 minutes | \$25.35 |
| 8. Mayer | None | N/A | 0 | N/A |
| 9. Patel | ✓ | Documents and Emails | 4 hours | \$53.88 |
| 10. Peters | ✓ | Documents and Emails | 90 minutes | \$18.49 |
| 11. Pitts | None | N/A | 0 | N/A |
| 12. Robertson | None | N/A | 0 | N/A |
| 13. Schimsa | ✓ | Emails | 30 minutes | \$31.69 |
| 14. Soura | ✓ | Emails | 30 minutes | \$64.71 |
| 15. Stirling | ✓ | Documents and Emails | 30 minutes | \$16.92 (Keke Robertson) |
| 16. Symmes | None | N/A | 0 | N/A |
| 17. Taillon | None | N/A | 0 | N/A |
| 18. Veldran | None | N/A | 0 | N/A |
| 19. Walls | None | N/A | 0 | N/A |
| 20. Correspondence | None | N/A | 10 minutes | \$21.04 (Katherine Thomas) |

Nelson Mullins (HP) FOIA – FORMER STAFF ELECTRONIC RECORDS

| | Electronic Records | Notes | Search Time | Average Hourly Rate |
|--------------------|---------------------------|--------------|--------------------|------------------------------|
| 1. Godfrey, Rob | | | | |
| 2. Hall, Taylor | None | N/A | 15 minutes | \$31.69 (Rebecca Schimsa) |
| 3. Pearson, Tim | None | | 75 minutes | \$31.69 (Rebecca Schimsa) |
| 4. Price, Blanche | None | N/A | 10 minutes | \$31.69 (Rebecca Schimsa) |
| 5. Shuster, Jamie | | | | |
| 6. Walker, Madison | | | | |
| 7. Walker, Trey | None | N/A | 10 minutes | \$31.69 (Rebecca Schimsa) |