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11 *Attorneys for Plaintiff Scott Peterson*

12 ARIZONA SUPERIOR COURT

13 MARICOPA COUNTY

14 Scott Peterson, an individual, doing  
15 business as the Checks and Balances  
16 Project,

17 Plaintiff,

18 v.

19 Arizona Corporation Commission, a  
20 political subdivision; Robert Stump, in his  
21 official capacity as Arizona Corporation  
22 Commissioner, Arizona Attorney General's  
23 Office, a public body; Mark Brnovich, in  
24 his official capacity as Attorney General of  
25 the State of Arizona,

26 Defendants.

No. LC2015-000453

**SECOND MOTION FOR FURTHER  
INSPECTION OF COMMISSIONER  
STUMP'S PHONE**

ORAL ARGUMENT REQUESTED

(Assigned to the Honorable Randall Warner)

27 This Court denied Plaintiff Scott Peterson's ("Plaintiff") first motion for further  
28 inspection, in part, because "there is no evidence . . . that the Attorney General's search was  
inadequate." [March 11, 2016 Minute Entry at 5] The inadequacy of the Attorney General's  
search is now plain to see, however, given that it failed to find the content of *any* of the 3,547 text  
messages sought by Plaintiff.

Plaintiff is entitled to inspect the public records he has requested, specifically certain  
records among text messages exchanged between Commissioner Stump and 18 individuals or  
entities that worked for or did business with the Arizona Corporation Commission

1 (“Commission”). As the current custodian of the records, the Attorney General has the burden of  
2 establishing that it adequately searched for these records. It has not met its burden in this case.

3 Plaintiff therefore renews his motion to allow Bryan Neumeister (“Neumeister”) to inspect  
4 Commissioner Bob Stump’s iPhone 5 (the “iPhone”) for public records. In the alternative,  
5 Plaintiff requests an evidentiary hearing on the adequacy of the Attorney General’s search.

### 6 **Factual Background**

7 Again, Plaintiff has requested the 3,547 text messages exchanged between Commissioner  
8 Stump and 18 individuals or entities that worked for or did business with the Commission  
9 between May 1, 2014 and March 11, 2015 (the “Requested Records”). The Commission initially  
10 advised Plaintiff that many of the Requested Records “do not exist,” because, in part,  
11 Commissioner Stump “routinely deleted text messages [constituting public records] once their  
12 administrative or reference value ended” and did so “not long after he received them.”  
13 [Complaint for Special Action (“Complaint”) ¶ 24] The text messages also do not exist,  
14 according to the Commission, because Commissioner Stump disposed of his previous state-issued  
15 iPhone, from which he had sent and received at least some of the text messages. [*Id.* ¶ 25]

16 But, despite Commissioner Stump’s efforts to destroy the text messages, both deleted text  
17 messages and text messages sent on previous phones still likely reside on the “unallocated space”  
18 on Commissioner Stump’s current iPhone. [Declaration of Bryan Neumeister (“Neumeister  
19 Decl.”) ¶¶ 6-7 (filed concurrently)]

20 As part of its investigation of a separate matter involving former Corporation  
21 Commissioner Gary Pierce, the Attorney General’s Office performed a forensic examination of  
22 Commissioner Stump’s iPhone. [Jan. 22, 2016 Letter from K. Hartman-Tellez to D. Barr at 1  
23 (describing process) (“Exhibit A”)] With the assistance of the Pinal County Sherriff’s Office  
24 (“PCSO”), the Attorney General reported that it used three software programs—two different  
25 versions of CelleBrite, Magnet Acquire, and Blacklight—to retrieve data from Commissioner  
26 Stump’s iPhone. [*Id.*] According to the Attorney General, “[a]t least one of the software  
27 programs used to recover text messages produced some results that did not include the sender’s or  
28 recipient’s name or phone number.” [Defendants’ Notice of Submission of Text Messages For *In*

1 Camera Review at 2 n.1] The Attorney General also reported that “[a] complete image of the  
2 phone, including all unallocated space, was not made because physical extraction was not  
3 supported.” [Exhibit A at 2] Finally, the Attorney General reported that “no HASH values of any  
4 text messages accompany the messages.” [Id.]

5 The results of this search produced “[o]nly 36 messages . . . within the dates of [Plaintiff’s  
6 public records] request,” or approximately 1% of the 3,547 text messages sought by Plaintiff.  
7 [March 25, 2016 Minute Order at 1] But, remarkably, “[n]o content was recovered from these 36  
8 messages.” [Id.] Put simply, the Attorney General’s search of Commissioner Stump’s iPhone  
9 uncovered *none* of the content sought by Plaintiff.

### 10 Analysis

#### 11 I. PLAINTIFF IS ENTITLED TO EXAMINE THE REQUESTED RECORDS AND 12 THE ATTORNEY GENERAL MUST ADEQUATELY SEARCH FOR SUCH RECORDS.

13 Plaintiff is entitled to inspect public records. A.R.S. § 39-121. And at least some of the  
14 unrecovered 3,547 text messages exchanged between Commissioner Stump’s state-issued  
15 iPhone 3 and 18 individuals or entities that worked for or did business with the Commission  
16 likely still exist, and reside on the “unallocated space” on Commissioner Stump’s iPhone. [See  
17 Neumeister Decl. ¶¶ 6-8] These records “are presumed open to the public for inspection as public  
18 records,” in furtherance of the law’s “strong policy” favoring open disclosure and access.  
19 *Carlson v. Pima Cty.*, 141 Ariz. 487, 491, 687 P.2d 1242, 1246 (1984).

20 A custodian “must make a good faith effort to conduct a search for the requested records.”  
21 *Phoenix New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 539, 177 P.3d 275, 281 (App. 2008)  
22 (quoting *Rugiero v. U.S. Dep’t of Justice*, 257 F.3d 534, 547 (6th Cir. 2001)). The custodian also  
23 “has the burden of establishing that it adequately searched” for any requested public records. *Id.*  
24 at 539, 117 P.3d at 281. Specifically, the custodian “must demonstrate its search was ‘reasonably  
25 calculated to uncover all relevant documents.’” *Hodai v. City of Tucson*, 239 Ariz. 34, 44 ¶ 32,  
26 365 P.3d 959, 969 (App. 2016) (quoting *Lahr v. Nat’l Transp. Safety Bd.*, 569 F.3d 964, 986 (9th  
27 Cir. 2009)). As explained below, there is substantial evidence that the Attorney General’s search  
28 was inadequate.

1 **II. THERE IS SUBSTANTIAL EVIDENCE THAT THE ATTORNEY GENERAL'S**  
2 **SEARCH WAS INADEQUATE**

3 Based on the Attorney General's report of the search it conducted and the results of this  
4 Court's review, there are *at least* two indicia that the Attorney General's search was inadequate:  
5 (1) the search did not uncover HASH values for any messages and (2) the recovered messages  
6 responsive to Plaintiff's request lacked content.

7 *First*, the Attorney General did not uncover any HASH values for *any* text messages  
8 recovered from the iPhone. Every text message has a HASH value, which is the equivalent of  
9 DNA of a text message. [Neumeister Decl. ¶ 9] It is very rare, if not impossible, to recover  
10 messages—even deleted messages—from a cell phone that do not include HASH values. [*Id.*  
11 ¶ 10] That the recovered text messages do not have HASH values suggests either there is  
12 something wrong with the data on the iPhone or that the Attorney General and its investigators  
13 did not have the technical background to acknowledge or recover them. [*Id.* ¶ 11]

14 *Second*, it is very unlikely that messages would be uncovered without any content. [*Id.*  
15 ¶ 12] Moreover the HASH value of the text messages would show whether the message's content  
16 has been deleted or altered in any way.<sup>1</sup> [*Id.*]

17 Finally, and separately, while Plaintiff respects the Attorney General's and PCSO's  
18 investigators, Mr. Neumeister is a well-recognized expert in forensic recovery and would likely  
19 have a greater chance of identifying the Requested Records. [*Id.* ¶¶ 1, 8] Based on his  
20 substantial experience, Mr. Neumeister believes that both his protocols and the technology he  
21 would employ would be better suited to uncover the Requested Records, particularly any deleted  
22 text messages that may still exist on the "unallocated space" of Commissioner Stump's iPhone as  
23 described above. [*Id.*]

24  
25  
26 <sup>1</sup> It is unclear whether the Attorney General searched the "unallocated" space on the  
27 iPhone. The Attorney General stated that it did not make a "complete image of the phone,  
28 including all unallocated space." [Exhibit A at 2] Again, this space is most likely to contain any  
deleted or early messages, including the Requested Records that Commissioner Stump's own  
attorney suggested Commissioner Stump deleted. [Neumeister Decl. ¶¶ 5-7] Any search of the  
iPhone without a search of the unallocated space would be inadequate.

1 **III. FURTHER EXAMINATION OR, AT A MINIMUM, AN EVIDENTIARY**  
2 **HEARING IS REQUIRED**

3 In sum, the Attorney General has not shown that its “search was ‘reasonably calculated to  
4 uncover all relevant documents.’” *Hodai*, 239 Ariz. at 44 ¶ 32, 365 P.3d at 969 (quoting *Lahr*,  
5 569 F.3d at 986). The Attorney General must perform an adequate search for the Requested  
6 Records. To assist the Attorney General in conducting the required search, Plaintiff is willing to  
7 pay for an expert. To that end, Plaintiff requests that Mr. Neumeister be permitted to examine the  
8 iPhone under the supervision of the Attorney General’s Office. Mr. Neumeister would be willing  
9 to perform all of his work in the presence of anyone from the Attorney General’s Office and to  
10 the exclusion of Plaintiff. [Neumeister Decl. ¶ 15]

11 In the alternative, Plaintiff requests this Court exercise its discretion to grant an  
12 evidentiary hearing to determine the adequacy of the Attorney General’s search. *See Phoenix*  
13 *News Times*, 217 Ariz. at 539, 177 P.3d at 281 (noting that custodian could demonstrate the  
14 adequacy of its search through evidence, including affidavits or declarations).

15 DATED: April 15, 2016

**PERKINS COIE LLP**

16 By: 

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*Attorneys for Plaintiff Scott Peterson*


21 Copy of the foregoing filed on April 15, 2016  
22 with the Clerk of Court, Maricopa County  
23 Superior Court and a copy delivered to the  
24 Hon. Randall Warner

25 Copy of the foregoing emailed and mailed  
26 on April 15, 2016, to:

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# **EXHIBIT A**



OFFICE OF THE ARIZONA ATTORNEY GENERAL  
STATE GOVERNMENT DIVISION  
AGENCY COUNSEL SECTION

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January 22, 2016

VIA E-MAIL  
AND U.S. MAIL

Daniel C. Barr  
Perkins Coie LLP  
2901 North Central Avenue  
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Phoenix, Arizona 85012-2788

Re: *Peterson v. Arizona Corporation Commission*, Cause No. LC2015-000453 (Ariz. Super. Ct. Maricopa Cnty.)

Dear Dan:

On behalf of the Arizona Attorney General's Office (the "AGO"), I write in response to your January 15, 2016 letter, in which you requested additional information about the steps the AGO took to retrieve text messages and related metadata from Commissioner Bob Stump's smartphone. I have communicated with the investigators who oversaw the retrieval process and have obtained the information below.

The AGO retrieved the data from the smartphone with the following programs:

- CelleBrite Software, v4.2.2.86
- CelleBrite Software, v4.2.6.5
- Magnet Acquire software, v6.6.3.0744
- Blacklight software, v2015R3

The retrieval using the former two programs occurred at the AGO. I understand that the latter two programs belong to the Pinal County Sheriff's Office ("PCSO"), and an AGO investigator obtained PCSO's assistance to retrieve data from the smartphone with those programs.

I provided spreadsheets, in PDF format, containing the data retrieved by each of the foregoing four programs to Judge Cole for his review.



Daniel C. Barr  
January 22, 2016  
Page 2

No FTK or EnCase image of any data cards were taken because data cards were not supported by the model of smartphone used by Commissioner Stump. A complete image of the phone, including all unallocated space, was not made because physical extraction was not supported. Finally, no HASH values of any text messages accompany the messages.

I trust that the foregoing answers your questions, but please let me know if you need additional information about the forensic examination of Commissioner Stump's smartphone.

Very truly yours,



Karen J. Hartman-Tellez

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