

ATTACHMENT IV

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May 19, 2008

Via U.S. MAIL

Charles Davant
Williams & Connolly LLP
725 Twelfth Street, NW
Washington, DC 20005-5901

Re: **Evans et al. v. City of Durham et al., No. 1:07cv739**

Dear Charles,

I am writing in response to your April 22, 2008 letter regarding the City of Durham's efforts to preserve electronically stored information ("ESI") related to the above-listed case.

As the City explained during our April 18, 2008 call, the City has undertaken to ensure the preservation of relevant electronic documents pursuant to your August 16, 2007 request. Your letter was sent to James T. Soukup (911 Emergency Services); Julie Brenman (Budget & Management); Henry Blinder (City Attorney); Kenneth Pennoyer (Finance & Risk Management); Alethea Bell (Human Resources); Beverly Thompson (Public Affairs); Michie Wagner (Technology Solutions); Steve Chalmers, Jose Lopez, Ron Hodge, BJ Council, Arnetta Herring, Toni Smith, Lee Russ, Steven Mihaich, Kammie Michael and James Bjurstrom (DPD). These individuals were asked to cascade the request to people within their respective departments who might have relevant information. The City Manager and City Council were provided with a copy of your letter and briefed by the City Attorney's office in a closed session. Crimestoppers is not a City department, but David Addison, the Police Department Crimestoppers Coordinator, was notified through Deputy Chief Hodge.

Prior to your request, the City employed its normal document retention policies, which includes periodic recycling of tapes used to backup the City's common server. E-mails on the City server are backed up weekly, with tapes recycled monthly. Documents on the City server are backed up monthly, with tapes recycled annually.

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The City also has in its possession hard copies of electronic documents that were printed out in response to a public records request in May 2006. In response to this request, the City selected 40 Police Department employees who may have had relevant information and requested that each of those individuals search their own computer for such relevant information. Privileged documents were removed by the Police Department Attorneys from those documents before production. Electronic copies of those e-mails are subject to the City's normal retention policies described above.

We have received your additional request that the City take immediate steps to preserve the computer hard drives that were used by the City of Durham Defendants during the time period at issue in the Amended Complaint. The City has imaged the computers of each of the employees listed in your original letter of August 16, 2007, and we are preserving relevant data from those files. This effort was undertaken in addition to the City's standard policy of imaging to a CD/DVD the computers of any employees leaving the employ of the City.

With regard to your follow-up questions, I will answer them in the order in which you present them in your letter.

1.A. E-mail and Outlook Items - Individual employees would be able to archive their Outlook e-mail to the City server through their personal directory connected to the server. E-mails in the "deleted items" folder are removed from the City's server every 14 days, but items in the "sent" folder are not.

1.B. Network Server Files - The City of Durham server is broken up by department, so, for example, the Durham Police Department has its own segment of the server. Within each department, some, but not all City employees have a "home directory" where they can store their documents to the server. There are also department-level folders for storing shared documents and files.

1.C. Back-up E-mail & Network Server Files - The City backs up its server to tapes. As we discussed on the phone, the City's policy is to recycle the tapes used to back-up the e-mail server monthly, and the tapes used for the file server annually. Because the tapes are recycled, and new information is overwritten, we do not believe that earlier information may be retrieved forensically. The tapes themselves are kept in the IT department.

1.D. Computer Hard Drives - Any investigator or administrator within the City Police Department does have their own assigned computer. Patrol officers share access to network computers. As we mentioned on the phone, we have confirmed that the City's policy of imaging the computer of departing employees was followed with regard to each of the defendants in this case who are no longer employed by the City. The computers themselves would remain in use in the Police Department during the course of their normal useful life.

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1.E. Voicemail - The City uses Nortel Voice Module for voicemail. There are no e-mail notifications when a voicemail is received, and there is no storage for voicemails once they are deleted from the phone.

1.F. Portable Devices - The following City of Durham defendants have City-issued blackberries: Patrick Baker, Beverly Council, Ron Hodge, and Lee Russ. Other storage devices may be purchased by department, but the City generally does not provide thumb drives, zip drives, or external hard drives. There are a limited number of thumb drives used within the Durham Police Department. Other storage devices such as floppy discs/CDs are available to City employees for their use in their investigations. The City does not maintain a list of employees who have personal PDAs or other personal storage devices.

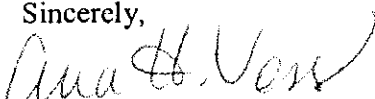
1.G. Other sources of ESI - The City Police Department uses two additional electronic databases: RMS (Records Management System) and CAD (Computer Aided Dispatch). The typed documents that you mentioned on the phone are most likely from RMS.

Finally, the City received your May 7, 2008 letter regarding the efforts of Messrs. Evans and Finnerty to preserve ESI. We have the following additional questions regarding those efforts.

1. Other internet accounts - You described Mr. Evans's and Mr. Finnerty's e-mail accounts in your letter. As we understand it, Mr. Evans and Mr. Finnerty have attempted to retain all e-mails that they deem relevant. Please let us know whether they have other online accounts through services such as Facebook, MySpace, LinkedIn, or other similar social, networking, or other online sites on which the Plaintiffs may have stored information of the kind described in the City's September 26, 2007 letter.

2. Portable Devices - You described the portable e-mail devices that Mr. Evans has used. We would also like to know whether Mr. Evans and Mr. Finnerty used cell phones with text messaging (SMS) capability at any point during or subsequent to March 13, 2006. Please describe any efforts taken to retain data available through such devices.

Sincerely,



Ana H. Voss

cc: Reggie Gillespie (by e-mail)
Richard D. Emery (by e-mail)
Barry C. Scheck (by e-mail)